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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF SAN FRANCISCO

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15  
16 **THE PEOPLE OF THE STATE OF**  
17 **CALIFORNIA, et al.,**

18 Plaintiffs,

19 v.

20 **SAMSUNG SDI, CO., LTD., et al.,**

21 Defendants.  
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Case No. CGC-11-515784

**SUPPLEMENTAL MEMORANDUM OF  
POINTS AUTHORITIES IN SUPPORT  
OF MOTION FOR PRELIMINARY  
APPROVAL OF SETTLEMENTS WITH  
LG, PANASONIC, HITACHI, TOSHIBA  
AND SAMSUNG, AND CONDITIONAL  
CERTIFICATION OF SETTLEMENT  
CLASS OF GOVERNMENT ENTITIES**

Date: March 29, 2016  
Time: 9:00 a.m.  
Dept: 304  
Judge: Curtis E.A. Karnow  
Action Filed: November 8, 2011

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## I. INTRODUCTION

This supplemental memorandum is intended to clarify issues and answer questions raised by the Court during the March 3, 2016 hearing on the Attorney General's motion for preliminary approval of her settlements. This memorandum explains those aspects of the Attorney General's settlements that require court approval and the nature of the approval required, e.g., class of local government entities for damages and injunctive relief/compliance training. In discussing the court approval that is required for various components of her settlements, the Attorney General clarifies how the compliance training is more than just a reporting requirement and in fact has great value. This memorandum also explains those aspects of these settlements that do not require court approval, e.g., deadweight loss or damages to the general economy of the state, damages suffered by state agencies, disgorgement of profits, and civil penalties.

As for the *parens patriae* claim of damages on behalf of natural persons, the Attorney General has, in reliance on this Court's observations as to her motion for preliminary approval, decided to move for dismissal with prejudice of her *parens* claim under these proceedings as permitted under Bus. & Prof. Code, § 16760, subd. (c). The reason for this simple: as explained herein, the Attorney General believes it is appropriate under the circumstances of this case to defer to the parallel federal proceedings in which a class was certified (including the damage claims of California natural persons) as the *more appropriate vehicle* by which California natural persons can recover *directly* for their losses. This holds true even if the federal class settlements that encompass the claims of California natural persons should be disapproved by the district court or on appeal.

As requested by the Court, the Attorney General supplies details as to the planned distribution of funds allocated for each of her monetary claims, e.g., class of local government entity claims, deadweight loss, state agencies' claims, civil penalties, and disgorgement of profits—whether or not that distribution must be approved by the Court. Regarding the Attorney General's *parens patriae* claims, the Attorney General is not proposing to allocate any funds as direct compensation for those claims. As the Attorney General will explain in more detail below, she has, as part of the resolution of her objections to the proposed allocation of settlement funds

1 in the federal case and in the interests of equity under her common law powers, set up an  
2 exclusive but limited funds from which not-for-profits and charitable organizations will be able to  
3 request technologically-related grants for the indirect benefit of natural persons. This exclusive  
4 fund would continue to be available for that end even if the federal court should disapprove the  
5 federal class settlements that include the damage claims of California natural persons.

6 Finally, the Attorney General discusses the various suggestions of the Court as to notice  
7 and explains how she has acted to implement those suggestions. The Attorney General  
8 respectfully requests that, in reviewing this supplemental memorandum, this Court keep in mind  
9 the following points: (1) the Attorney General first and foremost acts in a law-enforcement  
10 capacity in bringing these price-fixing cases and so places great emphasis on seeking non-  
11 monetary relief such as injunctive relief and compliance training as well as civil penalties and  
12 disgorgement of profits as a matter of the public interest; (2) the Attorney General then places  
13 substantial, though less, emphasis on seeking damages that are not being sought, and often can't  
14 be easily sought if at all, by private class plaintiffs, such as damages suffered by government  
15 entities and deadweight loss—with deadweight loss being greater in this case; and (3) the  
16 Attorney General finally places the least emphasis on securing monetary relief for natural persons  
17 where a parallel federal class case exists that covers their damages claims, where it is evident that  
18 the parallel case will result in those natural persons obtaining substantial relief, and where as here  
19 she can weigh in on any settlements reached by those class plaintiffs to ensure fair and  
20 proportionate treatment for California natural persons as part of the allocation of funds from those  
21 settlements. (Supplemental Declaration of Emilio Varanini in Support of Motion for Preliminary  
22 Approval (“Varanini Supp. Decl.”), ¶ 3.) This set of priorities, which reflects the public interest,  
23 was reflected in the coordination of this state case with the federal case, in the priorities of the  
24 Attorney General in settling her case, in the manner in which the Attorney General weighed in on  
25 the parallel federal class settlement that included the damage claims of California natural persons,  
26 and in the division of settlement funds among her various claims. (*Id.*)

27 It is also important to keep in mind that with regards to those settlement funds for which the  
28 Attorney General’s proposed *cy pres* plan of distribution must receive court approval, e.g., those

1 funds allocated to the local government entity class, as well as those settlement funds for which  
2 the Attorney General’s proposed *cy pres* plan of distribution do not require court approval, e.g.,  
3 funds allocated to state agencies and for deadweight loss, the Attorney General will meticulously  
4 follow federal case law as well as her own processes pursuant to her express policy. Accordingly,  
5 as the Attorney General explains below, she will implement a well-defined and rigorous process  
6 for grant applications and decisions that will ensure that the funds allocated for each of those  
7 categories go for specific purposes that best and most-widely benefit each specific group. (The  
8 funds allocated for deadweight loss, however, present special issues as will be explained below.)  
9 Ultimately, by following these priorities and principles, the Attorney General can ensure that  
10 companies doing business in California are subject to state laws whose interpretation will rest not  
11 in the hands of overloaded federal courts in complex MDL proceedings, but rather in the hands of  
12 a state court such as this one.

## 13 II. ARGUMENT

### 14 A. The Court Need Only Approve the Settlement of the Class Claim for 15 Government Entities, the Eventual Entry of a Court Order For Non- 16 Monetary Relief, and the Dismissal of the *Parens Patriae* Claim.

17 Only the following aspects of the Attorney General’s motion for preliminary approval  
18 require court approval: (1) the settlement for damages to the class of government entities; (2) the  
19 eventual entry of a court order that includes injunctive relief, compliance training, and  
20 cooperation, such that a violation thereof is enforceable in a contempt proceeding; and (3) the  
21 dismissal of the *parens patriae* claim. The Attorney General will discuss all of these points in  
22 turn.

### 23 B. The Settlement for the Class of Government Entities Should Be 24 Preliminarily Approved.

25 The Attorney General’s initial Memorandum of Points and Authorities (“MPA”) made it  
26 clear not only that this Court had to approve the proposed settlement of damage claims of a  
27 proposed settlement class of local government entities but also acknowledged that *Kullar v.*  
28 *Footlocker* (2008) 168 Cal.App.4th 116 would apply to the settlement of the class of government

1 entities. (See MPA at pp. 11-19.)<sup>1</sup> The Attorney General further supplied an analysis as to why  
2 this Court could approve the settlement of these class claims under *Kullar*. (See *id.*)  
3 Accordingly, this supplemental memorandum will simply address questions and comments raised  
4 by the Court with respect to the settlement class at the March 3, 2016 hearing.

