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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE OPTICAL DISK DRIVE
ANTITRUST LITIGATION

Case No. 3:10-md-02143 RS

MDL No. 2143

This Document Relates to:
ALL DIRECT PURCHASER ACTIONS

~~[PROPOSED]~~ ORDER APPROVING THE
NOTICE TO CLASS, APPROVING PROOF
OF CLAIM FORM, SETTING A
SCHEDULE FOR CLAIMS, AND
SCHEDULING A HEARING FOR
ATTORNEYS' FEES, COSTS, AND
INCENTIVE AWARDS

1 Direct Purchaser Plaintiffs' ("Plaintiffs") Motion for Approval of the Notice to the Class,
2 for Approval of the Proof of Claim Form, to Set a Schedule for Claims, and to Schedule a Hearing
3 for Attorneys' Fees, Costs, and Incentive Awards was presented to and considered by the Court.
4 This Court retains jurisdiction over the class action settlements for matters relating to
5 "implementation of this settlement and any distribution to Class Members pursuant to further
6 orders of this Court." *See, e.g.*, Final Judgment of Dismissal with Prejudice as to Defendant NEC
7 Corporation, ¶ 10 (August 14, 2014) (Dkt.1390).

8 The proposed notice ("Notice") regarding allocation of the settlements totaling \$37,750,000
9 ("Settlement Fund") and the proposed proof of claim form ("Claim Form"), attached hereto as
10 Exhibit A, are appropriate. Class Counsel shall file their motion for attorneys' fees, costs, and
11 incentive awards within fourteen (14) days from entry of this Order. Within twenty-one (21) days
12 of entry of this Order, Gilardi & Co. LLC ("Claims Administrator") will disseminate the Notice
13 and the Claim Form to those members of the classes who can reasonably be contacted through
14 electronic or direct mail. The Notice, in substantially similar form, shall also be published within
15 twenty-one (21) days of the entry of this Order in the *Wall Street Journal*. Comments or objections
16 to Class Counsel's motion for attorneys' fees, costs, and incentive awards shall be made within
17 forty-two (42) days from the entry of Order. Class Counsel may file a reply in support of their
18 motion for attorneys' fees, costs, and incentive awards within fifty-two (52) days of entry of Order.
19 A hearing will be held on Class Counsel's motion for attorneys' fees, costs, and incentive awards
20 sixty-six (66) days from entry of this Order. Class members shall have ninety (90) days from
21 mailing of the Notice to complete the Claim Form and submit it to the Claims Administrator. In
22 order to provide certainty, the last date for class members to submit their Claim Form to the Claims
23 Administrator shall be June 22 (~~111 days from entry of this Order~~), 2015.

24 Upon completion of submission of all Claim Forms within the period set by the
25 Court, the Claims Administrator will analyze and verify the claim submissions and follow up with
26 claimants to resolve any discrepancies. At that time, final distribution amounts will be determined
27
28

1 and Plaintiffs will submit to the Court a proposed order approving distribution of the Net
2 Settlement Fund¹ to class members.


3 All valid claims will be distributed in accordance with the plan of allocation that this Court
4 has previously approved, *i.e.*, a *pro rata* distribution to claimants based on direct purchases of
5 ODDs and ODD Devices from the named defendants, as described in the orders granting final
6 approval of the settlements and approving the plan of distribution.

7 Class Counsel shall file their Motion for an Award of Attorneys' Fees, Reimbursement of
8 Expenses, and Class Representative Incentive Awards within fourteen (14) days from the entry of
9 this Order. A hearing on Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of
10 Expenses, and Class Representative Incentive Awards is set for May 14 (~~66 days from entry of~~
11 ~~Order~~), 2015 at 1:30pm in Courtroom 3. In addition, any class member wishing to comment or
12 object to Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and
13 Class Representative Incentive Awards may do so by filing with the Court any comments or
14 objections on or before April 13 (~~42 days from entry of Order~~), 2015. Plaintiffs may file a
15 reply in support of their Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and
16 Class Representative Incentive Awards by April 23 (~~52 days from entry of Order~~), 2015.

17 The Court retains exclusive jurisdiction over this action to consider all further matters
18 arising out of or connected with the disbursement of the Settlement Funds.

19
20 IT IS SO ORDERED.

21
22
23 Dated: 3/2/2015


24 Hon. Richard Seeborg
25 UNITED STATES DISTRICT JUDGE

26
27 _____
28 ¹ The Net Settlement Fund is the Settlement Fund plus accrued interest, minus all costs, attorneys' fees, expenses, and incentive awards

EXHIBIT A

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

If You Directly Bought An Optical Disk Drive Or An Optical Disk Drive Device, A Class Action Settlement May Affect You.

