NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION, INDIRECT PURCHASER PLAINTIFFS, Plaintiff-Appellee, v. TOSHIBA CORPORATION; et al., Defendants-Appellees, v. TYLER AYRES; et al., Movants-Appellants.	No. 20-15697 D.C. No. 4:07-cv-05944-JST MEMORANDUM* (Filed Sep. 22, 2021)

In re: CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION, INDIRECT PURCHASER PLAINTIFFS, Plaintiff-Appellee,	No. 20-15704 D.C. No. 4:07-cv-05944-JST

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

v.

TOSHIBA CORPORATION; et al.,

Defendants-Appellees,

v.

ELEANOR LEWIS, Proposed Intervenor,

Movant-Appellant.

In re: CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION,

No. 20-16081

D.C. No. 4:07-cv-05944-JST

INDIRECT PURCHASER PLAINTIFFS,

Plaintiff-Appellee,

v.

TOSHIBA CORPORATION; et al.,

Defendants-Appellees,

v.

ANTHONY GIANASCA; et al.,

Movants-Appellants.

In re: CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION, --- INDIRECT PURCHASER PLAINTIFFS, Plaintiff-Appellee, v. TOSHIBA CORPORATION; et al., Defendants-Appellees, v. ELEANOR LEWIS, Proposed Intervenor, Movant-Appellant.	No. 20-16685 D.C. No. 4:07-cv-05944-JST

In re: CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION, --- INDIRECT PURCHASER PLAINTIFFS, Plaintiff-Appellee, v. JEFF SPEAECT; et al., Objectors-Appellants, v.	No. 20-16686 D.C. No. 4:07-cv-05944-JST

TOSHIBA CORPORATION; et al.,

Defendants-Appellees.

In re: CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION,

No. 20-16691

D.C. No. 4:07-cv-05944-JST

INDIRECT PURCHASER PLAINTIFFS,

Plaintiff-Appellee,

v.

TOSHIBA CORPORATION; et al.,

Defendants-Appellees,

v.

SCOTT A. CALDWELL, as administrator of the Estate of Barbara Caldwell; et al.,

Movants-Appellants.

In re: CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION,

No. 20-16699

D.C. No. 4:07-cv-05944-JST

INDIRECT PURCHASER PLAINTIFFS,

Plaintiff-Appellee,

v.

TOSHIBA CORPORATION; et al.,

Defendants-Appellees,

v.

TYLER AYRES; et al.,

Movants-Appellants.

Appeal from the United States District Court
for the Northern District of California
Jon S. Tigar, District Judge, Presiding

Argued and Submitted July 28, 2021
San Francisco, California

Before: W. FLETCHER and CLIFTON, Circuit Judges, and KATZMANN,** Judge.

Two sets of appeals have been presented to us. In one set, parties identified as the Other Repealer States (ORS) and the Non-Repealer States (NRS) appellants and purported settlement class member objectors appealed the district court's approval of amended settlements between the amended settlement class and Defendants.[1] In the other set, the ORS and NRS appellants appealed the district court's earlier denial of

** The Honorable Gary S. Katzmann, Judge for the United States Court of International Trade, sitting by designation.

[1] Defendants are a group of corporations that manufactured cathode ray tubes (CRT). They include Phillips, Panasonic, Hitachi, Toshiba, Samsung, and Thomson/TDA as well as their subsidiaries.

their motions to intervene. We have jurisdiction under 28 U.S.C. § 1291. We affirm the district court's approval of the amended settlement agreements, and we dismiss the NRS and ORS appeals of the denial of their motions to intervene.

1. Appeal Nos. 20-16685, 20-16686, 20-16691, and 20-16699

To appeal a class settlement, appellants must demonstrate Article III standing. *Emps.-Teamsters Loc. Nos. 175 & 505 Pension Tr. Fund v. Anchor Cap. Advisors*, 498 F.3d 920, 923 (9th Cir. 2007). Separately and in addition, appellants must establish "standing to appeal" including elements distinct from the requirements of constitutional standing. *See United States ex rel. Alexander Volkhoff, LLC v. Janssen Pharmaceutica N.V.*, 945 F.3d 1237, 1241 (9th Cir. 2020). Under the standing to appeal doctrine as it has developed regarding settlement approval, only parties to the settlement may appeal a dismissal by the court of claims against settling defendants pursuant to the terms of the settlement agreement. *Waller v. Fin. Corp. of Am.*, 828 F.2d 579, 583 (9th Cir. 1987); *see also United States v. Kovall*, 857 F.3d 1060, 1068 (9th Cir. 2017) (articulating the general rule that only parties to a judgment may appeal it). The settlement agreements at issue in this case provide for such a dismissal of the settling defendants by the settlement class members, but they do not release claims by the ORS or NRS appellants, so those appellants generally lack standing to object to

the settlement agreements and the dismissal of the claims against Defendants.

There is a narrow "exception to the general principle barring objections by non-settling [individuals] to permit a non-settling [individual] to object where it can demonstrate that it will sustain some formal legal prejudice as a result of the settlement." *Waller*, 828 F.2d at 583; *see also Smith v. Arthur Andersen LLP*, 421 F.3d 989, 998 (9th Cir. 2005). "Formal legal prejudice" sufficient to allow a non-settlement individual standing to appeal a settlement exists when a settlement (1) "purports to strip [a party] of a legal claim or cause of action, an action for indemnity or contribution for example," or (2) "invalidates the contract rights of one not participating in the settlement." *Waller*, 828 F.2d at 583. A tactical disadvantage is not legal prejudice. *See Smith v. Lenches*, 263 F.3d 972, 976 (9th Cir. 2001); *Waller*, 828 F.2d at 584.

The ORS and NRS objectors have not suffered "formal legal prejudice" such that they have standing to appeal the approval of the settlement agreements by the district court. The amended settlements do "not release any of the ORS or NRS Subclasses' claims." The ORS and NRS objectors have not been stripped of a legal claim or cause of action by the amended settlements. *Waller*, 828 F.2d at 583. While the ORS and NRS objectors argue that the amended settlements and resulting dismissal of the named plaintiffs' claims against Defendants will weaken their arguments to avoid Defendants' statute of limitations defenses on the ground that their claims "relate back" to the claims

released by the settlement class members, such a tactical disadvantage is not legal prejudice sufficient to create standing to appeal. *Smith*, 263 F.3d at 976; *Waller*, 828 F.2d at 584. Similarly, they contend that it will be difficult for them to accomplish service of process against some of Defendants if they are not allowed to take advantage of their existing presence in the district court action. That is not formal legal prejudice, either. The ORS and NRS objectors lack standing to appeal the district court's approval of the current settlement agreements.

Along with the ORS and NRS objectors, purported settlement class members appeal the district court's striking of their objections to the settlement agreements. This court reviews a district court's decision to strike an objection for abuse of discretion because issues of fact predominate. *See United States v. Mateo-Mendez*, 215 F.3d 1039, 1042 (9th Cir. 2000) ("The de novo standard applies when issues of law predominate in the district court's evidentiary analysis, and the abuse-of-discretion standard applies when the inquiry is 'essentially factual.' "). The district court did not err in determining that the purported settlement class objectors neither complied with the required procedures nor satisfied the requirements for objections under Federal Rule of Civil Procedure 23(e)(5)(A). Fed. R. Civ. P. 23(e)(5)(A) (An "objection must state whether it applies only to the objector, to a specific subset of the class, or to the entire class, and also state with specificity the grounds for the objection."). Having

determined the objections were non-compliant, the district court was within its discretion to strike them.

As there are no other objections to the amended settlements, we affirm the amended settlements and remand to the district court for further proceedings, including but not limited to, implementation of the settlements.

2. Appeals Nos. 20-15697, 20-15704 and 20-16081

Our affirmance of the amended settlement agreements moots the pending appeals by the ORS and NRS appellants related to intervention in the district court. To determine if an appeal of the denial of intervention is moot, we ask if "any effectual relief whatever" is possible even "if we were to determine that the district court erred in denying [] intervention." *United States v. Sprint Commc'n Inc.*, 855 F.3d 985, 990 (9th Cir. 2017). The ORS and NRS members seek to intervene into the pending action against Defendants to strengthen their relation back arguments. The approved amended settlements release Defendants from the suit at issue. There is no longer an action against Defendants into which the ORS and NRS appellants can intervene. We can grant no "effectual relief" to appellants even if we were to reach the merits of the appeals and determine the district court erred. *Id*. We dismiss the intervention appeals as moot.

Costs to be taxed against Appellants.

AFFIRMED IN PART, DISMISSED IN PART, AND REMANDED FOR FURTHER PROCEEDINGS.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE: CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION	Case No. 07-cv-05944-JST
This Document Relates to: ALL INDIRECT PURCHASER ACTIONS	**ORDER DENYING MOTION TO INTERVENE FOR PURPOSES OF APPEALING DENIAL OF FINAL SETTLEMENT OBJECTIONS AND DENYING AS MOOT MOTION TO EXTEND TIME TO APPEAL JUDGMENT ENTERED JULY 29, 2020**
	Re: ECF No. 5792, 5817
	(Filed Aug. 27, 2020)

Before the Court is the Other Repealer States' and Non-Repealer States' Motion to Intervene for Purpose of Appealing Denial of Objections to Settlements. ECF No. 5792. The Court will deny the motion. The Court will also deny as moot the ORS and NRS Subclasses' motion to extend the deadline to appeal the judgment entered on July 29, 2020. ECF No. 5817.

I. BACKGROUND

Because the parties are already familiar with the facts, the Court summarizes only those bearing on the present motion.

In February 2008, the Judicial Panel on Multidistrict Litigation ordered the centralization of actions alleging that certain Defendants conspired to fix prices of cathode ray tubes. *See In re Cathode Ray Tube (CRT) Antitrust Litig.*, 536 F. Supp. 2d 1364 (J.P.M.L. 2008). On March 11, 2020, the Court granted preliminary approval of amended settlement agreements between six groups of corporate defendants[1] and several Statewide Damages Classes of indirect purchasers of CRT products ("22 Indirect Purchaser State Classes"). ECF No. 5695. These amended agreements narrowed the settlement class and removed two subclasses of CRT purchasers[2] – now denominated the Omitted Repealer State Subclass ("ORS Subclass")[3] and the

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[1] Settling Defendants include several groups of entities: Phillips, Panasonic, Hitachi, Toshiba, Samsung, and Thomson/TDA. Each entity includes subsidiary entities also covered by these settlement agreements. *See* ECF No. 5786 at 2 n.1-6.

[2] In *Illinois Brick Co. v. Illinois*, the Supreme Court held that only direct purchasers could recover damages for price-fixing under Section 4 of the Clayton Act. 431 U.S. 720, 735 (1977). As the Ninth Circuit has summarized, the Supreme Court "barred indirect purchasers' suits, and left the field of private antitrust enforcement to the direct purchasers." *Royal Printing Co. v. Kimberly Clark Corp.*, 621 F.2d 323, 325 (9th Cir. 1980). In response to the *Illinois Brick* decision, many states passed so-called "*Illinois Brick* repealer statutes," which give indirect purchasers the right to sue when firms violate analogous state antitrust laws. *See*, *e.g.*, Robert H. Lande, New Options for State Indirect Purchaser Legislation: Protecting the Real Victims of Antitrust Violations, 61 Ala. L. Rev. 447, 448 (2010). Such states are referred to as "repealer states." A state which has not enacted such a statute is referred to as a "non-repealer state."

[3] The ORS Subclass in its current iteration consists of Indirect Purchaser Plaintiffs in the following states: Arkansas,

Non-Repealer State Subclass ("NRS Subclass")[4] – in order to "remove potential conflicts of interests that could result from differences in claims and relief sought by the 22 Indirect Purchaser State Classes verses the ORS and NRS Subclasses." ECF No. 5695 at 11; *see* ECF No. 5587 at 16; ECF No. 5587-1. Prior to preliminary approval, the ORS and NRS Subclasses presented motions to intervene in order to amend the complaint, *see* ECF Nos. 5565, 5567; to intervene directly into the MDL, *see* ECF Nos. 5643, 5645; and to seek the Court's reconsideration of the above, *see* ECF Nos. 5688, 5689. The Court denied each of these motions. ECF Nos. 5626, 5628, 5684, 5708.

In April 2020, the ORS and NRS Subclasses appealed the Court's preliminary approval order and the Court's orders denying the motions to intervene to the Ninth Circuit. ECF No. 5709. On June 9, 2020, upon motion by the 22 Indirect Purchaser State Classes, the Ninth Circuit concluded that it lacked jurisdiction over this Court's preliminary approval order and dismissed that portion of the appeal. ECF No. 5738 at 4. In so

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Massachusetts, Missouri, Montana, New Hampshire, Oregon, Rhode Island, South Carolina, and Utah. ECF No. 5518 at 1; ECF No. 5645 at 2. The parties now use the "ORS" abbreviation to signify "other repealer states" rather than "omitted repealer states." ECF No. 5645 at 1 n.1.

[4] The NRS Subclass consists of Indirect Purchaser Plaintiffs in the following Non-Repealer States: Alabama, Alaska, Colorado, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maryland, New Jersey, Ohio, Oklahoma, Pennsylvania, Texas, Virginia, Washington, and Wyoming. ECF No. 5518 at 2.

doing, the Ninth Circuit noted that it did not read this Court's orders "as precluding [the ORS and NRS Subclasses] from moving to intervene *after final approval* for the different purpose of appealing the denial of their objections to the settlement." *Id.* (emphasis added). On June 11, 2020, the ORS and NRS Subclasses filed a motion to "intervene in this action to present their objections and to appeal a final judgment if one is entered by the Court." ECF No. 5754 at 3. However, because the ORS and NRS Subclasses "fail[ed] to cite a single case or make any argument concerning why they [were] entitled to intervene," and because their request to intervene was "premature," the Court denied the motion. ECF No. 5780 at 3.

The Court held a final fairness hearing on July 8, 2020, ECF No. 5782, and granted final approval to the settlement of Settling Defendants and 22 Indirect Purchaser State Classes on July 13, 2020, ECF No. 5786. On July 16, 2020, the ORS/NRS Potential Intervenors filed the present motion "for an order permitting them to intervene in this action to appeal the denial of their objections to the settlements." ECF No. 5792 at 3. This motion was joined by the ORS Objector Plaintiffs.[5] ECF No. 5802. The Settling Defendants and 22 Indirect Purchaser State Classes oppose the motion. ECF Nos. 5805, 5806. The ORS/NRS Potential Intervenors

[5] Because it denies intervention as to both the ORS and NRS Subclasses, the Court does not address contentions by Settling Defendants and 22 Indirect Purchaser State Classes that the ORS Objector Plaintiffs are not entitled to join the motion for intervention. *See* ECF No 5806 at 15; ECF No. 5805 at 11.

and the ORS Objector Plaintiffs have filed replies. ECF Nos. 5811, 5812.

II. JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. § 1332(d)(2).

III. LEGAL STANDARD

Federal Rule of Civil Procedure 24(a)(2) provides for intervention as a matter of right where the potential intervenor "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." The Ninth Circuit has summarized the requirements for intervention as of right under Rule 24(a)(2) as follows:

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> (1) [T]he [applicant's] motion must be timely; (2) the applicant must have a "significantly protectable" interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest; and (4) the applicant's interest must be inadequately represented by the parties to the action.

Freedom from Religion Found., Inc. v. Geithner, 644 F.3d 836, 841 (9th Cir. 2011) (quoting *California ex rel. Lockyer v. United States*, 450 F.3d 436, 440 (9th Cir. 2006)). Proposed intervenors must satisfy all four criteria, and "[f]ailure to satisfy any one of the requirements is fatal to the application." *Perry v. Proposition 8 Official Proponents*, 587 F.3d 947, 950 (9th Cir. 2009). In evaluating motions to intervene, "courts are guided primarily by practical and equitable considerations, and the requirements for intervention are broadly interpreted in favor of intervention." *United States v. Alisal Water Corp.*, 370 F.3d 915, 919 (9th Cir. 2004). "Courts are to take all well-pleaded, nonconclusory allegations in the motion to intervene, the proposed complaint or answer in intervention, and declarations supporting the motion as true absent sham, frivolity or other objections." *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 820 (9th Cir. 2001). Nonetheless, "the applicant bears the burden of showing that each of the four elements is met." *Freedom from Religion Found.*, 644 F.3d at 841; *see also Smith v. L.A. Unified Sch. Dist.*, 830 F.3d 843, 853 (9th Cir. 2016).

The same standard applies when a proposed intervenor seeks intervention in order to appeal an order of the court. *See Koike v. Starbucks Corp.*, 602 F. Supp. 2d. 1158, 1160-61 (N.D. Cal. 2009) (applying the Rule 24(a)(2) four-part test to applicant's motion to intervene for purpose of appealing an order denying class certification); *Mass. Sch. of Law at Andover, Inc. v. United States*, 118 F.3d 776, 779 (D.C. Cir. 1997) (explaining that circuit courts apply the Federal Rules of

Civil Procedure "specifically Rule 24 – to interventions solely for purposes of appeal"). Notably, even if intervention for the purposes of appeal is permitted, the intervenor must satisfy Article III standing requirements when "seeking appellate review, just as it must be met by persons appearing in courts of first instance." *Arizonans for Official English v. Arizona*, 520 U.S. 43, 64 (1997); *see also Hollingsworth v. Perry*, 570 U.S. 693, 705 (2013) (holding that intervenors lacked standing, noting that "the District Court had not ordered them to do or refrain from doing anything," and that "No have standing, a litigant must seek relief for an injury that affects him in a personal and individual way" (internal citations omitted)).

"Permissive intervention," by contrast, "is committed to the broad discretion of the district court." *Orange Cnty. v. Air Cal.*, 799 F.2d 535, 539 (9th Cir. 1986). Federal Rule of Civil Procedure 24(b) "requires (1) an independent ground for jurisdiction; (2) a timely motion; and (3) a common question of law and fact between the movant's claim or defense and the main action." *Freedom from Religion Found.*, 644 F.3d at 843 (citations omitted). "Where a putative intervenor has met these requirements, the court may also consider other factors in the exercise of its discretion." *Perry*, 587 F.3d at 955. Additionally, "the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3).

IV. DISCUSSION

A. Intervention as of Right

The ORS/NRS Potential Intervenors are not entitled to intervene as of right because they have not shown they have a "significantly protectable interest" relating to the settlement. *See Donnelly v. Glickman*, 159 F.3d 405, 410 (9th Cir. 1998). A proposed intervenor generally has a "significantly protectable interest" when its interest is "protectable under some law," and "there is a relationship between the legally protected interest and the claims at issue." *Arakaki v. Cayetano*, 324 F.3d 1078, 1084 (9th Cir.2003). "An applicant generally satisfies the 'relationship' requirement only if the resolution of the plaintiff's claims actually will affect the applicant." *Donnelly*, 159 F.3d at 410.

Here, the subject of the action is the Court's order granting final approval of a settlement between the 22 Indirect Purchaser State Classes and Settling Defendants. ECF No. 5786. That settlement will not materially affect the ORS and NRS Potential Intervenors because, as the Court has now pointed out more than once, while the ORS and NRS Potential Intervenors are members of the Nationwide Class[6] pled in the complaint, they are not members of the settlement class.

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[6] The operative complaint defines "Nationwide Class" to include "All persons and or entities who or which indirectly purchased in the United States for their own use and not for resale, CRT Products manufactured and/or sold by the Defendants, or any subsidiary, affiliate, or co-conspirator thereof, at any time during the period from at least March 1, 1995 through at least November 25, 2007." ECF No. 1526 at 59.

See id. at 9 ("The ORS/NRS Subclasses are members of the 'Nationwide Class' but are not members of the 22 Indirect Purchaser State Classes. . . . Therefore, the persons and entities in these subclasses are not members of the amended settlement Class."). Whatever claims they have will remain intact. Since they are not members of the settling class, their claims will not be released by the settlement, and they cannot show a protectable interest in the settlement. *See Padilla v. Willner*, 15-cv-04866-JST, 2016 WL 860948, at *7 (N.D. Cal. Mar. 7, 2016) ("Class action settlements do not bind parties who were excluded from the class.").

The ORS/NRS Potential Intervenors make several attempts to paper over this deficiency. First, they assert, citing *Standard Fire Ins. v. Knowles*, 568 U.S. 588, 594 (2013), that "[m]embers of a class have a right to intervene if their interests are not adequately represented by existing parties." ECF No. 5792 at 5. No one contests this point. Since the ORS/NRS Potential Intervenors are *not* "members of [the] class," however, the argument does not assist them.

The ORS/NRS Potential Intervenors also misstate the issue before the Court, arguing that "neither the IPPs nor the defendants have shown that the ORS and NRS Plaintiffs' interests are so completely and conclusively unaffected by the settlements" that intervention should be denied. ECF No. 5811 at 5. The question before the Court is not whether anyone's interests are "completely and conclusively unaffected," and the burden is on the ORS/NRS Potential Intervenors, not the settling parties, to "show[] that each of the four

elements is met." *See Freedom from Religion Found.*, 644 F.3d at 841.

The ORS/NRS Potential Intervenors further argue that the effect of the settlements "*may* be to remove the largest and most culpable defendants from any further proceedings in this MDL," and that "entry of judgment of dismissal on all of the currently-named plaintiffs' claims has *at least the potential* to terminate the indirect purchaser MDL class litigation" as to Settling Defendants. ECF No. 5811 at 3-4 (emphasis added). But the interest prong of the intervention standard is not satisfied by reciting hypothetical suggestions about what "may" happen. *See Donnelly*, 159 F.3d at 411 ("When an applicant's purported interest is so tenuous, intervention is inappropriate."). Moreover, even if the settlement would in fact terminate the MDL litigation as to certain defendants, it is only because the ORS/NRS Potential Intervenors currently have no live claims against those defendants in this Court. That is not the fault of the settling parties, and preventing the settlement from going forward would not assist or revive claims that currently do not exist.[7] At best, the removal of other plaintiffs might give the ORS/NRS Potential Intervenors less leverage in their own settlement discussions, but that interest is too weak to qualify for intervention. As the Court has already observed,

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[7] As in their prior briefs, the ORS/NRS Potential Intervenors cite no authority for the argument that they are entitled to intervene to prevent dismissal of defendants against whom they have no live claims, a further sign that the interest they assert is not protectible. *See* ECF No. 5786 at 10.

the ORS/NRS Potential Intervenors' arguments show, "[a]t most, [that] the settlement puts [them] at something of a tactical disadvantage in the continuing litigation. Such an injury does not constitute plain legal prejudice." ECF No. 5786 at 10 (quoting *Waller v. Fin. Corp. of Am.*, 828 F.2d 579, 584 (9th Cir. 1987)).

At one point, the ORS/NRS Potential Intervenors even seem to acknowledge they have not met the burden of demonstrating an interest in the settlement, stating that "the question of whether the releases that are part of the settlements will impair the ability of ORS and NRS Plaintiffs and class members to prosecute their claims . . . is not so clear cut that it can be decided on this motion." ECF No. 5811 at 3. But this motion is precisely the place that question *must* be decided.

Because the ORS/NRS Potential Intervenors do not have a "significantly protectable" interest in the settlement they wish to challenge, their motion to intervene as of right is denied. *See Alisal Water Corp.*, 370 F.3d at 919 ("The party seeking to intervene bears the burden of showing that *all* the requirements for intervention have been met." (emphasis in original)).

B. Permissive Intervention

In the alternative, the ORS/NRS Potential Intervenors seek permissive intervention. ECF No. 5792 at 8-9. Neither opposing party contests the timeliness of the motion or the shared common questions of law and fact between the claims being settled by the settling

parties and those still asserted by the ORS/NRS Potential Intervenors. ECF No. 5806 at 16; ECF No. 5805 at 10-11. Rather, the 22 Indirect Purchaser State Classes argue that the ORS/NRS Potential Intervenors failed to demonstrate independent grounds for jurisdiction, and that intervention would prejudice settling parties. ECF No. 5806 at 17-18. Settling Defendants, meanwhile, argue that the Court should exercise its discretion and deny intervention in order to advance the policy encouraging voluntary settlements, and avoid circumvention of "well-established limitations on non-party appeals."[8] ECF No. 5805 at 11.

The independent jurisdictional grounds requirement stems from the "concern that intervention might be used to enlarge inappropriately the jurisdiction of the district courts," a concern that typically takes the form of "proposed intervenors seek[ing] to use permissive intervention to gain a federal forum for state-law claims over which the district court would not, otherwise, have jurisdiction." *See Freedom from Religion Found.*, 644 F.3d at 843. In other words, this requirement is not at issue when potential intervenors "ask the court only to exercise that power which it already has." *See Beckman Indus., Inc. v. Intl Ins. Co.*, 966 F.2d 470, 473 (9th Cir. 1992). This Court has jurisdiction based on the minimum diversity and amount in controversy requirements of the Class Action Fairness

[8] Settling Defendants further argue that the ORS Objector Plaintiffs who sought to join the intervention motion "lack standing to appeal." ECF No. 5805 at 11. That issue is not before the Court.

Act. *See* 28 U.S.C. § 1332(d)(2). The ORS/NRS Potential Intervenors' motion to intervene asks the Court only to exercise its existing jurisdiction and admit their intervention so that they may appeal the denial of their settlement objections. ECF No 5792 at 3. Because the request would not enlarge the Court's jurisdiction, "no independent jurisdictional basis is needed." *See Beckman Indus.*, 966 F.2d at 473.

The issue, instead, is that "the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. Pro. 24(b)(3). The Court has held, on prior occasions, that the ORS and NRS Subclasses have not shown that the pending settlement between the 22 Indirect Purchaser State Classes and Settling Defendants will result in formal legal prejudice. *See* ECF No. 5786 at 10. Any interests that the ORS/NRS Potential Intervenors do have are merely theoretical, and intervention by these subclasses in order to appeal their objections to a settlement for which they are not a part would create undue delay and prejudice to the settling parties. *See Med. Advocates for Healthy Air v. EPA*, No. CV 11-3515 SI, 2011 WL 4834464, at *4-5 (N.D. Cal. Oct. 12, 2011) (after finding that intervenor had not demonstrated a significantly protectable interest, denying permissive intervention because the intervenor's interests were "too attenuated").

In light of this prejudice, the Court will not exercise its discretion to allow permissive intervention. The ORS/NRS Potential Intervenors motion on this score is therefore denied.

C. Motion to Extend Time to Appeal

Because the Court has denied the motion to intervene, the ORS and NRS Subclasses' motion to extend the deadline to appeal the judgment entered on July 29, 2020, ECF No. 5817, is denied as moot.

CONCLUSION

For the foregoing reasons, the ORS/NRS Potential Intervenors' motion to intervene for the purposes of appealing the denial of final settlement objections is DENIED. The ORS and NRS Subclasses' motion to extend the deadline to appeal the judgment entered on July 29, 2020 is DENIED as moot.

IT IS SO ORDERED.

Dated: August 27, 2020

/s/ Jon S. Tigar
JON S. TIGAR
United States District Judge

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

IN RE: CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION	Master File No. 4:07-cv-5944-JST MDL No. 1917
This Document Relates to: INDIRECT PURCHASER ACTIONS FOR THE 22 STATES	~~[PROPOSED]~~ **FINAL JUDGMENT OF DISMISSAL WITH PREJUDICE AS TO THE PHILIPS, PANASONIC, HITACHI, TOSHIBA, SAMSUNG SDI, THOMSON, AND TDA DEFENDANTS** Judge: Honorable Jon S. Tigar (Filed Jul. 29, 2020)

This matter has come before the Court to determine whether there is any cause why this Court should not approve the amended settlements with the Philips,[1]

[1] "Philips" includes Koninklijke Philips N.V. (f/k/a Koninldijke Philips Electronics N.V.), Philips North America LLC (f/k/a Philips Electronics North America Corporation, Philips Taiwan Limited (f/k/a Philips Electronics Industries (Taiwan), Ltd.), and Philips do Brasil Ltda. (f/k/a Philips da Amazonia Industria Electronica Ltda.). The agreement was reached on January 26, 2015 (ECF No. 3862-1), and amended by the parties on September 16, 2019. *See* ECF No. 5587-1, Ex. A.

Panasonic,[2] Hitachi,[3] Toshiba,[4] Samsung SDI,[5] Thomson,[6] and TDA[7] Defendants (collectively "Settling Defendants") set forth in the respective settlement agreements ("Amended Settlements") relating to the above-captioned litigation, *In re Cathode Ray Tube*

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[2] "Panasonic" includes Panasonic Corporation (f/k/a Matsushita Electric Industrial Co., Ltd.), Panasonic Corporation of North America, and MT Picture Display Co., Ltd. The agreement was reached on January 28, 2015 (ECF No. 3862-2), and amended by the parties on September 16, 2019. *See* ECF No. 5587-1, Ex. B.

