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7 *Class Counsel for the Indirect Purchaser Plaintiffs*

8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**
 10 **SAN FRANCISCO DIVISION**

12 IN RE: CATHODE RAY TUBE (CRT)
13 ANTITRUST LITIGATION

Master File No. CV-07-5944-SC
MDL No. 1917

14 This Document Relates to:
15 All Indirect Purchaser Actions

**DECLARATION OF MARIO N. ALIOTO
IN SUPPORT OF INDIRECT
PURCHASER PLAINTIFFS' MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENTS WITH
THE PHILIPS, PANASONIC, HITACHI,
TOSHIBA AND SAMSUNG SDI
DEFENDANTS**

Hearing Date: July 31, 2015
Time: 10:00 a.m.
Courtroom: One, 17th Floor
Judge: Honorable Samuel Conti

1 I, Mario N. Alioto, declare:

2 1. I am an attorney duly licensed by the State of California and am admitted to
3 practice before this Court. I am a partner with the law firm Trump, Alioto, Trump & Prescott,
4 LLP and my firm serves as Class Counsel for the Indirect Purchaser Plaintiffs (“Plaintiffs”) in the
5 above-captioned action. The matters set forth herein are within my personal knowledge and if
6 called upon and sworn as a witness I could competently testify regarding them.

7 2. Plaintiffs have entered into class action settlements with the Philips, Panasonic,
8 Hitachi, Toshiba and Samsung SDI Defendants (the “Proposed Settlements”).

9 **Procedural History**

10 3. This multidistrict litigation arises from an alleged international conspiracy to fix
11 the prices of CRTs worldwide, specifically including the United States, during the period March
12 1, 1995 through November 25, 2007. Plaintiffs filed their original complaints in various federal
13 courts throughout the country in late 2007 and early 2008. The Judicial Panel on Multidistrict
14 Litigation transferred all related indirect purchaser actions to the Northern District of California,
15 where they were consolidated with similar class actions by direct purchaser plaintiffs.

16 4. On May 9, 2008 the Court appointed the undersigned as Interim Lead Counsel.
17 (Dkt. No. 47).

18 5. The United States Department of Justice (“DOJ”) intervened early in the case and
19 requested a stay of all merits discovery pending its criminal investigation. The parties negotiated
20 a Stipulated Order with the DOJ that provided for a stay of all merits discovery until September
21 12, 2009. (Dkt. No. 379) Pursuant to the DOJ’s requests, this stay was extended on several
22 occasions. (Dkt. Nos. 425, 590, 798)

23 6. Plaintiffs filed their consolidated amended complaint on March 16, 2009 (Dkt. No.
24 437). The Defendants filed motions to dismiss that were denied in part and granted in part, with
25 leave to amend certain state law claims. (Dkt. No. 665)

26 7. On May 10, 2010, Plaintiffs filed their Second Consolidated Amended Complaint.
27 (Dkt. No. 716) Defendants filed a joint motion to dismiss on various state-law grounds that was
28 denied in part and granted in part, with leave to amend certain state law claims. (Dkt. No. 799)

1 8. On December 11, 2010, Plaintiffs filed their Third Consolidated Amended
2 Complaint. (Dkt. No. 827) Defendants answered Plaintiffs' complaint on January 26, 2011.

3 9. On April 20, 2011, Defendants and Plaintiffs filed a stipulation providing that
4 Plaintiffs would withdraw the finished-CRT-products-conspiracy allegations from their
5 complaint (Dkt. No. 895). The Court entered an order to that effect on April 22, 2011 (Dkt. No.
6 904).

7 10. On April 18, 2009, Plaintiffs entered into a settlement with Chunghwa Picture
8 Tubes, Ltd., for \$10,000,000 cash. The Court granted Preliminary Approval on August 9, 2011
9 (Dkt. No. 992) and Final Approval on March 22, 2012 (Dkt. No. 1105).