Optical Disk Drive Devices include devices incorporating Optical Disk Drives such as desktop computers, mobile/laptop computers, videogame consoles, CD players/recorders, DVD players/recorders, and Blu-Ray disc players/recorders.

A Federal Court authorized this Notice. This is not a solicitation from a lawyer.

• **Why did I get this notice?** You or your company may have directly purchased an Optical Disk Drive or an Optical Disk Drive Device between **January 1, 2004 – December 31, 2011**. A direct purchaser is a person or business who bought an Optical Disk Drive or an Optical Disk Drive Device, directly from one or more of the Defendants, affiliates, or subsidiaries. A direct purchaser is NOT a person or company who purchased an Optical Disk Drive or an Optical Disk Drive Device from a wholesaler or a retail store. If you are a direct purchaser, you have the right to know about the litigation and about your legal rights and options. The Court in charge of the case is the United States District Court for the Northern District of California, and the case is called *In re Optical Disk Drive Antitrust Litigation*, MDL No. 2143. The people who sued are called Plaintiffs and the companies they sued are called Defendants.

• On October 3, 2014 the Court denied Plaintiffs' motion for class certification, and Plaintiffs filed a Petition for Permission to Appeal Pursuant to Rule 23(f). On January 14, 2015 the Ninth Circuit Court of Appeals denied Plaintiffs' petition for permission to appeal the order denying class certification.

• Some Defendants in the Direct Purchaser *Optical Disk Drive Antitrust Litigation* have settled their claims ("Settling Defendants"). A settlement was reached with Hitachi-LG Data Storage, Inc., Hitachi-LG Data Storage Korea, Inc., LG Electronics, Inc., LG Electronics USA, and Hitachi, Ltd. (collectively, "HLDS") for \$26,000,000. The HLDS settlement released claims asserted in the Second Consolidated Direct Purchaser Class Action Complaint. Subsequently, a settlement was reached with Panasonic Corporation and Panasonic Corporation of North America (collectively, "Panasonic") for \$5,750,000. Finally, a settlement was reached with NEC Corporation ("NEC") for \$6,000,000 (plus up to an additional \$150,000 for notice costs). The Panasonic and NEC settlements released claims asserted in the Third Consolidated Direct Purchaser Class Action Complaint. The Court has finally approved each of the settlements with Settling Defendants and the settlement proceeds are ready to be distributed to qualified claimants. Attached to this Notice is a proof of claim form ("Claim Form") that has been approved by the Court. All Claim Forms must be postmarked or sent via electronic mail no later than (90 days from date of mailed notice), 2015 to the address set forth in the Claim Form. Additional Claim Forms may be obtained at www.ODDDirectPurchaserAntitrustSettlement.com, by calling 1-877-224-3063, or writing to ODD Direct Settlement, P.O. Box 808003, Petaluma, CA 94975. Please do not contact the Court about claim administration.

• Class Counsel's Motion for Attorneys' Fees, Costs, and Incentive Awards is on file with the Court and available at www.ODDDirectPurchaserAntitrustSettlement.com. Class Counsel have asked the Court for attorneys' fees not exceeding one-third (33.3%) of the Settlement Fund plus reimbursement of their costs and expenses, in accordance with the provisions of the Settlement Agreements. Class Counsel have also asked for incentive awards for the named plaintiffs. The Court has set a hearing on Class Counsel's Motion for Attorneys' Fees, Costs, and Incentive Awards for XXX, 2015 at XXX in Courtroom 3. Any comments or objections to Plaintiffs Motion for Attorneys' Fees, Costs, and Incentive Awards must be filed with the Court (Honorable Richard Seeborg, United States District Court, Northern District of California, 450 Golden Gate Avenue, Courtroom 3, 17th floor, San Francisco, CA 94102) no later than ____ (42days from entry of Order), 2015.

Dated: _____

BY ORDER OF THE COURT

For More Information: Call 1-877-224-3063 or Visit www.ODDDirectPurchaserAntitrustSettlement.com

CLAIM FORMS MAY BE FILED ON-LINE AT www.ODDDirectPurchaserAntitrustSettlement.com



DEFINITIONS

A) "Class Period" or "Class Periods" means January 1, 2004 through December 31, 2011 for the HLDS settlement, and January 1, 2004 through January 1, 2010 for the Panasonic and NEC settlements.