[3] "Hitachi" includes Hitachi, Ltd., Hitachi Asia, Ltd., Hitachi America, Ltd., Hitachi Electronic Devices (USA), Inc., and Hitachi Displays, Ltd. (n/k/a Japan Display Inc.). The agreement was reached on February 19, 2015 (ECF No. 3862-3), and amended by the parties on September 16, 2019. *See* ECF No. 5587-1, Ex. C.

[4] "Toshiba" includes Toshiba Corporation, Toshiba America, Inc., Toshiba America Information Systems, Inc., Toshiba America Consumer Products, L.L.C., and Toshiba America Electronic Components, Inc. The agreement was reached on March 6, 2015 (ECF No. 3862-4), and amended by the parties on September 16, 2019. *See* ECF No. 5587-1, Ex. D.

[5] "Samsung SDI" includes Samsung SDI Co., Ltd., Samsung SDI America, Inc., Samsung SDI Brasil, Ltda., Tianjin Samsung SDI Co., Ltd., Shenzhen Samsung SDI Co., Ltd., Samsung SDI (Malaysia) Sdn. Bhd., and Samsung SDI Mexico S.A. de C.V. The agreement was reached on April 1, 2015 (ECF No. 3862-5), and amended by the parties on September 16, 2019. *See* ECF No. 55871, Ex. E.

[6] "Thomson" includes Technicolor SA (f/k/a Thomson SA) and Technicolor USA, Inc. (f/k/a Thomson Consumer Electronics, Inc). The agreement was reached on June 10, 2015 (ECF No. 3876-1), and amended by the parties on September 16, 2019. *See* ECF No. 5587-1, Ex. F.

[7] "TDA" refers to Technologies Displays Americas LLC (f/k/a Thomson Americas LLC). The agreement was reached on June 10, 2015 (ECF No. 3876-1), and amended by the parties on September 16, 2019. *See* ECF No. 5587-1, Ex. F.

(CRT) Antitrust Litigation, Case No. 4:07-cv-05944 JST, MDL No. 1917 (N.D. Cal.) ("Action"). The Court after carefully considering all papers filed and proceedings held herein and otherwise being fully informed in the premises, has determined that: (1) the Amended Settlements should be approved; and (2) there is no just reason for delay of the entry of this final Judgment approving the Amended Settlements. Accordingly, the Court directs entry of Judgment, which shall constitute a final adjudication of this case on the merits as to the parties to the Amended Settlements.

Good cause appearing therefor, it is:

ORDERED, ADJUDGED AND DECREED THAT:

1. The Court has jurisdiction over the subject matter of this litigation, and all actions within this litigation and over the parties to the Amended Settlements, including all members of the Class and the Settling Defendants.

2. The definitions of terms set forth in the Amended Settlements are incorporated hereby as though fully set forth in this Judgment.

3. The Court hereby finally approves and confirms the settlements set forth in the Amended Settlements and finds that said settlements are, in all respects, fair, reasonable and adequate to the Class pursuant to Rule 23 of the Federal Rules of Civil Procedure and all applicable state laws.

4. The persons/entities set out in Exhibit 1, attached hereto, have timely and validly requested exclusion from the Class and, therefore, are excluded. Such persons/entities are not included in or bound by this Final Judgment. Such persons/entities are not entitled to any recovery from the settlement proceeds obtained through the Amended Settlements.

5. The Court hereby dismisses on the merits and with prejudice the claims asserted by the Plaintiffs against the Settling Defendants, which were certified as a settlement class in the Court's Order Granting Final Approval (ECF No. 5786), with Plaintiffs and Settling Defendants to bear their own costs and attorneys' fees except as provided for in the Amended Settlements.

6. All persons and entities who are defined in the Amended Settlements as Releasors are hereby barred and enjoined from commencing, prosecuting, or continuing any claims, demands, actions, suits, or causes of action, or otherwise seeking to establish liability, against Settling Defendants ("Releasees") based, in whole or in part, upon any of the Released Claims or conduct at issue in the Released Claims.

7. Releasees are hereby and forever released and discharged with respect to any and all claims, demands, actions, suits, or causes of action which the Releasors had or have arising out of or related to any of the Released Claims.

8. The notice given to the Class of the settlements set forth in the Amended Settlements and other

matters set forth therein was the best notice practicable under the circumstances. Said notice provided due and adequate notice of the proceedings and of the matters set forth therein, including the proposed settlements set forth in the Amended Settlements, to all persons entitled to such notice, and said notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the requirements of due process, and all applicable state laws.

9. The objections to the Amended Settlements are hereby stricken and/or overruled for the reasons set forth in the Court's Order Granting Final Approval, ECF No. 5786.

10. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing and exclusive jurisdiction over: (a) implementation of these settlements and any distribution to Class Members pursuant to further orders of this Court; (b) disposition of the Settlement Fund; (c) hearing and determining applications by Plaintiffs' Class Counsel for attorneys' fees, costs, expenses, including expert fees and costs, and other such items; (d) the Class Action until the final judgments contemplated hereby have become effective and each and every act agreed to be performed by the parties all have been performed pursuant to the Amended Settlements; and (e) all parties to the Class Action and Releasees for the purpose of enforcing and administering the Amended Settlements and the mutual releases and other documents contemplated by, or executed in connection with, the Amended Settlements.

11. In the event that any of the settlements do not become effective in accordance with the terms of that Amended Settlement, then the judgment as to that Settling Defendant shall be rendered null and void and shall be vacated, and in such event, all orders entered and releases delivered in connection herewith shall be null and void and, except as otherwise provided in the Amended Settlement, the parties shall be returned to their respective positions *ex ante*.

12. The Court determines, pursuant to Rules 54(a) and (b) of the Federal Rules of Civil Procedure, that this Final Judgment should be entered and further finds that there is no just reason for delay in the entry of this Judgment, as a Final Judgment, as to the parties to the Amended Settlements. Accordingly, the Clerk is hereby directed to enter Judgment forthwith.

IT IS SO ORDERED.

Dated: July 29, 2020

/s/ Jon S. Tigar
JON S. TIGAR
United States District Judge

EXHIBIT 1

CRT INDIRECT PURCHASER EXCLUSION REQUESTS

Exclusion Request Number	Person or Entity	City, State	Postmark Date
1	Robert W. Robinson	Buena Vista, CO	8/17/15
2	Kmart Corporation	Hoffman Estates, IL	9/24/15
	Kmart Management Corporation	Hoffman Estates, IL	9/24/15
	Kmart Holdings Corporation	Hoffman Estates, IL	9/24/15
3	Sears Holding Corporation	Hoffman Estates, IL	9/24/15
	Sears Holdings Management Corporation	Hoffman Estates, IL	9/24/15
	Sears, Roebuck and Co.	Hoffman Estates, IL	9/24/15
4	Bonnie Bryant	Mesa, AZ	10/3/15
5	Michael Katz	New York, NY	10/7/15

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION, INDIRECT PURCHASER PLAINTIFFS, Plaintiff-Appellee, v. TOSHIBA CORPORATION; et al., Defendants-Appellees, v. TYLER AYRES; et al., Movants-Appellants.	No. 20-15697 D.C. No. 4:07-cv-05944-JST Northern District of California, Oakland ORDER (Filed Jul. 22, 2020)
In re: CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION, INDIRECT PURCHASER PLAINTIFFS, Plaintiff-Appellee, v.	No. 20-15704 D.C. No. 4:07-cv-05944-JST

TOSHIBA CORPORATION; et al.,

Defendants-Appellees,

v.

ELEANOR LEWIS, Proposed Intervenor,

Movant-Appellant.

Before: WARDLAW and CLIFTON, Circuit Judges, and KATZMANN,* Judge.

Appellants' emergency motion for a stay pending appeal is **DENIED**. Appellants have not shown that they are likely to suffer irreparable injury in the absence of a stay. *Al Otro Lado v. Wolf*, 952 F.3d 999, 1007 (9th Cir. 2020).

The temporary administrative stay of the district court's order granting final approval of the class settlement is lifted.

The previously established briefing schedule remains in effect.

IT IS SO ORDERED.

* The Honorable Gary S. Katzmann, Judge for the United States Court of International Trade, sitting by designation.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE: CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION,	Case No. 07-cv-05944-JST
	ORDER GRANTING FINAL APPROVAL
This Document Relates to:	Re: ECF Nos. 5695, 5758
INDIRECT PURCHASER ACTIONS FOR THE 22 STATES	(Filed Jul. 13, 2020)

Before the Court is Indirect Purchaser Plaintiffs' motion for final approval of amended settlements pursuant to the Ninth Circuit mandate to reconsider and amend final approval order, final judgment, and fee order. ECF Nos. 5695, 5758. The Court granted preliminary approval of the amended settlements on March 11, 2020, ECF No. 5695, and held a final fairness hearing on July 8, 2020, ECF No. 5782. The Court will grant final approval, and will grant Plaintiffs' request for attorney's fees, costs, and incentive awards.

I. BACKGROUND

A. Original Settlement Agreements

The factual history of this case is well known to the parties and is contained in the Court's prior orders. The case is predicated upon an alleged conspiracy to price-fix cathode ray tubes ("CRTs"), a core component

of tube-style screens for common devices including televisions and computer monitors. The conspiracy ran from March 1, 1995 to November 25, 2007, involved many of the major companies that produced CRTs, and allegedly resulted in overcharges of billions of U.S. dollars to domestic companies that purchased and sold CRTs or products containing CRTs. A civil suit was originally filed in 2007, ECF No. 1, consolidated by the Joint Panel on Multidistrict Litigation ("JPML") shortly thereafter, *see* ECF No. 122, assigned as a Multidistrict Litigation case ("MDL") to Judge Samuel Conti, *see id.*, and ultimately transferred to the undersigned in November 2015, *see* ECF No. 4162.

In 2015, one group of plaintiffs – the Indirect Purchaser Plaintiffs ("IPP Plaintiffs") – reached class action settlements with six groups of corporate defendants: Phillips,[1] Panasonic,[2] Hitachi,[3] Toshiba,[4]

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[1] The Philips entities include Koninklijke Philips N.V., Philips Electronics North America Corporation, Philips Taiwan Limited, and Philips do Brasil, Ltda. ECF No. 3862-1 at 2.

[2] The Panasonic entities include Panasonic Corporation, Panasonic Corporation of North America, and MT Picture Display Co. Ltd. ECF No. 3862-2 at 2.

[3] The Hitachi entities include Hitachi, Ltd., Hitachi Asia, Ltd., Hitachi America, Ltd., Hitachi Electronics Devices (USA), Inc., and Hitachi Displays, Ltd. ECF No. 3862-3 at 2.

[4] The Toshiba entities include Toshiba Corporation, Toshiba America, Inc., Toshiba America Information Systems, Inc., Toshiba America Consumer Products, L.L.C., and Toshiba America Electronic Components, Inc. ECF No. 3862-4 at 2.

Samsung,[5] and Thomson/TDA.[6] The settlements included a "Nationwide Class" of "[a]ll persons and or entities who or which indirectly purchased in the United States for their own use and not for resale, CRT Products manufactured and/or sold by the Defendants." *See* ECF No. 1526 at 59-60; ECF Nos. 3862-1, 3862-2, 3862-3, 3862-4, 3862-5; ECF No. 3876-1 (adopting the class definitions set forth in the operative complaint). The agreements also included Statewide Damages Classes of indirect purchasers of CRT products seeking money damages under the laws of 21 states and the District of Columbia ("22 Indirect Purchaser State Classes"). *See id.* The Court certified these classes for settlement purposes in its 2016 Final Approval Order. *See* ECF No. 4712 at 7, 36 (adopting Special Master's report and recommendation, ECF No. 4351 at 22-29, and conditionally certifying the 22 Indirect Purchaser State Classes).

The proposed settlements resolved all federal and state-law claims brought by the IPP Plaintiffs against the settling Defendants and obligated the Defendants

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[5] The Samsung entities include Samsung SDI Co. Ltd., Samsung SKI America, Inc., Samsung SDI Brazil Ltd., Tianjin Samsung SDI Co. Ltd, Shenzhen Samsung SDI Co., Ltd., SKI Malaysia Sdn. Bhd., and SDI Mexico S.A. de C.V. ECF No. 3862-5 at 2.

[6] The Thomson and TDA entities include Technicolor SA, Technicolor USA, Inc., and Technologies Displays Americas LLC. ECF No. 3876-1 at 2.

to pay a total of $541,750,000.[7] *See* ECF No. 3862-1 at 8; ECF No. 3862-2 at 8; ECF No. 3862-3 at 8; ECF No. 3862-4 at 8; ECF No. 3862-5 at 8; ECF No. 3876-1 at 9-10. The settlements provided monetary compensation for class members in the 22 Indirect Purchaser State Classes but did not provide compensation for persons or entities in certain other states, which collectively are now denominated the Omitted Repealer State[8] subclass ("ORS Subclass").[9] The settlement also provided no compensation to persons or entities in states whose laws do not provide for recovery to indirect

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[7] Including the prior Chunghwa and LG settlements, the aggregate IPP settlement amount was $576,750,000. ECF No. 4712 at 3.

[8] In *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977), the Supreme Court held that only direct purchasers could recover damages for price-fixing under Section 4 of the Clayton Act. *Id.* at 735. As the Ninth Circuit has summarized, the Supreme Court "barred indirect purchasers' suits, and left the field of private antitrust enforcement to the direct purchasers." *Royal Printing Co. v. Kimberly Clark Corp.*, 621 F.2d 323, 325 (9th Cir. 1980). In response to the *Illinois Brick* decision, many states passed so-called "*Illinois Brick* repealer statutes," which give indirect purchasers the right to sue when firms violate analogous state antitrust laws. *See*, *e.g.*, Robert H. Lande, New Options for State Indirect Purchaser Legislation: Protecting the Real Victims of Antitrust Violations, 61 Ala. L. Rev. 447, 448 (2010). Such states are referred to a "repealer states." A state which has not enacted such a statute is referred to as a "non-repealer state."

[9] The ORS Subclass in its current iteration consists of Indirect Purchaser Plaintiffs in the following states: Arkansas, Massachusetts, Missouri, Montana, New Hampshire, Oregon, Rhode Island, South Carolina, and Utah. ECF No. 5518 at 1; ECF No. 5645 at 2. The parties now use the "ORS" abbreviation to signify "other repealer states" rather than "omitted repealer states." ECF No. 5645 at 1 n.1.

purchasers ("non-repealer states"), now denominated the Non-Repealer State subclass ("NRS Subclass").[10] *See* ECF Nos. 3862-1, 3862-2, 3862-3, 3862-4, 3862-5, 3876-1. Even though they received no compensation, the settlements required members of the ORS and NRS Subclasses to release their claims for injunctive relief, equitable monetary relief, and damages.

The agreements proposed a distribution plan which included: (1) a "weighted pro-rata distribution to all members of the 22 Indirect Purchaser State Classes that filed valid claims," (2) a minimum payment of at least $25 per claimant, and (3) a maximum payment of "three times the estimated money damages per claimant." ECF No. 5587 at 30; *see* ECF No. 3862 ¶¶ 43-50. The plan "assign[ed] different weights to different CRT products based on the overcharge evidence for each." ECF No. 5587 at 30; *see* ECF No. 3862 ¶¶ 44-49.

After this Court preliminarily approved the original settlements, the claims administrator carried out a notice plan which involved: (1) mail and email notices sent to 10,082,690 unique addresses, (2) publication of notice on the settlement website, (3) advertisements on Google, Facebook, and other popular websites, and (4) print and online publications throughout the United States, in both English and Spanish. *See* ECF No.

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[10] The NRS Subclass consists of Indirect Purchaser Plaintiffs in the following Non-Repealer States: Alabama, Alaska, Colorado, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maryland, New Jersey, Ohio, Oklahoma, Pennsylvania, Texas, Virginia, Washington, and Wyoming. ECF No. 5518 at 2.

4071-1 ¶ 114; ECF No. 4371 ¶¶ 4-13. These notices directed class members to the settlement website. *See* ECF No. 4371 ¶¶ 9-13. They also advised class members of material settlement terms, the plan of distribution, and Class Counsel's intent to apply for an attorney fee award of up to one-third of the settlement fund. ECF No. 4071-1 ¶ 115.

On July 7, 2016, this Court granted final approval of the six settlement agreements ("Final Approval Order"). ECF No. 4712 at 1. On August 3, 2016, the Court issued a Fee Order approving an attorney's fees award of $158,606,250 to Class Counsel, an amount comprising 27.5% of the aggregate settlement fund. ECF No. 4740 at 2, 5-9. Two objectors appealed the settlement approval and fee award to the Ninth Circuit. ECF No. 4741.

On October 1, 2018, while the appeals were pending, the IPP Plaintiffs filed a Motion pursuant to Federal Rule of Civil Procedure 62.1 for an Indicative Ruling on Their Motion to Amend The IPP Fee Order and Amend the Plan of Distribution. ECF No. 5335. Counsel for the IPP Plaintiffs proposed to modify the earlier settlement by reducing the attorney's fees award by $6 million and using those funds to compensate plaintiffs in three states – Massachusetts, Missouri, and New Hampshire – that were omitted from the original settlement. *Id.* at 8.

The Court denied the motion on November 8, 2018. ECF No. 5362. The Court concluded that it had erred by approving the settlement in the first place,

and that the IPP Plaintiffs' proposed modifications did not cure all the defects in the settlement. *Id.* The Court's primary concern was that the settlement required class members in the Omitted Repealer States to release their claims without compensation. *See* ECF No. 5362 at 1. The order also expressed "concerns about the adequacy of the counsel who negotiated that settlement or whether they may have faced a conflict of interest," given that they had released some clients' claims without compensation. *Id.* at 1. In response to the Court's order, the Ninth Circuit remanded "this case so that the district court [could] reconsider its approval of the settlement." *See In re Cathode Ray Tube Antitrust Litig.*, No. 16-16368 (9th Cir. Feb. 13, 2009), ECF No. 238 at 11. The Ninth Circuit did not vacate this Court's Final Approval, Final Judgement, or Fee Order. *Id.*

On remand, this Court confirmed the existing lead counsel for the IPP Plaintiffs and appointed separate counsel for the unnamed ORS and NRS Subclasses. ECF Nos. 5535, 5518. The Court then referred the matter to Magistrate Judge Corley for settlement. ECF No. 5427.

B. Amended Settlement Agreements

After the Ninth Circuit remanded this case, counsel for IPP Plaintiffs[11] and the settling Defendants

[11] Counsel for "IPP Plaintiffs" now only represents class members in the 22 Indirect Purchaser State Classes rather than

engaged in mediation sessions before Magistrate Judge Corley and agreed to amend the settlements. ECF No. 5531; ECF No. 5587-1 ¶¶ 2-3.

The amendments alter the settlements in three ways. First, they appoint new settlement class representatives for the states of Hawaii, Nevada, New Mexico, and South Dakota.[12] Second, they narrow the definition of "the Class" to include only the 22 Indirect Purchaser State Classes certified for settlement in the Court's 2016 Final Approval Order. ECF No. 5587-1 at 7, 13, 19, 25, 31, 38. The amended settlements no longer include a Nationwide Class. *See* ECF No. 5587 at 16; ECF No. 5587-1. Only members of the 22 Indirect Purchaser State Classes release their claims against Defendants. Third, the amendments reduce each Defendant's settlement contribution by approximately 5.35%, for a total reduction of $29,000,000. ECF No. 5587 at 17; *see* ECF No. 5587-1 at 7-8, 13-14, 19-20, 25-26, 31-32, 38-39. The amendments offset these reductions in settlement amount by requesting that the Court reduce the attorney's fees previously awarded by

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all indirect purchasers in the Nationwide Class. *See* ECF Nos. 5535, 5518.

[12] On September 13, 2019, IPP Plaintiffs filed a stipulation amending their operative complaints to substitute Sandra Riebow for Daniel Riebow as the named plaintiff for the state of Hawaii; Gregory Painter for Gloria Comeaux as the named plaintiff for the state of Nevada; MaryAnn Stephenson for Craig Stephenson as the named plaintiff for the state of New Mexico; and Donna Ellingson-Mack for Jeffrey Speaect as the named plaintiff for South Dakota. ECF Nos. 5584-1, 5584-2. On September 16, 2019, the Court entered the Order. ECF No. 5585.

$29,000,000. *See id.* Interest earned on the original settlement funds since their 2015 deposit in an escrow account will remain in the fund, except that Class Counsel will still be entitled to seek a share of the accrued interest proportionate to their fee and expense award. ECF No. 5587 at 17; *see* ECF No. 5587-1 at 7-8, 13-14, 19-20, 25-26, 31-32, 38-39. All other terms of the original settlement agreements and plan for distribution remain the same. ECF No. 5587-1 at 8, 14, 20, 26, 33, 39.

C. Procedural History

On September 16, 2019, the IPP Plaintiffs filed a motion for preliminary approval of the amended settlements.[13] ECF No. 5695. The Court then issued an order which: (1) granted the motion for preliminary approval, (2) provisionally certified the 22 Indirect Purchaser State Classes for purposes of settlement, (3) authorized the IPP Plaintiffs to provide additional limited notice to certain class members, and (4) set a deadline of May 29, 2020 for certain class members to object ("Preliminary Approval Order"). *Id.* at 19.

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[13] IPP Plaintiffs' filed a "motion pursuant to Ninth Circuit mandate to reconsider and amend final approval order, final judgment, and fee order," which the Court construed as a motion for preliminary approval given its requests that the Court "reconsider and approve the amended settlements under Rule 23(e); order notice be given; and amend the Final Approval Order, the Final Judgment, and the Fee Order . . . after a final hearing." ECF No. 5695 at 6.

Between August 2019 and February 2020, NRS Subclass member Eleanor Lewis and several members of the ORS Subclass filed multiple motions to intervene in this MDL and file an amended complaint. ECF Nos. 5565, 5567, 5643, 5645, 5688, 5689. The Court denied these motions and directed movants to "file their claims in the appropriate forum(s) and seek transfer from the JPML or, if properly filed in the Northern District of California, 'request assignment of [their] actions to the Section 1407 transferee judge in accordance with applicable local rules.' ECF No. 5684 at 6 (quoting J.P.M.L. R. 7.2(a)); *see also* ECF No. 5626 at 3 (denying original motions to intervene which "attempt[ed] to amend someone else's complaint"); ECF No. 5628 at 3 (same).

In April 2020, the ORS and NRS Subclasses appealed the Court's Preliminary Approval Order and orders denying their motions to intervene to the Ninth Circuit. ECF No. 5695. The subclasses then moved to stay "all proceedings concerning" the Preliminary Approval Order pending resolution of their appeals. ECF No. 5718, 5720. On June 9, 2020, the Ninth Circuit concluded that it lacked jurisdiction over the Preliminary Approval Order and dismissed that portion of the appeal. ECF No. 5738. Thereafter, this Court denied the ORS and NRS Subclasses' motion to stay. ECF No. 5774.

On May 29, 2020, Lewis and some of the ORS purchasers ("ORS/NRS Objectors") filed objections to the amended settlements. ECF Nos. 5732, 5756. On the same day, the Court also received 15 separate but

identical objections from purported members of the 22 Indirect Purchaser State Classes. ECF Nos. 5739-5752. On June 12, 2020, the Court received a late-filed objection, identical to those filed by other members of the 22 Indirect Purchaser State Classes.[14] ECF No. 5755.[15] On June 12, 2020, the IPP Plaintiffs and Samsung Defendants filed responses to these objections. ECF No. 5757, 5758. The Court held a final fairness hearing on July 8, 2020. ECF No. 5782.

II. JURISDICTION

This Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2).

III. STANDING TO OBJECT

A. Legal Standard

A party seeking to invoke the Court's jurisdiction has the burden of establishing standing. *Steel Co. v.*

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[14] All but three of the 16 objections filed by purported members of the 22 Indirect Purchaser State Classes identify Robert Bonsignore as counsel. ECF Nos. 5739, 5740, 5742-5749, 575, 5752, 5755. Robert Bonsignore also serves as the Court-appointed counsel for the ORS Subclass. *See* ECF No. 5518.

[15] On July 3, 2020, five weeks after the deadline to file objections to the amended settlements, Counsel for the purported members of the 22 Indirect Purchaser State Classes filed a brief "in further support of their objections to the proposed amended settlement agreements." ECF No. 5779. In light of the facts that this supplemental brief was filed well after the deadline to object and these individuals already filed objections to the amended settlements, the Court declines to consider the supplemental brief.

Citizens for a Better Environment, 523 U.S. 83, 103-04 (1998); *see In re Hydroxycut Mktg. and Sales Practices Litig.*, No. 09md2087 BTM (KSC), 2013 WL 5275618, at *2 (S.D. Cal. Sept. 17, 2013) ("The party seeking to invoke the Court's jurisdiction—in this case, the Objectors—has the burden of establishing standing."). Non-class members generally "have no standing to object to the settlement of a class action." *San Francisco NAACP v. San Francisco Unified School Dist.*, 59 F. Supp. 2d 1021, 1032 (N.D. Cal. 1999) (citing *Gould v. Alleco, Inc.*, 883 F.2d 281, 284 (4th Cir. 1989)); *Moore v. Verizon Commc'ns Inc.*, No. C 09-1823 SBA, 2013 WL 4610764, at *9 (N.D. Cal. Aug. 28, 2013) ("[A] court need not consider the objections of nonclass members because they lack standing."); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 321 n.6 (N.D. Cal. 2018) (same); *see also In re Equity Funding Corp. of Am. Sec. Litig.*, 603 F.2d 1353, 1360-61 (9th Cir. 1979) (finding that non-class member "lack[ed] standing to object to, or to appeal from the [settlement's] Plan of Allocation or its approval").

A narrow "exception exists to this rule when [a] non-settling defendant can demonstrate that 'it will suffer some plain legal prejudice as a result' of the settlement." *Carillo v. Schneider Logistics Trans-Loading and Distrib., Inc.*, No. 2:11-cv-8557-CAS(DTBx), 2014 WL 688178, at *2 (C.D. Cal. Feb. 21, 2014) (quoting *Waller v. Fin. Corp. of Am.*, 828 F.2d 579, 583 (9th Cir. 1987)); *see Smith v. Arthur Andersen LLP*, 421 F.3d 989, 998 (9th Cir. 2005) (noting the "exception to the general principle barring objections by non-settling

defendants to permit a non-settling defendant to object where it can demonstrate that it will sustain some formal legal prejudice as a result of the settlement" (citing *Waller*, 828 F.2d at 583)).[16] "Formal legal prejudice" sufficient to warrant the application of this exception exists where a settlement (1) "purports to strip [a non-settling defendant] of a legal claim or cause of action, an action for indemnity or contribution for example" or (2) "invalidates the contract rights of one not participating in the settlement." *Waller*, 828 F.2d at 583.

B. ORS/NRS Objections

The ORS/NRS Objectors argue that the Court should not grant final approval of the amended settlements because: (1) "IPP Class Counsel has not provided adequate representation to the ORS and NRS Plaintiffs," (2) some of the 22 Indirect Purchaser State Classes "lack a representative who was properly added to the MDL," (3) "the settlements do not properly account for the value of the ORS and NRS claims," (4) "settlement notice has been constitutionally deficient," and (5) the "fee award should be reduced" or "delayed until the ORS and NRS can participate in negotiations regarding the value of their claims." ECF No. 5732 at 5-6. The IPP Plaintiffs and Samsung Defendants argue that the Court should disregard these objections

[16] ORS and NRS Objectors assert that the *Smith* court found that "objector-appellants had standing to object because they were 'potentially affected by the settlement.' " ECF No. 5732 at 7 (Quoting *Smith*, 421 F.3d at 998). However, the Ninth Circuit opinion in *Smith* contains no such language.

because the ORS/NRS Objectors lack standing to object to the amended settlements. ECF No. 5757 at 614; ECF No. 5758 at 17-24. The Court agrees.

The amended settlements state that the " 'Nationwide Class,' . . . and members thereof (except for members of the 22 Indirect Purchaser States Classes), are expressly excluded from 'the Class' and are not bound by the Agreement." *See* ECF No. 5587-1 at 7, 13, 19, 25, 31, 38. The ORS/NRS Subclasses are members of the "Nationwide Class" but are not members of the 22 Indirect Purchaser State Classes. ECF No. 5616 at 8; *see* ECF No. 1526 at 59-60; ECF Nos. 3862-1, 3862-2, 3862-3, 3862-4, 3862-5; ECF No. 3876-1. Therefore, the persons and entities in these subclasses are not members of the amended settlement Class and have no standing to object to the Court's final approval of these agreements. *See Kent v. Hewlett-Packard Co.*, No. 5:09-cv-05341-JF (HRL), 2011 WL 4403717, at *3 (N.D. Cal. Sept. 20, 2011) ("The [objectors] are excluded from the settlement. . . . Because they are not members of the class, [they] lack standing to object.").