10 11. The DOJ's stay of merits discovery was partially lifted on March 8, 2010 and
11 Defendants began their rolling production of documents. Most of the Defendant groups comprise
12 multiple entities located around the world. Because many of the Defendants are no longer
13 involved in the CRT business, Plaintiffs had to travel to several storage facilities both here and
14 abroad to manually search Defendants' paper records for relevant documents, and had to employ
15 technical experts to restore backup tapes and servers containing relevant information. Plaintiffs
16 even subpoenaed documents and data from the U.S. and Dutch bankruptcy trustees of a former
17 manufacturer of CRTs, LG.Philips Displays. In addition, Plaintiffs subpoenaed and negotiated
18 productions of documents and data from over 50 third party retailers, distributors and CRT
19 television and monitor manufacturers.

20 12. Defendants have produced millions of documents and voluminous data sets, which
21 were loaded into a web-based electronic database and reviewed and analyzed by a team of over
22 50 attorneys, including attorneys fluent in Korean, Chinese, Japanese and Dutch. In order to use
23 these foreign language documents in the litigation, Plaintiffs have obtained certified translations
24 and addressed Defendants' objections to the certified translations. Plaintiffs also retained
25 economists to review and analyze the documents and data, and prepare expert reports in support
26 of class certification, liability and damages.

27 13. Plaintiffs filed their motion for class certification, along with the Declaration of
28 Janet S. Netz, Ph.D, on October 1, 2012. (Dkt. No. 1388) The complete record on class

1 certification totaled approximately 6,000 pages. Interim Special Master Martin Quinn held a
2 hearing on the motion and recommended that the Court grant Plaintiffs' motion for class
3 certification and deny Defendants' motion to strike the expert report of Dr. Netz. (Dkt. Nos.
4 1742 and 1743) On September 24, 2013, the Honorable Samuel Conti adopted the Special
5 Master's Reports and Recommendations and certified 22 state-wide classes of indirect purchasers
6 of CRTs. (Dkt. No. 1950) The Ninth Circuit Court of Appeals denied the Defendants' petition to
7 appeal the District Court's order pursuant to Fed. R. Civ. P. 23(f). (Dkt. No. 2283)

8 14. On May 18, 2013, Plaintiffs entered into a settlement with LG Electronics, Inc.
9 and LG Electronics USA, Inc., for \$25,000,000 cash. The Court granted Preliminary Approval of
10 this settlement on December 9, 2013 (Dkt No. 2248), and Final Approval on April 18, 2014 (Dkt.
11 No. 2542)

12 15. Merits depositions began in December 2012. Plaintiffs have taken and defended a
13 substantial number of depositions in this case. Each of the 24 class representatives was deposed
14 by Defendants, and Plaintiffs have taken over 30 depositions of Defendants under F.R.C.P.
15 30(b)(6), as well as over 70 merits depositions of defense witnesses. Several of these depositions
16 took place abroad in Taiwan, Korea, Mexico and England. There have also been numerous other
17 depositions of expert witnesses, third party resellers of finished products containing CRTs, and
18 witnesses for the Direct Action Plaintiffs ("DAPs").¹ Plaintiffs' expert economist, Dr. Netz, was
19 deposed five times during the course of the litigation.

20 16. In the last year, Plaintiffs have been preparing for trial, which originally was
21 scheduled to begin on March 9, 2015.² The parties exchanged expert reports on liability and
22 damages starting in April 2014 and continuing through September 2014. These included
23 opening, opposition, rebuttal and sur-rebuttal reports from 17 expert witnesses, all of whom were
24 deposed, often multiple times, regarding their reports.

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27 ¹ The DAPs are another group of plaintiffs in this case that purchased CRT Products directly
28 from defendants. They include computer and television manufacturers such as Dell and Sharp,
and retailers such as Target, Best Buy and Costco. The DAPs joined this litigation between 2011
and 2014. Plaintiffs have worked closely with the DAPs to coordinate and minimize duplication
of effort.

1 17. Merits discovery closed on September 5, 2014, but some discovery continued after
2 the September 5 discovery cut-off. In particular, several depositions were scheduled after
3 September 5 and contention interrogatories propounded by all parties led to Plaintiffs filing
4 several motions to compel further responses from certain defendants.

5 18. On November 7, 2014, the Defendants filed 36 motions for summary judgment.
6 Eleven of these were directed specifically at Plaintiffs' claims. These motions were fully briefed
7 before the Proposed Settlements were executed. The motions have been withdrawn in light of the
8 Settlements.