### 5 **1. Settlement Class of Local Government Entities**

6 The Court has asked for clarification regarding the settlement amount for the class of  
7 government entities (the “Settlement Class”) and the distribution of that settlement amount. The  
8 Settlement Class consists of approximately 4,000 local government entities, plus the University of  
9 California and the State Bar of California. (Varanini Supp. Decl., ¶ 4.) The Attorney General  
10 proposes to allocate \$1,032,113 to the Settlement Class, to be distributed *cy pres* in the form of  
11 technology-related grants. All class members and only class members will be eligible to apply  
12 for grants from this *cy pres* distribution. (*Id.*, ¶ 23.) The Attorney General will retain a third-  
13 party fund administrator who will issue a request for grant applications, vet the candidates,  
14 recommend grantees to the Attorney General for awards in a manner reflecting criteria such as  
15 geographic diversity to ensure this class benefits as broadly as possible from these awards. (*Id.*,  
16 ¶¶ 37-41.) After the Attorney General and then the Court approve the recipients the administrator  
17 will oversee the grant making process including reviewing reports regarding how the grant funds  
18 were spent. (*Id.*) The *cy pres* distribution criteria and process are explained in more detail in  
19 Section F below.

20 The Attorney General also proposes to allocate \$330,000 as incentive awards to the original  
21 33 local government entities named in the Complaint and whose claims were directly represented  
22 by the Attorney General. Thus, the recovery for the Settlement Class totals \$1,362,133, which is  
23 15.66% of the single damages estimate of \$8.7 million. In that regard, the Court inquired whether  
24 the Attorney General contends that her odds of winning a full damages award—before trebling—  
25 is 15% of single damages. The Attorney General does not so contend. Instead, she is contending

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26  
27 <sup>1</sup> The Attorney General also pointed out that some deference to the Attorney General’s  
28 role in managing intergovernmental relations with local government entities was appropriate  
under *Kullar*, which did not involve sophisticated class members such as government entities.

1 that a 15% recovery of single damages is adequate in light of the risks, expense, complexity, and  
2 likely duration of further litigation. (Varanini Supp. Decl., ¶ 5.)

3 Additionally, class members will be eligible to apply for technology-related grants from  
4 another *cy pres* distribution allocated for deadweight loss (in the amount of \$863,833) to the  
5 California economy. (Varanini Supp. Decl., ¶ 29.) While the monetary amount allocated for  
6 deadweight loss is not part of the class settlement, the fact that class members will be eligible to  
7 apply for grants from that *cy pres* fund is an additional benefit to class members, and thus can and  
8 should be considered by this Court in evaluating the reasonableness of the class settlement.

9 Finally, although the Attorney General respectfully disagrees with this Court's view that  
10 injunctive relief has no value in a *Kullar* analysis even when such relief extends to foreign  
11 corporations and goes beyond the price-fixed products at issue, she will not reprise her arguments  
12 here. However, because this Court originally indicated it was inclined to assign value to the  
13 compliance training as part of a *Kullar* analysis before later indicating otherwise, the Attorney  
14 General explains here that the compliance training she secured is not merely a reporting  
15 requirement such that it should be given value for purposes of a *Kullar* analysis. Notably, the  
16 compliance training requires the defendants to work with the AGO to set dates for the training,  
17 defense counsel will work with the AGO beforehand to ensure that the training program comports  
18 with the expectations and agreement of the AGO, and the defendants must then report back to the  
19 AGO that the training comports with what was agreed to. (Varanini Supp. Decl., ¶ 6.) There is  
20 also a special procedure for Samsung, namely the appointment of a Compliance Officer whom the  
21 Attorney General's Office can interview regarding Samsung's compliance training efforts. (See  
22 Varanini Decl., Exh. I at 6.)

23 The compliance training is also of significance in this case because defendants include both  
24 foreign and domestic companies, and the compliance training will educate them that foreign  
25 companies are bound by California laws in doing business in California. (Varanini Supp. Decl., ¶  
26 6; cf. Bus. & Prof. Code § 16753 [giving the Attorney General the power to revoke the license of  
27 a foreign corporation to do business in this state if that corporation is found to have violated the  
28 Cartwright Act].) Under these circumstances, the Attorney General respectfully submits that the

1 compliance training she secured has great value. Indeed, the United States Department of Justice  
2 has expressly recognized the importance of implementing verifiable compliance training as a  
3 means of restoring a culture of competition to affected companies to the benefit of future  
4 consumers. (See Varanini Decl., Exh. R.)

5 **2. Case Law Supports Measuring the Settlement Amount Against**  
6 **Single Damages.**

7 Case law overwhelmingly supports evaluating the reasonableness of a class action  
8 settlement amount by comparing it to actual damages rather than treble damages. (See, e.g.,  
9 *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 964 [“courts generally  
10 determine fairness of an antitrust class action settlement based on how it compensates the class  
11 for past injuries, without giving much, if any consideration to treble damages”]; see also *County*  
12 *of Suffolk v. Long Island Lighting Co.* (2nd Cir. 1990) 907 F.2d 1295 [“the district judge correctly  
13 recognized that it is inappropriate to measure the adequacy of a settlement amount by comparing  
14 to a trebled base recovery figure”]); *City of Detroit v. Grinnell Corp.* (2nd Cir. 1974) 495 F.2d  
15 448, 458-59 [“the vast majority of courts which have approved settlements . . . have given their  
16 approval . . . based on an estimate of single damages only”]), overruled on other grounds as  
17 recognized by *U.S. Football League v. Nat’l Football League* (2d Cir. 1989) 887 F.2d 408, 415-  
18 16; *Carnegie v. Household Intern., Inc.* (N.D. Ill 2006) 445 F.Supp.2d 1032 [“numerous courts  
19 have held that in determining a settlement value, the potential for treble damages should not be  
20 taken into account”]; *Lorazepam & Clorazepate Antitrust Litig.* (D.D.C. 2002) 205 F.R.D. 369,  
21 376 [“the standard for evaluating settlement involves a comparison of the settlement amount with  
22 the estimated single damages”].)

23 Comparing a settlement amount to single damages instead of treble damages advances the  
24 longstanding policy of encouraging settlements. As the Grinnell Court observed, “requiring  
25 treble damages to be considered as part of the computation of base liability figure would force  
26 defendants automatically to concede guilt at the outset of negotiations,” and “[s]uch a concession  
27 would upset the delicate settlement balance by giving too great an advantage to the claimants—  
28

1 an advantage that is not required by the antitrust laws and one which might well hinder the highly  
2 favored practice of settlement.” (*Grinnell, supra*, 495 F.2d at p. 259.)

3 **C. Court Approval Will Be Required for Entry of a Court Order that**  
4 **Includes Provisions for Injunctive Relief, Compliance Training, and**  
5 **Cooperation.**

6 Because the Attorney General’s law enforcement action seeks entry of an enforceable court  
7 order that includes injunctive relief, compliance training, and cooperation as part of that order,  
8 this Court’s approval will necessarily be required. This is a different question than the issue of  
9 whether this non-monetary relief should be given value for purpose of a *Kullar* analysis. The  
10 standard of review for such approval of a government agency settlement seeking entry of a court  
11 order, namely whether the non-monetary relief is fair and reasonable such that the court order  
12 should be entered, was set forth in *U.S.S.E.C. v. Citigroup Global Markets, Inc.*, (2nd Cir. 2014)  
13 752 F.3d 285.