The ORS/NRS Objectors argue that they may object as "non-parties" because their "rights *are* impacted" by the amended settlements. ECF No. 5732 at 7 (emphasis in original). In particular, they contend that (1) "if the settlements are approved . . . , ORS and NRS class members may lose the ability to intervene into this case as class members to assert their claims" and (2) "[o]nce the underlying litigation is dismissed following settlement approval, there may no longer be

any action in which to intervene."[17] ECF No. 5732 at 8 (internal quotation mark, citation, and alteration omitted). According to ORS/NRS Objectors, this "threat of injury from the settlement, 'no matter how small,' suffices to create [] standing." *Id.* (quoting *Brandt v. Vill. Of Winnetka, Ill.*, 612 F.3d 647, 650 (7th Cir. 2010)). However, the single case that ORS/NRS Objectors cite in support of their "threat of injury" theory contains no discussion of *non-party* standing to object to a settlement. *See generally Brandt*, 612 F.3d 647. Instead, it addresses the requirements that a *plaintiff* must meet in order to establish Article III standing to bring an action in federal court. *See id.* at 649-50. In the context of non-party objections to settlements, "[m]ere allegations of injury in fact or tactical disadvantage as a result of a settlement simply do not rise to the level of plain legal prejudice." *Carillo*, 2014 WL 688178, at *2 (quoting *Argretti v. ANR Freight System, Inc.*, 982 F.2d 242, 247 (7th Cir. 1992)). Formal legal prejudice sufficient to create non-party standing exists only where a settlement purports to strip a non-settling defendant

[17] As the Court stated in its Order Denying Motion to Stay, "final approval of IPP Plaintiffs' amended settlements will not terminate the MDL." ECF No. 5774 at 6. The amended settlements resolve the actions between the 22 Indirect Purchaser State Classes and several groups corporate defendants. *Id.; see* ECF No. 5531; ECF No. 5587-1 ¶¶ 2-3. "The settlements do not release any of the ORS or NRS Subclasses' claims and do not resolve IPP Plaintiffs' claims against several remaining defendants within the MDL. As such, the underlying MDL will not be eliminated upon final approval of the proposed settlement between a particular subset of the classes and defendants contained therein." ECF No. 5774 at 6.

of a legal claim or cause of action or "invalidates the contract rights of one not participating in the settlement." *Waller*, 828 F.2d at 583. ORS/NRS Objectors' arguments show, "[a]t most, [that] the settlement puts [them] at something of a tactical disadvantage in the continuing litigation. Such an injury does not constitute plain legal prejudice." *Id.* at 584 (finding no standing to object where, as here, "[t]he settlement does not cut off or in anyway affect any of [the non-party's] claims; it only disposes of the claims of the classes against [the settling defendant]"). Thus, ORS/NRS have failed to establish any entitlement to raise non-party objections to the amended settlements. *In re Hydroxycut*, 2013 WL 5275618, at *2 ("The party seeking to invoke the Court's jurisdiction—in this case, the Objectors—has the burden of establishing standing."). The Court therefore strikes their objections. *See Miller v. Ghirardelli Chocolate Co.*, No. 12-cv-04936-LB, 2015 WL 758094, at *10 (N.D. Cal. Feb. 20, 2015) ("The court [] finds that all three objectors lack standing and strikes their objections.").

C. Remaining Objections

The remaining 16 objections purport to be from members of the 22 Indirect Purchaser State Classes and present identical, generalized statements challenging the amended settlements' adequacy of representation, attorney's fees, fairness, and delay in receipt of settlement funds. BCE Nos. 5739-5752, 5755. For instance, the objections assert that: (1) "[t]he proposed settlement class should not be certified for lack of

adequate representation" and "both Class Counsel and Class Representatives are inadequate representatives, and some should be conflicted out," (2) "[t]he proposed settlement is not fair, reasonable and adequate and was not negotiated at arm's length," and (3) "[t]he delay arising from Class Counsel's improper conduct cost me and all others similarly situated to lose more time and interest." *Id.* The IPP Plaintiffs argue that the Court should disregard these objections because they fail to "provide proof of class membership" and fail to comply with the requirements of Rule 23(e)(5). ECF No. 5758 at 13-15. The Court agrees.[18]

In its Preliminary Approval Order, the Court granted IPP Plaintiffs' request to send "limited notification [] to certain class members" to "advise recipients of their opportunities to object to the amendments, object to the requested fee award, and appear at the fairness hearing." ECF No. 5695 at 19. In doing so, the Court approved the proposed Notice

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[18] The Court's order should not be read as holding that a receipt is required for proof of class membership in all cases. The law is to the contrary. *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1124-25 (9th Cir. 2017); *see also Lilly v. Jamba Juice Co.*, 308 F.R.D. 231, 236-40 (N.D. Cal. 2014) (rejecting ascertainability requirement). However, the parties to a class action settlement are free to impose a receipt requirement as a condition of making a valid claim, separate and apart from the issue from class membership. Here, objectors themselves acknowledge that "proof" in this case requires submission of a receipt. *See*, *e.g.*, ECF No. 5741 at 2 ("Requiring that Class Members to submit a receipt for the purchase as a condition to object does not treat Class Members equitably relative to each other and is evidence of the inadequacy of the Class Representatives and Class Counsel.").

form, which permits any "member of the 22 Indirect Purchaser State Classes [who] submitted a claim in or objected to the 2016 Settlements" to "ask the Court to deny approval of the Settlements as amended by the Amendments or to the attorneys' fees request by filing objections with the Court." ECF No. 55872 at 18; *see* ECF No. 5695 at 16 n.13, 19. The Notice form requires that "objections *must* include . . . [p]roof of membership in one or more of the 22 Indirect Purchaser State Classes." ECF No. 5587-2 at 18 (emphasis added). However, the 16 objectors neither state that they "submitted a claim in or objected to the 2016 Settlements" nor provide "[p]roof of membership in one or more of the 22 Indirect Purchaser State Classes." *See* ECF Nos. 5739-5752, 5755. They have not complied with the required "procedures and so have not established that they are actual class members." *Miller*, 2015 WL 758094, at *9-10. As such "all [16] objectors have failed to establish their standing to challenge the settlement." *Id.* (finding that objectors failed to establish standing to challenge a settlement where they had not complied with the requirement for objectors to provide "documents or testimony sufficient to establish membership in the Settlement Class"); *see In re Hydroxycut*, 2013 WL 5275618, at *2 ("[B]ecause [the objector] has not established that he in fact purchased a Hydroxycut Product, he has not carried his burden of proving standing as a class member, and the Court strikes [his] objection."); *see also Nwabueze v. AT&T Inc.*, No. C 0901529 SI, 2013 WL 6199596, at *6-7 (N.D. Cal. Nov. 27, 2013) (overruling objection which "failed to comply with the Court's procedural requirements for objecting to the

Settlement"). "[O]n this basis alone, the Court may refuse to consider the objections at issue." *Chavez v. PVH Corp.*, No. 13-CV-01797-LHK, 2015 WL 9258144, at *3 (N.D. Cal. Dec. 18, 2015) (overruling objections which were "procedurally improper" and "were made by individuals who [did] not appear to be Class Members"); *see Miller*, 2015 WL 758094, at *10 (striking objections where objectors did not state under oath what products they purchased).[19]

In addition, each of the 16 objections fails to comply with Rule 23. Under Rule 23(e)(5), a settlement "objection must state whether it applies only to the objector, to a specific subset of the class, or to the entire class, and also state with specificity the grounds for the objection." The objections at issue, however, do not specify whether they apply "only to the objector, to a specific subset of the class, or to the entire class." *See* ECF Nos. 5739-5752, 5755. Nor do they state the grounds for their objections "with specificity." *See id.*

[19] Each of the 16 objections states that "[r]equiring [ ] Class Members to submit a receipt for the purchase as a condition to object does not treat Class Members equitably relative to each other." ECF Nos. 5739-5752, 5755. However, the Notice does not require Class Members to submit a receipt. It requires objectors to provide "[p]roof of membership in one or more of the 22 Indirect Purchaser State Classes," such as a declaration under oath describing which CRT product(s) the objector purchased. ECF No. 5587-2 at 18. Such a requirement is consistent with those approved by other courts within the Ninth Circuit. *See*, *e.g.*, *Miller*, 2015 WL 758094, at *9-10 (striking objections which failed to provide "documents or testimony sufficient to establish membership in the Settlement Class"); *In re Hydroxycut*, 2013 WL 5275618, at *2 (striking objections where objectors did not provide evidence of their purchases, and therefore of class membership).

Instead, they offer vague assertions regarding "lack of adequate representation," "lawyers who made multiple errors," and a settlement agreement which "does not treat Class Members equitable relative to each other" and "is not fair, reasonable and adequate." *See id.* These assertions are not accompanied by any explanation or supporting facts to specify *how* members of the 22 Indirect Purchaser State Classes were inadequately represented and inequitably treated. *See id.* The objections also contain no detail as to which of the lawyers' "multiple errors" the objectors complain. *See id.* Accordingly, the Court strikes these objections "for failure to follow the objection procedures outlined in the Court – approved Class Notice" and failure to comply with Rule 23. *Kim v. Tinder, Inc.*, No. CV 18-3093-JFW(ASx), 2019 WL 2576367, at *10 (C.D. Cal. June 19, 2019) (overruling "boilerplate identical one page form objections" for failure to comply with Rule 23(e)).

IV. FINAL APPROVAL OF CLASS ACTION SETTLEMENT

A. Legal Standard

"The claims, issues, or defenses of a certified class may be settled . . . only with the court's approval." Fed. R. Civ. P. 23(e). "Adequate notice is critical to court approval of a class settlement under Rule 23(e)." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1025 (9th Cir. 1998). In addition, Rule 23(e) "requires the district court to determine whether a proposed settlement is fundamentally fair, adequate, and reasonable." *Id.* at 1026.

To assess a settlement proposal, courts in the Ninth Circuit use a multi-factor test which balances the following factors:

> (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and view of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members of the proposed settlement.

In re Online DVD-Rental Antitrust Litig., 779 F.3d 934, 944 (9th Cir. 2015) (quoting *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)).

"Recent amendments to Rule 23 require the district court to consider a similar list of factors before approving a settlement." *Theodore Broomfield v. Craft Brew Alliance, Inc.*, No. 17-cv-01027-BLF, 2020 WL 1972505, at *5-6 (N.D. Cal. Feb. 5, 2020). These factors include whether: (1) "the class representatives and class counsel have adequately represented the class;" (2) "the proposal was negotiated at arm's length;" (3) "the relief provided for the class is adequate;" and (4) "the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2). The "specific factors added to Rule 23(e)(2) are not intended to 'displace' any factors currently used by the courts, but instead aim to focus the court and attorneys on 'the core concerns of procedure and substance that should

guide the decision whether to approve the proposal.'" *Theodore Broomfield*, 2020 WL 1972505, at *6 (quoting Advisory Committee Notes to 2018 Amendments, Fed. R. Civ. P. 23(e)(2)). "Accordingly, the Court applies the framework set forth in Rule 23 with guidance from the Ninth Circuit's precedent." *Id.*

Settlements that occur before formal class certification "require a higher standard of fairness." *In re Mego Fin. Corp. Sec. Litig.*, 213 F. 3d 454, 458 (9th Cir. 2000). In reviewing such settlements, the court must ensure that "the settlement is not the product of collusion among the negotiating parties." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F. 3d 935, 946-47 (9th Cir. 2011).

B. Adequacy of Notice

A court must "direct notice [of a proposed class settlement] in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1). "The class must be notified of a proposed settlement in a manner that does not systematically leave any group without notice." *Officers for Justice v. Civil Serv. Comm'n of City & Cty. of S.F.*, 688 F. 2d 615, 624 (9th Cir. 1982) (citation omitted). "Notice is satisfactory if it 'generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.'" *In re Hyundai and Kia Fuel Economy Litig.*, 926 F.3d 539, 567 (9th Cir. 2019) (quoting *Churchill*, 361 F.3d at 575). If a fairness hearing leads to

"substantial changes" in the settlement which "adversely affect[] some members of the class, additional notice, followed by an opportunity to be heard, might be necessary." *In re Anthem*, 327 F.R.D. at 330.

Class members of the 22 Indirect Purchaser States have already received "the best notice that is practicable under the circumstances." *See* Fed. R. Civ. P. 23(c)(2)(B). After this Court preliminarily approved the original settlements, the claims administrator carried out a notice plan which included: (1) mail and email notices sent to 10,082,690 unique addresses, (2) publication of notice on the settlement website, (3) advertisements on Google, Facebook, and other popular websites, and (4) print and online publications throughout the United States, in both English and Spanish. *See* ECF No. 4071-1 ¶ 114; ECF No. 4371 ¶¶ 4-13. These notices directed recipients to the settlement website. *See* ECF No. 4371 ¶¶ 9-13. They also advised class members of material settlement terms, the plan of distribution, and Class Counsel's intent to apply for an attorney fee award of up to one-third of the settlement fund. ECF No. 4071-1 ¶ 115. As the Court found in its prior Final Approval Order, this plan "provided the best practicable notice to class members." ECF No. 4712 at 9.

The IPP Plaintiffs' amendments to the settlement agreements did not require additional notice. ECF No. 5695 at 18-19. As the Court noted in its Preliminary Approval Order, the amended settlements "provide the same benefits to the members of the 22 Indirect Purchaser State Classes." ECF No. 5587 at 32; *see* ECF No.

5587-1 at 7-8, 13-14, 19-20, 26-26, 31-33, 38-39. While the amendments reduce the gross settlement fund by $29,000,000, "that reduction is fully offset by a $29,000,000 reduction in Class Counsel's fee request." *Id.* Therefore, the settlement does not have a "material adverse effect on the rights of class members" and there is no reason to conclude that those class members who failed to object or opt out of the original agreements would now choose to do so. *See In re Anthem*, 327 F.R.D. at 330 (finding that, where amendment did not adversely affect class members, "there is no overriding reason to conclude that those Settlement Class Members who failed to opt out would now choose to do so"). The amendments also do not adversely affect the rights of the ORS and NRS Subclasses which were included in the original settlement. Because the amendments narrow the settlement Class, the release no longer applies to the ORS and NRS Subclasses. *See* ECF No. 5587-1 at 7, 13, 19, 25, 31, 38. These groups retain the claims that they previously possessed, if any, and they are free to pursue those claims against the Defendants.

Although not required, the Court granted the IPP Plaintiffs' request to provide additional notice to certain class members. ECF No. 5695 at 19. The settlement administrator, The Notice Company, Inc., carried out the limited notice procedure as outlined in the Preliminary Approval Order. ECF No. 5758-1. On March 27, 2020, the Notice Company updated the Settlement Website "to include a Detailed Notice concerning the Amendments to the Settlements." *Id.* ¶ 7. The Notice

Company then sent an email notice to 92,170 class members and mailed Postcard Notices to 2,151 class members. *Id.* ¶ 5. During the initial dissemination of notices by email, 8,562 emails "bounced" and were not deliverable; consequently, a Postcard Notice was sent to the mailing address of those recipients. *Id.* During the initial dissemination of notice by mail, 711 Postcard Notices were returned as undeliverable. *Id.* The Notice Company then "conducted skip traces in an effort to obtain additional address information for recipients with undeliverable addresses, which resulted in remailing of the Postcard Notice to 378 recipients." *Id.* In sum, "direct notice was sent to 100% of the persons or entities on the Notice List but was not received by 0.7%, for an overall success rate of 99.3%." *Id.*

The notices "each (a) provided a summary of the Amendments to the Settlements and the reduced fee award, (b) stated that May 29, 2020, was the deadline for submitting objections or comments, (c) stated that the Fairness Hearing was scheduled for July 8, 2020, and (d) directed recipients to obtain the Detailed Notice and additional information at www.CRTclaims.com (the "Settlement Website")." *Id.* ¶ 6. Because "the amended settlements provide the same benefits to class members as were available in the original settlement, the Court [found] it unnecessary to provide opt-outs an opportunity to rejoin the settlement." ECF No. 5695 at 19.

Due process requires "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford

them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). In light of the adequacy of the original notice plan and IPP Plaintiffs' provision of additional notice of settlement amendments, the Court finds that the parties have provided adequate notice to class members.

C. Fairness, Adequacy, and Reasonableness

With the exception of the reaction of class members, the Court analyzed the necessary factors and found the settlement to be fair, adequate, and reasonable when it granted preliminary approval of the amended settlements. ECF No. 5695 at 13-17. The Court likewise found it proper to conditionally certify the proposed settlement class. *Id.* at 8-11. IPP Plaintiffs have now provided additional notice to class members who filed claims, objected, requested updates, or requested exclusion from the original settlements. ECF No. 5758-1. Class members have also been provided an opportunity to object to the amendments, object to the requested fee award, and appear at the fairness hearing. The Court finds no reason to alter either of its conclusions now that class members have been provided additional notice and an opportunity to be heard and the amended settlements are before the Court for final approval.

1. Adequacy of Representation – Rule 23(e)(2)(A)

The Ninth Circuit has explained that "adequacy of representation . . . requires that two questions be addressed: (a) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (b) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *In re Mego*, 213 F.3d at 462.

In its Preliminary Approval Order, the Court found that there was no evidence of a conflict between either class representatives or Class Counsel and the rest of the settling class members. ECF No. 5695 at 10. No contrary evidence has emerged.

The Court also found that IPP Plaintiffs' and Class Counsel have vigorously prosecuted this action on behalf of the 22 Indirect Purchaser State Classes through extensive discovery and participation in multiple formal mediation and negotiation sessions. *Id.* Discovery leading up to the settlements has required production and review of millions of documents and the taking of hundreds of depositions, all conducted over eight-plus years. *See* ECF No. 3862 ¶¶ 12, 15. IPP Lead Counsel has "invested considerable time in this case and ha[s] substantial experience with class action litigation." ECF No. 5695 at 10; ECF No. 4073-1 at 6-15. The Court therefore finds that counsel "possessed 'sufficient information to make an informed decision about settlement.'" *Heller v. Wells Fargo & Co.*, No.

16-cv-05479-JST, 2018 WL 6619983, at *6 (N.D. Cal. Dec. 18, 2018) (quoting *In re Mego*, 213 F.3d at 459).

During the 2016 final approval process, several objectors argued that the absence of recovery by the ORS and NRS Subclasses suggested a conflict of interest between the 22 Indirect Purchaser State Classes and certain members of the Nationwide Class. *See*, *e.g.*, ECF No. 4113 at 8; ECF No. 4125 at 4-5; *see Ellis*, 657 F.3d at 985 ("To determine whether named plaintiffs will adequately represent a class, courts must resolve" whether "the named plaintiffs and their counsel have any conflict of interest with other class members."). The amended settlements eliminate these concerns. On remand, the Court appointed separate counsel to represent the ORS Subclass and NRS Subclass. ECF Nos. 5535, 5518; *see Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 819, 856 (1999) (discussing division of a class "into homogeneous subclasses . . . with separate representation to eliminate conflicting interests of counsel" when class members have divergent interests). Additionally, by narrowing the settlement Class to include only the 22 Indirect Purchaser State Classes, the amendments remove potential conflicts of interests that could result from differences in claims and relief sought by the 22 Indirect Purchaser State Classes verses the ORS and NRS Subclasses. *See Campbell v. Best Buy Stores, L.P.*, No. LA CV 12-07794 JAK (SHx), 2015 WL 12744268, at *5 (noting conflicts of interest that arise from "differences in the type of relief sought, the amount or seriousness of damages sought," and "the theories of law or fact that may benefit some class members").

Therefore, the amendments moot the adequacy-of-representation concerns expressed by objectors to the original settlement.

Accordingly, the Court concludes that this factor weighs in favor of approval.

2. Arm's Length Negotiations – Rule 23(e)(2)(B)

In its Preliminary Approval Order, the Court found that both the original and amended settlements were the product of arm's length negotiations. ECF No. 5695 at 14. Two former jurists "provided their experienced input into the parties' [original] settlement negotiations." ECF No. 4351 at 34; *see* Advisory Committee Notes, Fed. R. Civ. P. 23, subdiv. (e)(2) (2018) ("[T]he involvement of a neutral or court-affiliated mediator or facilitator in [ ] negotiations may bear on whether they were conducted in a manner that would protect and further the class interests."). The amended settlements were a product of negotiations conducted during two mediation sessions supervised by Magistrate Judge Corley. ECF No. 5587-1 ¶¶ 2-3; *see Hefler*, 2018 WL 6619983, at *6 (noting mediation sessions supervised by former judge as an indication of arm's length negotiations).

The Court also "examine[d] the settlements for additional indicia of collusion that would undermine seemingly arm's length negotiations" and found "no indicia of collusion that would undermine the amended settlements." ECF No. 5695 at 14-15; *see In re*

Bluetooth, 654 F.3d at 946 ("Prior to formal class certification, . . . agreements must withstand an even higher level of scrutiny for evidence of collusion or other conflicts of interest."). The amended settlements request an attorney fee award of 23.66 percent of the settlement fund. ECF No. 5587 at 29; *see* ECF No. 5587-1 at 7-8, 13-14, 19-20, 25-26, 31-32, 38-39; *In re Bluetooth*, 654 F.3d at 942 ("[C]ourts typically calculate 25% of the fund as the 'benchmark' for a reasonable fee award."). The amended settlements also do not contain a reversion clause. ECF No. 4712 at 15. Although the agreements contain a "clear sailing" provision, the Court finds no cause for concern because Class Counsel's fee will be awarded from the same common fund as the recovery to the class. *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 961 n.5 (9th Cir. 2009); *see also Bayat v. Bank of the West*, No. C-13-2376 EMC, 2015 WL 1744342, at *7 (N.D. Cal. Apr. 15, 2015) ("[B]ecause any attorneys' fees award will come out of the common fund, there is no 'clear sailing' agreement here that would warrant against settlement approval."). The findings from the Court's Preliminary Approval order remain applicable. Further, as discussed in greater detail when evaluating the fees motion, the Court finds that the requested fees are in fact reasonable.

The Court therefore concludes that this factor weighs in favor or approval.

3. Adequate Relief for the Class – Rule 23(e)(2)(C)

To determine whether the relief provided for the class is adequate, courts must consider: (a) the costs, risks, and delay of trial and appeal, (b) the effectiveness of any proposed method of distributing relief to the class, (c) the terms of any proposed award of attorney's fees, and (d) any agreement required to be identified under Rule 23(e)(3). Fed. R. Civ. P. 23(e)(2)(C).

a. Costs, Risks, and Delay

In its previous Final Approval Order, the Court found that the IPP Plaintiffs would have faced several hurdles in the absence of a settlement – hurdles that "weigh[ed] strongly in favor of approving the Proposed Settlements." ECF No. 4712 at 9. The Court noted that there was a "great risk to IPPs in continuing to pursue litigation, including both uncertainty over the results of pending motions and challenges (and delay) in collecting any winnings." *Id.* (internal quotation marks omitted); *see also* ECF No. 4351 at 30-32. In light of these costs, risks, and potential delays, the Court determined that the settlements were "a good recovery and firmly in line with the recoveries in other cases." ECF No. 4712 at 10.

The Court need not revisit these findings. The proposed amended settlements reduce the amounts paid by each Defendant but fully offset these amounts by requested corresponding reductions in Class Counsel's attorney fee award. ECF No. 5587 at 17; *see* ECF No.

5587-1 at 78, 13-14, 19-20, 25-26, 31-32, 38-39. Because the net settlement fund available for distribution to class members remains the same, these settlements remain a "good recovery" in light of the costs, risks, and delay of trial and appeal. If anything, the litigation that has taken place since the Court's prior order, and the accompanying passage of time, serve to underscore the Court's findings about risk and delay.

b. Distribution Method

In the prior Final Approval Order, the Court examined and approved the settlements' proposed plan of distribution. ECF No. 26-29. This plan provides for (1) a "weighted pro-rata distribution to all members of the 22 Indirect Purchaser State Classes that filed valid claims," (2) a minimum payment of at least $25 per claimant, and (3) a maximum payment of "three times the estimated money damages per claimant." ECF No. 5587 at 30; *see* ECF No. 3862 ¶¶ 43-50. The amended settlements do not alter this proposed allocation plan, and the Court again approves it.

c. Attorney's Fees

Class Counsel request an award of attorneys' fees totaling 23.66 percent of the settlement fund along with expenses incurred during the litigation. *See In re Bluetooth*, 654 F.3d at 942 ("[C]ourts typically calculate 25% of the fund as the 'benchmark' for a reasonable fee award."). The Court previously awarded $158,606,250 in attorney's fees in connection with the prior IPP

Settlement after considering counsels' motion for attorney's fees and any objections thereto. ECF No. 4740 at 2. Class Counsel request the Court to reduce that fee award by $29,000,000 to fully offset the reduction in the settlement amounts, and ensure that the reductions do not adversely affect the funds available for distribution to claimants. ECF No. 5587 at 17. In addition, all interest earned on the original settlement amounts from the date of deposit in 2015—approximately $13,000,000—will remain in the fund for the benefit of class members (except that Class Counsel shall still be entitled to seek a share of the accrued interest on the fund proportionate to their fee and expense award).[20] *Id.* Accordingly, the Court finds that this factor weighs in favor of approval.

4. Equitable Treatment of Class Members – Rule 23(e)(2)(D)

Consistent with Rule 23's instruction to consider whether "the proposal treats class members equitably relative to each other," Fed. R. Civ. P. 23(e)(2)(C)(i), the Court now considers whether the Settlement "improperly grant[s] preferential treatment to class representatives or segments of the class." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007).

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[20] By definition, that award will be lower both in absolute numbers and on an hourly basis than the award the Court approved in 2016 – particularly given that counsels' work in reaching the current agreement will not be separately compensated.

In the previous Final Approval Order, the Court examined and approved the allocation of settlement funds among the 22 Indirect Purchaser State Classes. As noted above, the original settlement provided for (1) a "weighted pro-rata distribution to all members of the 22 Indirect Purchaser State Classes that filed valid claims," (2) a minimum payment of at least $25 per claimant, and (3) a maximum payment of "three times the estimated money damages per claimant." ECF No. 5587 at 30; *see* ECF No. 3862 ¶¶ 43-50. The plan "assign[ed] different weights to different CRT products based on the overcharge evidence for each." ECF No. 5587 at 30; *see* ECF No. 3862 ¶¶ 44-49. The amended settlements do not alter this proposed allocation.

As discussed in the prior Final Approval Order, "[i]t is reasonable to allocate the settlement funds to class members based on . . . the strength of their claims on the merits." *In re Omnivision Techs., Inc.*, No. C-04-2297 SC, 2007 WL 4293467, at *7 (N.D. Cal. Dec. 6, 2007) (internal quotation marks and citations omitted). Because "reimburs[ing] class members based on the extent of their injuries is generally reasonable," the Court finds that this factor weighs in favor of approval. *See In re Oracle Sec. Litig.*, No. 90-cv-00931-VRW, 1994 WL 502054, at * 1 (N.D. Cal. June 18, 1994); *In re Citric Acid Antitrust Litig.*, 145 F. Supp. 2d 1152, 1154 (N.D. Cal. 2001) ("A plan of allocation that reimburses class members based on the type and extent of their injuries is generally reasonable."); *In re Anthem*, 327 F.R.D. at 332 (same).

5. Reaction of the Class

Finally, the Court considers the reaction of class members to the amended settlements. In this case, the Court received 17 objections, consisting of one objection from the excluded ORS/NRS Subclasses and 16 identical objections from individuals who purport to be members of the 22 Indirect Purchaser State Classes. ECF Nos. 5739-5752, 5755, 5756, 5732. As discussed above, the Court strikes these objections because each objector has failed to carry its "burden of proving standing as a class member." *In re Hydroxycut*, 2013 WL 5275618, at *2; *see Moore*, 2013 WL 4610764, at *9 ("[A] court need not consider the objections of nonclass members because they lack standing.").

The Court has received no other objections to the amended settlements. "[T]he absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members." *In re Omnivision*, 559 F. Supp. 2d at 1043 (citation omitted).

After reviewing all of the required factors, the Court continues to find the amended settlements to be fair, reasonable, and adequate, and finds certification of the settlement class to be proper. As such, the Court grants final approval of the amended settlements.