9 19. Most recently, the parties exchanged trial exhibit lists, witness lists, deposition
10 designations, jury instructions and special verdict forms, and filed 64 motions *in limine* and other
11 pretrial motions. These motions were briefed in varying degrees before the Proposed Settlements
12 were executed. Pursuant to the Proposed Settlements, the Settling Defendants have
13 provisionally withdrawn all of the motions pending against Plaintiffs. (Dkt. Nos. 3801, 3802,
14 3812, 3851, 3852)

15 **The Proposed Settlements**

16 20. The Proposed Settlements resolve all claims against Settling Defendants for their
17 alleged part in the alleged global conspiracy to fix prices of CRTs.

18 21. The proposed Settlement Class is defined according to the class alleged in
19 Plaintiffs' operative complaint (*see* Fourth Consolidated Amended Complaint, Dkt. No. 1526)
20 because Settling Defendants required a complete release of all allegations made against them in
21 this litigation.

22 22. The proposed Settlement Class is slightly broader than the class certified by the
23 Court ("Certified Class") in the following respects: (1) the Certified Class did not include the
24 nationwide, injunctive relief class; (2) the Certified Class requires that the Statewide Damages
25 Class Members be residents of the respective States, whereas the Settlement Class requires only
26 that the purchase was made in one of the States; and (3) the Certified Class is limited to
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28 ² By Order dated February 9, 2015, the Court vacated the trial date (Dkt. No. 3515).

1 televisions and monitors containing CRTs, whereas the Settlement Class includes CRTs,
2 televisions and monitors containing CRTs, and other products containing CRTs.

3 23. The settlement negotiations with Settling Defendants were hard-fought and at
4 times contentious. Each settlement was reached only after extensive, arm's-length negotiations
5 between counsel for the Settling Defendant and Plaintiffs. The parties were assisted by the
6 Honorable Vaughn R. Walker (Ret.), former Chief Judge of the Northern District of California,
7 and the Honorable Fern Smith (Ret.), former Judge of the Northern District of California.

8 24. Settlement discussions with Philips began many months prior to reaching an
9 agreement in principle. Judge Walker assisted the parties in reaching the final settlement, which
10 was executed on January 26, 2015. A copy of the Settlement Agreement with Philips is attached
11 hereto as Exhibit A.

12 25. Plaintiffs began negotiations with Panasonic more than six months prior to
13 reaching a settlement. Judge Walker assisted the parties in reaching a settlement during the latter
14 part of 2014. The final agreement was executed on January 28, 2015. A copy of the Settlement
15 Agreement with Panasonic is attached hereto as Exhibit B.

16 26. Plaintiffs and Hitachi engaged in mediation before Judge Walker on March 5,
17 2014. The parties continued to discuss settlement with Judge Walker's assistance for the
18 remainder of 2014 and executed the settlement on February 19, 2015. A copy of the Settlement
19 Agreement with Hitachi is attached hereto as Exhibit C.

20 27. The initial settlement efforts with Toshiba continued for a number of months in
21 2014 but were unsuccessful, as was the mediation session on February 3, 2015 with Judge Fern
22 Smith. Judge Smith continued her mediation efforts in the weeks that followed and, with her
23 assistance, the parties were able to reach a settlement. The final settlement was executed on
24 March 6, 2015. A copy of the Settlement Agreement with Toshiba is attached hereto as Exhibit
25 D.

26 28. An agreement in principle was reached with Samsung SDI on January 23, 2015
27 after two full days of mediation with Judge Walker. The parties continued to negotiate the terms
28 of the settlement with Judge Walker's assistance for two months thereafter. The final settlement

1 was executed on April 1, 2015. A copy of the Settlement Agreement with Samsung SDI is
2 attached hereto as Exhibit E.

3 29. Under the Proposed Settlements, the Settling Defendants have paid a total of Five
4 Hundred and Twenty Eight Million Dollars (\$528,000,000) in cash to settle all indirect purchaser
5 claims against them.³

6 30. The Settlement Amounts have been deposited into an escrow account and have
7 been invested in United States Treasury bills and other instruments insured or guaranteed by the
8 full faith and credit of the United States. If the Settlements are finally approved, any interest
9 earned thereon (together with the Settlement Amounts) will become part of the Settlement Fund.