B) "Defendant" or "Defendants" means the following entities which are named as Defendants in this action: Sony Corporation, Sony Optiarc Inc., NEC Corporation, Sony NEC Optiarc Inc., Sony Optiarc America Inc. (FKA Sony NEC), Sony Computer Entertainment America, Inc., Sony Electronics Inc., LG Electronics, Inc., LG Electronics USA, Inc., Hitachi, Ltd., Hitachi-LG Data Storage, Inc., Hitachi-LG Data Storage Korea, Inc., Toshiba Corporation, Toshiba America Information Systems, Inc., Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., Toshiba Samsung Storage Technology Corp., Toshiba Samsung Storage Technology Corp. Korea, Lite-On IT Corp. of Taiwan, Koninklijke Philips Electronics N.V., Philips & Lite-On Digital Solutions Corp., Philips & Lite-On Digital Solutions USA, Inc., BenQ Corporation, BenQ America Corporation, TEAC Corporation, TEAC America, Inc., Quanta Storage Inc., Quanta Storage America, Inc., Panasonic Corporation, Panasonic Corporation of North America. "Defendant" or "Defendants" shall also include named co-conspirators Pioneer Corporation, Pioneer North America, Inc., Pioneer Electronics (USA) Inc., and Pioneer High Fidelity Taiwan Co., Ltd.

C) "Settlement Class" or "Settlement Classes" means:

For the HLDS settlement: "All individuals and entities who, during the period from January 1, 2004 through December 31, 2011, purchased Optical Disk Drives and Optical Disk Drive Devices in the United States directly from the Defendants, their subsidiaries, or their affiliates. Excluded from the Class are Defendants and their parents, subsidiaries, affiliates, and all governmental entities."

For the Panasonic and NEC settlements: "All individuals and entities who, during the period from January 1, 2004 until at least January 1, 2010 purchased one or more Optical Disk Drives or a laptop or desktop computer incorporating an ODD in the United States directly from the Defendants, their subsidiaries, or their affiliates. Excluded from the Class are Defendants and their parents, subsidiaries, affiliates, and all governmental entities."

D) "Releasees" shall refer jointly and severally, individually and collectively to all defendants listed above and their respective past and present parents, subsidiaries, affiliates, officers, directors, employees, agents, attorneys, servants, representatives (and the parents', subsidiaries', and affiliates' past and present officers, directors, employees, agents, attorneys, servants, and representatives), and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.

E) "Optical Disk Drive" or "ODD" means any device which reads and/or writes data from and to an optical disk, including but not limited to, CD-ROMS, CD-recordable/rewritable, DVD-ROM, DVD-recordable/rewritable, Blu-Ray, Blu-Ray recordable/rewritable, HD-DVD, Super Multi-Drives and other combination drives. The term "Optical Disk Drives" or "ODDs" shall also include (a) a drive sold as a separate unit that is to be inserted into, or incorporated in, an electronic device; and (b) a drive sold that is to be attached to an electronic device through an external interface such as a Universal Serial Bus (USB) connection;

F) "Optical Disk Drive Device" or "ODD Device" means a device incorporating an ODD including but not limited to desktop computers, mobile/laptop computers, videogame consoles, CD players/recorders, DVD players/recorders, and Blu-Ray disc players/recorders.

G) "Class Members" means all members of the Settlement Classes who did not timely and validly elect to be excluded from the Settlement Classes certified by the Court.

H) "Net Settlement Fund" means the combined proceeds from the HLDS, Panasonic, and NEC settlements plus accrued interest minus all costs, attorneys' fees, expenses, and incentive awards.

PART 3: SCHEDULE OF QUALIFYING PURCHASES

Report separately each purchase of an Optical Disk Drive or Optical Disk Drive Device directly from any Defendant during the Class Periods (attach additional pages if necessary). **In order to qualify as a claim, your purchase(s) must have been billed to and/or shipped to a location in the United States.** Foreign transactions where billing and shipping took place outside of the U.S. do not qualify. **If you have submitted a request for exclusion from a Settlement Class in connection with settlements, do not submit this Claim Form. Also, if you entered into a settlement with any Defendant for your purchase(s) from that defendant, or assigned or transferred your claim for any purchase(s), your Claim Form must not include, as part of your claim, any of those purchases.** For example, if Class member A purchased \$10,000 from Defendant 1 and entered into a settlement with Defendant 1 for those purchases, that \$10,000 must not be included as part of Class member A's claim. Failure to include all purchases will reduce the amount of your payment. You **DO NOT** need to attach documentation. However, you must keep copies of your purchase order(s), invoice(s), or other documentation of your purchase(s) in case verification of your claim is necessary.

List each type of ODD or ODD Device purchased from each Defendant, the quantity of ODDs or ODD Devices purchased, the dollar



amount (in U.S. dollars) of purchases of each type of Optical Disk Drive made directly from any Defendant during the Class Periods, and the date of each purchase. **Amounts should be rounded to the nearest dollar.** (Example: \$12,345.67 should be entered as \$12,346.) Do not include transportation charges, rebates, refunds, credits, etc.