V. ATTORNEY'S FEES

A. Legal Standard

"While attorneys' fees and costs may be awarded in a certified class action where so authorized by law or the parties' agreement, Fed. R. Civ. P. 23(h), courts have an independent obligation to ensure that the award, like the settlement itself, is reasonable, even if the parties have already agreed to an amount." *In re Bluetooth*, 654 F.3d at 941. Courts have discretion to "award attorneys a percentage of the common fund in lieu of the often more time-consuming task of calculating the lodestar." *Id.* at 942.

For more than two decades, the Ninth Circuit has set the "benchmark for an attorneys' fee award in a successful class action [at] twenty-five percent of the entire common fund." *Williams v. MGM-Pathe Commc'ns Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997). Courts in the Ninth Circuit generally start with the 25 percent benchmark and adjust upward or downward depending on:

> the extent to which class counsel "achieved exceptional results for the class," whether the case was risky for class counsel, whether counsel's performance "generated benefits beyond the cash . . . fund," the market rate for the particular field of law (in some circumstances), the burdens class counsel experienced while litigating the case (e.g., cost, duration, foregoing other work), and whether the case was handled on a contingency basis.

In re Online DVD-Rental, 779 F.3d at 954-55 (quoting *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047-50 (9th Cir. 2002)).

Courts often also cross-check the amount of fees against the lodestar. "Calculation of the lodestar, which measures the lawyers' investment of time in the litigation, provides a check on the reasonableness of the percentage award." *Vizcaino*, 290 F.3d at 1050.

B. Discussion

In its prior Fee Order, the Court approved an attorney's fees award of $158,606,250 to Class Counsel, an amount which comprised 27.5% of the aggregate common fund.[21] ECF No. 4740 at 2, 5-9. In determining Class Counsel's entitlement to this fee award, the Court conducted a benchmark analysis by examining: "(1) the results achieved for the class; (2) the complexity of the case and the risk of and expense to counsel of litigating it; (3) the skill, experience, and performance of counsel (both sides); (4) the contingent nature of the fee; and (5) fees awarded in comparable cases." *Id.* at 5-9; *see Vizcaino*, 290 F.3d at 1043; *see In re Bluetooth*, 654 F.3d at 941-42. The Court then "perform[ed] a lodestar cross-check to ensure the reasonableness of its selected percent-of-the-fund award." ECF No. 4740 at 10.

[21] The aggregate common fund includes the $541,750,000 paid to resolve all claims brought by the 22 Indirect Purchaser State Classes against the settling Defendants, as well as the amounts paid in the settlements between IPP Plaintiffs and the Chunghwa and LG defendants. *See* ECF No. 4712 at 3; ECF No. 4740 at 1.

The Court applied a "10 percent across-the-board reduction" to the lodestar and, thereby, "reduce[d] the lodestar from $90,075,076.90 to $81,067,569.20." *Id.* "Applying this lodestar to a 27.5 percent fee of $158,606,250 result[ed] in a multiplier of 1.96, which is well within the range of acceptable multipliers." *Id.*

Class Counsel now request that the Court reconsider its prior Fee Award "in accordance with the Amendments to the settlement agreements" and "reduce the aggregate fee award to Class Counsel from $158,606,250 plus interest to $129,606,250 plus interest."[22] ECF No. 5587. This newly requested fee award comprises 23.66 percent of the aggregate settlement fund, which is below the Ninth Circuit's 25 percent benchmark for a reasonable fee award. *See In re Bluetooth*, 654 F.3d at 942. When the adjusted lodestar employed in its prior Fee Award – $81,067,569.20 – is applied to the 23.66 percent fee, this results in a multiplier of 1.6, which is well within the range of acceptable multipliers.

The ORS/NRS Objectors oppose the requested fee award on the basis that it "deducts an unduly small value for the ORS and NRS claims" and "should be reduced" or "delayed until the ORS and NRS can participate in negotiations regarding the value of their claims." ECF No. 5732 at 5-6. As discussed above, ORS/NRS Objectors are not members of the settlement

[22] As the Court noted in its Preliminary Approval Order, "[u]nder these circumstances, there [was] no need for class counsel to file a further motion for attorney's fees." ECF No. 5695 at 16 n.13.

class and, therefore, lack standing to object to the requested fee award. *Rodriguez v. Disner*, 688 F.3d 645, 660 n.11 (9th Cir. 2012) ("[O]bjectors who do not participate in a settlement lack standing to challenge class counsel's . . . fee award because, without a stake in the common fund pot, a favorable outcome would not redress their injury." (citation omitted)).

In addition, 16 objections assert that Class Counsel "will attempt to bill more for the resultant increased costs and time related to their negotiations and work that arise from their inadequate representation and errors."[23] ECF Nos. 5739-5752, 5755. As discussed above, the Court strikes these objections because the objectors have failed established that they purchased any CRT products and, thus, have not "carried [their] burden of proving standing as a class member." *In re Hydroxycut*, 2013 WL 5275618, at *2. The Court also notes that, even if it were to consider these objections, it would find that the "generalized" statements asserted therein "do not provide a basis to contravene the Court's benchmark analysis and lodestar cross-check." *Heller*, 2018 WL 6619983, at * 15 (citation omitted); *see Asghari v. Volkswagen Grp. of Am., Inc.*, No. CV 13-02529 MMM (VBKx), 2015 WL 12732462, at *30 (C.D. Cal. May 29, 2015) (overruling objections that

[23] As the Court noted in its Preliminary Approval Order, Class Counsel does not request additional fees for work performed after the filing of the original fee motion. ECF No. 16 n.13 ("[C]ounsel's work in reaching the current agreement will not be separately compensated.").

"conclusorily assert that the fees are too high as compared to the benefits class members will receive").

Because the Court has verified under both the lodestar method and the percentage-recovery method that the amount of requested fees is reasonable, the Court awards 23.66 percent of the $576,750,000 aggregate settlement amount, or $129,606,250, to Class Counsel.

VI. EXPENSES

An attorney is entitled to "recover as part of the award of attorney's fees those out-of-pocket expenses that would normally be charged to a fee paying client." *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (internal quotation marks and citation omitted). To support an expense award, Plaintiffs should file an itemized list of their expenses by category, listing the total amount advanced for each category, allowing the Court to assess whether the expenses are reasonable. *Wren v. RGIS Inventory Specialists*, No. 06-cv-05778-JCS, 2011 WL 1230826, at *30 (N.D. Cal. Apr. 1, 2011), *supplemented*, No. 06-cv-05778-JCS, 2011 WL 1838562 (N.D. Cal. May 13, 2011).

In its prior Fee Order, the Court examined the "aggregate itemized claimed costs from the Litigation Expense Fund and the Future Expense Fund" and considered two objections related to the payment of these expenses. ECF No. 4740 at 17. The Court found "the expenses to be fair and reasonable." *Id.* at 18. No contrary evidence has emerged. As such, the Court

adopts the findings of its prior Fee Order and "approves the $4,495,878.02 already paid from the Future Expense Fund, and grants the motion for the reimbursement in the reduced amount of $3,174,647.55." *Id.*

VII. INCENTIVE AWARDS

"Incentive awards are payments to class representatives for their service to the class in bringing the lawsuit." *Radcliffe*, 715 F.3d 1157, 1163 (9th Cir. 2013). "It is well-established in this circuit that named plaintiffs in a class action are eligible for reasonable incentive payments, also known as service awards." *Wren v. RGIS Inventory Specialists*, 2011 WL 1230826, at *31. An incentive award of $5,000 is presumptively reasonable, and an award of $25,000 or even $10,000 is considered "quite high." *See Dyer v. Wells Fargo Bank*, 303 F.R.D. 326, 335 (N.D. Cal. 2014) (citing *Harris v. Vector Mktg. Corp.*, No. 08-cv-5198 EMC, 2012 WL 381202, at *7 (N.D. Cal. Feb. 6, 2012)). Nonetheless, a higher award may be appropriate where class representatives expend significant time and effort on the litigation and face the risk of retaliation or other personal risks; where the class overall has greatly benefitted from the class representatives' efforts; and where the incentive awards represent an insignificant percentage of the overall recovery. ECF No. 4399 at 4-5; *Wren*, 2011 WL 1230826, at *32.

In its prior Fee Order, the Court considered the factors set forth above and approved payments of

"$15,000 for each of 25 Court-appointed class representatives and $5,000 for an additional 15 named plaintiffs not appointed by the court but who acted as state representatives for a period of time before being replaced." ECF No. 4740 at 18. No contrary evidence has emerged, and no one has objected to the requested incentive awards. As such, the Court adopts the findings of its prior Fee Order and "authorizes total incentive payments of $450,000 as set forth above." *Id.* at 19.

CONCLUSION

For the foregoing reasons, the Court orders as follows:

1. For the reasons set forth in its March 11, 2020 Preliminary Approval Order, the Court confirms its certification of the class for settlement purposes only.

2. The Court grants final approval of the proposed amended settlements and plans of allocation.

3. The class members who made timely requests to opt out of the settlement are excluded from the class.

4. The Court grants Class Counsel's request to reduce the aggregate fee award to $129,606,250 plus interest.

5. For the reasons set forth in its August 3, 2016 Fee Order, the Court approves the $4,495,878.02 already paid from the Future Expense Fund, and grants the motion for reimbursement in the amount of $3,174,647.55.

6. For the reasons set forth in its August 3, 2016 Fee Order, the Court authorizes total incentive payments of $450,000 as set forth above.

7. The Court vacates its July 7, 2016 Final Approval Order, ECF No. 4712, and its August 3, 2016 Fee Order, ECF No. 4740.

8. The Court vacates its July 14, 2016 Final Judgment of Dismissal with prejudice as to the Philips, Panasonic, Hitachi, Toshiba, Samsung SDI, Thomson, and TDA Defendants, ECF No. 4717.

Plaintiffs shall submit a proposed form of judgment within seven days of this order.

IT IS SO ORDERED.

Dated: July 13, 2020

/s/ Jon S. Tigar
JON S. TIGAR
United States District Judge

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE: CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION	Case No. 07-cv-05944-JST **ORDER DENYING MOTION TO STAY** Re: ECF No. 5718 (Filed Jun. 25, 2020)

Before the Court is Other Repealer States' and Non-Repealer States' motion for a stay of the Court's March 11, 2020 order granting motion for preliminary approval. ECF No. 5718. The Court will deny the motion.

I. BACKGROUND

The facts regarding this case are well known to the parties, and the Court summarizes them here only insofar as they bear on the present motions. In February 2008, the Judicial Panel on Multidistrict Litigation ("JPML") ordered the centralization of actions alleging that certain defendants conspired to fix prices of cathode ray tubes ("CRTs"). *See In re Cathode Ray Tube (CRT) Antitrust Litig.*, 536 F. Supp. 2d 1364 (J.P.M.L. 2008). In 2015, one group of plaintiffs – the Indirect Purchaser Plaintiffs ("IPP Plaintiffs") – reached class action settlements with six groups of corporate defendants: Philips, Panasonic, Hitachi, Toshiba, Samsung,

and Thomson/TDA. ECF No. 4712 at 1; ECF No. 5695 at 2.

The settlements included a "Nationwide Class" of "[a]ll persons and or entities who or which indirectly purchased in the United States for their own use and not for resale, CRT Products manufactured and/or sold by the Defendants." *See* ECF No. 1526 at 59-60; ECF Nos. 3862-1, 3862-2, 3862-3, 3862-4, 3862-5; ECF No. 3876-1 (adopting the class definitions set forth in the operative complaint). The agreements also included Statewide Damages Classes of indirect purchasers of CRT products seeking money damages under the laws of 21 states and the District of Columbia ("22 Indirect Purchaser State Classes"). *See id.* The settlements resolved all federal and state-law claims brought by the IPP Plaintiffs against the settling Defendants and provided monetary compensation for class members in the 22 Indirect Purchaser State Classes. *See* ECF No. 3862-1 at 8; ECF No. 3862-2 at 8; ECF No. 3862-3 at 8; ECF No. 3862-4 at 8; ECF No. 3862-5 at 8; ECF No. 3876-1 at 9-10. However, the agreements did not provide compensation for persons or entities in certain other states, which collectively are now denominated the Omitted Repealer[1] State subclass ("ORS

[1] In *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977), the Supreme Court held that only direct purchasers could recover damages for price-fixing under Section 4 of the Clayton Act. *Id.* at 735. As the Ninth Circuit has summarized, the Supreme Court "barred indirect purchasers' suits, and left the field of private antitrust enforcement to the direct purchasers." *Royal Printing Co. v. Kimberly Clark Corp.*, 621 F.2d 323, 325 (9th Cir. 1980). In response to the Illinois Brick decision, many states passed so-called

Subclass").[2] The settlement also provided no compensation to persons or entities in states whose laws do not provide for recovery to indirect purchasers ("non-repealer states"), now denominated the Non-Repealer State subclass ("NRS Subclass").[3] *See* ECF Nos. 3862-1, 3862-2, 3862-3, 3862-4, 3862-5, 3876-1. Even though they received no compensation, the settlements required members of the ORS and NRS Subclasses to release their claims for injunctive relief, equitable monetary relief, and damages.

On July 7, 2016, this Court granted final approval of the six settlement agreements. ECF No. 4712 at 1. Two objectors sought appeal of this decision in the Ninth Circuit. ECF No. 4741. On November 8, 2018,

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"Illinois Brick repealer statutes," which give indirect purchasers the right to sue when firms violate analogous state antitrust laws. *See, e.g.,* Robert H . Lande, New Options for State Indirect Purchaser Legislation: Protecting the Real Victims of Antitrust Violations, 61 Ala. L. Rev. 447, 448 (2010). Such states are referred to a "repealer states." A state which has not enacted such a statute is referred to as a "non-repealer state."

[2] The ORS Subclass in its current iteration consists of Indirect Purchaser Plaintiffs in the following states: Arkansas, Massachusetts, Missouri, Montana, New Hampshire, Oregon, Rhode Island, South Carolina, and Utah. ECF No. 5518 at 1; ECF No. 5645 at 2. The parties now use the "ORS" abbreviation to signify "other repealer states" rather than "omitted repealer states." ECF No. 5645 at 1 n.1.

[3] The NRS Subclass consists of Indirect Purchaser Plaintiffs in the following Non-Repealer States: Alabama, Alaska, Colorado, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maryland, New Jersey, Ohio, Oklahoma, Pennsylvania, Texas, Virginia, Washington, and Wyoming. ECF No. 5518 at 2.

this Court issued an order in which it concluded that it erred in approving the settlement provision which required class members in the ORS Subclass to release their claims without compensation. *See* ECF No. 5362 at 1. The order expressed "concerns about the adequacy of the counsel who negotiated that settlement or whether they may have faced a conflict of interest." *Id.* at 1. In response, the Ninth Circuit remanded "this case so that the district court [could] reconsider its approval of the settlement." *See In re Cathode Ray Tube Antitrust Litig.*, No. 16-16368 (9th Cir. Feb. 13, 2009), ECF No. 238 at 11.

On remand, this Court confirmed the existing lead counsel for the IPP Plaintiffs and appointed separate counsel for the unnamed ORS Subclass and NRS Subclass. ECF Nos. 5535, 5518. The Court then referred the matter to Magistrate Judge Corley for settlement. ECF No. 5427. Thereafter, counsel for IPP Plaintiffs and seven defendants engaged in mediation sessions and agreed to amend the settlements. ECF No. 5531; ECF No. 5587-1 ¶¶ 2-3. In order to "remove potential conflicts of interests that could result from differences in claims and relief sought by the 22 Indirect Purchaser State Classes verses the ORS and NRS Subclasses," the amended settlements "narrow[ed] the settlement Class to include only the 22 Indirect Purchaser State Classes." ECF No. 5695 at 11; *see* ECF No. 5587 at 16; ECF No. 5587-1. Accordingly, the amended settlements only release the claims of members of the 22 Indirect Purchaser State Classes. ECF No. 5695 at 5; ECF No. 5587 at 16; ECF No. 5587-1. On September

16, 2019, the IPP Plaintiffs filed a motion for preliminary approval of the amended settlements. ECF No. 5587. The Court granted preliminary approval, provisionally certified the proposed class, approved the proposed notice procedure, and scheduled a final approval hearing for July 8, 2020. ECF No. 5695 at 19.

On August 23, 2019, NRS Subclass member Eleanor Lewis and several members of the ORS Subclass moved to intervene in this litigation and file an amended complaint. ECF Nos. 5565, 5567. The Court denied these motions without prejudice. ECF No. 5626 at 3; ECF No. 5628 at 3. In November 2019, Lewis and the ORS Subclass filed renewed motions to intervene. ECF Nos. 5643, 5645. The Court denied the renewed motions and directed movants to "file their claims in the appropriate forum(s) and seek transfer from the JPML or, if properly filed in the Northern District of California, 'request assignment of [their] actions to the Section 1407 transferee judge in accordance with applicable local rules.'" ECF No. 5684 at 6 (quoting J.P.M.L. R. 7.2(a)). Thereafter, Lewis and the ORS Subclass filed motions to alter or amend the Court's order denying their renewed motions to intervene. ECF No. 5688, 5689. The Court denied these motions. ECF No. 5708.

In April 2020, Lewis and the ORS Subclass appealed the following of this Court's orders to the United Sates Court of Appeal for the Ninth Circuit: (1) Order Denying Eleanor Lewis's Motion to Intervene and File an Amended Complaint, ECF No. 5626; (2) Order Denying Motion to Intervene and Amend

Complaint to Allege State Law Claims for the Other Repealer States, ECF No. 5628; (3) Order Denying Renewed Motions to Intervene, ECF No. 5684; (4) Order Denying Motion to Alter or Amend the Court's Order, ECF No. 5708; and (5) Order Granting Preliminary Approval, ECF No. 5695.[4] ECF Nos. 5709, 5711, 5712, 5713. Then, the ORS and NRS Subclasses filed a motion to stay all approval proceedings for IPP Plaintiffs' amended settlements pending resolution of their appeals. ECF No. 5718. IPP Plaintiffs and the Samsung Defendants[5] oppose this motion. ECF Nos. 5726, 5727. The ORS and NRS Subclasses have filed a reply. ECF No. 5731.

II. JURISDICTION

The Court has jurisdiction pursuant to 28 U.S.C. § 1331.

III. LEGAL STANDARD

A court's "power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants."

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[4] On June 9, 2020, the Ninth Circuit issued an order concluding that it lacks jurisdiction to review this Court's order granting preliminary approval of the class settlement. ECF No. 5738 at 4.

[5] The Samsung Defendants consist of Samsung SDI Co., Ltd.; Samsung SDI America, Inc.; Samsung SDI Mexico S.A. De C.V.; Samsung SDI Brasil Ltda.; Shenzhen Samsung SDI Co., Ltd.; Tianjin Samsung SKI Co., Ltd.; and Samsung SDI (Malaysia) Sdn. Bhd. ECF No. 5726 at 1.

Landis v. North American Co., 299 U.S. 248, 254 (1936). A stay is "an exercise of judicial discretion, and the propriety of its issue is dependent upon the circumstances of the particular case." *Nken v. Holder*, 556 U.S. 418, 433 (2009) (internal alterations, citations, and quotations omitted). "The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion." *Al Otro Lado v. Wolf*, 952 F.3d 999, 1006 (9th Cir. 2020) (quoting *Nken*, 556 U.S. at 433-34).

When deciding a motion to stay an order pending appeal, courts consider four factors: (1) "whether the stay applicant has made a strong showing that he is likely to succeed on the merits," (2) "whether the applicant will be irreparably injured absent a stay," (3) "whether issuance of the stay will substantially injure the other parties interested in the proceeding," and (4) "where the public interest lies." *Nken*, 556 U.S. at 426 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). " 'The first two factors . . . are the most critical'; the last two are reached only '[o]nce an applicant satisfies the first two factors.' " *Al Otro Lado*, 952 F.3d at 1007 (quoting *Nken*, 556 U.S. at 434-35). "[I]f a stay applicant cannot show irreparable harm, 'a stay may not issue, regardless of the petitioner's proof regarding the other stay factors.' " *Doe #1 v. Trump*, 957 F.3d 1050, 1062 (9th Cir. 2020) (quoting *Leiva-Perez v. Holder*, 640 F.3d 962, 965 (9th Cir. 2011)).

IV. DISCUSSION

Because the court may not issue a stay if the applicant fails to show irreparable harm, the Court begins its analysis with consideration of this factor. *See Doe #1*, 957 F.3d at 1058. "An applicant for a stay pending appeal must show that a stay is necessary to avoid likely irreparable injury to the applicant while the appeal is pending." *Al Otro Lado*, 952 F.3d at 1007 (citing *Nken*, 556 U.S. at 434). "'[S]imply showing some possibility of irreparable injury' is insufficient." *Id.* (quoting *Leiva-Perez*, 640 F.3d at 968). Rather, an applicant must show "that irreparable injury is likely to occur during the period before the appeal is likely to be decided." *Id.* (citing *Leiva-Perez*, 640 F.3d at 968).

The ORS and NRS Subclasses argue that a stay is warranted because, if IPP Plaintiffs' amended settlements become final during the appeals, "*it is possible* that there will be no 'action' in which they can intervene, even if the Ninth Circuit rules that they satisfy the criteria for intervention as of right in the cases now pending." ECF No. 5718 at 13 (emphasis added); *see* ECF No. 5731 at 2 (arguing that final approval of the amended settlements would "drop [their] federal claims before the ORS and NRS Plaintiffs could intervene and amend the complaint"). The ORS and NRS Subclasses also note that there exits "*uncertainty* surrounding whether [their] pending appeal will be rendered moot" in the event that "this Court grant[s] final approval of the proposed settlement[s]." *Id.* at 13-14 (emphasis added). These statements of "some possibility of irreparable harm" are insufficient to meet the

"minimum threshold showing" that "irreparable harm is likely to occur." *Al Otro Lado*, 952 F.3d at 1007.

Moreover, contrary to the ORS and NRS Subclasses' assertions, the Court's final approval of IPP Plaintiffs' amended settlements will not terminate the MDL. The amended settlements resolve the actions between the 22 Indirect Purchaser State Classes and seven groups of corporate defendants. ECF No. 5531; ECF No. 5587-1 ¶¶ 2-3. The settlements do not release any of the ORS or NRS Subclasses' claims[6] and do not resolve IPP Plaintiffs' claims against several remaining defendants within the MDL.[7] As such, the underlying MDL will not be eliminated upon final approval of the proposed settlement between a particular subset of the classes and defendants contained therein.

Neither will IPP Plaintiffs' operative Fifth Consolidated Amended Complaint ("CAC") disappear. ECF No. 5589. In addition to the settling 22 Indirect Purchaser State Classes, the CAC alleges a Nationwide Class, which includes the ORS and NRS Subclasses. ECF No. 5589 ¶ 243. It also includes several non-settling defendants. *See* ECF No. 5589 ¶¶ 95-98, 109-115. Thus,

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[6] The amended settlements "narrow[] the settlement Class to include only the 22 Indirect Purchaser State Classes." ECF No. 5695 at 11; *see* ECF No. 5587 at 16; ECF No. 5587-1. Accordingly, the settlements only release the claims of members of the 22 Indirect Purchaser State Classes. ECF No. 5695 at 5; ECF No. 5587 at 16; ECF No. 5587-1.

[7] IPP Plaintiffs continue to litigate their claims against Irico Group Corporation, Irico Display Devices Co., Ltd., and Mitsubishi Electric Corporation. *See* ECF No. 5589 ¶¶ 95-98, 109-115 (IPP Plaintiff's Fifth Consolidated Amended Complaint).

if the Ninth Circuit concludes that the ORS and NRS Subclasses are entitled to intervene in this action, both the MDL and the CAC which the Subclasses seek to amend[8] would likely still exist at that time. While "it is possible that there will be no 'action' in which they can intervene," ECF No. 5718 at 13, the ORS and NRS Subclasses make no showing that this outcome is "likely to occur." *Al Otro Lado*, 952 F.3d at 1007 ("[S]imply showing some possibility of irreparable injury is insufficient. The minimum threshold showing for a stay pending appeal requires that irreparable injury is likely to occur during the period before the appeal is likely to be decided." (internal quotation marks and citations omitted)).

Each remaining allegation of irreparable harm stems from the mistaken assertion that final approval of the amended settlements will eliminate the action in which the ORS and NRS Subclasses seek to intervene. *See, e.g.,* ECF No. 5718 at 13 (arguing that the ORS and NRS Subclasses' appeals may be dismissed as moot if there is no action in which they can intervene); ECF No. 5718 at 8 (arguing that the ORS and NRS Subclasses' ability to invoke the relation back doctrine in response to a timeliness challenge may be hindered if there is "no proceeding in which to

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[8] In its order denying their initial motions to intervene, the Court found that the unnamed ORS and NRS Subclasses could not intervene in the MDL by attempting to amend the CAC. ECF No. 5626, 5628 ("[T]here is the practical reality that [NRS and ORS Movants] are attempting to amend someone else's complaint. They cite no authority permitting a proposed intervenor to take such a step, and the Court concludes it is not allowed.").

intervene" and no "complaint within an already-pending action"). Therefore, these alleged injuries are unfounded.

Finally, the Court notes that the ORS and NRS Plaintiffs recently appealed to the Ninth Circuit this Court's orders (1) denying their motions to intervene and (2) granting preliminary approval of the IPP class settlement. *See Indirect Purchaser Plaintiffs v. Toshiba Corp.*, Case No. 20-15697 (9th Cir.). The Ninth Circuit concluded that it lacked jurisdiction over the order preliminarily approving the settlement and dismissed that portion of the appeal. *Id.*, ECF No. 20 (9th Cir. June 9, 2020). In so doing, that court observed that the ORS and NRS Subclasses could move to intervene after final approval for the purpose of appealing the denial of their objections to the settlement. *Id.* at 4. If this Court were to deny that motion, the denial could be immediately appealed. *Id.*

The ORS and NRS Subclasses have failed to "show that a stay is necessary to avoid likely irreparable injury . . . while the appeal is pending." *Al Otro Lado*, 952 F.3d at 1007 (citation omitted) ("The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion."). Accordingly, "a stay may not issue." *Doe #1*, 957 F.3d at 1062 (internal quotation marks and citation omitted).

CONCLUSION

For the foregoing reasons, the Court denies the ORS and NRS Subclasses' motion to stay.

IT IS SO ORDERED.

Dated: June 25, 2020

/s/ John S. Tigar
JON S. TIGAR
United States District Judge

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE: CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION	Case No. 07-cv-05944-JST **ORDER DENYING MOTION TO ALTER OR AMEND THE COURT'S ORDER** Re: ECF No. 5688, 5689 (Filed Apr. 9, 2020)

Before the Court are Other Repealer States' and Non-Repealer States' motions to alter or amend the Court's order denying their renewed motions to intervene. ECF Nos. 5688, 5689. The Court will deny the motions.

I. BACKGROUND

The facts regarding this case are well known to the parties, and the Court summarizes them here only insofar as they bear on the present motions.

In February 2008, the Judicial Panel on Multidistrict Litigation ("JPML") ordered the centralization of actions alleging that certain defendants conspired to fix prices of cathode ray tubes. *See In re Cathode Ray Tube (CRT) Antitrust Litig.*, 536 F. Supp. 2d 1364 (J.P.M.L. 2008). On July 7, 2016, this Court granted final approval of settlement agreements which resolved

claims between one set of plaintiffs – the Indirect Purchaser Plaintiffs ("IPP Plaintiffs") – and six sets of corporate defendants. ECF No. 4712 at 1. Two objectors sought appeal of this decision in the Ninth Circuit. ECF No. 4741.

On November 8, 2018, this Court issued an order in which it concluded that it erred in approving the settlement provision which required class members in certain Omitted Repealer States to release their claims without compensation. *See* ECF No. 5362 at 1. The order expressed "concerns about the adequacy of the counsel who negotiated that settlement or whether they may have faced a conflict of interest." *Id.* at 1. In response, the Ninth Circuit remanded "this case so that the district court [could] reconsider its approval of the settlement." *See In re Cathode Ray Tube Antitrust Litig.*, No. 16-16368 (9th Cir. Feb. 13, 2009), ECF No. 238 at 11.

On remand, this Court confirmed the existing lead counsel for the IPP Plaintiffs and appointed separate counsel for the unnamed Omitted Repealer State subclass ("ORS Subclass")[1] and Non-Repealer State subclass ("NRS Subclass").[2] ECF Nos. 5535, 5518. The

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[1] The ORS Subclass in its current iteration consists of Indirect Purchaser Plaintiffs with claims in the following Omitted Repealer States: Arkansas, Massachusetts, Missouri, Montana, New Hampshire, Oregon, Rhode Island, South Carolina, and Utah. ECF No. 5518 at 1. The parties now use the "ORS" abbreviation to signify "other repealer states" rather than "omitted repealer states." ECF No. 5645 at 1 n.1.