10 31. In addition to monetary consideration, all of the Proposed Settlements contain
11 cooperation provisions that require Settling Defendants to provide specified cooperation to
12 Plaintiffs in the prosecution of any continuing litigation. I believe that the cooperation provisions
13 are material and valuable terms of the Settlements. They enhanced the settlement prospects with
14 the remaining defendants because they obligated Settling Defendants, to varying degrees, to
15 provide cooperation to the Plaintiffs in prosecuting the remaining Defendants, including
16 authentication of documents, producing witnesses for interviews, depositions and/or trial, and
17 providing other assistance.⁴

18 32. Upon these Settlements becoming final, Plaintiffs and class members will release
19 all federal and state-law claims against a Settling Defendant whose settlement becomes final,
20 “concerning the manufacture, supply, distribution, sales or pricing of CRT Products”⁵ The
21 release does not include claims for product defect, personal injury or breach of contract.⁶

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24 ³ See Ex. A (Philips Settlement Agreement), ¶ 6 (\$175,000,000 cash payment); Ex. B (Panasonic
25 Settlement Agreement), ¶ 6 (\$70,000,000 cash payment); Ex. C (Hitachi Settlement Agreement),
26 ¶ 6 (\$28,000,000 cash payment); Ex. D (Toshiba Settlement Agreement), ¶ 6 (\$30,000,000 cash
27 payment); and Ex. E (Samsung SDI Settlement Agreement), ¶ 6 (\$225,000,000 cash payment)
(together referred to herein as the “Settlement Amount”).

28 ⁴ See Exs. A-E, ¶¶ 23- 24.

⁵ *Id.*, Exs. A-E at ¶¶ 13-14.

⁶ *Id.*, Exs. A-E at ¶ 15.

1 33. In the context of indirect purchaser price-fixing cases, it is my understanding that
2 the total settlement amount here is second only to the *LCD* litigation, where the conspiracy
3 started more recently (2001), most of the defendants had pled guilty to violations of the Sherman
4 Act and admitted that their conduct had an impact in the United States, and the DOJ’s criminal
5 fines totaled \$894 million. Here, the conspiracy period started 20 years ago (i.e., 1995), only one
6 defendant pled guilty to fixing prices of one type of CRT (Color Display Tubes used in
7 monitors), and only for sales to certain customers, and the DOJ’s single criminal fine of \$32
8 million amounted to less than 3.5 percent of the fines made in connection with LCD conspiracy.

9 34. Plaintiffs’ expert estimated the total class damages in this case to be \$2.768
10 billion, with CRT monitors accounting for approximately \$2 billion, and CRT televisions
11 accounting for approximately \$768 million. Using the same data and methodology, and
12 correcting for what Defendants argued were “fatal flaws” in Dr. Netz’s work, one defense expert
13 estimated the total class damages to be approximately \$61 million. Other defense experts
14 maintained that the total class damages were zero.

15 35. Over the course of the last seven years, Plaintiffs have reviewed and analyzed
16 millions of documents produced by Defendants and third parties, taken over 100 depositions of
17 defense witnesses, and have conducted extensive economic analyses of the Defendants’ and third
18 parties’ data. Plaintiffs participated in three mock trials and observed 11 mock juries. Plaintiffs
19 were fully prepared to try this case to a jury.

20 36. I have been practicing in antitrust and consumer class actions – and specifically
21 indirect purchaser antitrust class actions – for over 40 years. It is my opinion that the Proposed
22 Settlements are in the best interests of the class members.

23 37. The Representative Plaintiffs have a genuine interest in the litigation and
24 understand the allegations in this case. They have reviewed the pleadings in this case, responded
25 to written discovery, produced the documents requested and have been deposed by Defendants.

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1 **Proposed Notice Program**

2 38. I have retained an experienced class action administrator, The Notice Company, to
3 give notice of these Settlements to the members of the Settlement Class. The notice program
4 will consist of both mailed and published notice, as well as posting of the Notice on the Internet.
5 The components of the notice program are substantially similar to the notice programs approved
6 by the Court in connection with the previously-approved settlements, and indeed go beyond the
7 previously-approved notice programs.