14 *Citigroup* involved an enforcement action brought by the Securities and Exchange  
15 Commission (“SEC”) against Citigroup for violations of the Securities Act of 1933. Shortly after  
16 filing its complaint, the SEC sought approval of a consent judgment whereby Citigroup agreed to:  
17 (1) a permanent injunction barring Citigroup from violating Sections 17(a)(2) and (3) of the  
18 Securities Act; (2) disgorgement of profits; (3) prejudgment interest, and (4) civil penalties.  
19 (*Citigroup*, at p. 289.) Citigroup also consented to make internal changes for a period of three  
20 years, to prevent similar acts from happening in the future. (*Id.*)

21 The district court denied the consent decree on the ground that the SEC had not established  
22 the “truth” of the allegations against Citigroup. (*Citigroup*, at p. 290-91.) On appeal, the Second  
23 Circuit Court of Appeals held that the district court’s requirement that the SEC to establish the  
24 “truth “ of the securities fraud allegations as a condition for approval a consent decree was an  
25 abuse of discretion. (*Id.*, at 295-96). The Second Circuit held that the “proper standard for  
26 reviewing a proposed consent judgment involving an enforcement agency requires that the district  
27 court determine whether the proposed consent decree is fair and reasonable, with the additional  
28 requirement that the ‘public interest would not be disserved’ [citation], in the event that the  
consent decree includes injunctive relief. Absent a substantial basis in the record for conclusion

1 that the proposed consent decree does not meet these requirements, the district court is required to  
2 enter the order.” (*Id.*, at p. 294.) Further, “the job of determining whether the proposed SEC  
3 consent decree best serves the public interest . . . rests squarely with the SEC, and its decision  
4 merits significance.” (*Id.*, at p. 296.)

5 The assessment of fairness and reasonableness for purposes of reviewing a proposed  
6 consent decree requires the court to examine the following criteria: (1) the basic legality of the  
7 consent decree; (2) whether the terms of the consent decree, including its enforcement  
8 mechanism, are clear; (3) whether the consent decree reflects a resolution of the actual claims of  
9 the complaint; and (4) whether the consent decree is tainted by improper collusion or corruption  
10 of some kind. (*Citigroup*, 752 F.3d at pp. 294-95.) The “primary focus of the inquiry . . . should  
11 be on ensuring the consent decree is procedurally proper . . . taking care not to infringe on the  
12 S.E.C.’s discretionary authority to settle on a particular set of terms.” (*Id.*, at p. 295.)

13 The Attorney General submits that her eventual request for entry of a court order will  
14 readily meet the foregoing criteria, particularly because she is statutorily authorized to seek  
15 injunctive relief (Bus. & Prof. Code § 16754.5), the settlement agreements provide for an  
16 enforcement mechanism, the injunctive relief and compliance training reflect a resolution of the  
17 actual claims of the complaint, and there is no improper collusion or corruption of any kind.  
18 However, the Court’s approval of such an order is not needed now for purposes of preliminarily  
19 approving the class settlement or approving dismissal of the *parens* claim.

20 **D. The Dismissal of the *Parens Patriae* Claim Should Be Preliminarily**  
21 **Approved So that California Natural Persons May Receive Notice and**  
22 **Have an Opportunity to be Heard.**

23 **1. Standard of Review**

24 The Attorney General, in her executive discretion and in consideration of the public  
25 interest, seeks to dismiss with prejudice her *parens patriae* claim. Dismissal of her *parens*  
26 *patriae* claim requires court approval. (Bus. & Prof. Code § 16760(c).) Neither the statute nor  
27 state case law, however, specifies the standard for governing dismissal of a *parens* damages claim  
28 brought on behalf of California natural persons, especially when it is being accomplished in  
deference to a parallel federal civil action with a certified litigation class covering damage claims

1 of California natural persons. The Attorney General submits that the standard most apt to cover  
2 such a set of circumstances is not the standard set forth in *Kullar*, which requires the court to  
3 approve entry of a settlement that is fair, reasonable, and adequate as a final resolution of the  
4 claims of class members. (See, e.g., *Kullar*, 168 Cal.App.4th at pp. 120, 127-28.) *Kullar*  
5 involved the settlement of a class action of employees with claims against their employer for  
6 alleged labor code violations, in which the settlement would be binding on absent class members,  
7 there was no parallel class action, and there was little discovery conducted before settlement.  
8 (*Id.*, at pp. 121-28.) That is not the situation presented in the Attorney General’s dismissal of her  
9 *parens* claim in favor of a parallel class action with a certified class after years of vigorous and  
10 coordinated litigation. Accordingly, for reasons set out below, the standard most apt to cover  
11 these circumstances is the “fair and reasonable” standard endorsed in *U.S.S.E.C. v. Citigroup*  
12 *Global Markets, Inc.*, 752 F.3d 285, as described above.

13 The *Citigroup* court explained that, in its review of the settlement government enforcement  
14 actions, a review not just for fairness and reasonableness, but also for adequacy, was  
15 inappropriate. (*Citigroup*, 752 F.3d at p. 294.) As the *Citigroup* court noted, while an adequacy  
16 requirement is appropriate in reviewing class action settlements because such settlements  
17 typically bar future claims, such a requirement is “particularly inapt” in the context of a  
18 government enforcement action, whether the settlement included a payment of restitution or  
19 damages, because potential plaintiffs have a private right of action and so could bring their own  
20 actions for restitution and damages. (*Id.*, at p. 294.) That set of circumstances fits this case in  
21 which the Attorney General has deliberately chosen, as part of her coordination of her case with  
22 the federal private plaintiffs’ case, to let the federal class case be the vehicle by which California  
23 natural persons can more directly recover overcharges.

24 The *Citigroup* court also noted that, to the extent the district court believed the SEC failed  
25 to bring the proper charges against Citigroup and withheld approval of the consent decree on that  
26 ground, such decision constituted an abuse of discretion. (*Citigroup*, at p. 297.) The Second  
27 Circuit noted that the “exclusive right to choose which charges to levy against a defendant rests  
28 with the SEC.” (*Id.*; see also *Heckler v. Chaney* (1985) 470 U.S. 821, 831 [“an agency’s decision

1 not to prosecute or enforce, whether through civil or criminal process, is a decision generally  
2 committed to an agency's absolute discretion"].) This set of circumstances also fits this case in  
3 which the Attorney General has made a decision in her executive discretion, as part of her  
4 traditional assessment of the public interest and to ensure the best allocation of taxpayer  
5 resources, to dismiss her case in favor of the federal class case. (Varanini Supp. Decl., ¶ 7.)

6 Accordingly, where there is a parallel private case operating in conjunction with the  
7 Attorney General's *parens patriae* claim to secure damages for California natural persons,  
8 Citigroup governs this Court's assessment of the propriety of any dismissal of a *parens patriae*  
9 claim by the Attorney General.

## 10 **2. Dismissal of the *Parens* Claim is Fair and Reasonable.**

11 As this Court is aware, in order to serve the public interest most efficiently, the Attorney  
12 General attempted to coordinate her case as closely as possible with the private plaintiffs,  
13 including the IPPs, in the parallel federal MDL. (Varanini Supp. Decl., ¶ 8.) Typically, the  
14 Attorney General will look to the IPPs to secure, by way of settlement or trial, monetary relief  
15 sufficient for California natural persons to have a full and fair opportunity to file claims and  
16 recover a pro rata or full share of their damages, while the Attorney General will work for non-  
17 monetary relief as well as a residue of the monetary relief to be distributed *cy pres* for the indirect  
18 benefit of the class as is permitted and welcomed under state law. (*Id.*) This division of labor  
19 economizes resources and leads to optimal results.

20 This division of labor was the path pursued in this case. (*Id.*, ¶ 9.) The Attorney General  
21 focused on recovering non-monetary relief, insofar as her *parens* claims were concerned, and  
22 weighed in on the IPP's proposed distribution plan on their federal settlements, to ensure the  
23 interests of Californians were protected. (*Id.*) This is consistent with the California Supreme  
24 Court's recognition that an Attorney General's law enforcement action may seek non-monetary  
25 relief as the primary remedy, and any request for restitution is ancillary. (See *People v. Pacific*  
26 *Land Research Co.* (1977) 20 Cal.3d 10, 17.) Indeed, the settlement agreements are also geared  
27 to the notion that California natural persons should look for monetary relief from the parallel IPP  
28 action. Specifically, the releases in the Panasonic, Toshiba, and Samsung settlement agreements

1 expressly state that the release of claims does not “release or supplant the indirect purchaser class  
2 claims in the parallel federal proceeding. . . . nor does it bar Californian natural persons from  
3 obtaining relief as a member of the indirect purchase class in that proceeding.” (See Varanini  
4 Decl., Exhs. C at 10, G at 11, and I at 11.)

5 Here, the IPPs obtained a substantial settlement on behalf of indirect purchasers, including  
6 California natural persons. The Attorney General had no objection to the settlement amounts  
7 obtained by the IPP. However, she had concerns with respect to certain aspects of the IPP’s  
8 proposed allocation of settlement funds, and raising those concerns in a Statement of Interest  
9 (asserting conditional objections) and Supplemental Statement of Interest in response to the IPP’s  
10 approval motions. (Varanini Supp. Decl., Exhs. A and B.) Specifically, her conditional  
11 objections included the need for Californians to have more time to claim monetary relief from the  
12 federal settlements, and the need for a reservation of a residual fund for *cy pres* distribution so  
13 that California natural persons not only would have an opportunity to file claims directly, but also  
14 so that, as a whole, Californians could also receive at least some indirect benefit from the IPP  
15 settlement.

16 On the one hand, recognizing this coordination of state and federal efforts, the federal court  
17 agreed with the Attorney General’s first objection, and extended the deadline for California  
18 natural persons to file a claim for monetary payment from the IPP settlement fund to June 30,  
19 2016. (Varanini Decl., Exh. V.) On the other hand, the Special Master rejected the request to  
20 include a *cy pres* plan based on the IPP’s assertion that no residue would remain. (Varanini Supp.  
21 Decl., Exh. C.) Though disagreeing with this assertion, the Attorney General did not pursue her  
22 objection because she could (and has) in her equitable discretion using her common law powers  
23 to allocate a residual fund of her own —\$195,000—to be distributed *cy pres* for the indirect  
24 benefit of California natural persons.

25 As the Court may recall, the Attorney General contemplated dismissing her *parens patriae*  
26 claim back in August of 2015 when the IPPs first announced their settlements, but she stated she  
27 could not make that decision until she had adequately evaluated the distribution of the settlement  
28 and the period for notice and objections had passed:

1 Plaintiffs have reviewed the Indirect Purchaser Plaintiff settlements, including the  
2 grant of preliminary approval, and may be inclined to withdraw their *parens patriae*  
3 claim for damages for natural persons due to overcharges by dismissing that claim  
4 with prejudice in the public interest in the exercise of their executive discretion.  
However, Plaintiffs cannot do so until after the period for notice and objections has  
passed so that Plaintiffs can evaluate the objections (if any) made to the Indirect  
Purchaser Plaintiff settlements by members of the public.

5 (Varanini Supp. Decl., Exh. D [August 18, 2015 Joint CMC Statement].)

6 Now that the period for notice and objections has passed, and the Attorney General has  
7 been successful in extending the claims deadline for natural persons to June 30, 2016, the  
8 Attorney General believes dismissal of her *parens* claim with prejudice is fair and reasonable and  
9 the public interest would not be disserved. The IPPs have secured relief through their settlements  
10 of which the Attorney General ascribes \$36 million to the damage claims of California natural  
11 persons. (See MPA at p. 18.) Indeed, insofar as the Cartwright Act prohibits the Attorney  
12 General from any duplicative recovery when there is a parallel private class case with the same  
13 damage claims as her own *parens patriae* case (see Bus. & Prof. Code § 16750(a)(1)), that  
14 prohibition provides indirect support for the dismissal of her *parens patriae* claim in favor of the  
15 parallel federal class claim.

16 Whether the IPP settlements end up being disapproved, either by the federal district court or  
17 on appeal, does not impact the fairness and reasonableness of the Attorney General's decision to  
18 dismiss her *parens* claims. The claims already filed by California natural persons presumably  
19 would be honored in any future settlement and any deficiencies identified by a federal court as to  
20 what are quite sizeable settlements may be quickly fixed. The Attorney General will object if  
21 Californians are treated inequitably as part of any such future settlements. (Varanini Supp. Decl., ¶  
22 18.)

23 Should, however, litigation ensue and the class claims falter whether in attempts at future  
24 settlement or at trial, Californians will still have the benefit of the non-monetary relief and of the  
25 small residual fund for *cy pres* grants. Moreover, they will have the benefit, albeit in a more  
26 attenuated sense, of *cy pres* grants from the deadweight loss pool as explained below. Thus,  
27 dismissal of the *parens* claim should be preliminarily approved, not only so that the public may  
28

1 receive notice and have an opportunity to be heard but also so that the Attorney General may  
2 notify Californian natural persons of the extension of the claims date in the federal proceedings.

3 **E. Court Approval is Not Required for the Attorney General's Law**  
4 **Enforcement Claims for Deadweight Loss, Disgorgement of Profits, Civil**  
5 **Penalties, or Damages to State Agencies.**

6 **1. Deadweight Loss**

7 The Court has inquired whether its approval is required for the settlement of the Attorney  
8 General's claim for deadweight loss and then asked certain related questions involving the  
9 allocation of funds to that claim as well as the planned distribution of those funds. Deadweight  
10 loss is the general damage to the economy of the state from a price-fixing cartel, essentially from  
11 the fact that prices have risen to the point that some individuals and government agencies will no  
12 longer buy a product, thus hindering the efficient allocation of resources that occurs in a  
13 competitive economy. (See, e.g., *Leslie, Christopher, Antitrust Damages and Deadweight Loss*,  
14 51 Antitrust Bulletin 521, 525-26 (2006); see also *In re W. Liquid Asphalt Cases* (9th Cir. 1973)  
15 487 F.2d 191, 200 ["The amount of the overcharge is not necessarily the total amount of harm to  
16 plaintiffs. Purchasers may also have been damaged by being forced to substitute goods, or to  
17 discontinue purchasing the price-fixed product"].) This deadweight loss claim does not involve  
18 any statutory or case law provision requiring court approval. Nor does it involve the specific  
19 claim of a third party that might be extinguished as the result of this settlement and that could be  
20 brought in a class action. Thus, there is no need for court approval.

21 In response to the Court's question about distribution, the Attorney General explains that  
22 her plan is to distribute the proceeds allocated to this claim, \$863,833, via *cy pres* grants. The  
23 Attorney General allocated such a large amount for such grants, third only to the amounts  
24 allocated for civil penalties (though very close) and for the class of government entities for two  
25 reasons: (1) proportionally speaking, deadweight loss is a large portion of the damages claimed  
26 by the Attorney General once her *parens* claims are disregarded and (2) the Attorney General  
27 strongly believes the recovery of deadweight loss to be in the public interest as part of the  
28 prosecution of these price-fixing cases. (Varanini Supp. Decl., ¶ 27.)

1 Because those grants must benefit the general economy of the state as much as possible, the  
2 grantees must be state and local government agencies or private entities, with state and local  
3 government agencies being preferred, who can use the planned grants in a manner best aiding the  
4 technological development of substantial segments of the state. Details on how that grant process  
5 will work are supplied below.

## 6 **2. Equitable Disgorgement of Profits and Civil Penalties**

7 Similarly, court approval is not required for the settlement of the Attorney General's claims  
8 for equitable disgorgement of profits and for civil penalties. The equitable disgorgement of actual  
9 profits of price-fixing defendants, as opposed to overcharges paid by their victims, is appropriate  
10 when injunctive relief cannot be secured in whole or in part. (See, e.g., *United States v. Keyspan*  
11 (S.D.N.Y. 2011) 763 F.Supp.2d 633, 639-40.) Here, the Attorney General allocated funds for the  
12 disgorgement of profits because she did not secure all of the injunctive relief that she believed she  
13 was entitled to in this case. (Varanini Supp. Decl., ¶ 19.) This claim, which is also associated  
14 with the claim for injunctive relief, does not involve any statutory or case law provision requiring  
15 court approval. Nor does it involve the specific claim of a third party that might be extinguished  
16 as the result of this settlement and that could be brought in a class action. Thus, there is no need  
17 for court approval.

18 ***Equitable Disgorgement of Profits.*** The proposed allocation of \$431,917 for equitable  
19 disgorgement of profits reflects the importance of this claim to the Attorney General as a means  
20 of restoring competition to the market when faced with a defense of mootness of injunctive relief  
21 asserted by Defendants due to the technological obsolescence of Cathode Ray Tubes. (See, e.g.,  
22 *Kansas v. Nebraska* (2015) 1035 S.Ct. 1042, 1057-59.) As the Attorney General did not obtain,  
23 through settlement, all of the injunctive relief she would have requested from each of these  
24 Defendants had this case gone to trial, reserving some of the settlement funds for equitable  
25 disgorgement is appropriate. (Varanini Supp. Decl., ¶ 19.) And just for one Defendant alone,  
26 those profits, when broken down for California, were valued at a number that substantially  
27 compared quite favorably to the Attorney General's other claims. (*Id.*) Pursuant to analogous  
28 federal practice (see, e.g., *United States v. Keyspan*, 763 F.Supp.2d at p. 643 [approving payment

1 of disgorged proceeds to the Treasury rather than to consumers of the City of New York], this  
2 amount will go directly to the Attorney General’s Office for deposit into an antitrust account fund  
3 to be used exclusively for antitrust enforcement by the Attorney General’s Office. (Varanini  
4 Supp. Decl., ¶ 19.) This distribution of those funds will aid the Attorney General’s Office to meet  
5 the mandate set out in the special injunctive provisions of the Cartwright Act —that only public  
6 prosecutors can invoke—enabling them to restore competition. (Compare, e.g., Bus. & Prof.  
7 Code § 16754.5 with *Keyspan*, 763 F.Supp.2d at pp. 640-43.)

8 **Civil Penalties.** Civil penalties consist of fines that can be imposed by the Court to punish  
9 past unfair acts of unfair competition, here violations of the Cartwright Act, and deter future  
10 violations. (See Bus. & Prof. Code § 17206.) This claim for civil penalties does not involve any  
11 statutory or case law provision requiring court approval. Nor does it involve the specific claim of  
12 a third party that might be extinguished as the result of this settlement and that could be brought  
13 in a class action. Thus, there is no need for court approval. The imposition of civil penalties is  
14 important to the law enforcement mission of the Attorney General, especially in price-fixing  
15 cases, and the potential amount of civil penalties was sizeable enough that the allocation of  
16 settlement funds to that claim deserved to be at near parity with the deadweight loss. (Varanini  
17 Supp. Decl., ¶ 20.) Hence the Attorney General has allocated \$865,000 for civil penalties.

18 Although the allocation of civil penalties is taking place as part of the negotiated resolution  
19 of the Attorney General’s claims, and not pursuant to a court order following trial, Business and  
20 Professions Code section 17206 appears to provide a one-size fits all solution for distribution of  
21 civil penalties. According to section 17206, those funds must be divided 50-50 between the  
22 Attorney General’s Office and the City and County of San Francisco as the location where the  
23 Attorney General filed her complaint. In turn, the civil penalties paid to the Attorney General  
24 must be deposited into the “Unfair Competition Law Fund” to be used by the Attorney General’s  
25 Antitrust Law and Consumer Law Sections to support investigations and prosecutions of  
26 California’s Unfair Competition Law. (*Id.*) Thus, in response to the Court’s inquiry as to what is  
27 the “consumer protection account,” the account is solely for use by the Attorney General’s Office;

1 money from this account will not be distributed to other state agencies, the class of government  
2 entities, or natural persons. (*Id.*)

### 3                   **3. State Agencies**

4           The Attorney General proposes to allocate \$182,137 to approximately 150 state agencies to  
5 be distributed *cy pres*. These state agencies are not part of the settlement class. Instead, the  
6 Attorney General brought this claim for damages on behalf of the State, as permitted by the  
7 Cartwright Act—Bus. & Prof. Code § 16750(b), as the chief law enforcement officer of the  
8 State—Cal. Const., art. V, § 13. These claims are law enforcement claims that cannot be brought  
9 by other parties and can be settled without court approval. (Compare, e.g., Bus. & Prof. Code §  
10 16750(b) [no mention of need for court approval for compromise or dismissal of claims brought  
11 by the Attorney General on behalf of the State of California] with *id.* § 16750(c) [court approval  
12 required for compromise or dismissal of *parens patriae* claim brought on behalf of California  
13 natural persons].)

14           Although court approval is not required, the Attorney General responds to the Court’s  
15 question as to why the Attorney General is not distributing \$1,000 to each state agency as  
16 follows. Due to the wide range in size of the state agencies, and the likely difference in the  
17 number of CRT products purchased by the state agencies, the Attorney General believes the  
18 amount to be given to each state agency should have some correlation to their purchase of CRT  
19 products. (Varanini Supp. Decl., ¶ 25.) Thus, in prior cases involving technology-related  
20 purchases, the Attorney General has used the number of full time employees (FTE) in an agency  
21 as a proxy for the quantity of purchases. (*Id.*) Based on the AGO’s experience in a prior case  
22 which provided for direct distribution to 75 state agencies and 27 local entities at a cost of over  
23 \$17,000 in administrative fees, the AGO estimates that it would cost more than \$20,000 in  
24 administrative fees to allocate and distribute based on FTE an appropriate amount to the  
25 approximately 150 state agencies in this case. (*Id.*) Furthermore, it should be noted that in prior  
26 cases, the Attorney General determined that direct distribution of an amount under \$5,000 would  
27 not be a meaningful distribution to a government agency. (*Id.*) Thus, rather than allocate \$1,000  
28 for each state agency, the Attorney General, in her executive discretion, has determined that a *cy*

1 *pres* distribution would be preferable. (*Id.*) The Attorney General supplies more details as to the  
2 grant-making process for distributing these funds below.