[2] The NRS Subclass consists of Indirect Purchaser Plaintiffs with claims in the following Non-Repealer States: Alabama,

Court then referred the matter to Magistrate Judge Corley for settlement. ECF No. 5427.

On August 23, 2019, NRS Subclass member Eleanor Lewis and several members of the ORS Subclass moved to intervene in this litigation and file an amended complaint. ECF Nos. 5565, 5567. The Court denied these motions without prejudice. ECF No. 5626 at 3; ECF No. 5628 at 3. In November 2019, Lewis and the ORS Subclass filed renewed motions to intervene. ECF Nos. 5643, 5645. The Court denied the renewed motions and directed movants to "file their claims in the appropriate forum(s) and seek transfer from the JPML or, if properly filed in the Northern District of California, 'request assignment of [their] actions to the Section 1407 transferee judge in accordance with applicable local rules.'" ECF No. 5684 at 6 (quoting J.P.M.L. R. 7.2(a)).

On February 13, 2020, Lewis and the ORS Subclass filed motions to alter or amend the Court's order denying their renewed motions to intervene.[3] ECF Nos. 5688, 5689. Defendants oppose the motions. ECF No. 5690. Lewis and the ORS Subclass have filed replies. ECF Nos. 5691, 5692.

Alaska, Colorado, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maryland, New Jersey, Ohio, Oklahoma, Pennsylvania, Texas, Virginia, Washington, and Wyoming. ECF No. 5518 at 2.

[3] Under Civil Local Rule 7-9, "[n]o party may notice a motion for reconsideration without first obtaining leave of Court to file the motion." Movants failed to seek leave of Court before filing, but the Court considers the motions on the merits nevertheless.

II. JURISDICTION

The Court has jurisdiction pursuant to 28 U.S.C. § 1331.

III. LEGAL STANDARD

Under Federal Rule of Civil Procedure 59(e), a party may move a court to reconsider a previous ruling and alter a previous order. *See Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003); *Sacchi v. Mortgage Elec. Registration Sys., Inc.*, No. CV11-01658 AHM (CWx), 2012 WL 13006267, at *2 (C.D. Cal. March 6, 2012). Reconsideration is appropriate "when (1) the court committed manifest errors of law or fact, (2) the court is presented with newly discovered or previously unavailable evidence, (3) the decision was manifestly unjust, or (4) there is an intervening change in the controlling law." *Rishor v. Ferguson*, 822 F.3d 482, 491-92 (9th Cir. 2016).

Rule 59(e) "offers an extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." *Carroll*, 342 F.3d at 945 (internal quotation marks and citation omitted). A motion for reconsideration "may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation." *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). It must also do more than rehash arguments or recapitulate cases already considered by the court. *Young v. Peery*, 163 F. Supp. 3d 751, 753 (N.D. Cal. 2015); *United States v. Westlands*

Water Dist., 134 F. Supp. 2d 1111, 1131 (E.D. Cal. 2001).

IV. DISCUSSION

Lewis and the ORS Subclass (collectively "Movants") contend that reconsideration is warranted because the Court committed clear error in ruling that the multidistrict litigation ("MDL") statute "does not permit [ORS and NRS] movants' direct intervention into the MDL proceedings whether by filing separate complaints or amending IPP Plaintiffs' operative complaint." ECF No. 5688 at 5 (internal quotation mark omitted); ECF No. 5689 at 6. But Movants merely either recapitulate cases already considered by the Court or raise arguments for the first time which could reasonably have been raised earlier in the litigation. Movants fail to provide any basis for the court to alter or amend its order.

First, Movants argue that the Court erred by failing to consider its power under Federal Rule of Civil Procedure 23 to "to create subclasses and appoint new, adequate class representatives whenever exiting class representatives are (or become) conflicted or otherwise inadequate." ECF No. 5688 at 5; *see* ECF No. 5689 at 6. Movants assert that the multidistrict litigation statute, 28 U.S.C. § 1407, does not repeal Rule 23's "subclass-creation protections for class members just because, as here, a national class action gets brought into an MDL proceeding." ECF No. 5688 at 6; *see* ECF No. 5689 at 10. Both Lewis and the ORS Subclass had

ample opportunity to raise these arguments during the briefing on their renewed motions to intervene. Instead, Movants asserted that: (1) "Judicial Panel of Multidistrict Litigation Rule 7.2(a) explicitly allows for direct filing" complaints in MDL proceedings and (2) "[t]here is simply no basis in Multidistrict jurisprudence for opposing the addition of Ms. Lewis as a plaintiff so that she can represent the interests of her subclass." ECF No. 5670 at 25 n.8; *see* ECF No. 5668 at 5. "Rule 59 is not a vehicle for . . . securing a rehearing on the merits, or otherwise taking a second bite at the apple." *Baldonado v. United States*, No. 2:06-cv-07266-JHN-RZ, 2011 WL 13213543, at *2 (C.D. Cal. Oct. 12, 2011). Movants' motions for reconsideration may not be used to raise these arguments for the first time when they could reasonably have been raised earlier in the litigation. *Kona*, 229 F.3d at 890.

Second, Movants attempt to distinguish this action from two cases on which the Court relied in its order denying the renewed motions to intervene: *In re Mortgage Elec. Registration Sys. (MERS) Litig.*, No. MD-09-02119-PHX-JAT, 2016 WL 3931820, at *5 (D. Ariz. July 21, 2016) and *In re Farmers Ins. Exch. Claims Representatives' Overtime Pay Litig.*, MDL No. 33-1439, 2008 WL 4763029, at *3 (D. Or. Oct. 28, 2008). ECF No. 5688 at 7-8; ECF No. 5689 at 7. A party seeking reconsideration under Rule 59, however, "must do more than rehash arguments or recapitulate cases already considered by the court." *White v. Square, Inc.*, No. 15-cv-04539-JST, 2016 WL 6647927, at *2 (Nov. 9, 2016) (citations omitted).

Third, Movants repeat the assertion from their prior briefing that "[t]hey very specifically [are] not seeking to file a new suit." ECF No. 5688 at 8; *see* ECF No. 5670 at 24 (noting that "the ORS Plaintiffs do not seek severance from this case" and "are not seeking to file new claims that are untethered from the already-pending litigation"). As noted above, "a motion to reconsider is not a vehicle permitting the unsuccessful party to 'rehash' arguments previously presented." *Williams v. Felker*, No. CIV S-08-0878 LKK GGH P, 2010 WL 744795, at *1 (E.D. Cal. March 3, 2010).

Fourth, Movants suggest that the Court misunderstood their motions as requests "to be joined as a party to *the MDL proceeding*" rather than motions "to intervene as a named plaintiff in each and everyone one of the indirect purchaser actions that comprise MDL 1917." ECF No. 5689 at 7 (emphasis in original); ECF No. 5688 at 8. Regardless of this attempt at reframing, the rule remains that Movants are not permitted to add plaintiffs to this MDL who "never filed a lawsuit in any federal court nor had [their] case transferred to the transferee MDL court by the Judicial Panel." *In re MERS*, 2016 WL 3931820, at *7 ("[T]he majority of case law on this topic indicates that a transferee court's jurisdiction is not sufficiently invoked where an added plaintiff never filed a lawsuit in any federal court nor had its case transferred to the transferee MDL court by the Judicial Panel."); *see id.* ("Plaintiffs cannot add [potential class member] DeBaggis as a plaintiff by amendment in the MDL as this directly contradicts the appropriate procedures designated in

28 U.S.C. § 1407 for consolidating cases for pretrial proceedings.").

Finally, Movants suggest that the Court's order is inconsistent with prior orders in this MDL, which have allowed the addition of named plaintiffs to indirect purchaser actions through amendments to various Consolidated Amended Complaints. ECF No. 5689 at 12; ECF No. 5688 at 8 ("To the extent this Court seeks to adopt the *MERS* analysis of amendment to bar the addition of new parties within an MDL, then that analysis must apply equally to the IPPs."). In support, Movants cite orders issued between 2010 and 2012[4] which granted two stipulated requests to file amended complaints. ECF No. 5689 at 12 n.4 (citing ECF Nos. 799, 1505); *see also* ECF No. 5688 (citing ECF No. 437). Because no party objected to those stipulations, the judge then presiding over the case had no occasion to consider the appropriate procedures under the MDL statute. In any event, there is nothing improper, let alone "clearly erroneous," about the Court's application of MDL procedural requirements to Lewis's and the ORS Plaintiffs' instant motions to intervene. *See S.E.C. v. Pattison*, No. C-08-4238 EMC, 2011 WL 2293195, at *2 (N.D. Cal. June 9, 2011) ("[C]lear error should conform to a very exacting standard—*e.g.*, a court should have a clear conviction of error." (internal quotation marks and citation omitted)); *Campion v. Old Republic Home Protection Co.*, No. 09-CV-748-JMA(NLS), 2011 WL 1935967, at *1 (S.D. Cal. May 20, 2011) ("Mere doubts

[4] This action was assigned to the undersigned on November 3, 2015. ECF No. 4164.

or disagreement about the wisdom of a prior decision of this or a lower court will not suffice. . . . To be clearly erroneous, a decision must strike us as more than just maybe or probably wrong; it must be dead wrong." (internal quotation marks and citation omitted)); *Teamsters Local 617 Pension and Welfare Funds v. Apollo Group, Inc.*, 282 F.R.D. 216, 231 (D. Ariz. 2012) (same).

CONCLUSION

For the foregoing reasons, the Court denies the motions to alter or amend its order denying Lewis's and the ORS Subclass's renewed motions to intervene.

IT IS SO ORDERED.

Dated: April 9, 2020

/s/ John S. Tigar
JON S. TIGAR
United States District Judge

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE: CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION,	Case No. 07-cv-05944-JST
This Document Relates to: INDIRECT PURCHASER ACTIONS FOR THE 22 STATES	**ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL** Re: ECF No. 5587 (Filed Mar. 11, 2020)

Before the Court is the Indirect Purchaser Plaintiffs' motion pursuant to Ninth Circuit mandate to reconsider and amend final approval order, final judgment, and fee order. ECF No. 5587. The Court construes the motion as one for preliminary approval and grants it.

I. BACKGROUND

A. Original Settlement Agreements

The factual history of this case is well known to the parties and is contained in the Court's prior orders. The case is predicated upon an alleged conspiracy to price-fix cathode ray tubes ("CRTs"), a core component of tube-style screens for common devices including televisions and computer monitors. The conspiracy ran from March 1, 1995 to November 25, 2007, involved many of the major companies that produced CRTs, and

allegedly resulted in overcharges of billions of U.S. dollars to domestic companies that purchased and sold CRTs or products containing CRTs. A civil suit was originally filed in 2007, ECF No. 1, consolidated by the Joint Panel on Multidistrict Litigation shortly thereafter, *see* ECF No. 122, assigned as a Multidistrict Litigation case ("MDL") to Judge Samuel Conti, *see id.*, and ultimately transferred to the undersigned in November 2015, *see* ECF No. 4162.

In 2015, one group of plaintiffs – the Indirect Purchaser Plaintiffs ("IPP Plaintiffs") – reached class action settlements with six groups of corporate defendants: Phillips,[1] Panasonic,[2] Hitachi,[3] Toshiba,[4] Samsung,[5]

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[1] The Philips entities include Koninklijke Philips N.V., Philips Electronics North America Corporation, Philips Taiwan Limited, and Philips do Brasil, Ltda. ECF No. 3862-1 at 2.

[2] The Panasonic entities include Panasonic Corporation, Panasonic Corporation of North America, and MT Picture Display Co. Ltd. ECF No. 3862-2 at 2.

[3] The Hitachi entities include Hitachi, Ltd., Hitachi Asia, Ltd., Hitachi America, Ltd., Hitachi Electronics Devices (USA), Inc., and Hitachi Displays, Ltd. ECF No. 3862-3 at 2.

[4] The Toshiba entities include Toshiba Corporation, Toshiba America, Inc., Toshiba America Information Systems, Inc., Toshiba America Consumer Products, L.L.C., and Toshiba America Electronic Components, Inc. ECF No. 3862-4 at 2.

[5] The Samsung entities include Samsung SDI Co. Ltd., Samsung SKI America, Inc., Samsung SDI Brazil Ltd., Tianjin Samsung SDI Co. Ltd, Shenzhen Samsung SDI Co., Ltd., SKI Malaysia Sdn. Bhd., and SDI Mexico S.A. de C.V. ECF No. 3862-5 at 2.

and Thomson/TDA.[6] The settlements included a "Nationwide Class" of "[a]ll persons and or entities who or which indirectly purchased in the United States for their own use and not for resale, CRT Products manufactured and/or sold by the Defendants." *See* ECF No. 1526 at 59-60; ECF Nos. 3862-1, 3862-2, 3862-3, 3862-4, 3862-5; ECF No. 3876-1 (adopting the class definitions set forth in the operative complaint). The agreements also included Statewide Damages Classes of indirect purchasers of CRT products seeking money damages under the laws of 21 states and the District of Columbia ("22 Indirect Purchaser State Classes"). *See id*. The Court certified these classes for settlement purposes in its 2016 Final Approval Order. *See* ECF No. 4712 at 7, 36 (adopting Special Master's report and recommendation, ECF No. 4351 at 22-29, and conditionally certifying the 22 Indirect Purchaser State Classes).

The proposed settlements resolved all federal and state-law claims brought by the IPP Plaintiffs against the settling Defendants and obligated the Defendants to pay a total of $541,750,000. *See* ECF No. 3862-1 at 8; ECF No. 3862-2 at 8; ECF No. 3862-3 at 8; ECF No. 3862-4 at 8; ECF No. 3862-5 at 8; ECF No. 3876-1 at 9-10. The settlements provided monetary compensation for class members in the 22 Indirect Purchaser State Classes but did not provide compensation for persons or entities in certain other states, which collectively

[6] The Thomson and TDA entities include Technicolor SA, Technicolor USA, Inc., and Technologies Displays Americas LLC. ECF No. 3876-1 at 2.

are now denominated the Omitted Repealer[7] State subclass ("ORS Subclass").[8] The settlement also provided no compensation to persons or entities in states whose laws do not provide for recovery to indirect purchasers ("non-repealer states"), now denominated the Non-Repealer State subclass ("NRS Subclass").[9] *See* ECF Nos. 3862-1, 3862-2, 3862-3, 3862-4, 3862-5, 3876-1. Even though they received no compensation, the settlements required members of the ORS and NRS

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[7] In *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977), the Supreme Court held that only direct purchasers could recover damages for price-fixing under Section 4 of the Clayton Act. *Id.* at 735. As the Ninth Circuit has summarized, the Supreme Court "barred indirect purchasers' suits, and left the field of private antitrust enforcement to the direct purchasers." *Royal Printing Co. v. Kimberly Clark Corp.*, 621 F.2d 323, 325 (9th Cir. 1980). In response to the *Illinois Brick* decision, many states passed so-called "*Illinois Brick* repealer statutes," which give indirect purchasers the right to sue when firms violate analogous state antitrust laws. *See*, *e.g.*, Robert H. Lande, New Options for State Indirect Purchaser Legislation: Protecting the Real Victims of Antitrust Violations, 61 Ala. L. Rev. 447, 448 (2010). Such states are referred to a "repealer states." A state which has not enacted such a statute is referred to as a "non-repealer state."

[8] The ORS Subclass in its current iteration consists of Indirect Purchaser Plaintiffs in the following states: Arkansas, Massachusetts, Missouri, Montana, New Hampshire, Oregon, Rhode Island, South Carolina, and Utah. ECF No. 5518 at 1; ECF No. 5645 at 2. The parties now use the "ORS" abbreviation to signify "other repealer states" rather than "omitted repealer states." ECF No. 5645 at 1 n.1.

[9] The NRS Subclass consists of Indirect Purchaser Plaintiffs in the following Non-Repealer States: Alabama, Alaska, Colorado, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maryland, New Jersey, Ohio, Oklahoma, Pennsylvania, Texas, Virginia, Washington, and Wyoming. ECF No. 5518 at 2.

Subclasses to release their claims for injunctive relief, equitable monetary relief, and damages.

The agreements proposed a distribution plan which included: (1) a "weighted pro-rata distribution to all members of the 22 Indirect Purchaser State Classes that filed valid claims," (2) a minimum payment of at least $25 per claimant, and (3) a maximum payment of "three times the estimated money damages per claimant." ECF No. 5587 at 30; *see* ECF No. 3862 ¶¶ 43-50. The plan "assign[ed] different weights to different CRT products based on the overcharge evidence for each." ECF No. 5587 at 30; *see* ECF No. 3862 ¶¶ 44-49.

After this Court preliminarily approved the original settlements, the claims administrator carried out a notice plan which involved: (1) mail and email notices sent to 10,082,690 unique addresses, (2) publication of notice on the settlement website, (3) advertisements on Google, Facebook, and other popular websites, and (4) print and online publications throughout the United States, in both English and Spanish. *See* ECF No. 4071-1 ¶ 114; ECF No. 4371 ¶¶ 4-13. These notices directed class members to the settlement website. *See* ECF No. 4371 ¶¶ 9-13. They also advised class members of material settlement terms, the plan of distribution, and class counsel's intent to apply for an attorney fee award of up to one-third of the settlement fund. ECF No. 4071-1 ¶ 115.

On July 7, 2016, this Court granted final approval of the six settlement agreements. ECF No. 4712 at 1. On August 3, 2016, the Court issued a Fee Order

approving an attorney's fees award of $158,606,250 to class counsel, an amount comprising 27.5% of the settlement fund. ECF No. 4740 at 2, 5-9. Two objectors appealed the settlement approval and fee award to the Ninth Circuit. ECF No. 4741.

On October 1, 2018, while the appeals were pending, the IPP Plaintiffs filed a Motion pursuant to Federal Rule of Civil Procedure 62.1 for an Indicative Ruling on Their Motion to Amend The IPP Fee Order and Amend the Plan of Distribution. ECF No. 5335. Counsel for the IPP Plaintiffs proposed to modify the earlier settlement by reducing the attorney's fees award by $6 million and using those funds to compensate plaintiffs in three states – Massachusetts, Missouri, and New Hampshire – that were omitted from the original settlement ("Omitted Repealer States"). *Id.* at 8.

The Court denied the motion on November 8, 2018. ECF No. 5362. The Court concluded that it had erred by approving the settlement in the first place, and that the IPP Plaintiffs' proposed modifications did not cure all the defects in the settlement. *Id.* The Court's primary concern was that the settlement required class members in the Omitted Repealer States to release their claims without compensation. *See* ECF No. 5362 at 1. However, the order also expressed "concerns about the adequacy of the counsel who negotiated that settlement or whether they may have faced a conflict of interest," given that they had released some clients' claims without compensation. *Id.* at 1. In response to the Court's order, the Ninth Circuit

remanded "this case so that the district court [could] reconsider its approval of the settlement." *See In re Cathode Ray Tube Antitrust Litig.*, No. 16-16368 (9th Cir. Feb. 13, 2009), ECF No. 238 at 11. The Ninth Circuit did not vacate this Court's Final Approval, Final Judgement, or Fee Order. *Id.*

On remand, this Court confirmed the existing lead counsel for the IPP Plaintiffs and appointed separate counsel for the ORS and NRS Subclasses. ECF Nos. 5535, 5518. The Court then referred the matter to Magistrate Judge Corley for settlement. ECF No. 5427.

B. Amended Settlement Agreements

After the Ninth Circuit remanded this case, counsel for IPP Plaintiffs[10] and seven Defendants engaged in mediation sessions before Magistrate Judge Corley and agreed to amend the settlements. ECF No. 5531; ECF No. 5587-1 ¶¶ 2-3.

The amendments alter the settlements in three ways. First, they appoint new settlement class representatives for the states of Hawaii, Nevada, New Mexico, and South Dakota.[11] Second, they narrow the

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[10] On remand, the Court appointed separate counsel to represent the ORS and NRS Subclasses. ECF Nos. 5518, 5535.

[11] On September 13, 2019, IPP Plaintiffs filed a stipulation amending their operative complaints to substitute Sandra Riebow for Daniel Riebow as the named plaintiff for the state of Hawaii; Gregory Painter for Gloria Comeaux as the named plaintiff for the state of Nevada; MaryAnn Stephenson for Craig Stephenson as the named plaintiff for the state of New Mexico; and Donna Ellingson-Mack for Jeffrey Speaect as the named plaintiff for

definition of "the Class" to include only the 22 Indirect Purchaser State Classes certified for settlement in the Court's 2016 Final Approval Order. ECF No. 5587-1 at 7, 13, 19, 25, 31, 38. The amended settlements no longer include a Nationwide Class. *See* ECF No. 5587 at 16; ECF No. 5587-1. Only members of the 22 Indirect Purchaser State Classes release their claims against Defendants. Third, the amendments reduce each Defendant's settlement contribution by approximately 5.35%, for a total reduction of $29,000,000. ECF No. 5587 at 17; *see* ECF No. 5587-1 at 7-8, 13-14, 19-20, 25-26, 31-32, 38-39. The amendments offset these reductions in settlement amount by requesting that the Court reduce the attorney's fees previously awarded by $29,000,000. *See id.* Interest earned on the original settlement funds since their 2015 deposit in an escrow account will remain in the fund, except that class counsel will still be entitled to seek a share of the accrued interest proportionate to their fee and expense award. ECF No. 5587 at 17; *see* ECF No. 5587-1 at 7-8, 13-14, 19-20, 25-26, 31-32, 38-39. All other terms of the original settlement agreements and plan for distribution remain the same. ECF No. 5587-1 at 8, 14, 20, 26, 33, 39.

C. Motion for Preliminary Approval

On September 16, 2019, the IPP Plaintiffs filed a "motion pursuant to Ninth Circuit mandate to

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South Dakota. ECF Nos. 5584-1, 5584-2. On September 16, 2019, the Court entered the Order. ECF No. 5585.

reconsider and amend final approval order, final judgment, and fee order." ECF No. 5587. In their motion, IPP Plaintiffs request that the Court "reconsider and approve the amended settlements under Rule 23(e); order notice be given; and amend the Final Approval Order, the Final Judgment, and the Fee Order . . . after a final hearing." ECF No. 5587 at 37. The Court construes the motion as one for preliminary approval of the amended settlements between the 22 Indirect Purchaser State Classes and Defendants. The ORS Subclass and NRS Subclass oppose the motion. ECF No. 5607. The IPP Plaintiffs have filed a reply. ECF No. 5616.

II. JURISDICTION

The Court has jurisdiction pursuant to 28 U.S.C. § 1332(d)(2).

III. STANDING TO OBJECT

A. Legal Standard

A party seeking to invoke the Court's jurisdiction has the burden of establishing standing. *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 103-04 (1998); *see In re Hydroxycut Marketing and Sales Practices Litig.*, No. 09md2087 BTM (KSC), 2013 WL 5275618, at *2 (S.D. Cal. Sept. 17, 2013) ("The party seeking to invoke the Court's jurisdiction—in this case, the Objectors—has the burden of establishing standing."). Under Federal Rule of Civil Procedure 23(e), "nonclass members have no standing to object to the

settlement of a class action." *San Francisco NAACP v. San Francisco Unified School Dist.*, 59 F. Supp. 2d 1021, 1032 (N.D. Cal. 1999) (citing *Gould v. Alleco, Inc.*, 883 F.2d 281, 284 (4th Cir. 1989) ("The plain language of Rule 23(e) clearly contemplates allowing only class members to object to settlement proposals")).

B. Discussion

The ORS and NRS Subclasses oppose the IPP Plaintiffs' motion for preliminary approval. ECF No. 5607. The IPP Plaintiffs ask the Court to disregard these objections because the "ORS/NRS Plaintiffs lack Article III standing to object to the Amendments . . . because they are not members of the amended settlement class." ECF No. 5616 at 7. The IPP Plaintiffs are correct.

The amended settlements state that the "'Nationwide Class,' . . . and members thereof (except for members of the 22 Indirect Purchaser States Classes), are expressly excluded from 'the Class' and are not bound by the Agreement." *See* ECF No. 5587-1 at 7, 13, 19, 25, 31, 38. The ORS/NRS Subclasses are members of the "Nationwide Class" but are not members of the 22 Indirect Purchaser State Classes. ECF No. 5616 at 8; *see* ECF No. 1526 at 59-60; ECF Nos. 3862-1, 3862-2, 3862-3, 3862-4, 3862-5; ECF No. 3876-1. Therefore, the persons and entities in these subclasses are not members of the amended settlement Class and have no standing to object to IPP Plaintiffs' motion for preliminary approval of the amended settlements. *See Kent v.*

Hewlett-Packard Co., No. 5:09-cv-05341-JF (HRL), 2011 WL 4403717, at *3 (N.D. Cal. Sept. 20, 2011) ("The Ziegenfelders are excluded from the settlement. . . . Because they are not members of the class, the Ziegenfelders lack standing to object."); *Hydroxycut*, 2013 WL 5275618, at *2 ("[N]either Mr. Blanchard nor Ms. McBean have satisfied their burden of establishing that they are class members and therefore have standing to object to the proposed settlement."). Accordingly, the Court strikes the objections of the ORS and NRS Subclasses. *See Miller v. Ghirardelli Chocolate Co.*, No. 12-cv-04936-LB, 2015 WL 758094, at *10 (N.D. Cal. Feb. 20, 2015) ("The court [] finds that all three objectors lack standing and strikes their objections").

IV. CLASS CERTIFICATION

A. Legal Standard

Class certification under Federal Rule of Civil Procedure 23 is a two-step process. First, a plaintiff must demonstrate that the four requirements of Rule 23(a) are met: numerosity, commonality, typicality, and adequacy. *Wang v. Chinese Daily News, Inc.*, 737 F.3d 538, 542-44 (9th Cir. 2013). "Class certification is proper only if the trial court has concluded, after a 'rigorous analysis,' that Rule 23(a) has been satisfied." *Id.* (quoting *Wal-Mart Stores, Inc.*, 564 U.S. at 351).

Second, a plaintiff must establish that the action meets one of the bases for certification in Rule 23(b). IPP Plaintiffs rely on Rule 23(b)(3) and must therefore establish that "questions of law or fact common to class

members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

When determining whether to certify a class for settlement purposes, a court must pay "heightened" attention to the requirements of Rule 23. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). "Such attention is of vital importance, for a court asked to certify a settlement class will lack the opportunity, present when a case is litigated, to adjust the class, informed by the proceedings as they unfold." *Id.*

B. Discussion

1. Numerosity, Commonality, Predominance, and Superiority

In its 2016 Final Approval Order, the Court made findings regarding numerosity, commonality, predominance, and superiority. *See* ECF No. 4712 at 7, 36.

The Court found that the 22 Indirect Purchaser State Classes satisfied Rule 23(a)'s numerosity and commonality requirements because: (1) "millions of people in the United States purchased CRT products during the class period" and (2) there are "questions of law and fact common to the Class, including whether the Defendants engaged in a price-fixing conspiracy that injured Plaintiffs when they paid more for CRT Products than they would have absent the alleged

price-fixing conspiracy." ECF No. 4351 at 26; *see* ECF No. 4712 at 7 (adopting the Special Master's Rule 23 analysis and incorporating it by reference in the Final Approval Order).

The Court also concluded that the classes satisfied Rule 23(b)(3)'s predominance and superiority criteria because: (1) "all IPPs are alleged to have paid overcharges that were caused by the defendants' alleged price-fixing activities" and (2) "the damages of most individual class members are relatively small compared to the cost of the litigation, making it difficult for individual class members to adjudicate their claims individually." *See* ECF No. 4712 at 7, 36 (adopting Special Master's report and recommendation, ECF No. 4351 at 22-29). Moreover, in price-fixing cases, such as this, "courts repeatedly have held that the existence of the conspiracy is the predominant issue and warrants certification even when significant individual issues are present." *Thomas & Thomas Rodmakers, Inc. v. Newport Adhesives and Composites, Inc.*, 209 F.R.D. 159, 167 (C.D. Cal. 2002) (quoting *In re NASDAQ Market-Makers Antitrust Litig.*, 169 F.R.D. 493, 518 (S.D.N.Y.).