8 39. Attached hereto as Exhibit F is a copy of the Summary Notice that Plaintiffs
9 intend to publish in various newspapers and/or magazines throughout the United States and
10 which will direct potential class members to the website, www.CRTclaims.com, and the Detailed
11 Notice.

12 40. Attached hereto as Exhibit G is a copy of the Detailed Notice that Plaintiffs intend
13 to publish on the website www.CRTclaims.com, along with copies of the Settlement Agreements,
14 the papers filed in support of the motion for preliminary approval and other important documents.

15 41. The Notices describe the nature of the litigation and the general terms of the
16 Proposed Settlements, and inform potential class members that complete information is available
17 from the court files and from the settlement website at www.CRTclaims.com. The notices
18 explain that class members must submit a claim form in order to receive compensation, and sets
19 forth the deadline and process for submitting a claim. The notices also explain that class
20 members have the right to exclude themselves from the Proposed Settlements⁷ or object to any
21 aspect of them, and clearly state the procedure and deadlines for doing so. Finally, the Notices
22 explain that the judgment against Settling Defendants will bind all class members who do not
23 exclude themselves, and that any class member who does not exclude himself may appear
24 through counsel at the Fairness Hearing.

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27 ⁷ Even though members of the Statewide Damages Classes were previously given an opportunity
28 to exclude themselves from the Certified Class, Plaintiffs propose that class members be provided
the opportunity to exclude themselves from the Settlement Class. *See* Fed. R. Civ. P. 23, 2003
Advisory Committee Notes (“A decision to remain in the class is likely to be more carefully
considered and is better informed when settlement terms are known.”).

1 42. Settling Defendants have informed me that, in accordance with the Class Action
2 Fairness Act, 28 U.S.C. §1715 (“CAFA”), they will provide notice of the Proposed Settlements
3 to the Attorney General of the United States and the Attorney Generals of all 50 States within ten
4 days of the filing of this motion.

5 **Proposed Plan of Distribution**

6 43. We propose to compensate members of the Statewide Damages Classes according
7 to a plan of distribution, which provides that qualifying claimants will be eligible to claim their
8 pro-rata share of the Settlement Fund based on the number of valid claims filed, and the number
9 and type of CRT Products each claimant purchased during the class period.

10 44. The Settlement Administrator will first compute the straight pro-rata distribution
11 of the available Settlement Fund among all claimed product purchases, with claims for Standard
12 CRT Televisions (televisions with a screen size of less than 30 inches) getting a weight of 1;
13 Large CRT Televisions (televisions with a screen size of 30 inches or larger) getting a weight of
14 4.3; and CRT Computer Monitors getting a weight of 3.

15 45. The weighting of the different CRT Products in this manner is necessary to reflect
16 the relative harm to purchasers of those products. The data produced in this case shows that the
17 CRTs used in televisions with a screen size of 30 inches or larger were significantly more
18 expensive than the CRTs used in televisions less than 30 inches. After reviewing the data and
19 consulting with Plaintiffs’ expert, Dr. Janet Netz, it became necessary to create two categories for
20 CRT televisions (Standard CRT Televisions and Large CRT Televisions) to ensure that
21 purchasers of Large CRT Televisions are properly compensated.

22 46. In addition, based on Dr. Netz’s findings that the overcharge on monitor tubes was
23 more than twice the overcharge on television tubes, it is appropriate to give greater weight to
24 CRT Computer Monitors than Standard CRT televisions.

25 47. However, the data produced in this case also shows that Large CRT Televisions
26 contain the largest, most expensive CRTs. On average, they are approximately twice the size and
27 four times the price of CRTs used in monitors. So even though Dr. Netz found the overcharge
28 percentage on television tubes to be less than for monitor tubes, the average dollar overcharge is

1 greater for Large CRT Televisions than for CRT Computer Monitors (overcharge percentage
2 times higher price = higher overcharge).

3 48. Because there will very likely be a broad range in the number of products
4 purchased by claimants - with some average individual consumers reporting one or two products
5 purchased, and some corporate claimants reporting thousands of products purchased - the next
6 step will be to determine a minimum payment amount. Based on historical claim rates, it is
7 expected that there will be sufficient funds to distribute a minimum payment of at least \$25 to
8 eligible class members who submit a valid claim form. The purpose of the minimum payment
9 amount is to incentivize the filing of claims by small purchasers whose straight pro-rata
10 distribution amount would be less than the expected minimum payment amount of \$25. Thus, a
11 hypothetical consumer claimant whose straight pro-rata distribution amount would have been
12 only \$15 would instead receive the minimum payment amount of \$25. A hypothetical claimant
13 whose straight pro-rata distribution amount would have been *greater* than \$25 will continue to
14 receive a larger amount based on an adjusted pro-rata distribution (“adjusted” to compensate for
15 the effect of the minimum payment amount). The minimum payment amount of \$25 represents
16 the Plaintiffs’ reasonable estimate at this time; the actual amount cannot be determined until all
17 claims have been processed. The Court’s approval for the minimum payment will be requested
18 when the data from the actual claims process is available.

19 49. Using this adjusted pro-rata distribution plan will ensure that all valid claimants
20 receive fair compensation based directly on their purchases of CRT Products. The minimum
21 payment ensures that small claimants (*i.e.*, most individual consumers) receive meaningful
22 compensation for their participation in the claims process.

23 50. Additionally, a maximum payment amount of three times the estimated money
24 damages per claimant will apply. Upon final approval, none of the Settlement Fund will revert to
25 any defendant. Members of the Nationwide Class, who are not also members of any Statewide
26 Damages Class, will not receive monetary compensation.

27 51. All Statewide Damages Class members who seek payment from the Settlement
28 Fund will be required to complete a claim form containing: (i) the class member’s contact

1 information; (ii) verification of membership in one of the Statewide Damages Classes; (iii) the
 2 number and type of each CRT Product purchased during the class period; and (iv) an attestation
 3 under penalty of perjury that the information provided is accurate. The proposed claim form is
 4 attached hereto as Exhibit H.

5 52. All claimants will also be subject to auditing and requests for documentation of
 6 purchases by the Settlement Administrator. The Settlement Administrator will use commercially
 7 reasonable efforts to identify and investigate claims.

8 **Notice Costs, Litigation Expenses and Attorneys' Fees**

9 53. The Proposed Settlements provide that counsel for the Plaintiffs may apply to the
 10 Court for an award of attorneys' fees (not to exceed one-third of the Settlement Fund), and for
 11 payment of notice costs⁸ and litigation expenses, all of which come out of the Settlement Fund.
 12 The Settling Defendants have agreed that a certain amount of the Settlement Fund can be used for
 13 notice costs, and will not oppose Plaintiffs' application for attorneys' fees and litigation
 14 expenses.⁹

15 54. The Proposed Notices (attached hereto as Exhibits F and G) advise that the
 16 Plaintiffs intend to apply for attorneys' fees (not to exceed one-third of the Settlement Fund),
 17 notice costs and litigation expenses. These applications will be heard at the final approval
 18 hearing or other date determined by the Court. Additionally, the Proposed Notices advise that the
 19 Plaintiffs intend to apply for individual incentive awards for the indirect purchaser class
 20 representatives, all of whom fully participated in the discovery phase of the case. Several class
 21 representatives were also preparing to participate in the trial. These applications will be filed
 22 with the Court and posted to the website www.CRTclaims.com at least 14 days in advance of the
 23 deadline for objections to give class members an opportunity to review the applications and either
 24 support or file objections to them.

25 _____
 26 ⁸ The Settlement Administrator provides estimates of the notice and administration costs in the
 27 Fisher Decl., ¶ 33.

28 ⁹ See Ex. A (Philips Settlement), ¶¶ 19, 23; Ex. B (Panasonic Settlement), ¶¶ 18, 22; Ex. C
 (Hitachi Settlement), ¶¶ 18, 22; Ex. D (Toshiba Settlement), ¶¶ 18, 22; and Ex. E (Samsung SDI
 Settlement), ¶¶ 19, 23.

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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 29th day of May 2015 at San Francisco, California.

/s/ Mario N. Alioto
Mario N. Alioto

Class Counsel for the Indirect Purchaser Plaintiffs