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11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 IN RE OPTICAL DISK DRIVE PRODUCTS
16 ANTITRUST LITIGATION

No. 3:10-md-2143 RS (JCS)

17 DECLARATION OF SHANA E.
18 SCARLETT IN SUPPORT OF
19 INDIRECT PURCHASER PLAINTIFFS'
20 MOTION FOR PRELIMINARY
21 APPROVAL OF CLASS ACTION
SETTLEMENT WITH DEFENDANTS
SAMSUNG ELECTRONICS CO., LTD.,
TOSHIBA CORPORATION AND
TOSHIBA SAMSUNG STORAGE
TECHNOLOGY CORPORATION, AND
DISSEMINATION OF CLASS NOTICE

22 Date: Sept. 27, 2018
23 Time: 1:30 p.m.
24 Dept: Courtroom 3, 17th Floor
Judge: Hon. Richard Seeborg

DATE ACTION FILED: Oct. 27, 2009

25
26 This Document Relates to:
27 ALL INDIRECT PURCHASER ACTIONS
28

1 I, Shana E. Scarlett, declare as follows:

2 1. I am an attorney duly licensed to practice before all of the courts of the State of
3 California. I am a partner with the law firm of Hagens Berman Sobol Shapiro LLP, the counsel of
4 record for Indirect Purchaser Plaintiffs (IPPs) in the above-titled action. I have personal knowledge
5 of the matters stated herein and, if called upon, I could and would competently testify thereto.

6 2. On March 27, 2018, the IPPs reached an agreement in principle to settle the claims
7 against Samsung Electronics Co., Ltd., Toshiba Corporation, Toshiba Samsung Storage Technology
8 Corporation, and Toshiba Samsung Storage Technology Korea Corporation (collectively, Settling
9 Defendants). On May 23, 2018, the parties reached a final agreement as formalized in the attached
10 Settlement Agreement.

11 3. The Settlement Agreement between IPPs, on the one hand, and Samsung Electronics
12 Co., Ltd., Toshiba Corporation, and Toshiba Samsung Storage Technology Corporation, on the
13 other hand, provides for a \$25 million cash payment, with no reversion. This Settlement Agreement
14 was negotiated by counsel highly experienced in litigating complex antitrust class actions such as
15 these. The parties reached agreement after eight years of litigation, discovery and investigation and
16 multiple conferrals of counsel and the parties concerning settlement constructs and amounts. IPPs
17 and the Settling Defendants reached agreement on this settlement through arm's-length negotiations
18 over a period of months with the assistance of a nationally renowned mediator, Eric Green. The
19 procedural posture of this action is so advanced that counsel are fully informed of the strengths and
20 weaknesses of the litigation.

21 4. All class representatives have approved the terms of this settlement.

22 5. The Ninth Circuit issued a limited remand so that this Court could evaluate the
23 proposed settlement.

24 6. The settlement bears none of the signs of collusion warned against by the Ninth
25 Circuit, including: (a) when class counsel receive a disproportionate distribution of the settlement;
26 (b) when the parties negotiate a "clear sailing" arrangement that provides for the payment of
27 attorneys' fees separate and apart from class funds; or (c) when the parties arrange for fees not
28 awarded to plaintiffs' counsel to revert to the defendants rather than the class. The proposed

1 settlement is a common fund, all-in settlement with no possibility of reversion. The funds will be
2 used to cover costs and fees and compensate the class based on a *pro rata* formula. There is no
3 “clear sailing” provision, no payment of fees separate and apart from the class funds, and no
4 “kicker” provision which would allow unawarded fees to revert to the defendants.

5 7. IPPs propose to compensate members of the classes according to a plan of
6 distribution which provides for a *pro rata* share of the settlement fund based on: (1) the number of
7 ODDs purchased by the class member; and (2) the number of valid claims filed.

8 8. The proposed class notice informs class members that Class Counsel will make a
9 request for attorneys’ fees up to 20 percent of the settlement fund.

10 9. Attached hereto as Exhibit 1 is a true and correct copy of the Settlement Agreement
11 between IPPs and Samsung Electronics Co., Ltd., Toshiba Corporation, and Toshiba Samsung
12 Storage Technology Corporation.

13 I declare under penalty of perjury under the laws of the United States that the foregoing is
14 true and correct. Executed this 23rd day of August, 2018 at Chicago, Illinois.

15
16 s/ Shana E. Scarlett
17 SHANA E. SCARLETT