No parties objected to the Court's findings regarding the numerosity, commonality, predominance, and superiority of the 22 Indirect Purchaser State Classes in the original settlement. *See* ECF No. 4712 at 7. Because the amended settlements do not alter the composition of these classes, the Court adopts the reasoning from its previous Final Approval Order. *See Giroux v. Essex Property Trust, Inc.*, No. 16-cv-01722-HSG, 2019 WL 2106587, at *2 (N.D. Cal. May 14, 2019)

(approving stipulated amendments to class settlement after final approval and "incorporat[ing] by reference prior analysis under Rules 23(a) and (b)" because "no facts that would affect these requirements have changed since the Court preliminarily approved the class").

2. Typicality – Rule 23(a)(3)

Under Rule 23(a)(3), "representative claims are 'typical' if they are reasonably coextensive with those of absent class members; they need not be substantially identical." *Just Film, Inc. v. Buono*, 847 F.3d 1108, 1116 (9th Cir. 2017) (citations omitted). "Measures of typicality include whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Id.* (internal quotation marks and citations omitted).

The Court finds that the claims of the representative parties are typical of the claims of the class. *See* Fed. R. Civ. P. 23(a)(3). In its previous Final Approval Order the Court found that "the claims of the representative Plaintiffs are typical of the claims of the class members because they all indirectly purchased CRT products at supra-competitive levels as a result of the alleged price-fixing conspiracy during the relevant time period." ECF No. 4351 at 26; *see* ECF No. 4712 at 7 (adopting the Special Master's Rule 23 analysis). The Court adopts this reasoning with respect to the

representative plaintiffs common to the original and amended settlements.

The amended settlements appoint new class representatives for the states of Hawaii, Nevada, New Mexico, and South Dakota. These newly appointed class representatives also satisfy the Rule 23(a)(3) typicality requirement. Each representative "purchased CRT Products from one or more of the Defendants or their co-conspirators" during the Class Period. ECF No. 5589 ¶¶ 26, 37, 38, 44. Moreover, each representative alleges that he/she suffered the same injury as other class members – being overcharged for CRT products as a result of the alleged CRT conspiracy. *See id*; ECF No. 5589 ¶¶ 225-242.

3. Adequacy of Representation – Rule 23(a)(4)

Rule 23(a)(4) permits certification of a class action only if "the representative parties will fairly and adequately protect the interest of the class." Fed. R. Civ. P. 23(a)(4); *Nielson v. The Sports Authority*, No. C 11-4724 SBA, 2013 WL 3957764, at *6 (N.D. Cal. July 29, 2013). "To determine whether named plaintiffs will adequately represent a class, courts must resolve two questions: '(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?'" *Ellis v. Costco Wholsale Corp.*, 657 F.3d 970, 985 (9th

Cir. 2011) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998)).

At this stage, the Court is satisfied with IPP Plaintiffs' demonstration that the representative parties will fairly and adequately protect the interests of the class. "Given the identity of issues shared by the class and proposed class representatives, the named plaintiffs' interests are sufficiently aligned with those of the class." *See Bostick v. Herbalife Int'l of Am., Inc.*, No. CV 13-2488 BRO (SHx), 2015 WL 12731932, at *8 (C.D. Cal. May 14, 2015). Moreover, IPP Plaintiffs' and class counsel have vigorously prosecuted this action on behalf of the 22 Indirect Purchaser State Classes. *See id.* First, named plaintiffs and class counsel "conducted extensive discovery and engaged in multiple mediation and negotiation sessions before reaching" the original and amended settlements. *See id.* at *14; ECF No. 3862 ¶¶ 12, 15; ECF No. 5587-1 ¶¶ 2-3. Discovery leading up to the settlements has required production and review of millions of documents and the taking of hundreds of depositions, all conducted over eight-plus years. *See* ECF No. 3862 ¶¶ 12, 15. Second, IPP Lead Counsel has "invested considerable time in this case and ha[s] substantial experience with class action litigation." *See Bostick*, 2015 WL 12731932, at *14; ECF No. 4073-1 at 6-15. Third, the new named plaintiffs have affirmed their understandings of the allegations in the case and their genuine interest in this litigation. ECF No. 5587-1 ¶ 4. Each new named plaintiff has "reviewed the pleadings, the settlement agreements and the Amendments thereto, and, in consultation with their lawyers,

have approved them on behalf of their respective states." *Id.* "This is sufficient to demonstrate adequacy under Rule 23(a)." *See Bostick*, 2015 WL 12731932, at *14.

During the 2016 final approval process, several objectors argued that the absence of recovery by the ORS and NRS Subclasses suggested a conflict of interest between the 22 Indirect Purchaser State Classes and certain members of the Nationwide Class. *See*, *e.g.*, ECF No. 4113 at 8; ECF No. 4125 at 4-5; *see Ellis*, 657 F.3d at 985 ("To determine whether named plaintiffs will adequately represent a class, courts must resolve" whether "the named plaintiffs and their counsel have any conflict of interest with other class members."). The amended settlements eliminate these concerns. On remand, the Court appointed separate counsel to represent the ORS Subclass and NRS Subclass. ECF Nos. 5535, 5518; *see Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 819, 856 (1999) (discussing division of a class "into homogeneous subclasses . . . with separate representation to eliminate conflicting interests of counsel" when class members have divergent interests). Additionally, by narrowing the settlement Class to include only the 22 Indirect Purchaser State Classes, the amendments remove potential conflicts of interests that could result from differences in claims and relief sought by the 22 Indirect Purchaser State Classes verses the ORS and NRS Subclasses. *See Campbell v. Best Buy Stores, L.P.*, No. LA CV 12-07794 JAK (SHx), 2015 WL 12744268, at *5 (noting conflicts of interest that arise from "differences in the type of relief sought, the amount or

seriousness of damages sought," and "the theories of law or fact that may benefit some class members"). Therefore, the amendments moot the adequacy-of-representation concerns expressed by objectors to the original settlement.

For the foregoing reasons, the Court concludes that provisional certification of the proposed class is appropriate for the purposes of settlement.

V. PRELIMINARY APPROVAL

The IPP Plaintiffs seek approval of their amended settlement agreements and an order directing limited notice to the putative class and setting a fairness hearing. ECF No. 5587 at 37. The Court finds that preliminary approval of the settlement is warranted and grants IPP Plaintiffs' request for limited notice.

A. Legal Standard

The Ninth Circuit maintains a "strong judicial policy" that favors the settlement of class actions. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). The proposed settlement need not be ideal, but it must be fair, free of collusion, and consistent with counsel's fiduciary obligations to the class. *Hanlon*, 150 F.3d at 1027, *overruled on other grounds by Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011) ("Settlement is the offspring of compromise; the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate

and free from collusion."). "The initial decision to approve or reject a settlement proposal is committed to the sound discretion of the trial judge." *City of Seattle*, 955 F.2d at 1276 (citation omitted).

Rule 23 requires courts to employ a two-step process in evaluating class action settlements. First, courts preliminarily approve the settlement and authorize notice to the class. *See Wilson v. Tesla*, No. 17-cv-03763-JSC, 2019 WL 2929988, at *4 (N.D. Cal. July 8, 2019). Second, courts conduct a hearing to make a final determination of whether a settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2).

The court's task at the preliminary approval stage is to determine whether the settlement falls "within the range of possible approval." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007) (citation omitted). To guide this analysis, courts look to the four overarching factors contained in recently-amended Rule 23(e)(2) and consider whether:

> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) the relief provided for the class is adequate; and
>
> (D) the proposal treats class members equitably relative to each other.

Shin v. Plantronics, No. 18-cv-05626-NC, 2019 WL 2515827, at *4 (N.D. Cal. July 17, 2019); *see* Manual for Complex Litigation, Fourth ("MCL, 4th") § 21.632 (FJC

2004) (explaining that courts "must make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms"). The amendments to Rule 23 do "not 'displace any factor' previously announced by the Ninth Circuit,[12] but instead 'focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal.'" *Shin*, 2019 WL 2515827, at *4; *see* Advisory Committee Notes, Fed. R. Civ. P. 23, subdiv. (e)(2) (2018). Thus, courts may apply the framework set forth in Rule 23, "while continuing to draw guidance from the Ninth Circuit's factors and relevant precedent." *Hefler v. Wells Fargo & Co.*, No. 16-cv-05479-JST, 2018 WL 6619983, at *4 (N.D. Cal. Dec. 18, 2018).

Settlements that occur before formal class certification require a higher standard of fairness. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2011). "In reviewing such settlements, in addition to considering the above factors, the court also must ensure that 'the settlement is not the product of collusion among the negotiating parties.'" *Hefler*, 2018 WL 6619983, at

[12] Ninth Circuit precedent instructs district courts to balance the following factors: "(1) the strength of the plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement." *Churchill Village, L.L.C. v. General Electric*, 361 F.3d 566, 575 (9th Cir. 2004) (citing *Hanlon*, 150 F.3d at 1026).

*4 (quoting *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946-47 (9th Cir. 2011). Courts "must be particularly vigilant not only for explicit collusion, but also for more subtle signs that class counsel have allowed pursuit of their own self-interests and that of certain class members to infect the negotiations." *In re Bluetooth*, 654 F.3d 935, 947 (9th Cir. 2011).

A proposed settlement must be "taken as a whole, rather than the individual component parts," in the examination for overall fairness. *Id.* at 948 (emphasis omitted). Courts do not have the ability to "delete, modify, or substitute certain provisions." *Id.* A settlement "must stand or fall in its entirety." *Id.* (citation and emphasis omitted).

B. Discussion

1. Adequacy of Representation – Rule 23(e)(2)(A)

Adequacy of representation requires that two questions be addressed: (1) "do the named plaintiffs and their counsel have any conflicts of interest with other class members" and (2) "will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Hefler*, 2018 WL 6619983, at *6. As discussed above, IPP Plaintiffs have demonstrated that the representative parties and their counsel will fairly and adequately protect the interests of the 22 Indirect Purchaser State Classes. Moreover, the amended settlement eliminates the conflicts-of-interest concerns raised by objectors to the original

settlement. Therefore, this factor weighs in favor of preliminary approval.

2. Arm's Length Negotiations – Rule 23(e)(2)(B)

Both the original and amended settlements were the product of arm's length negotiations. Two former jurists "provided their experienced input into the parties' [original] settlement negotiations." ECF No. 4351 at 34; *see* Advisory Committee Notes, Fed. R. Civ. P. 23, subdiv. (e)(2) (2018) ("[T]he involvement of a neutral or court-affiliated mediator or facilitator in [] negotiations may bear on whether they were conducted in a manner that would protect and further the class interests."). The amended settlements were a product of negotiations conducted during two mediation sessions supervised by Magistrate Judge Corley. ECF No. 5587-1 ¶¶ 2-3; *see Hefler*, 2018 WL 6619983, at *6 (noting mediation sessions supervised by former judge as an indication of arm's length negotiations).

Pursuant to Ninth Circuit precedent, the Court must also examine the settlements for additional indicia of collusion that would undermine seemingly arm's length negotiations. *See In re Bluetooth*, 654 F.3d at 946 ("Prior to formal class certification, . . . agreements must withstand an even higher level of scrutiny for evidence of collusion or other conflicts of interest."). Signs of collusion include: (1) a disproportionate distribution of the settlement fund to counsel; (2) negotiation of a "clear sailing provision"; and (3) an arrangement for

funds not awarded to revert to defendant rather than to be added to the settlement fund. *Id.* at 947. If "multiple indicia of possible implicit collusion" are present, a district court has a "special 'obligat[ion] to assure itself that the fees awarded in the agreement were not unreasonably high.'" *Id.* (quoting *Staton v. Boeing Co.*, 327 F.3d 938, 965 (9th Cir. 2003)).

The Court finds no indicia of collusion that would undermine the amended settlements. First, the amended settlements request an attorney fee award of 23.66% of the settlement fund. ECF No. 5587 at 29; *see* ECF No. 5587-1 at 7-8, 13-14, 19-20, 25-26, 31-32, 38-39; *In re Bluetooth*, 654 F.3d at 941-42 ("[C]ourts typically calculate 25% of the fund as the 'benchmark' for a reasonable fee award."). Second, the amended settlements – like the original agreements – do not contain a reversion clause. ECF No. 4712 at 15. Although the agreements contain a "clear sailing" provision, the Court finds no cause for concern because Class Counsel's fee will be awarded from the same common fund as the recovery to the class. *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 961 n.5 (9th Cir. 2009); *see also Bayat v. Bank of the West*, No. C-13-2376 EMC, 2015 WL 1744342, at *7 (N.D. Cal. Apr. 15, 2015) ("[B]ecause any attorneys' fees award will come out of the common fund, there is no 'clear sailing' agreement here that would warrant against settlement approval.").

3. Adequate Relief for the Class – Rule 23(e)(2)(C)

To determine whether the relief provided for the class is adequate, courts must consider: (i) the costs, risks, and delay of trial and appeal, (ii) the effectiveness of any proposed method of distributing relief to the class, (iii) the terms of any proposed award of attorney's fees, and (iv) any agreement required to be identified under Rule 23(e)(3). Fed. R. Civ. P. 23(e)(2)(C).

a. Costs, Risks, and Delay

In the previous Final Approval Order, this Court found that the IPP Plaintiffs would have faced several hurdles in the absence of a settlement – hurdles that "weigh[ed] strongly in favor of approving the Proposed Settlements." ECF No. 4712 at 9. The Court noted that there was a "great risk to IPPs in continuing to pursue litigation, including both uncertainty over the results of pending motions and challenges (and delay) in collecting any winnings." *Id.* (internal quotation marks omitted); *see also* ECF No. 4351 at 30-32. In light of these costs, risks, and potential delays, the Court determined that the settlements were "a good recovery and firmly in line with the recoveries in other cases." ECF No. 4712 at 10.

The Court need not revisit these findings. The proposed amended settlements reduce the amounts paid by each Defendant but fully offset these amounts by requested corresponding reductions in class counsel's

attorney fee award. ECF No. 5587 at 17; *see* ECF No. 5587-1 at 7-8, 13-14, 19-20, 25-26, 31-32, 38-39. Because the net settlement fund available for distribution to class members remains the same, these settlements remain a "good recovery" in light of the costs, risks, and delay of trial and appeal.

b. Distribution Method

In the prior Final Approval Order, the Court examined and approved the settlements' proposed plan of distribution. ECF No. 26-29. This plan provides for (1) a "weighted pro-rata distribution to all members of the 22 Indirect Purchaser State Classes that filed valid claims," (2) a minimum payment of at least $25 per claimant, and (3) a maximum payment of "three times the estimated money damages per claimant." ECF No. 5587 at 30; *see* ECF No. 3862 ¶¶ 43-50. The amended settlements do not alter this proposed allocation plan, and the Court again approves it.

c. Attorney's Fees

Class Counsel have stated that they intend to apply for an award of attorneys' fees totaling 23.66% of the settlement fund along with expenses incurred during the litigation. The Court previously awarded $158,606,250 in attorney's fees in connection with the prior IPP Settlement after considering counsels' motion for attorney's fees and any objections thereto. ECF No. 4740 at 2. The proposed Amendments provide that Class Counsel will request the Court to reduce that fee

award by $29,000,000 to fully offset the reduction in the settlement amounts, and ensure that the reductions do not adversely affect the funds available for distribution to claimants. ECF No. 5587 at 17. In addition, all interest earned on the original settlement amounts from the date of deposit in 2015—approximately $13,000,000—will remain in the fund for the benefit of class members (except that Class Counsel shall still be entitled to seek a share of the accrued interest on the fund proportionate to their fee and expense award).[13] *Id.*

4. Equitable Treatment of Class Members – Rule 23(e)(2)(D)

Consistent with Rule 23's instruction to consider whether "the proposal treats class members equitably relative to each other," Fed. R. Civ. P. 23(e)(2)(C)(i), the Court now considers whether the Settlement "improperly grant[s] preferential treatment to class representatives or segments of the class." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d at 1079.

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[13] Any member of the 22 Indirect Purchaser State Classes who submitted a claim in or objected to the 2016 Settlements may now ask the Court to object to the attorney's fees award. ECF No. 5587-2 at 18. By definition, that award will be lower both in absolute numbers and on an hourly basis than the award the Court approved in 2016 – particularly given that counsels' work in reaching the current agreement will not be separately compensated. Under these circumstances, there is no need for class counsel to file a further motion for attorney's fees, and the deadlines the Court has set do not provide for one.

In the previous Final Approval Order, the Court examined and approved the allocation of settlement funds among the 22 Indirect Purchaser State Classes. As noted above, the original settlement provided for (1) a "weighted pro-rata distribution to all members of the 22 Indirect Purchaser State Classes that filed valid claims," (2) a minimum payment of at least $25 per claimant, and (3) a maximum payment of "three times the estimated money damages per claimant." ECF No. 5587 at 30; *see* ECF No. 3862 ¶¶ 43-50. The plan "assign[ed] different weights to different CRT products based on the overcharge evidence for each." ECF No. 5587 at 30; *see* ECF No. 3862 ¶¶ 44-49. The amended settlements do not alter this proposed allocation.

As discussed in the prior Final Approval Order, "[i]t is reasonable to allocate the settlement funds to class members based on . . . the strength of their claims on the merits." *In re Omnivision Techs., Inc.*, No. C-04-2297 SC, 2007 WL 4293467, at *7 (N.D. Cal. Dec. 6, 2007) (internal quotation marks and citations omitted). Because "reimburs[ing] class members based on the extent of their injuries is generally reasonable," the Court finds that this factor weighs in favor of preliminary approval. *See In re Oracle Sec. Litig.*, No. 90-cv-00931-VRW, 1994 WL 502054, at * 1 (N.D. Cal. June 18, 1994).

In sum, the Court finds that the Rule 23(e) factors will likely weigh in favor of granting final approval. Because the Court will likely find the amended settlements to be fair, reasonable, and adequate at the final

approval stage, preliminary approval of the settlement is warranted.

5. Proposed Notice Plan

Before the district court approves a class settlement, "it is 'critical' that class members receive adequate notice." *In re Hyundai and Kia Fuel Economy Litig.*, 926 F.3d 539, 567 (9th Cir. 2019) (citing *Hanlon*, 150 F.3d at 1025). "Notice is satisfactory if it 'generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.'" *Id.* (quoting *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)). If a fairness hearing leads to "substantial changes" in the settlement which "adversely affect[] some members of the class, additional notice, followed by an opportunity to be heard, might be necessary." *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 330 (N.D. Cal. 2018). "The pertinent question here is whether the changes *adversely* affect the class members." *Id.* (emphasis in original).

a. Original Notice Plan

Class members of the 22 Indirect Purchaser States have already received "the best notice that is practicable under the circumstances." *See* Fed. R. Civ. P. 23(c)(2)(B). After this Court preliminarily approved the original settlements, the claims administrator carried out a notice plan which included: (1) mail and email notices sent to 10,082,690 unique addresses, (2)

publication of notice on the settlement website, (3) advertisements on Google, Facebook, and other popular websites, and (4) print and online publications throughout the United States, in both English and Spanish. *See* ECF No. 4071-1 ¶ 114; ECF No. 4371 ¶¶ 4-13. These notices directed recipients to the settlement website. *See* ECF No. 4371 ¶¶ 9-13. They also advised class members of material settlement terms, the plan of distribution, and class counsel's intent to apply for an attorney fee award of up to one-third of the settlement fund. ECF No. 4071-1 ¶ 115. As the Court found in its prior Final Approval Order, this plan "provided the best practicable notice to class members." ECF No. 4712 at 9.

b. Additional Notice

The IPP Plaintiffs' amendments to the settlement agreements do not require additional notice. The amended settlements "provide the same benefits to the members of the 22 Indirect Purchaser State Classes." ECF No. 5587 at 32; *see* ECF No. 5587-1 at 7-8, 13-14, 19-20, 26-26, 31-33, 38-39. While the amendments reduce the gross settlement fund by $29,000,000, "that reduction is fully offset by a $29,000,000 reduction in Class Counsel's fee request." *Id.* Therefore, the settlement does not have a "material adverse effect on the rights of class members" and there is no reason to conclude that those class members who failed to object or opt out would now choose to do so. *See Anthem*, 327 F.R.D. at 330 (finding that, where amendment did not adversely affect class members, "there is no overriding

reason to conclude that those Settlement Class Members who failed to opt out would now choose to do so.").

The amendments also do not adversely affect the rights of the ORS and NRS Subclasses which were included in the original settlement. Because the amendments narrow the settlement Class, the release no longer applies to the ORS and NRS Subclasses. *See* ECF No. 5587-1 at 7, 13, 19, 25, 31, 38. These groups retain any claims that they previously possessed, if any, and they are free to pursue those claims against the Defendants. Therefore, the parties need not provide any additional notice to members of the current or former settlement classes.

Although not required, the IPP Plaintiffs request that the court authorize that limited notification be sent to certain class members. In particular, they propose to send notification of settlement amendments to class members who filed claims, objected to the settlements, requested updates regarding the settlements, or requested exclusion from the settlement class. ECF No. 5587 at 34. These notices would advise recipients of their opportunities to object to the amendments, object to the requested fee award, and appear at the fairness hearing. *Id.* at 34-35; ECF No. 5587-3 at 5-18. They would not, however, enable recipients to exclude themselves or rejoin the settlement. ECF No. 5587-3 at 5-18. Some courts have given opt-outs an opportunity to rejoin a settlement when amended. *See Anthem*, 327 F.R.D. at 331 ("[T]he change to the Settlement could materially affect their decision to opt out. Thus, they deserved an opportunity to reconsider their decisions

based on the terms of the amended Settlement."). Where, as here, the amended settlements provide the same benefits to class members as were available in the original settlement, the Court finds it unnecessary to provide opt-outs an opportunity to rejoin the settlement. Therefore, the Court grants IPP Plaintiffs' request to provide limited notice to certain class members.

CONCLUSION

For the foregoing reasons, the Court GRANTS IPP Plaintiffs' motion pursuant to Ninth Circuit mandate to reconsider. The proposed class is hereby provisionally certified for the purposes of settlement. The Court grants preliminary approval of the amended settlements and approves the proposed limited notice procedure and forms. The Court will hold a final approval hearing on July 8, 2020.

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DATE	EVENT
March 27, 2020	Notice Publication Date and Mailed/Emailed Notice to Commence
May 29, 2020	Deadline for Class Members to Submit Objections
June 12, 2020	Deadline for IPP Plaintiffs to File Responses to Objections
July 8, 2020	Final Hearing

Upon final approval, if any, of the pending settlement, the Court's approval of the prior settlement will be vacated. *See* ECF No. 5632.

IT IS SO ORDERED.

Dated: March 11, 2020

/s/ Jon S. Tigar
JON S. TIGAR
United States District Judge

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE: CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION	Case No. 07-cv-05944-JST
	ORDER DENYING RENEWED MOTIONS TO INTERVENE
This Order Relates To:	Re: ECF Nos. 5643, 5645
ALL INDIRECT PURCHASER ACTIONS	(Filed Feb. 4, 2020)
ALL DIRECT PURCHASER ACTIONS	

Before the Court are Non-Repealer State Subclass Member Eleanor Lewis's renewed motion to intervene and Other Repealer States' renewed motion to intervene and file severed complaint. ECF Nos. 5643, 5645. The Court will deny the motions.

I. BACKGROUND

The facts regarding this case are well known to the parties, and the Court summarizes them here only insofar as they bear on the present motions.

In February 2008, the Judicial Panel on Multidistrict Litigation ("JPML") ordered the centralization of actions alleging that certain defendants conspired to fix prices of cathode ray tubes. *See In re Cathode Ray Tube (CRT) Antitrust Litig.*, 536 F. Supp. 2d 1364 (J.P.M.L. 2008). On July 7, 2016, this Court granted

final approval of settlement agreements which resolved claims between one set of plaintiffs – the Indirect Purchaser Plaintiffs ("IPP Plaintiffs") – and six sets of corporate defendants. ECF No. 4712 at 1. Two objectors sought appeal of this decision in the Ninth Circuit. ECF No. 4741.

On November 8, 2018, this Court issued an order in which it concluded that it erred in approving the settlement provision which required class members in certain Omitted Repealer States to release their claims without compensation. *See* ECF No. 5362 at 1. The order expressed "concerns about the adequacy of the counsel who negotiated that settlement or whether they may have faced a conflict of interest." *Id.* at 1. In response, the Ninth Circuit remanded "this case so that the district court [could] reconsider its approval of the settlement." *See In re Cathode Ray Tube Antitrust Litig.*, No. 16-16368 (9th Cir. Feb. 13, 2009), ECF No. 238 at 11.

On remand, this Court confirmed the existing lead counsel for the IPP Plaintiffs and appointed separate counsel for the unnamed Omitted Repealer State subclass ("ORS Subclass")[1] and Non-Repealer State subclass ("NRS Subclass").[2] ECF Nos. 5535, 5518. The

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[1] The ORS Subclass consists of Indirect Purchaser Plaintiffs with claims in the following Omitted Repealer States: Arkansas, Massachusetts, Missouri, Montana, New Hampshire, Oregon, Rhode Island, South Carolina, and Utah. ECF No. 5518 at 1.

[2] The NRS Subclass consists of Indirect Purchaser Plaintiffs with claims in the following Non-Repealer States: Alabama, Alaska, Colorado, Connecticut, Delaware, Georgia, Idaho, Illinois,

Court then referred the matter to Magistrate Judge Corley for settlement. ECF No. 5427.

On August 23, 2019, NRS Subclass member Eleanor Lewis and several members of the ORS Subclass moved to intervene in this litigation and file an amended complaint. ECF Nos. 5565, 5567. The Court denied these motions without prejudice. ECF No. 5626 at 3; ECF No. 5628 at 3. In November 2019, Lewis and the ORS Subclass filed renewed motions to intervene. ECF Nos. 5643, 5645. IPP Plaintiffs do not oppose the motions to intervene but "do, however, oppose the request by NRS Plaintiff Eleanor Lewis . . . that all indirect purchaser plaintiffs be ordered to file a single consolidated amended complaint *after* intervention." ECF No. 5664 at 2. The Thomson Defendants[3] and Samsung Defendants[4] oppose the motions. ECF Nos. 5662, 5663. Lewis and the ORS Subclass have filed replies. ECF Nos. 5668, 5670.

Indiana, Kentucky, Louisiana, Maryland, New Jersey, Ohio, Oklahoma, Pennsylvania, Texas, Virginia, Washington, and Wyoming. ECF No. 5518 at 2.

[3] The Thomson Defendants consist of Thomson SA and Thomson Consumer Electronics, Inc. ECF No. 5662 at 1.

[4] The Samsung Defendants consist of Samsung SDI Co., Ltd.; Samsung SDI America, Inc.; Samsung SDI Mexico S.A. De C.V.; Samsung SDI Brasil Ltda.; Shenzhen Samsung SDI Co., Ltd.; Tianjin Samsung SDI Co., Ltd.; and Samsung SDI (Malasia) Sdn. Bhd. ECF No. 5663 at 1.

II. JURISDICTION

The Court has jurisdiction pursuant to 28 U.S.C. § 1332(d)(2).

III. DISCUSSION

The multidistrict litigation ("MDL") "statute, 28 U.S. § 1407, limits the actions that may be transferred for coordinated or consolidated pretrial proceedings to 'civil actions involving one or more common questions of fact [that] *are pending in different districts*. . . .'" *In re Farmers Ins. Exch. Claims Representatives' Overtime Pay Litig.*, MDL No. 33-1439, 2008 WL 4763029, at *3 (D. Or. Oct. 28, 2008) (emphasis in original) (quoting 28 U.S.C. § 1407(a)). "A plaintiff may not unilaterally add actions in [an] MDL that have not been pending in federal court elsewhere or which were not transferred to the transferee court through the MDL process." *In re Mortgage Elec. Registration Sys. (MERS) Litig.*, No. MD-09-02119-PHX-JAT, 2016 WL 3931820, at *5 (D. Ariz. July 21, 2016) (citing *In re Farmers*, 2008 WL 4763029, at *3).

Lewis moves to intervene by filing a new "NRS Subclass Complaint." ECF No. 5643 at 3. ORS Movants seek to intervene by filing a "severed complaint amending the prior allegations to add state law claims." ECF No. 5645 at 20. The Court finds, however, that the MDL statute does not permit movants' direct intervention into the MDL proceedings, whether by filing separate complaints or amending IPP Plaintiffs' operative complaint.