Defendant from whom ODD or ODD Device was purchased	Description of ODD or ODD Device purchased	Quantity of ODDs or ODD Devices Purchased	Total purchase Amount in USD (for ODDs only)	Date purchased
Sony/NEC ¹				
LG ²				
Hitachi ³				
Toshiba ⁴				
Samsung ⁵				
TSST ⁶				
Lite-On ⁷				
Philips ⁸				
BenQ ⁹				
TEAC ¹⁰				
QSI ¹¹				
Panasonic ¹²				
Pioneer ¹³				

The Claims administrator will review the information listed above for valid qualifying purchases. After the purchases are verified the Claims Administrator will: 1) assign a dollar value to each purchase (ODDs will be valued at 100% of their purchase price, and ODD Devices

¹ "Sony/NEC" means Sony Corporation, Sony Optiarc Inc., NEC Corporation, Sony NEC Optiarc Inc., Sony Optiarc America Inc. (FKA Sony NEC), Sony Electronics Inc., and Sony Computer Entertainment America, Inc.

² "LG" means LG Electronics, Inc. and LG Electronics USA, Inc.

³ "Hitachi" means Hitachi, Ltd., Hitachi-LG Data Storage, Inc., Hitachi-LG Data Storage Korea, Inc.

⁴ "Toshiba" means Toshiba Corporation and Toshiba America Information Systems, Inc.

⁵ "Samsung" means Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.

⁶ "TSST" means Toshiba Samsung Storage Technology Corp. and Toshiba Samsung Storage Technology Corp. Korea

⁷ "Lite-On" means Lite-On IT Corp. of Taiwan

⁸ "Philips" means Koninklijke Philips Electronics N.V., Philips & Lite-On Digital Solutions Corp., and Philips & Lite-On Digital Solutions USA, Inc.

⁹ "BenQ" means BenQ Corporation and BenQ America Corporation

¹⁰ "TEAC" means TEAC Corporation and TEAC America, Inc.

¹¹ "QSI" means Quanta Storage Inc., Quanta Storage America, Inc.

¹² "Panasonic" means Panasonic Corporation and Panasonic Corporation of North America

¹³ "Pioneer" means Pioneer Corporation, Pioneer North America, Inc., Pioneer Electronics (USA) Inc., and Pioneer High Fidelity Taiwan Co., Ltd.



will be valued at a fixed amount as follows: desktop or laptop computer: \$32, Sony PlayStation 2: \$20, Sony PlayStation 3: \$73, CD players/recorders: \$15, DVD players/recorders: \$20, and each purchase of a Blu-Ray players/recorders: \$73; 2) Allocate the value of each purchase between the settlements reached with Settling Defendants (the settlements had varying and overlapping class definitions and class periods, so it is possible certain purchases will qualify for one settlement fund, but not the other); 3) Allocate the Net Settlement Fund on a *pro rata* basis based on the total dollar value of each class member's purchase(s) of ODDs and ODD Devices in proportion to the total dollar value of all valid claims filed.

PART 4: SUBMISSION TO JURISDICTION OF THE DISTRICT COURT

By signing below, you are verifying that:

1. You have documentation to support your claim and agree to provide additional information to Class Counsel or the Claims Administrator if necessary;
2. You have not assigned or transferred (or purported to assign or transfer) or settled for the same purchases or submitted any other claim for the same purchases of ODD and/or ODD Devices and have not authorized any other person or entity to do so, and know of no other person or entity having done so on your behalf;
3. The information provided in this Claim Form is accurate and complete; and
4. You agree to submit to the jurisdiction of the District Court for the Northern District of California, where this action is pending, for purposes of resolving any issues related to or arising from your claim.

PART 5: CERTIFICATION

I (We) certify that I am (we are) NOT subject to backup withholding under the provisions of Section 3406 (a)(1)(c) of the Internal Revenue Code because: (a) I am (We are) exempt from backup withholding, or (b) I (We) have not been notified by the IRS that I am (we are) subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me (us) that I am (we are) no longer subject to backup withholding.

NOTE: If you have been notified by the IRS that you are subject to backup withholding, please strike out the language that you are not subject to backup withholding in the certification above.

I (WE) DECLARE, UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA, THAT THE INFORMATION PROVIDED IN THIS PROOF OF CLAIM FORM IS TRUE AND CORRECT.

This certification was executed on the _____ of _____, 2015, in _____.
(day) (Month) (City/State/Country)

SIGNATURE OF CLAIMANT: (If this claim is being made on behalf of Joint Claimants, then each must sign.)

Signature:

Type/Print Name:

Company's Name:

Capacity of person signing; e.g. President:

Mail the completed Claim Form to:

In re Optical Disk Drive Antitrust Litigation
Gilardi & Co. LLC
P.O. Box XXXX
Petaluma, CA 94975

or email it to: claims@ODDDirectPurchaserAntitrustSettlement.com

**ACCURATE PROCESSING OF CLAIMS MAY TAKE SIGNIFICANT TIME.
THANK YOU, IN ADVANCE, FOR YOUR PATIENCE.**