3 **F. *Cy Pres***

4 The exhibits previously to the Varanini Declaration filed in support of the Attorney  
5 General's motion for preliminary approval set out the careful criteria that the Attorney General  
6 follows for *cy pres* distribution based on her internal policy and case law. (See Varanini Decl.,  
7 Exhs. W, X.) Those criteria include the following: the *cy pres* distribution must have a nexus to  
8 the basis for the litigation; the method of selecting the *cy pre* recipient must be disclosed in a  
9 public document; and the recipient must be a non-profit, governmental organization or court-  
10 supervise entity that is accountable, i.e., is able to demonstrate how the funds will be spent and  
11 can assure that the funds are being spent for the proper, designated purpose. (*Id.*, Exh. W at p. 3;  
12 see also Varanini Supp. Decl., ¶¶ 31-35 [discussing California and Ninth Circuit case law and  
13 AGO policy].)

14 As explained above, the only proposed *cy pres* distribution of settlement funds that this  
15 Court must approve involves the class of local government entities. Accordingly, the Attorney  
16 General addresses that issue first. However, in response to the Court's questions regarding the *cy*  
17 *pres* distribution of other pots of money—e.g., the distribution of funds for the benefit of natural  
18 persons as part of the federal settlements, the distribution of funds for the deadweight loss claim,  
19 and the distribution of funds for state agencies—the Attorney General supplies additional  
20 information as to how the distribution of those funds will be conducted.

21 ***Class of Local Government Entities (\$1,032,113).*** As observed above, insofar as the class  
22 of local government entities is concerned, only class members may apply for grants from the  
23 funds reserved to that class. As the present case involved technology, the grants themselves must  
24 be technologically related. Accordingly, the Attorney General will inform the class that any  
25 member may file a request for a grant that can involve the purchase of technological items  
26 representing the next generation after CRTs, such as tablets, smart phones, computer labs, squad  
27 car video technology, or better sewer system video technology. As a matter of fairness and  
28 practicality, the Attorney General would propose that each grant be in the amount of \$30,000, or

1 thereabout in order to ensure a diversity of grants for local government entities located in  
2 different areas and communities throughout the state. (Varanini Supp. Decl., ¶ 23.) As part of  
3 the policy applicable to *cy pres* grants (see, e.g., Varanini Decl., Exh. W [Declaration of Kathleen  
4 Foote]), the Attorney General will hire a *cy pres* grants administrator (hereinafter referred to as  
5 “grants administrator”) not only to ensure that those grant applications that are approved would  
6 best benefit the class as widely as possible but also to ensure that the grants are being used for the  
7 approved purposes. (Varanini Supp. Decl., ¶¶ 37-41.) That grants administrator will also  
8 safeguard against multiple applications from one entity, determine how quickly the grant will be  
9 used, determine whether the grant will completely cover a need or whether the grant will be  
10 matched by the entity itself, avoid the grant funds being used for operating budget items (e.g.,  
11 these grants should not be used to pay salaries for existing staff positions), ensure that these  
12 grants are not used to supplant monies already budgeted to the local government entities for the  
13 purposes that would be served by the grant, and require periodic reports on the expenditure of the  
14 grant monies. (*Id.*) It should be noted that there will be costs for the use of the grants  
15 administrator, which will amount to no more than 9% of the total amount of any fund, though the  
16 Attorney General will seek economies in the expenditure of costs whenever possible by, for  
17 example, using the same grants administrator for these multiple *cy pres* pots. (*Id.*, ¶ 38.)

18 ***Natural Persons (Parens Patriae) (\$195,000).*** As observed above, regarding the funds  
19 reserved for *cy pres* distribution to not-for-profits and charitable institutions for the indirect  
20 benefit of California natural persons, local government entities and state agencies cannot apply  
21 for grants from those funds. Because the amount of funds here is limited (given that natural  
22 persons have had and will have an opportunity to make claims directly from the federal  
23 settlements), the grants administrator will make between two to four geographically diverse  
24 grants to California-based organizations who offer either computer-related services or  
25 technology-related services. (Varanini Supp. Decl., ¶ 24.) For purposes of awarding these grants,  
26 those services could include helping provide technology-using skills to various communities or  
27 helping assist in the delivery of technology-related services to various communities. (*Id.*) As  
28 explained above in the previous paragraph regarding the class of government entities, the

1 Attorney General will retain a grant administrator not only to ensure that those grant applications  
2 that are approved would best benefit natural persons as widely as possible but also to ensure that  
3 the grants are being used for the approved purposes. That grants administrator will also safeguard  
4 against multiple applications from one entity, determine how quickly the grant will be used,  
5 determine whether the grant will completely cover a need or whether the grant will be matched by  
6 the entity itself, avoid the grant funds being used for operating budget items (e.g., these grants  
7 should not be used to pay salaries for existing staff positions), and require periodic reports on the  
8 expenditure of the grant monies. (*Id.*, ¶¶ 37-41.)

9 ***State Agencies (\$182,137).*** Only state agencies will be able to apply for a grant from those  
10 funds reserved to them for *cy pres* distribution. (Varanini Supp. Decl., ¶ 26.) As with those  
11 funds reserved for the class of local government entities in a separate pot, state agencies can apply  
12 for grants from this pot involving the purchase of technological items representing the next  
13 generation after CRTs, including such items as tablets, smart phones, or squad car video  
14 technology. (*Id.*) However, because the amount of funds is limited, the Attorney General  
15 envisions the grants administrator making between two to four grants. (*Id.*) As explained above  
16 in the previous paragraph regarding the class of local government entities, the Attorney General  
17 will retain a grants administrator not only to ensure that those grant applications that are approved  
18 would best benefit state agencies but also to ensure that the grants are being used for the approved  
19 purposes. (*Id.*, ¶¶ 37-41.) That grants administrator will also safeguard against multiple  
20 applications from one agency, determine how quickly the grant will be used, determine whether  
21 the grant will completely cover a need or whether the grant will be matched by the agency itself,  
22 avoid the grant funds being used for operating budget items (e.g., these grants should not be used  
23 to pay salaries for existing staff positions) or supplanting existing funding, and require periodic  
24 reports on the expenditure of the grant monies. (*Id.*)

25 ***Deadweight Loss (\$863,833).*** In understanding how *cy pres* grants of deadweight loss will  
26 be awarded, it is important to understand that deadweight loss itself involves the damage to the  
27 general economy of the state as a result of a price-fixing cartel. The *cy pres* grants thus must  
28 have a nexus to the damage to the general economy of the state occasioned by a price-fixing

1 cartel related to technology that squelched competition. (Varanini Supp. Decl., ¶ 28.) In order to  
2 ensure such a nexus, and to avoid duplication between these grants and ones that will be awarded  
3 from the various other pots, the Attorney General will require that such grants be for the purpose  
4 of increasing either competition in technology-related industries or encouraging the use of  
5 technology in ways that broadly impact the state to improve the economy as a whole as much as  
6 possible. (*Id.*) This means that such grants should not be awarded just so that a government  
7 entity or a non-for-profit can purchase computers or computer-related technology. Rather, they  
8 should be awarded either for advocacy/ research involving increasing competition in  
9 technological industries or for research on the implementation and use of new technologies  
10 beyond even the successor technology to CRTs, flat panels. This could also include identifying  
11 and implementing best practices for the deployment of appropriate technology to benefit the  
12 California economy. (*Id.*) By funding grants either involving advocacy and research on  
13 increasing competition in technological industries or involving technological research, the  
14 Attorney General can restore competition going forward and increase consumer welfare, both of  
15 which are important objectives of the antitrust laws. (See, e.g., Bus. & Prof. Code, § 16754.5; *In*  
16 *re Cipro I & II* (2015) 61 Cal.4th 116, 136.)

17 This preceding paragraph does raise the question of which entities would be eligible to  
18 apply for such grants. Without question, government entities should be eligible to apply for such  
19 grants provided the requisite nexus is present. (Varanini Supp. Decl., ¶ 29.) Moreover, institutes  
20 and laboratories, whether public or public-private, should also be eligible to apply for grants  
21 provided the requisite nexus is present. And private entities, be they not-for-profit or otherwise,  
22 may also be eligible to apply for grants; however, the assessment of the requisite nexus must be  
23 conducted in a more rigorous manner if such entities apply for these grants as such grants should  
24 not go to support self-serving ends such as either the development of proprietary technologies of a  
25 single company or the furtherance of particular viewpoints on the issues of competition in  
26 technological industries. (*Id.*)

27 The Attorney General will use a grants administrator here to ensure the requisite nexus is  
28 present for any grant application and to oversee the use of the grants to ensure that they are being

1 used for the approved purposes. (*Id.*, ¶¶ 37-41.) That grants administrator will also safeguard  
2 against multiple applications from one entity, determine how quickly the grant will be used,  
3 determine whether the grant will completely cover a need or whether the grant will be matched by  
4 the entity itself, avoid the grant funds being used for operating budget items (e.g., these grants  
5 should not be used to pay salaries for existing staff positions) or supplanting existing funding as  
6 in the case of government entities and institutes, and require periodic reports on the expenditure  
7 of the grant monies. (*Id.*)

8 **G. The Class Notice Has Been Revised in Accordance with this Court's**  
9 **Suggestions and Should Be Approved.**

10 The suggestions and edits set forth on pages 3 and 4 of the handout attached to the Court's  
11 March 4, 2016 Order have all been implemented. Copies of the revised long and short forms of  
12 the Class Notice are attached as Exhibits H and I, respectively, to the Supplemental Varanini  
13 Declaration. In particular, the revised long form now contains the following clarifications:

- 14 • Wherever applicable, the notice makes clear that the Settlement Fund and the related *cy*  
15 *pres* grants will be distributed by the Attorney General's Office, and not by the Court.  
16 The statements concerning the *cy pres* process also have been revised significantly.  
17 (Varanini Supp. Decl., Ex. H.)
- 18 • Section 5: This section summarizes the terms of the settlements. The term "Monetary  
19 Benefits" has been replaced with "Settlement Fund." (*Id.* at §5.)
- 20 • Section 7: This is a new section intended to comply with the Court's requirement that the  
21 notice must state the exact amount for each line item under the Attorney General's'  
22 proposed allocation and distribution plan. Specifically, this new section lays out the  
23 Attorney General's entire allocation and distribution plan, line item by line item. The  
24 exact amount of each proposed allocation is clearly stated, as well as the proposed  
25 distribution. This section also alerts class members to the fact that the Attorney General's  
26 proposed plan requires court approval and if approved, it is the Attorney General's Office,  
27 and not the Court, that will distribute the funds and *cy pres* grants. It also apprises class  
28 members that the *cy pres* grants will be administered by a neutral third-party administrator

1 and that the Attorney General anticipates that the administrator's fees will be no more  
2 than nine percent of the distributed amount. This new section precedes the section on *cy*  
3 *pres* distribution. (*Id.* at §7.)

4 • Section 8: The *cy pres* section now includes an explanation of the *cy pres* grant process,  
5 including who will be eligible to apply for a grant, the grant criteria, the selection process,  
6 and its administration by a neutral, third-party. It makes clear that while all class  
7 members may apply for a grant, only some of the applicants will receive a grant if they  
8 meet the grant criteria. (*Id.* at §8.) The administrator's estimated fee is stated under  
9 Section 7, because like the notice costs, attorneys' fees, and litigation costs, the fee  
10 associated with the administration of the *cy pres* grants is also part and parcel of the  
11 Attorney General's complete proposal on allocation and distribution of the entire  
12 Settlement Fund. (*Id.* at §7.)

13 • Sections 10 and 11: These sections explain each class member's rights and options. The  
14 statements concerning intervention have been removed per the Court's suggestions at the  
15 March 3, 2016 hearing. (*Id.* at §§10 and 11.)

16 • Forms: There are now two different forms accompanying the long form. One for opting  
17 out and the other for objecting and requesting to appear at the Fairness Hearing. (*Id.* at  
18 Opt-Out Form and Objection and/or Appearance Form.)

19 • Submission to the AGO: Each form also clearly instructs the notice recipients to  
20 submitted their completed forms only to the AGO and that the AGO will submit the forms  
21 to the Court and provide copies to the Defendants. (*Id.*)

22 The revised short form of the Class Notice also contains the aforementioned clarifications.  
23 The short form will be used for publication by the associations, while the long form will be  
24 disseminated by email. Postcard notices will be disseminated by U.S. Mail to the ascertained  
25 class members who do not have an email address or do not belong to the four associations that  
26 have agreed to publish this notice. (Varanini Supp. Decl., ¶ 46.)

27 Both the short form of the notice and the postcard notice do direct recipients to the AGO's  
28 website (<http://oag.ca.gov>), where all the relevant documents will be made available. In

1 particular, the AGO’s website will provide copies of the Complaint, the Settlement Agreements,  
2 all papers filed in connection with the approval process, all orders issued during this process, the  
3 long form, short form, and postcard version of the Class Notice, the Opt-Out Form, the Objection  
4 and/or Appearance Form, the *cy pres* grant application and selection process, and any other  
5 relevant court documents. (*Id.*, ¶ 41.)

6 The Government Notice Program should therefore be approved. (See *In re Cellphone Fee*  
7 *Termination Cases* (2010) 186 Cal.App.4th 1380, 1390 [class notices drafted “with the goal of  
8 making it easy to understand for non-lawyers and to make certain that the notice clearly explained  
9 the rights and obligations of class members in connection with the settlement” accord with due  
10 process]; Cal. Rules of Court, rules 3.766(e) [in specifying the manner of giving notice, courts  
11 must consider factors such as the stake of the individual class members, the cost of notifying class  
12 members, and the parties’ resources; Cal. Rules of Court, rules 3.769(f) [“broadcasting [the  
13 notice] on the Internet” or via an association publication is acceptable when “it appears that all  
14 members of the class cannot be notified personally”]; *Cartt v. Superior Court* (1975) 50  
15 Cal.App.3d 960, 967, 974 [sending individual notices to one-third of the class that was “easily  
16 ascertainable” was sufficient]; *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 58 [Approved  
17 the use of email and the internet to provide notice: “Using the capability of the Internet in that  
18 fashion was a sensible and efficient way of providing notice.”].)

19 **H. The Notice of Dismissal of the *Parens Patriae* Claim Should Be Approved.**

20 The new proposed notice of dismissal of the *parens patriae* claim comports with the due  
21 process standards provided by the Cartwright Act and should be approved. Copies of the long  
22 and short form of the dismissal notice are attached as Exhibits 1 and 2 to the Declaration of  
23 Daniel Burke Regarding Plan to Disseminate Notice of Dismissal (“Burke Decl. Re Notice of  
24 Dismissal”).

25 Specifically, this notice of dismissal apprises California individuals and sole proprietors  
26 about their rights and options in the context of a dismissal with prejudice of the *parens patriae*  
27 claim as follows:  
28

1 (1) The notice begins with an explanation that the Attorney General’s lawsuit contains a  
2 claim to recover monetary damages on behalf of California individuals and sole proprietors who  
3 indirectly purchased CRTs during the conspiracy period, and that the Attorney General asserted  
4 this claim for monetary damages pursuant to her *parens patriae* authority under the Cartwright  
5 Act. (Burke Decl. Re Notice of Dismissal, Exh. 1, at §1.)

6 (2) The notice also explains that the IPPs’ lawsuit in federal court also contains a claim to  
7 recover monetary damages on their behalf pursuant to the class action rules. (*Id.* at §2.)

8 (3) The notice goes on to explain that the Attorney General seeks to dismiss her *parens*  
9 *patriae* claim with prejudice because she believes that the IPPs’ settlement is adequate to address  
10 the damages suffered by those she represents under *parens patriae*, especially in light of the fact  
11 that (a) the IPPs will be making cash payments to eligible indirect purchasers in California; (b) at  
12 the Attorney General’s request, the federal court overseeing the IPPs’ settlement has extended the  
13 claims deadline for California individuals who indirectly purchased CRTs to file a claim for cash  
14 payment in the federal lawsuit; and (c) to the extent the IPPs’ distribution plan is inadequate to  
15 promote California’s public interest in the *cy pres* distribution of residual settlement funds, the  
16 Attorney General will be setting aside \$195,000 to uphold that interest, with those funds to be  
17 distributed *cy pres* in the form of technology-related grants. The notice goes on to explain what  
18 that grant process entails. (*Id.* at §3.)

19 (4) The notice then provides information on how to make a claim for cash payment in the  
20 federal lawsuit and the new claims filing deadline that applies only to California individuals who  
21 indirectly purchased CRTs during the conspiracy period. (*Id.* at §4.)

22 (5) The notice also explains the requested dismissal will not affect the rights that California  
23 individuals who indirectly purchased CRTs have to recover monetary damages from the CRT  
24 defendants by participating the IPPs’ class action in federal court. (*Id.* at §5.)

25 (6) The notice further explains that with respect to the Attorney General’s request for  
26 dismissal of the *parens patriae* claim with prejudice, each affected California individual has the  
27 option (a) to do nothing and thus agree to be bound by the dismissal; or (b) to be excluded from  
28 the dismissal of the *parens patriae* claim and thus not be bound by the dismissal; or (c) for those

1 who do not exclude themselves from the dismissal of the *parens patriae* claim, they can appear at  
2 the dismissal hearing. The notice also informs California individuals that whatever option they  
3 exercise in this Court will not affect their right to file a claim for cash payment in the federal  
4 lawsuit. (*Id.* at §6.)

5 (7) The date, time and location of the Dismissal Hearing are also provided. (*Id.* at §7.)

6 (8) The exclusion and appearance process and pertinent deadlines are explained as well.  
7 (*Id.* at §6 and Exclusion Form and Appearance Form.)

8 Thus, as presented, the proposed notice of dismissal of the *parens patriae* claim fairly  
9 apprises affected California individuals of their rights and options in the context of a dismissal  
10 with prejudice and should therefore be approved. (See Bus. & Prof. Code §16760(b)-(c); *In re*  
11 *Cellphone Fee Termination Cases*, *supra*, 186 Cal.App.4th at 1390.)

12 Like the short form Class Notice, the short form will direct people to the long form by  
13 directing people to the AGO's website (<http://oag.ca.gov>). (Varanini Supp. Decl., ¶ 50.) The  
14 AGO's website will provide copies of the Complaint, all papers filed in connection with the  
15 dismissal process, all orders issued during this process, all approved notices, the Exclusion Form,  
16 the Appearance Form, and any other relevant court documents. (*Id.*)

17 To avoid confusion, the dedicated website that Gilardi had previously created for the  
18 Chunghwa case will not be used for this case. Notice recipients will be directed only to the  
19 following two websites: (1) to the AGO's website for information about the Attorney General's  
20 lawsuit and requested dismissal, and (2) to the IPPs' settlement website for information about the  
21 federal court's approval of that settlement and the process for making a claim for cash payment in  
22 that lawsuit. (*Id.*, ¶ 51.)

23 With respect to the online media campaign, there are two different components—Internet  
24 banners and sponsored ad links—that serve dual purposes. (*Id.*, ¶ 52.) The Internet banners  
25 serve to notify people not only about the dismissal of the *parens* claim but also about the related  
26 IPP settlement. Thus, those banners direct people first to the AGO's website  
27 ([http://oag.ca.gov/consumers/crt\\_notice](http://oag.ca.gov/consumers/crt_notice)), where they will be linked to the federal case website.  
28 The sponsored ad links primarily serve to provide supplemental notice of the IPP settlement and

1 to stimulate claims for money from that settlement; thus, the sponsored ad links send people  
2 directly to the federal case website as it is a more direct route to claims filing.

3 Altogether, the proposed dissemination plan also accord with due process and should be  
4 approved. (See Bus. & Prof. Code §16760(b)-(c); *Mullane v. Central Hanover Bank & Trust Co.*  
5 (1950) 339 U.S. 306, 317-318; Cal. Rules of Court, rules 3.766(e) and 3.769(f); *Cartt, supra*, 50  
6 Cal.App.3d at 967, 974; *Chavez, supra*, 162 Cal.App.4th at 58; *In re Cellphone Fee Termination*  
7 *Cases, supra*, 186 Cal.App.4th at 1392.)

#### 8 **I. Clarification of Request for Attorneys' Fees and Litigation Costs.**

9 The Court has inquired whether the Attorney General's request for attorneys' fees and  
10 litigation costs includes fees for activities incurred in the MDL and whether such fees were  
11 recovered in the MDL. Given that the AGO's participation in coordinated discovery was for  
12 purposes of advancing the Attorney General's state case and because the AGO did not request or  
13 recover any attorneys' fees in the MDL, the Attorney General believes she would be entitled to  
14 recover attorneys' fees for such activities in this case. Nevertheless, this is a non-issue, because  
15 even without considering the AGO's activities in the MDL, the Attorney General's fees in the  
16 state case alone as well as total litigation costs (which include substantial expert witness costs)  
17 exceed 20% of the settlement fund. Her request for attorneys' fees and litigation costs, however,  
18 is capped at 20% of the settlement fund.

### 19 **VI. CONCLUSION**

20 For the reasons set forth above and in her initial Memorandum of Points of Authorities, as  
21 modified herein, the Attorney General respectfully requests that the Court: (1) grant preliminary  
22 approval of the proposed class settlements; (2) grant preliminary approval of the dismissal of the  
23 *parens patriae* claim, (3) conditionally certify, for settlement purposes only, the class of  
24 government entities specified in the LG, Panasonic, Hitachi, Toshiba, and Samsung settlements  
25 and appoint the City and County of San Francisco as class representative and the Attorney  
26 General as counsel for the settlement class; (4) approve the proposed form of notices; (5) approve  
27 the proposal for the dissemination on the proposed notices; and (6) schedule a hearing on final  
28

1 approval of the LG, Panasonic, Hitachi, Toshiba, and Samsung settlements, and dismissal of the  
2 *parens patriae* claim.

3 Dated: March 18, 2016

Respectfully Submitted,

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