First, movants are not permitted to file complaints directly into MDL proceedings. *In re MERS*, 2016 WL 3931820, at *7 ("[T]he majority of case law on this topic indicates that a transferee court's jurisdiction is not sufficiently invoked where an added plaintiff never filed a lawsuit in any federal court nor had its case transferred to the transferee MDL court by the Judicial Panel."); *see In re Farmers*, 2008 WL 4763029, at *3, 5 (dismissing four subclasses for lack of subject matter jurisdiction where plaintiffs added "state law class actions in this MDL that had not been pending in federal court elsewhere and were not transferred to this court through the MDL process"). Cases must already be pending in a federal court before they can be added to an existing MDL. *See In re MERS*, 2016 WL 3931820, at *5. If a potential tag-along action is pending in a different district, the Clerk of the JPML "may enter a conditional order transferring that action to the previously designated transferee district court" upon learning of the pendency of the action.[5] J.P.M.L. R. 7.1(b). If a potential tag-along action is filed in the transferee district, a party may "request assignment of such action[] to the Section 1407 transferee judge in accordance with applicable local rules." J.P.M.L. R. 7.2(a).

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[5] Under Rule 7.1(a) of the JPML Rules of Procedure, "[a]ny party or counsel in actions previously transferred under Section 1407 shall promptly notify the Clerk of the Panel of any potential tagalong actions in which that party is also named or in which that counsel appears."

Second, as discussed in its previous orders, movants may not add new plaintiffs to an MDL by amending IPP Plaintiffs' complaint. ECF No. 5628 at 3 ("Movants are attempting to amend someone else's complaint. They cite no authority permitting a proposed intervenor to take such a step, and the Court concludes it is not allowed."); ECF No. 5626 at 3 (same); *see In re MERS*, 2016 WL 3931820, at *7 ("Plaintiffs cannot add [potential class member] DeBaggis as a plaintiff by amendment in the MDL as this directly contradicts the appropriate procedures designated in 28 U.S.C. § 1407 for consolidating cases for pretrial proceedings."). Rather, the proper course for proposed "new plaintiffs in this MDL litigation is to file their claims in the appropriate forums and to permit the MDL consolidation process to operate as intended." *In re MERS*, 2016 WL 3931820, at *10 (quoting *In re Packaged Ice Antitrust Litig.*, No. 08-MDL-1952, 2011 WL 6178891, at *8 (E.D. Mich. Dec. 12, 2011)).

ORS Movants argue that JPML Rule 7.2(a) "explicitly allows for direct filing" in MDL proceedings. ECF No. 5670 at 25 n.8. However, Rule 7.2(a) does not waive the requirement to file an action in federal court prior to seeking transfer to the MDL. Instead, it provides that potential tag-along actions which are already "*filed* in the transferee district" may "request assignment of such action to the transferee judge in accordance with applicable local rules." J.P.M.L. R. 7.2(a).[6] Moreover, the filing of an initial complaint prior

[6] Some district courts have held that a transferee court may invoke the Rule 7.2(a) transfer procedure only if the district has

to seeking transfer to an MDL is integral to the "unique procedural world of an MDL," where "the authority of the transferee court to handle the case ordinarily ends on conclusion of pretrial proceedings." *In re Farmers*, 2008 WL 4763029, at *3 (citing *Lexecon Inc. v. Milberg Weiss*, 523 U.S. 26, 36-37 (1998)). "Within the context of MDL proceedings, individual cases that are consolidated or coordinated for pretrial purposes remain fundamentally separate actions, intended to resume their independent status once the pretrial stage of litigation is over." *In re Korean Air Lines Co., Ltd.*, 642 F.3d 685, 700 (9th Cir. 2011). Each action transferred under Section 1407 "shall be remanded by the panel at or before the conclusion of . . . pretrial proceedings to the district from which it was transferred unless it shall have been previously terminated." 28 U.S.C. § 1407(a); *Gelboim v. Bank of Am. Corp.*, 135 S. Ct. 897, 903 (2015). Without the filing of an initial complaint independent of the MDL, a plaintiff's "claims have no 'home federal court' to which this

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a local rule that specifically "address[es] . . . potential tag-along actions" in the context of multi-district litigation. *In re MERS*, 2016 WL 3931820, at *6. The Court finds no support for this holding in the text of the rule. To the contrary, the JMPL Rule requires only that the transferee court have local rules regarding the assignment of related cases generally. This reading follows naturally from the rule's admonition that "[p]otential tag-along actions filed in the transferee district do not require Panel action." J.P.M.L. R. 7.2(a); *see also* 23A Karl Oakes, Fed. Proc., L. Ed. § 55:41 (2019) ("Potential tag-along actions filed in the transferee district require no action on the part of the Judicial Panel on Multidistrict Litigation; requests for assignment of such actions to the transferee judge should be made in accordance with local rules for the assignment of related actions.") (citing J.P.M.L. R. 7.2(a)).

Court may eventually remand them in accordance with 28 U.S.C. § 1407(a)." *In re MERS*, 2016 WL 3931820, at *7 (quoting *In re Farmers*, 2008 WL 4763029, at *3).

Lewis argues that there is "no basis in Multidistrict jurisprudence for opposing [her] addition . . . as a plaintiff so that she can represent the interests of her subclass." ECF No. 5668 at 5. In support, Lewis cites *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, 330 F.R.D. 11 (E.D.N.Y. 2019).[7] After the Second Circuit vacated the district court's settlement approval and remanded the action, the court in *Payment Card* appointed "new interim co-lead counsel to represent the interests of different putative classes" and "required each newly defined group of putative class plaintiffs to file a new pleading." ECF No. 5669-1 at 9-10. However, neither the parties nor the court appear to have considered whether the filing of new pleadings in the MDL comported with 28 U.S.C. § 1407. Therefore, Lewis's reference to *Payment Card* is unpersuasive.

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[7] Lewis has filed a request for judicial notice of a court memorandum and order in *Payment Card*, No. 1:05-md-01720-MKB-JO (E.D.N.Y.). ECF No. 5669. Under Federal Rule of Evidence 201(b), "[t]he court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." A court "may take judicial notice of court filings and other matters of public record." *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006). Accordingly, Lewis's request is granted.

CONCLUSION

For the foregoing reasons, the Court denies Lewis's and ORS Movants' renewed motions to intervene. Movants may file their claims in the appropriate forum(s) and seek transfer from the JPML or, if properly filed in the Northern District of California, "request assignment of [their] actions to the Section 1407 transferee judge in accordance with applicable local rules." J.P.M.L. R. 7.2(a).

IT IS SO ORDERED.

Dated: February 4, 2020

/s/ Jon S. Tigar
JON S. TIGAR
United States District Judge

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE: CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION	Case No. 07-cv-05944-JST
This Order Relates To: ALL INDIRECT PURCHASER ACTIONS	**ORDER DENYING MOTION TO INTERVENE AND AMEND COMPLAINT TO ALLEGE STATE LAW CLAIMS FOR THE OTHER REPEALER STATES**
	Re: ECF No. 5567
	(Filed Oct. 17, 2019)

Before the Court is the Other Repealer States' motion to intervene and file an amended complaint. ECF No. 5567. The Court will deny the motion.

I. BACKGROUND

In February 2008, the Judicial Panel on Multidistrict Litigation ordered the centralization of actions alleging that certain Defendants conspired to fix prices of cathode ray tubes. *See In re Cathode Ray Tube (CRT) Antitrust Litig.*, 536 F. Supp. 2d 1364 (J.P.M.L. 2008). On July 7, 2016, this Court granted final approval of settlement agreements which resolved claims between one set of plaintiffs – the Indirect Purchaser Plaintiffs ("IPP Plaintiffs") – and six sets of corporate

defendants. ECF No. 4712 at 1. Two objectors sought appeal of this decision in the Ninth Circuit. ECF No. 4741.

On November 8, 2018, this Court issued an order in which it concluded that it erred in approving the settlement provision which required class members in certain Omitted Repealer States to release their claims without compensation. *See* ECF No. 5362 at 1. The order expressed "concerns about the adequacy of the counsel who negotiated that settlement or whether they may have faced a conflict of interest." *Id.* at 1. In response, the Ninth Circuit remanded "this case so that the district court [could] reconsider its approval of the settlement." *See In re Cathode Ray Tube Antitrust Litig.*, No. 16-16368 (9th Cir. Feb. 13, 2009), ECF No. 238 at 11.

On remand, this Court confirmed the existing lead counsel for the IPP Plaintiffs and appointed separate counsel for an Omitted Repealer State subclass ("ORS Subclass")[1] as well as a Non-Repealer State subclass ("NRS Subclass).[2] ECF Nos. 5535, 5518. The Court

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[1] The ORS Subclass consists of Indirect Purchaser Plaintiffs in the following states: Arkansas, Massachusetts, Missouri, Montana, New Hampshire, Oregon, Rhode Island, South Carolina, and Utah. ECF No. 5518 at 1.

[2] The NRS Subclass consists of Indirect Purchaser Plaintiffs in the following Non-Repealer States: Alabama, Alaska, Colorado, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maryland, New Jersey, Ohio, Oklahoma, Pennsylvania, Texas, Virginia, Washington, and Wyoming. ECF No. 5518 at 2.

then referred the matter to Magistrate Judge Corley for settlement. ECF No. 5427.

On August 23, 2019, members of the ORS Subclass moved to intervene in this litigation and file an amended complaint. ECF No. 5567 at 9-10, 20, 28. The IPP Plaintiffs and Defendants both oppose this motion. ECF Nos. 5592, 5593, 5591. The ORS Movants have filed a reply. ECF No. 5611.

II. JURISDICTION

The Court has jurisdiction pursuant to 28 U.S.C. § 1332(d)(2).

III. MOTION TO INTERVENE

Federal Rule of Civil Procedure 24 requires that a motion to intervene "be accompanied by a pleading that sets out the claim or defense for which intervention is sought." Fed. R. Civ. P. 24(c); *Buffin v. City and County of San Francisco*, No. 15-cv-04959-YGR, 2016 WL 6025486, at *12 (N.D. Cal. Oct. 14, 2016) (citing *Beckman Industries, Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 474 (9th Cir. 1992).

ORS Movants have filed a pleading which seeks to adopt an amended version of IPP Plaintiffs' operative complaint. *See* ECF No. 5567 (The proposed complaint "adds the ORS Plaintiffs as named parties" and "adopts and incorporates the relevant, preceding allegations of the current complaint, adding only the supplemental state law counts."); ECF Nos. 5590-1,

5590-2. ORS Movants' intervention motion may "provide[ ] enough information to state a claim and for the court to grant intervention." *See Lennar Mare Island, LLC v. Steadfast Ins. Co.*, Nos. 2:12-cv-02182-KJM-KJN, 2:16-cv-00291-KJM-KJN, 2016 WL 5847010, at *6 (E.D. Cal. Oct. 6, 2016). Nevertheless, the Court requires the ORS Movants "to file a separate pleading to fully apprise defendant[s] and the court of the basis for its claims in intervention." *See id.* "In a complex multiparty case such as this one, a separate pleading will assist the court in policing the parameters of the case in intervention." *Id.* ORS Movants acknowledge the "divergence of interests with [IPP Plaintiffs] on certain issues . . . bolstering the advisability of a separate complaint." *See id*; ECF No. 5567 at 18 ("IPP Counsel represents a class of individuals with interests diametrically opposed to the ORS Plaintiffs").[3]

In addition to these considerations, there is the practical reality that ORS Movants are attempting to amend someone else's complaint. They cite no authority permitting a proposed intervenor to take such a

[3] The Court also notes that ORS Movants violated Northern District of California Civil Local Rule 5-1(i)(3) by filing a proposed "Indirect Purchaser Plaintiffs' Sixth Consolidated Amended Complaint" with no attestation that each signatory concurred in the document's filing. *See* ECF Nos. 5590, 5590-1, 5590-2. In their opposition, IPP Plaintiffs assert that ORS "Plaintiffs' counsel never even provided a copy of the proposed amended complaints to IPP Lead Counsel before filing, much less received his concurrence." ECF No. 5593 at 8. The Court interprets ORS Movants' failure to respond as a concession. *See Angeles v. U.S. Airways, Inc.*, No. C 12-05860 CRB, 2013 WL 622032, at *4 ("The failure to respond amounts to a concession.").

step, and the Court concludes it is not allowed. Thus, even if their motion to intervene could be granted, their motion to amend the existing IPP complaint would fail.

The Court therefore denies the motion to intervene without prejudice to a renewed motion accompanied by a separate pleading. That motion is due by November 12, 2019.

CONCLUSION

For the foregoing reasons, the Court denies ORS Movants' motion to intervene and amend the complaint without prejudice.

IT IS SO ORDERED.

Dated: October 17, 2019

/s/ Jon S. Tigar
JON S. TIGAR
United States District Judge

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE: CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION	Case No. 07-cv-05944-JST
This Order Relates To: ALL INDIRECT PURCHASER ACTIONS	**ORDER DENYING ELEANOR LEWIS'S MOTION TO INTERVENE AND FILE AN AMENDED COMPLAINT**
	Re: ECF No. 5565
	(Filed Oct. 15, 2019)

Before the Court is Eleanor Lewis's motion to intervene and file an amended complaint. ECF No. 5565. The Court will deny the motion.[1]

I. BACKGROUND

In February 2008, the Judicial Panel on Multidistrict Litigation ordered the centralization of actions alleging that certain Defendants conspired to fix prices of cathode ray tubes. *See In re Cathode Ray Tube (CRT) Antitrust Litig.*, 536 F. Supp. 2d 1364 (J.P.M.L. 2008). On July 7, 2016, this Court granted final approval of settlement agreements which resolved claims between

[1] The Court has considered the parties' pleadings and finds the matter to be suitable for disposition without oral argument. *See* N.D. Civ. L.R. 7-1(b). The hearing currently scheduled for October 23, 2019 is vacated.

one set of plaintiffs – the Indirect Purchaser Plaintiffs ("IPP Plaintiffs") – and six sets of corporate defendants. ECF No. 4712 at 1. Two objectors sought appeal of this decision in the Ninth Circuit. ECF No. 4741.

On November 8, 2018, this Court issued an order in which it concluded that it erred in approving the settlement provision which required class members in certain Omitted Repealer States ("ORS") to release their claims without compensation. *See* ECF No. 5362 at 1. The order expressed "concerns about the adequacy of the counsel who negotiated that settlement or whether they may have faced a conflict of interest." *Id.* at 1. In response, the Ninth Circuit remanded "this case so that the district court [could] reconsider its approval of the settlement." *See In re Cathode Ray Tube Antitrust Litig.*, No. 16-16368 (9th Cir. Feb. 13, 2009), ECF No. 238 at 11.

On remand, this Court confirmed the existing lead counsel for the IPP Plaintiffs and appointed separate counsel for an Omitted Repealer State Subclass ("ORS Subclass")[2] as well as a Non-Repealer State subclass ("NRS Subclass").[3] ECF Nos. 5535, 5518. The Court

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[2] The ORS Subclass consists of Indirect Purchaser Plaintiffs in the following states: Arkansas, Massachusetts, Missouri, Montana, New Hampshire, Oregon, Rhode Island, South Carolina, and Utah. ECF No. 5518 at 1.

[3] The NRS Subclass consists of Indirect Purchaser Plaintiffs with claims in the following Non-Repealer States: Alabama, Alaska, Colorado, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maryland, New Jersey, Ohio, Oklahoma, Pennsylvania, Texas, Virginia, Washington, and Wyoming. ECF No. 5518 at 2.

then referred the matter to Magistrate Judge Corley for settlement. ECF No. 5427.

On August 23, 2019, NRS Subclass member Eleanor Lewis moved to intervene in this litigation and file an amended complaint. ECF No. 5565 at 7. The IPP Plaintiffs and Defendants both oppose the motion. ECF Nos. 5592, 5593, 5591. Lewis has filed a reply. ECF No. 5613.

II. JURISDICTION

The Court has jurisdiction pursuant to 28 U.S.C. § 1332(d)(2).

III. MOTION TO INTERVENE

Federal Rule of Civil Procedure 24 requires that a motion to intervene "be accompanied by a pleading that sets out the claim or defense for which intervention is sought." Fed. R. Civ. P. 24(c); *Buffin v. City and County of San Francisco*, No. 15-cv-04959-YGR, 2016 WL 6025486, at *12 (N.D. Cal. Oct. 14, 2016) (citing *Beckman Industries, Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 474 (9th Cir. 1992).

Lewis's motion to intervene is not accompanied by a pleading. *See* ECF No. 5565. Instead, Lewis seeks to adopt an amended version of IPP Plaintiffs' operative complaint which (1) "incorporates the relevant . . . allegations of the current complaint," (2) adds "supplemental state law claims," and (3) adds Lewis and members of the ORS Subclass as named parties. *See* ECF No. 5567 at 20; ECF No. 5590-1 at 5; ECF No.

5590-2 at 5; ECF No. 5565 at 7 ("Lewis's proposed amendment is contained in a . . . Complaint being submitted jointly with the ORS Plaintiffs."). Lewis has not obtained the consent of the IPP Plaintiffs to amend their complaint. In fact, they oppose the request.

Lewis's intervention motion may "provide[] enough information to state a claim." *See Lennar Mare Island, LLC v. Steadfast Ins. Co.*, Nos. 2:12-cv-02182-KJM-KJN, 2:16-cv-00291-KJM-KJN, 2016 WL 5847010, at *6 (E.D. Cal. Oct. 6, 2016). Nevertheless, the Court requires Lewis "to file a separate pleading to fully apprise defendant[s] and the court of the basis for [her] claims in intervention." *See id.* "In a complex multiparty case such as this one, a separate pleading will assist the court in policing the parameters of the case in intervention." *Id.* Lewis acknowledges the potential "divergence of interests" with other class representatives on certain issues, "bolstering the advisability of a separate complaint." *See id*; ECF No. 5565 at 17 (discussing a "conflict of interest" between the NRS Subclass and other class representatives).[4]

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[4] The Court also notes that Lewis violated Northern District of California Civil Local Rule 5-1(i)(3) by jointly filing an amended complaint with no attestation that each signatory concurred in the document's filing. *See* ECF Nos. 5590, 5590-1, 5590-2; ECF No. 5565 at 7 ("Lewis's proposed amendment is contained in a . . . Complaint being submitted jointly with the ORS Plaintiffs."). In their opposition, IPP Plaintiffs assert that "ORS/NRS Plaintiffs' counsel never even provided a copy of the proposed amended complaints to IPP Lead Counsel before filing, much less received his concurrence." ECF No. 5593 at 8. The Court interprets Lewis's failure to respond as a concession. *See Angeles v. U.S. Airways, Inc.*, No. C 12-05860 CRB, 2013 WL 622032, at *4.

In addition to these considerations, there is the practical reality that Lewis is attempting to amend someone else's complaint. She cites no authority permitting a proposed intervenor to take such a step, and the Court concludes it is not allowed. Thus, even if her motion to intervene could be granted, her motion to amend the existing IPP complaint would fail.

The Court therefore denies the motion to intervene without prejudice to a renewed motion accompanied by a separate pleading. That motion is due by November 8, 2019.

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CONCLUSION

For the foregoing reasons, the Court denies Lewis's motion to intervene and amend the complaint without prejudice.

IT IS SO ORDERED.

Dated: October 15, 2019

/s/ Jon S. Tigar
JON S. TIGAR
United States District Judge

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION, ---------- INDIRECT PURCHASER PLAINTIFFS, Plaintiff-Appellee, v. JOHN FINN; LAURA TOWNSEND FORTMAN, Objectors-Appellants, v. TOSHIBA CORPORATION; TOSHIBA AMERICA, INC.; TOSHIBA AMERICA INFORMATION SYSTEMS, INC.; TOSHIBA AMERICA CONSUMER PRODUCTS, LLC; TOSHIBA AMERICA ELECTRONIC COMPONENTS, INC.; SAMSUNG SDI CO., LTD.; SAMSUNG SDI AMERICA, INC.; SAMSUNG SDI (MALAYSIA) SDN BHD;	No. 16-16368 D.C. No. 3:07-cv-05944-JST ORDER* (Filed Feb. 13, 2019)

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

SAMSUNG SDI MEXICO S.A. DE C.V.; SAMSUNG SDI BRASIL LTDA.; SHENZEN SAMSUNG SDI CO., LTD.; TIANJIN SAMSUNG SDI CO., LTD.; HITACHI, LTD.; HITACHI DISPLAYS, LTD., AKA Japan Display, Inc.; HITACHI AMERICA, LTD; HITACHI ASIA, LTD.; HITACHI ELECTRONIC DEVICES (USA), INC.; PANASONIC CORPORATION, FKA Matsushita Electric Industrial Co., Ltd. ("MEI"), is a Japanese entity; PANASONIC CORPORATION OF NORTH AMERICA; MT PICTURE DISPLAY CO., LTD; PHILIPS KONINKLIJKE N.V.; PHILIPS ELECTRONICS NORTH AMERICA CORPORATION; PHILIPS TAIWAN LIMITED; PHILIPS DO BRASIL LTDA.; THOMSON CONSUMER ELECTRONICS, INC.; THOMSON SA,

Defendants-Appellees.

In re: CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION, --- INDIRECT PURCHASER PLAINTIFFS, Plaintiff-Appellee, v. SEAN HULL; GORDON B. MORGAN, Objectors-Appellants, v. TOSHIBA CORPORATION; TOSHIBA AMERICA, INC.; TOSHIBA AMERICA INFORMATION SYSTEMS, INC.; TOSHIBA AMERICA CONSUMER PRODUCTS, LLC; TOSHIBA AMERICA ELECTRONIC COMPONENTS, INC.; SAMSUNG SDI CO., LTD.; SAMSUNG SDI AMERICA, INC.; SAMSUNG SDI (MALAYSIA) SDN BHD; SAMSUNG SDI MEXICO S.A. DE C.V.; SAMSUNG SDI BRASIL LTDA.; SHENZEN SAMSUNG SDI CO., LTD.; TIANJIN SAMSUNG SDI CO., LTD.; HITACHI, LTD.; HITACHI DISPLAYS, LTD., AKA Japan Display, Inc.;	No. 16-16371 D.C. No. 3:07-cv-05944-JST

HITACHI AMERICA, LTD; HITACHI ASIA, LTD.; HITACHI ELECTRONIC DEVICES (USA), INC.; PANASONIC CORPORATION, FKA Matsushita Electric Industrial Co., Ltd. ("MEI"), is a Japanese entity; PANASONIC CORPORATION OF NORTH AMERICA; MT PICTURE DISPLAY CO., LTD; PHILIPS KONINKLIJKE N.V.; PHILIPS ELECTRONICS NORTH AMERICA CORPORATION; PHILIPS TAIWAN LIMITED; PHILIPS DO BRASIL LTDA.; THOMSON CONSUMER ELECTRONICS, INC.; THOMSON SA,

Defendants-Appellees.

In re: CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION,

INDIRECT PURCHASER PLAINTIFFS,

Plaintiff-Appellee,

v.

ANTHONY GIANASCA; GLORIA COMEAUX; MINA ASHKANNEJHAD,

No. 16-16373

D.C. No. 3:07-cv-05944-JST

individually and as Administrator of the Estate of the late R. Deryl Edwards, Jr.; JEFFREY SPEAECT; ROSEMARY CICCONE; JEFF CRAIG,

Objectors-Appellants,

v.

TOSHIBA CORPORATION; TOSHIBA AMERICA, INC.; TOSHIBA AMERICA INFORMATION SYSTEMS, INC.; TOSHIBA AMERICA CONSUMER PRODUCTS, LLC; TOSHIBA AMERICA ELECTRONIC COMPONENTS, INC.; SAMSUNG SDI CO., LTD.; SAMSUNG SDI AMERICA, INC.; SAMSUNG SDI (MALAYSIA) SDN BHD; SAMSUNG SDI MEXICO S.A. DE C.V.; SAMSUNG SDI BRASIL LTDA.; SHENZEN SAMSUNG SDI CO., LTD.; TIANJIN SAMSUNG SDI CO., LTD.; HITACHI, LTD.; HITACHI DISPLAYS, LTD., AKA Japan Display, Inc.; HITACHI AMERICA, LTD; HITACHI ASIA, LTD.; HITACHI ELECTRONIC DEVICES (USA), INC.; PANASONIC CORPORATION, FKA Matsushita Electric Industrial Co., Ltd. ("MEI"), is a

Japanese entity; PANASONIC CORPORATION OF NORTH AMERICA; MT PICTURE DISPLAY CO., LTD; PHILIPS KONINKLIJKE N.V.; PHILIPS ELECTRONICS NORTH AMERICA CORPORATION; PHILIPS TAIWAN LIMITED; PHILIPS DO BRASIL LTDA.; THOMSON CONSUMER ELECTRONICS, INC.; THOMSON SA,

Defendants-Appellees.

In re: CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION,

INDIRECT PURCHASER PLAINTIFFS,

Plaintiff-Appellee,

v.

DONNIE CLIFTON,

Objector-Appellant,

v.

TOSHIBA CORPORATION; TOSHIBA AMERICA, INC.; TOSHIBA AMERICA INFORMATION SYSTEMS, INC.; TOSHIBA AMERICA CONSUMER PRODUCTS, LLC;

No. 16-16374

D.C. No. 3:07-cv-05944-JST

TOSHIBA AMERICA ELECTRONIC COMPONENTS, INC.; SAMSUNG SDI CO., LTD.; SAMSUNG SDI AMERICA, INC.; SAMSUNG SDI (MALAYSIA) SDN BHD; SAMSUNG SDI MEXICO S.A. DE C.V.; SAMSUNG SDI BRASIL LTDA.; SHENZEN SAMSUNG SDI CO., LTD.; TIANJIN SAMSUNG SDI CO., LTD.; HITACHI, LTD.; HITACHI DISPLAYS, LTD., AKA Japan Display, Inc.; HITACHI AMERICA, LTD; HITACHI ASIA, LTD.; HITACHI ELECTRONIC DEVICES (USA), INC.; PANASONIC CORPORATION, FKA Matsushita Electric Industrial Co., Ltd. ("MEI"), is a Japanese entity; PANASONIC CORPORATION OF NORTH AMERICA; MT PICTURE DISPLAY CO., LTD; PHILIPS KONINKLIJKE N.V.; PHILIPS ELECTRONICS NORTH AMERICA CORPORATION; PHILIPS TAIWAN LIMITED; PHILIPS DO BRASIL LTDA.; THOMSON CONSUMER ELECTRONICS, INC.; THOMSON SA,

Defendants-Appellees.

In re: CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION, --- INDIRECT PURCHASER PLAINTIFFS, Plaintiff-Appellee, v. DAN L. WILLIAMS & CO., Objector-Appellant, v. TOSHIBA CORPORATION; TOSHIBA AMERICA, INC.; TOSHIBA AMERICA INFORMATION SYSTEMS, INC.; TOSHIBA AMERICA CONSUMER PRODUCTS, LLC; TOSHIBA AMERICA ELECTRONIC COMPONENTS, INC.; SAMSUNG SDI CO., LTD.; SAMSUNG SDI AMERICA, INC.; SAMSUNG SDI (MALAYSIA) SDN BHD; SAMSUNG SDI MEXICO S.A. DE C.V.; SAMSUNG SDI BRASIL LTDA.; SHENZEN SAMSUNG SDI CO., LTD.; TIANJIN SAMSUNG SDI CO., LTD.; HITACHI, LTD.; HITACHI DISPLAYS, LTD., AKA Japan Display, Inc.; HITACHI AMERICA, LTD;	No. 16-16378 D.C. No. 3:07-cv-05944-JST

HITACHI ASIA, LTD.; HITACHI ELECTRONIC DEVICES (USA), INC.; PANASONIC CORPORATION, FKA Matsushita Electric Industrial Co., Ltd. ("MEI"), is a Japanese entity; PANASONIC CORPORATION OF NORTH AMERICA; MT PICTURE DISPLAY CO., LTD; PHILIPS KONINKLIJKE N.V.; PHILIPS ELECTRONICS NORTH AMERICA CORPORATION; PHILIPS TAIWAN LIMITED; PHILIPS DO BRASIL LTDA.; THOMSON CONSUMER ELECTRONICS, INC.; THOMSON SA,

Defendants-Appellees.

In re: CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION,

INDIRECT PURCHASER PLAINTIFFS,

Plaintiff-Appellee,

v.

ROCKHURST UNIVERSITY; GARY TALEWSKY; HARRY GARAVANIAN,

Objectors-Appellants,

No. 16-16379

D.C. No. 3:07-cv-05944-JST

v.

TOSHIBA CORPORATION; TOSHIBA AMERICA, INC.; TOSHIBA AMERICA INFORMATION SYSTEMS, INC.; TOSHIBA AMERICA CONSUMER PRODUCTS, LLC; TOSHIBA AMERICA ELECTRONIC COMPONENTS, INC.; SAMSUNG SDI CO., LTD.; SAMSUNG SDI AMERICA, INC.; SAMSUNG SDI (MALAYSIA) SDN BHD; SAMSUNG SDI MEXICO S.A. DE C.V.; SAMSUNG SDI BRASIL LTDA.; SHENZEN SAMSUNG SDI CO., LTD.; TIANJIN SAMSUNG SDI CO., LTD.; HITACHI, LTD.; HITACHI DISPLAYS, LTD., AKA Japan Display, Inc.; HITACHI AMERICA, LTD; HITACHI ASIA, LTD.; HITACHI ELECTRONIC DEVICES (USA), INC.; PANASONIC CORPORATION, FKA Matsushita Electric Industrial Co., Ltd. ("MEI"), is a Japanese entity; PANASONIC CORPORATION OF NORTH AMERICA; MT PICTURE DISPLAY CO., LTD; PHILIPS KONINKLIJKE N.V.; PHILIPS ELECTRONICS NORTH

AMERICA CORPORATION; PHILIPS TAIWAN LIMITED; PHILIPS DO BRASIL LTDA.; THOMSON CONSUMER ELECTRONICS, INC.; THOMSON SA,

Defendants-Appellees.

In re: CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION,

No. 16-16400

D.C. No. 3:07-cv-05944-JST

INDIRECT PURCHASER PLAINTIFFS,

Plaintiff-Appellee,

v.

ANTHONY GIANASCA; GLORIA COMEAUX; MINA ASHKANNEJHAD, individually and/or as Administrator of the Estate of the Late R. Deryl Edwards, Jr.; JEFFREY SPEAECT; ROSEMARY CICCONE; JEFF CRAIG,

Movants-Appellants,

v.

TOSHIBA CORPORATION; TOSHIBA AMERICA, INC.; TOSHIBA AMERICA INFORMATION SYSTEMS, INC.; TOSHIBA AMERICA

CONSUMER PRODUCTS, LLC; TOSHIBA AMERICA ELECTRONIC COMPONENTS, INC.; SAMSUNG SDI CO., LTD.; SAMSUNG SDI AMERICA, INC.; SAMSUNG SDI (MALAYSIA) SDN BHD; SAMSUNG SDI MEXICO S.A. DE C.V.; SAMSUNG SDI BRASIL LTDA.; SHENZEN SAMSUNG SDI CO., LTD.; TIANJIN SAMSUNG SDI CO., LTD.; HITACHI, LTD.; HITACHI DISPLAYS, LTD., AKA Japan Display, Inc.; HITACHI AMERICA, LTD; HITACHI ASIA, LTD.; HITACHI ELECTRONIC DEVICES (USA), INC.; PANASONIC CORPORATION, FKA Matsushita Electric Industrial Co., Ltd. ("MEI"), is a Japanese entity; PANASONIC CORPORATION OF NORTH AMERICA; MT PICTURE DISPLAY CO., LTD; PHILIPS KONINKLIJKE N.V.; PHILIPS ELECTRONICS NORTH AMERICA CORPORATION; PHILIPS TAIWAN LIMITED; PHILIPS DO BRASIL LTDA.; THOMSON CONSUMER

ELECTRONICS, INC.;
THOMSON SA,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of California
Jon S. Tigar, District Judge, Presiding

Argued and Submitted April 10, 2018
Submission Vacated April 30, 2018
Re-Submitted February 13, 2019
San Francisco, California

Before: Kim McLane Wardlaw and Richard R. Clifton, Circuit Judges, and Gary S. Katzmann,* Judge.

On November 8, 2018, in response to Indirect Purchaser Plaintiffs' motion for an indicative ruling pursuant to Federal Rule of Civil Procedure 62.1, the District Court stated that, "with the benefit of hindsight . . . it erred in approving the parties' original settlement" now pending on appeal in our court. The district court recognized that it should have provided recovery to class members in the Omitted Repealer States, Massachusetts, Missouri, and New Hampshire, which necessarily affects the remaining issues on appeal: 1) the adequacy of representation under Federal Rules of Civil Procedure 23(a)(4); and 2) the attorneys' fees awarded to Lead Counsel.

* The Honorable Gary S. Katzmann, Judge for the United States Court of International Trade, sitting by designation.

We therefore remand this case so that the district court may reconsider its approval of the settlement.

The Indirect Purchaser Plaintiffs' motion for a stay, filed October 1, 2018 (Dkt. No. 226), and the Objector-Appellants' motion for leave to file an enlarged response (Dkt. Nos. 223 & 224) are **DENIED** as moot.

The Indirect Purchaser Plaintiffs' Motion Requesting Remand with Instructions Regarding: (1) The Plan of Distribution for the Settlements; and (2) The Fee Order, filed January 9, 2019 (Dkt. No. 230), is **DENIED**.[1]

The Indirect Purchaser Plaintiffs' Motion for Leave to File Excess Pages, filed January 29, 2019 (Dkt. No. 233), is **GRANTED**. The Reply brief has already been filed (Dkt. No 234). The request of Objectors-Appellants to file a Surreply to that Reply, contained within their Opposition to the Motion for Leave to File Excess Pages (Dkt. 235), is **DENIED** as moot.

The motions to dismiss appeal voluntarily filed by Objectors-Appellants Sean Hull (Dkt. No. 198), John Finn and Laura Townsend Fortman (Dkt. No. 199), Donnie Clifton (Dkt. No. 200), and Josie Saik (Dkt. No. 222) are **GRANTED**.

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[1] Objector-Appellants' motion to supplement the record on appeal (Dkt. No. 120) and motion to strike Indirect Purchaser Plaintiffs' response to the same (Dkt. No. 150) are **DENIED** as moot. Objector-Appellants' and Defendant-Appellees' motions to take judicial notice (Dkt. Nos. 130, 197) are **DENIED** as moot.

We therefore **REMAND** to the District Court to reconsider its order on class certification and settlement approval. We do not vacate the order at this time.

The current panel will retain responsibility for future appeals in this case.

Each party shall bear its own costs of appeal.

IT IS SO ORDERED.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION, ——————————— INDIRECT PURCHASER PLAINTIFFS, Plaintiff-Appellee, v. JOHN FINN; LAURA TOWNSEND FORTMAN, Objectors-Appellants, v. TOSHIBA CORPORATION; TOSHIBA AMERICA, INC.; TOSHIBA AMERICA INFORMATION SYSTEMS, INC.; TOSHIBA AMERICA CONSUMER PRODUCTS, LLC; TOSHIBA AMERICA ELECTRONIC COMPONENTS, INC.; SAMSUNG SDI CO., LTD.; SAMSUNG SDI AMERICA, INC.; SAMSUNG SDI (MALAYSIA) SDN BHD; SAMSUNG SDI MEXICO S.A. DE C.V.; SAMSUNG SDI BRASIL LTDA.; SHENZEN SAMSUNG SDI CO., LTD.;	No. 20-16685 D.C. No. 4:07-cv-05944-JST Northern District of California, Oakland ORDER (Filed Dec. 23, 2021)

TIANJIN SAMSUNG SDI CO., LTD.; HITACHI, LTD.; HITACHI DISPLAYS, LTD., AKA Japan Display, Inc.; HITACHI AMERICA, LTD; HITACHI ASIA, LTD.; HITACHI ELECTRONIC DEVICES (USA), INC.; PANASONIC CORPORATION, FKA Matsushita Electric Industrial Co., Ltd. ("MEI"), is a Japanese entity; PANASONIC CORPORATION OF NORTH AMERICA; MT PICTURE DISPLAY CO., LTD; PHILIPS KONINKLIJKE N.V.; PHILIPS ELECTRONICS NORTH AMERICA CORPORATION; PHILIPS TAIWAN LIMITED; PHILIPS DO BRASIL LTDA.; THOMSON CONSUMER ELECTRONICS, INC.; THOMSON SA; TECHNOLOGIES DISPLAYS AMERICAS LLC,

Defendants-Appellees.

v.

ELEANOR LEWIS, Proposed Intervenor,

Movant-Appellant.

In re: CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION, _____ INDIRECT PURCHASER PLAINTIFFS, Plaintiff-Appellee, v. JEFF SPEAECT; GLORIA A. COMEAUX; VALERIE G. DEICK; ERIC R. COGGINS; DALE B. MCKENZIE; HEATHER J. GORDON; MIGUEL A. ALBARRAN; DAVID N. WATSON; CRAIG A. SCHULER; MARY J. BAUCOM; BRENDAN C. MCCANN; DENNIS S. CORNETT; LISA L. BUTTERBRODT; JESSICA M. MCINTYRE, Objectors-Appellants, v. TOSHIBA CORPORATION; TOSHIBA AMERICA, INC.; TOSHIBA AMERICA INFORMATION SYSTEMS, INC.; TOSHIBA AMERICA CONSUMER PRODUCTS, LLC; TOSHIBA AMERICA ELECTRONIC COMPONENTS, INC.; SAMSUNG SDI CO.,	No. 20-16686 D.C. No. 4:07-cv-05944-JST Northern District of California, Oakland

LTD.; SAMSUNG SDI AMERICA, INC.; SAMSUNG SDI (MALAYSIA) SDN BHD; SAMSUNG SDI MEXICO S.A. DE C.V.; SAMSUNG SDI BRASIL LTDA.; SHENZEN SAMSUNG SDI CO., LTD.; TIANJIN SAMSUNG SDI CO., LTD.; HITACHI, LTD.; HITACHI DISPLAYS, LTD., AKA Japan Display, Inc.; HITACHI AMERICA, LTD; HITACHI ASIA, LTD.; HITACHI ELECTRONIC DEVICES (USA), INC.; PANASONIC CORPORATION, FKA Matsushita Electric Industrial Co., Ltd. ("MEI"), is a Japanese entity; PANASONIC CORPORATION OF NORTH AMERICA; MT PICTURE DISPLAY CO., LTD; PHILIPS KONINKLIJKE N.V.; PHILIPS ELECTRONICS NORTH AMERICA CORPORATION; PHILIPS TAIWAN LIMITED; PHILIPS DO BRASIL LTDA.; THOMSON CONSUMER ELECTRONICS, INC.; THOMSON SA; Technologies Displays Americas LLC,

Defendants-Appellees.

In re: CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION, _____ INDIRECT PURCHASER PLAINTIFFS, Plaintiff-Appellee, v. TOSHIBA CORPORATION; TOSHIBA AMERICA, INC.; TOSHIBA AMERICA INFORMATION SYSTEMS, INC.; TOSHIBA AMERICA CONSUMER PRODUCTS, LLC; TOSHIBA AMERICA ELECTRONIC COMPONENTS, INC.; SAMSUNG SDI CO., LTD.; SAMSUNG SDI AMERICA, INC.; SAMSUNG SDI (MALAYSIA) SDN BHD; SAMSUNG SDI MEXICO S.A. DE C.V.; SAMSUNG SDI BRASIL LTDA.; SHENZEN SAMSUNG SDI CO., LTD.; TIANJIN SAMSUNG SDI CO., LTD.; HITACHI, LTD.; HITACHI DISPLAYS, LTD., AKA Japan Display, Inc.; HITACHI AMERICA, LTD; HITACHI ASIA, LTD.; HITACHI ELECTRONIC DEVICES (USA), INC.; PANASONIC CORPORATION,	No. 20-16691 D.C. No. 4:07-cv-05944-JST Northern District of California, Oakland

FKA Matsushita Electric Industrial Co., Ltd. ("MEI"), is a Japanese entity; PANASONIC CORPORATION OF NORTH AMERICA; MT PICTURE DISPLAY CO., LTD; PHILIPS KONINKLIJKE N.V.; PHILIPS ELECTRONICS NORTH AMERICA CORPORATION; PHILIPS TAIWAN LIMITED; PHILIPS DO BRASIL LTDA.; THOMSON CONSUMER ELECTRONICS, INC.; THOMSON SA; TECHNOLOGIES DISPLAYS AMERICAS LLC,

Defendants-Appellees.

v.

SCOTT A. CALDWELL, as administrator of the Estate of Barbara Caldwell; ANTHONY GIANASCA; WARREN CUTLIP; MINA ASHKANNEJHAD, individually and/or as Administrator of the Estate of the Late R. Deryl Edwards, Jr.; JEFF CRAIG; GEORGE MAGLARAS; STEVEN HARRELSON; DONALD OELZE; WALKER, WARREN & WATKINS, LLC; SUSAN LAPAGE; DONNA MUCCINO; FELICIA BLACKWOOD,

Movants-Appellants.

In re: CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION, _____ INDIRECT PURCHASER PLAINTIFFS, Plaintiff-Appellee, v. TOSHIBA CORPORATION; TOSHIBA AMERICA, INC.; TOSHIBA AMERICA INFORMATION SYSTEMS, INC.; TOSHIBA AMERICA CONSUMER PRODUCTS, LLC; TOSHIBA AMERICA ELECTRONIC COMPONENTS, INC.; SAMSUNG SDI CO., LTD.; SAMSUNG SDI AMERICA, INC.; SAMSUNG SDI (MALAYSIA) SDN BHD; SAMSUNG SDI MEXICO S.A. DE C.V.; SAMSUNG SDI BRASIL LTDA.; SHENZEN SAMSUNG SDI CO., LTD.; TIANJIN SAMSUNG SDI CO., LTD.; HITACHI, LTD.; HITACHI DISPLAYS, LTD., AKA Japan Display, Inc.; HITACHI AMERICA, LTD; HITACHI ASIA, LTD.; HITACHI ELECTRONIC DEVICES (USA), INC.; PANASONIC CORPORATION,	No. 20-16699 D.C. No. 4:07-cv-05944-JST Northern District of California, Oakland

FKA Matsushita Electric Industrial Co., Ltd. ("MEI"), is a Japanese entity; PANASONIC CORPORATION OF NORTH AMERICA; MT PICTURE DISPLAY CO., LTD; PHILIPS KONINKLIJKE N.V.; PHILIPS ELECTRONICS NORTH AMERICA CORPORATION; PHILIPS TAIWAN LIMITED; PHILIPS DO BRASIL LTDA.; THOMSON CONSUMER ELECTRONICS, INC.; THOMSON SA; TECHNOLOGIES DISPLAYS AMERICAS LLC,

Defendants-Appellees.

v.

TYLER AYRES; MIKE BRATCHER; NIKKI CRAWLEY; JAY ERICKSON; HARRY GARAVANIAN; JOHN HEENAN; HOPE HITCHCOCK; D. BRUCE JOHNSON; JEFF JOHNSON; KERRY MURPHY; CHRIS SEUFERT; ROBERT STEPHENSON; GARY TALEWSKY; WILLIAM TRENTHAM,

Movants-Appellants.

Before: W. FLETCHER and CLIFTON, Circuit Judges, and KATZMANN,* Judge.

The panel has unanimously voted to deny Appellants' Motion for Rehearing and Motion for Rehearing En Banc (Docket Entry No. 80). Judge Fletcher has voted to deny the motion, and Judge Clifton and Judge Katzmann so recommend.

The full court has been advised of the motion for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The motion for rehearing and motion for rehearing en banc are DENIED.

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* The Honorable Gary S. Katzmann, Judge for the United States Court of International Trade, sitting by designation.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION, INDIRECT PURCHASER PLAINTIFFS, Plaintiff-Appellee, v. TOSHIBA CORPORATION; et al., Defendants-Appellees, v. TYLER AYRES; et al., Movants-Appellants.	No. 20-15697 D.C. No. 4:07-cv-05944-JST Northern District of California, Oakland ORDER (Filed Mar. 2, 2022)

In re: CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION, INDIRECT PURCHASER PLAINTIFFS, Plaintiff-Appellee, v. TOSHIBA CORPORATION; et al.,	No. 20-15704 D.C. No. 4:07-cv-05944-JST

Defendants-Appellees,

v.

ELEANOR LEWIS, Proposed Intervenor,

Movant-Appellant.

In re: CATHODE RAY TUBE (CRT) ANTITRUST LITIGATION,

No. 20-16081

D.C. No. 4:07-cv-05944-JST

INDIRECT PURCHASER PLAINTIFFS,

Plaintiff-Appellee,

v.

TOSHIBA CORPORATION; et al.,

Defendants-Appellees,

v.

ANTHONY GIANASCA; et al.,

Movants-Appellants.

Before: W. FLETCHER and CLIFTON, Circuit Judges, and KATZMANN,* Judge.

Appellants' Motion for Rehearing and Motion for Rehearing En Banc (Docket Entry No. 88), which the

* The Honorable Gary S. Katzmann, Judge for the United States Court of International Trade, sitting by designation.

panel construes as a petition for panel rehearing or rehearing en banc, is denied. Judge Fletcher, Judge Clifton, and Judge Katzmann recommend denying the petition.

The full court has been advised of the motion for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The motion for rehearing and motion for rehearing en banc are DENIED.

28 U.S.C. § 1407. Multidistrict litigation

(a) When civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings. Such transfers shall be made by the judicial panel on multidistrict litigation authorized by this section upon its determination that transfers for such proceedings will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions. Each action so transferred shall be remanded by the panel at or before the conclusion of such pretrial proceedings to the district from which it was transferred unless it shall have been previously terminated: *Provided, however*, That the panel may separate any claim, cross-claim, counter-claim, or third-party claim and remand any of such claims before the remainder of the action is remanded.

(b) Such coordinated or consolidated pretrial proceedings shall be conducted by a judge or judges to whom such actions are assigned by the judicial panel on multidistrict litigation. For this purpose, upon request of the panel, a circuit judge or a district judge may be designated and assigned temporarily for service in the transferee district by the Chief Justice of the United States or the chief judge of the circuit, as may be required, in accordance with the provisions of chapter 13 of this title. With the consent of the transferee district court, such actions may be assigned by the panel to a judge or judges of such district. The judge or judges to whom such actions are assigned, the

members of the judicial panel on multidistrict litigation, and other circuit and district judges designated when needed by the panel may exercise the powers of a district judge in any district for the purpose of conducting pretrial depositions in such coordinated or consolidated pretrial proceedings.

(c) Proceedings for the transfer of an action under this section may be initiated by--

> **(i)** the judicial panel on multidistrict litigation upon its own initiative, or
>
> **(ii)** motion filed with the panel by a party in any action in which transfer for coordinated or consolidated pretrial proceedings under this section may be appropriate. A copy of such motion shall be filed in the district court in which the moving party's action is pending.

The panel shall give notice to the parties in all actions in which transfers for coordinated or consolidated pretrial proceedings are contemplated, and such notice shall specify the time and place of any hearing to determine whether such transfer shall be made. Orders of the panel to set a hearing and other orders of the panel issued prior to the order either directing or denying transfer shall be filed in the office of the clerk of the district court in which a transfer hearing is to be or has been held. The panel's order of transfer shall be based upon a record of such hearing at which material evidence may be offered by any party to an action pending in any district that would be affected by the proceedings under this section, and shall be supported by

findings of fact and conclusions of law based upon such record. Orders of transfer and such other orders as the panel may make thereafter shall be filed in the office of the clerk of the district court of the transferee district and shall be effective when thus filed. The clerk of the transferee district court shall forthwith transmit a certified copy of the panel's order to transfer to the clerk of the district court from which the action is being transferred. An order denying transfer shall be filed in each district wherein there is a case pending in which the motion for transfer has been made.

(d) The judicial panel on multidistrict litigation shall consist of seven circuit and district judges designated from time to time by the Chief Justice of the United States, no two of whom shall be from the same circuit. The concurrence of four members shall be necessary to any action by the panel.

(e) No proceedings for review of any order of the panel may be permitted except by extraordinary writ pursuant to the provisions of title 28, section 1651, United States Code. Petitions for an extraordinary writ to review an order of the panel to set a transfer hearing and other orders of the panel issued prior to the order either directing or denying transfer shall be filed only in the court of appeals having jurisdiction over the district in which a hearing is to be or has been held. Petitions for an extraordinary writ to review an order to transfer or orders subsequent to transfer shall be filed only in the court of appeals having jurisdiction over the transferee district. There shall be no appeal or review

of an order of the panel denying a motion to transfer for consolidated or coordinated proceedings.

(f) The panel may prescribe rules for the conduct of its business not inconsistent with Acts of Congress and the Federal Rules of Civil Procedure.

(g) Nothing in this section shall apply to any action in which the United States is a complainant arising under the antitrust laws. "Antitrust laws" as used herein include those acts referred to in the Act of October 15, 1914, as amended (38 Stat. 730; 15 U.S.C. 12), and also include the Act of June 19, 1936 (49 Stat. 1526; 15 U.S.C. 13, 13a, and 13b) and the Act of September 26, 1914, as added March 21, 1938 (52 Stat. 116, 117; 15 U.S.C. 56); but shall not include section 4A of the Act of October 15, 1914, as added July 7, 1955 (69 Stat. 282; 15 U.S.C. 15a).

(h) Notwithstanding the provisions of section 1404 or subsection (f) of this section, the judicial panel on multidistrict litigation may consolidate and transfer with or without the consent of the parties, for both pretrial purposes and for trial, any action brought under section 4C of the Clayton Act.

Federal Rule of Civil Procedure 23. Class Actions

(a) Prerequisites. One or more members of a class may sue or be sued as representative parties on behalf of all members only if:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

(b) Types of Class Actions. A class action may be maintained if Rule 23(a) is satisfied and if:

(1) prosecuting separate actions by or against individual class members would create a risk of:

(A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or

(B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;

(2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or

(3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:

(A) the class members' interests in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already begun by or against class members;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the likely difficulties in managing a class action.

(c) Certification Order; Notice to Class Members; Judgment; Issues Classes; Subclasses.

(1) ***Certification Order.***

(A) *Time to Issue.* At an early practicable time after a person sues or is sued as a class representative, the court must determine by order whether to certify the action as a class action.

(B) *Defining the Class; Appointing Class Counsel.* An order that certifies a class action must define the class and the class claims,

issues, or defenses, and must appoint class counsel under Rule 23(g).

(C) *Altering or Amending the Order.* An order that grants or denies class certification may be altered or amended before final judgment.

(2) ***Notice.***

(A) *For (b)(1) or (b)(2) Classes.* For any class certified under Rule 23(b)(1) or (b)(2), the court may direct appropriate notice to the class.

(B) *For (b)(3) Classes*. For any class certified under Rule 23(b)(3)--or upon ordering notice under Rule 23(e)(1) to a class proposed to be certified for purposes of settlement under Rule 23(b)(3)--the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice may be by one or more of the following: United States mail, electronic means, or other appropriate means. The notice must clearly and concisely state in plain, easily understood language:

(i) the nature of the action;

(ii) the definition of the class certified;

(iii) the class claims, issues, or defenses;

(iv) that a class member may enter an appearance through an attorney if the member so desires;

(v) that the court will exclude from the class any member who requests exclusion;

(vi) the time and manner for requesting exclusion; and

(vii) the binding effect of a class judgment on members under Rule 23(c)(3).

(3) ***Judgment.*** Whether or not favorable to the class, the judgment in a class action must:

(A) for any class certified under Rule 23(b)(1) or (b)(2), include and describe those whom the court finds to be class members; and

(B) for any class certified under Rule 23(b)(3), include and specify or describe those to whom the Rule 23(c)(2) notice was directed, who have not requested exclusion, and whom the court finds to be class members.

(4) ***Particular Issues.*** When appropriate, an action may be brought or maintained as a class action with respect to particular issues.

(5) ***Subclasses.*** When appropriate, a class may be divided into subclasses that are each treated as a class under this rule.

(d) Conducting the Action.

(1) ***In General.*** In conducting an action under this rule, the court may issue orders that:

(A) determine the course of proceedings or prescribe measures to prevent undue repetition

or complication in presenting evidence or argument;

(B) require--to protect class members and fairly conduct the action--giving appropriate notice to some or all class members of:

(i) any step in the action;

(ii) the proposed extent of the judgment; or

(iii) the members' opportunity to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or to otherwise come into the action;

(C) impose conditions on the representative parties or on intervenors;

(D) require that the pleadings be amended to eliminate allegations about representation of absent persons and that the action proceed accordingly; or

(E) deal with similar procedural matters.

(2) ***Combining and Amending Orders.*** An order under Rule 23(d)(1) may be altered or amended from time to time and may be combined with an order under Rule 16.

(e) Settlement, Voluntary Dismissal, or Compromise. The claims, issues, or defenses of a certified class--or a class proposed to be certified for purposes of settlement--may be settled, voluntarily dismissed, or compromised only with the court's approval. The

following procedures apply to a proposed settlement, voluntary dismissal, or compromise:

(1) ***Notice to the Class.***

(A) *Information That Parties Must Provide to the Court.* The parties must provide the court with information sufficient to enable it to determine whether to give notice of the proposal to the class.

(B) *Grounds for a Decision to Give Notice.* The court must direct notice in a reasonable manner to all class members who would be bound by the proposal if giving notice is justified by the parties' showing that the court will likely be able to:

(i) approve the proposal under Rule 23(e)(2); and

(ii) certify the class for purposes of judgment on the proposal.

(2) ***Approval of the Proposal.*** If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether:

(A) the class representatives and class counsel have adequately represented the class;

(B) the proposal was negotiated at arm's length;

(C) the relief provided for the class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

(3) ***Identifying Agreements.*** The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.

(4) ***New Opportunity to be Excluded.*** If the class action was previously certified under Rule 23(b)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.

(5) ***Class-Member Objections.***

(A) *In General*. Any class member may object to the proposal if it requires court approval under this subdivision (e). The objection must state whether it applies only to the objector, to a specific subset of the class, or to the entire class, and also state with specificity the grounds for the objection.

(B) *Court Approval Required for Payment in Connection with an Objection*. Unless approved by the court after a hearing, no payment or other consideration may be provided in connection with:

(i) forgoing or withdrawing an objection, or

(ii) forgoing, dismissing, or abandoning an appeal from a judgment approving the proposal.

(C) *Procedure for Approval After an Appeal.* If approval under Rule 23(e)(5)(B) has not been obtained before an appeal is docketed in the court of appeals, the procedure of Rule 62.1 applies while the appeal remains pending.

(f) Appeals. A court of appeals may permit an appeal from an order granting or denying class-action certification under this rule, but not from an order under Rule 23(e)(1). A party must file a petition for permission to appeal with the circuit clerk within 14 days after the order is entered, or within 45 days after the order is entered if any party is the United States, a United States agency, or a United States officer or employee sued for an act or omission occurring in connection with duties performed on the United States' behalf. An appeal does not stay proceedings in the district court unless the district judge or the court of appeals so orders.

(g) Class Counsel.

(1) ***Appointing Class Counsel.*** Unless a statute provides otherwise, a court that certifies a class must appoint class counsel. In appointing class counsel, the court:

(A) must consider:

(i) the work counsel has done in identifying or investigating potential claims in the action;

(ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;

(iii) counsel's knowledge of the applicable law; and

(iv) the resources that counsel will commit to representing the class;

(B) may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class;

(C) may order potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney's fees and nontaxable costs;

(D) may include in the appointing order provisions about the award of attorney's fees or nontaxable costs under Rule 23(h); and

(E) may make further orders in connection with the appointment.

(2) ***Standard for Appointing Class Counsel.*** When one applicant seeks appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under Rule 23(g)(1) and (4). If more than one adequate applicant seeks appointment, the court must appoint the applicant best able to represent the interests of the class.

(3) ***Interim Counsel.*** The court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.

(4) ***Duty of Class Counsel.*** Class counsel must fairly and adequately represent the interests of the class.

(h) Attorney's Fees and Nontaxable Costs. In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement. The following procedures apply:

(1) A claim for an award must be made by motion under Rule 54(d)(2), subject to the provisions of this subdivision (h), at a time the court sets. Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.

(2) A class member, or a party from whom payment is sought, may object to the motion.

(3) The court may hold a hearing and must find the facts and state its legal conclusions under Rule 52(a).

(4) The court may refer issues related to the amount of the award to a special master or a magistrate judge, as provided in Rule 54(d)(2)(D).

Federal Rule of Civil Procedure 24. Intervention

(a) Intervention of Right. On timely motion, the court must permit anyone to intervene who:

(1) is given an unconditional right to intervene by a federal statute; or

(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

(b) Permissive Intervention.

(1) ***In General.*** On timely motion, the court may permit anyone to intervene who:

(A) is given a conditional right to intervene by a federal statute; or

(B) has a claim or defense that shares with the main action a common question of law or fact.

(2) ***By a Government Officer or Agency.*** On timely motion, the court may permit a federal or state governmental officer or agency to intervene if a party's claim or defense is based on:

(A) a statute or executive order administered by the officer or agency; or

(B) any regulation, order, requirement, or agreement issued or made under the statute or executive order.

(3) ***Delay or Prejudice.*** In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

(c) Notice and Pleading Required. A motion to intervene must be served on the parties as provided in Rule 5. The motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought.