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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

CHRISTOPHER JULIAN, MARK  
PACANA, PAUL FISKRATTI, and  
WAYNE LEWALD, on Behalf of  
Themselves and All Others Similarly  
Situated,

Plaintiffs,

v.

TTE TECHNOLOGY, INC., dba  
TCL NORTH AMERICA,

Defendant.

Case No. 3:20-CV-02857-EMC

**NOTICE OF MOTION AND MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS SETTLEMENT AND DIRECTION  
OF NOTICE UNDER FED. R. CIV. P. 23(e)**

Judge: Hon. Edward M. Chen  
Hearing: April 28, 2022  
Time: 1:30 pm  
Courtroom: 5, 17th Floor

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**NOTICE OF MOTION**

PLEASE TAKE NOTICE THAT on April 28, 2022, at 1:30 pm, or as soon thereafter as the matter may be heard, in the Courtroom of the Honorable Edward M. Chen, of the United States District Court for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, California 94102, Courtroom 5, Plaintiff Paul Fiskratti will and hereby does move, pursuant to Federal Rule of Civil Procedure 23, this Court for an order (1) preliminarily approving the Proposed Settlement settling their claims, both on behalf of themselves and all others similarly situated; (2) certifying the Settlement Class; (3) directing notice to the Settlement Class; (4) appointing Class Counsel and Class Representatives; and (5) scheduling a final approval hearing.

As discussed more fully in the attached Memorandum of Points and Authorities, the Parties have negotiated a Settlement that provides substantial compensation to consumers for their economic losses, thereby providing meaningful relief to Class Members. The proposed notice program, which was negotiated and agreed to by the Parties, includes both email notice and extensive multimedia outreach, thereby fulfilling the requirements of Federal Rule of Civil Procedure 23 and represents the best notice practicable under the circumstances. Plaintiffs thus respectfully request that the Court grant preliminary approval of the Proposed Settlement, direct notice to the proposed Class, and schedule a final approval hearing.

**MEMORANDUM OF POINTS AND AUTHORITIES**

Plaintiff originally filed this proposed class action against Defendant TTE Technology, Inc. (“TCL”) on April 24, 2020. Following approximately eighteen months of contentious litigation and discovery, the Parties have reached an agreement to resolve the claims raised in this action. The settlement provides for up to \$2,500,000 in cash benefits to the settlement class under a claims-made process (the “Proposed Settlement”), with up to \$15 per valid claim. The Proposed Settlement (attached as **Exhibit A**) was reached only after extensive, aggressive litigation and prolonged arm’s-length negotiations—including a mediation before the Hon. Jay C. Gandhi (Ret.) of JAMS—and provides fair and meaningful relief to the proposed settlement class of California consumers, while balancing the risks and delays of continued, protracted litigation. Such a recovery is in line with other false advertising settlements approved in this District. *See, e.g., Miller v. Ghirardelli Chocolate Co.*, No. 12-cv-04936-LB, 2015 WL 758094 (N.D. Cal. Feb. 20, 2015) (final approval of \$5.25 million settlement); *Larsen v. Trader Joe’s Co.*, No. 11-cv-05188-WHO, 2014 WL 3404531 (N.D. Cal. July 11, 2014) (final approval of \$3.375 million settlement); *Zeisel v. Diamond Foods, Inc.*, No. C 10-01192 JSW, 2012 WL 4902970 (N.D. Cal. Oct. 16, 2012) (final approval of \$2.6 million settlement).

As explained below, Plaintiff Paul Fiskratti (“Plaintiff”), individually and on behalf of the proposed settlement class, submits that this is a very good recovery for the proposed settlement class in light of the substantial risks at class certification and trial. Based on an informed evaluation of the facts and governing legal principles, Plaintiff respectfully moves for preliminary approval of the Proposed Settlement as fair, reasonable, and adequate under Rule 23.

**I. SUMMARY OF THE LITIGATION**

This case involves the alleged deceptive marketing of certain TCL televisions (the “subject televisions”) as having an “effective” refresh rate that the televisions do not actually have. As detailed in the operative complaint, ECF No. 63, LCD televisions display a series of still images in rapid succession. The rate at which images are displayed is the refresh rate, measured in hertz (Hz). A television with a 60Hz refresh rate is capable of displaying 60 unique images per second; a television with a 120Hz refresh rate can display 120 unique images per second. The refresh rate—



1 that is, the rate at which unique images are displayed—is limited by the hardware in the display  
2 panel.

3         However, TCL claims that the subject televisions can display an “effective” refresh rate  
4 double that of the actual refresh rate. Through a process known as backlight scanning, the  
5 television’s display rapidly turns on and off the backlight (or portions of the backlight) to darken  
6 the screen (or portions of the screen), all while only a single image is being displayed. This  
7 “backlight scanning” process allegedly “smooths” the blur between the unique images as they are  
8 displayed. Thus, backlight scanning does not actually increase the television’s refresh rate. Despite  
9 this fact, TCL represented that its televisions could achieve double the actual refresh rate, which  
10 TCL calls “Clear Motion Index” or “CMI,” a proprietary marketing term. For example, a 60Hz  
11 television would be marketed as having a “120Hz CMI effective refresh rate.”

12         Plaintiffs originally filed their Class Action Complaint on April 24, 2020. ECF No. 1.  
13 Following two motions to dismiss, Plaintiffs filed the operative Second Amended Class Action  
14 Complaint, ECF No. 63. Following another motion to dismiss, TCL answered on April 7, 2021,  
15 ECF No. 77. The Parties engaged in extensive discovery, including the production and review of  
16 tens of thousands of pages of documents from Parties and non-parties, preparing for and defending  
17 depositions of three named plaintiffs, three 30(b)(6) witnesses, and several expert witnesses, and the  
18 submission of expert reports. Declaration of Adam Edwards ¶¶ 3-4 (attached as **Exhibit B**). Then,  
19 on August 27, 2021, Plaintiffs filed their class certification motion, ECF No. 87, which TCL  
20 opposed, ECF No. 102. Before Plaintiffs’ reply brief was due, the Parties negotiated and agreed  
21 upon the Proposed Settlement. *See* ECF No. 109.

22         As discovery unfolded, the Parties discussed the prospects of potential settlement. Even  
23 while they briefed the motion for class certification, the Parties continued to consider settlement,  
24 eventually scheduling a mediation. On October 15, 2021, the Parties engaged in a full-day mediation  
25 with the Hon. Jay C. Gandhi of JAMS, a retired judge and experienced mediator. Judge Gandhi  
26 guided the Parties through their negotiations, eventually reaching an agreement. The Proposed  
27 Settlement was reached approximately 18 months after the initiation of this action.

1 **I. THE PROPOSED SETTLEMENT**

2 The Proposed Settlement provides substantial, meaningful relief to current and former  
3 owners of the subject televisions by compensating their economic losses associated with the  
4 purchase of a television that was technologically incapable of displaying the advertised Hz rating.  
5 Notably, none of the Settlement benefits will be reduced by Class Counsel’s fees or expenses, further  
6 ensuring the Class Members receive full and fair relief.

7 **A. The Proposed Settlement Class**

8 The proposed “Settlement Class” consists of all persons who, during the Class Period,  
9 purchased a new TCL television marketed as having a “Hz” rating twice as high as its native panel  
10 refresh rate (Hz) in the state of California.<sup>1</sup> The Settlement Class does not include New Jersey  
11 consumers notwithstanding that the complaint pleaded claims under New Jersey law. The Proposed  
12 Settlement’s “Class Period” runs from April 24, 2016, through the notice date—established as  
13 twenty-one days following the Court’s order preliminary approving the Proposed Settlement.

14 **B. Benefits to the Class**

15 TCL will pay up to \$2,500,000 in cash compensation to Settlement Class Members.  
16 Settlement Class Members who submit a valid claim will receive up to a \$15 cash payment. To be  
17 valid, claims must be accompanied by proof of purchase consisting of any of the following: (1) copy  
18 of a receipt, (2) inputting the television serial number into the claim form, (3) a statement under  
19 penalty of perjury establishing that the Settlement Class Member sold, donated, or gave away the  
20 subject television prior to January 1, 2018, or (4) a statement under penalty of perjury establishing  
21 that the Settlement Class Member recycled the subject television pursuant to California law. Should  
22 sufficient valid claims be made, such that the total cash owed would exceed \$2,500,000, the cash  
23 payment for each valid claim will be reduced *pro rata*.

24 \_\_\_\_\_  
25 <sup>1</sup> Excluded from the Settlement Class are: all persons who validly opt out of the Settlement in a  
26 timely manner; governmental entities; counsel of record (and their respective law firms) for the  
27 Parties; TCL and any of its parents, affiliates, subsidiaries, independent service providers and all of  
28 its respective employees, officers, and directors; the presiding judge in the action or judicial officer  
presiding over the matter, and all of their immediate families and judicial staff; and any natural  
person or entity that entered into a release with TCL prior to the effective date concerning the subject  
televisions.

Further, the Proposed Settlement includes an injunctive relief component, which will benefit all future TCL television purchasers. TCL has agreed not to label any new television manufactured after final approval as being “120Hz CMI” or “120Hz Clear Motion Index” for four years—thus removing the “effective” refresh rate statements from all TCL television packaging.

**C. Class Notice and Settlement Administration**

Notice will be given to the Settlement Class via at least 5,555 email address known to TCL, an extensive 60-day online advertising campaign, a case-specific toll-free number, and by posting notice on the settlement website. *See* Declaration of Eric Schachter ¶¶ 6-18 (attached as **Exhibit C**). The settlement website will include all documents relevant to Settlement Class Members, including the Settlement Agreement, the claim form, and the long form notice. The short and long form notice are clear and concise and directly inform Settlement Class Members of how to submit a claim, and of their rights to opt-out from or object to the Settlement.

The Parties retained AB Data, Ltd. (“AB Data”) as the Settlement Administrator, a firm with substantial experience in managing class settlements, subject to the Court’s approval. *See* Schachter Decl. ¶¶ 3-4, Exh. 1. AB Data will be paid via a separate account, which TCL will fund with \$75,000, and these expenses will not reduce the benefits to the Settlement Class.

**D. Attorneys’ Fees and Expenses**

Class Counsel will separately seek an award of reasonable attorneys’ fees and expenses not to exceed \$1,000,000. This figure, once awarded, will be paid separate and apart from the Settlement fund. Thus, whatever reasonable attorneys’ fees and expenses are awarded, they will *not* reduce the total \$2,500,000 in benefits available to the Settlement Class.

TCL has agreed to take no position with regard to Class Counsel’s fee request. The Proposed Settlement is *not* contingent on the Court awarding attorneys’ fees and expenses. Should the Court decline to approve Class Counsel’s request for attorneys’ fees and expenses, either in whole or in part, the remaining provisions of the Settlement would still remain in effect (contingent upon the Court’s approval of the Settlement).

**E. Service Award to Named Plaintiff Fiskratti**

Plaintiff played a vital role in litigating this case, including reviewing pleadings and other filings, staying abreast of the status of the case and regularly discussing the matter with their counsel, responding to discovery and sitting for a deposition, and playing an active role in considering and approving settlement terms. Plaintiff ensured the interests of putative class members were protected. Plaintiff will request the Court to award him \$2,500 in recognition of his active role and significant time expended in furtherance of this litigation on behalf of the proposed Settlement Class.

**F. Timeline**

Under the Proposed Settlement, the Parties agreed to a settlement schedule based on the following intervals:

<b><u>Item</u></b>	<b><u>Deadline</u></b>
Filing of Motion for Preliminary Approval	February 11, 2022
Funding of Administration Fund	21 days after Preliminary Approval
Notice Deadline/Notice Date	21 days after Preliminary Approval
Objection/Exclusion Deadline	81 days after Preliminary Approval
Claim Deadline	81 days after Preliminary Approval
Final Tally	7 days after Claim Deadline
Plaintiffs' Motion for Attorneys' Fees and Incentive Awards	60 days prior to the date of Fairness Hearing.
Motion for Final Approval	60 days prior to date of Fairness Hearing
Responses to Motion for Attorneys' Fees and Incentive Awards and Motion for Final Approval	30 days prior to date of Fairness Hearing
Plaintiffs' and Defendant's Responses to Objections	14 days prior to date of Fairness Hearing
Fairness Hearing	180 days after Preliminary Approval (or such other date set by the Court)
Effective Date	Date of Final Approval (assuming no objections)
Fund Payment for Settlement Awards	No later than 30 days after Effective Date
Payment of Attorneys' Fees and Incentive Awards	No later than 21 business days after Effective Date
Distribution of Settlement Awards	No later than 90 days after Effective Date
Post-Distribution Accounting	30 days after distribution of Settlement Awards

**II. LEGAL STANDARD**

In the Ninth Circuit, there is a “strong judicial policy that favors settlements” of class actions. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). “[T]here is an overriding public interest in settling and quieting litigation,” and this is “particularly true in class action suits.”

1 *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976). Recognizing that “[p]arties  
2 represented by competent counsel” are “positioned . . . to produce a settlement that fairly reflects  
3 each party’s expected outcome in [the] litigation,” courts favor approval of settlements. *In re Pac.*  
4 *Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995).

5 At the preliminary approval stage, courts generally “require a determination of whether the  
6 proposed settlement ‘falls within the range of possible approval’ and ‘has no obvious deficiencies.’”  
7 *O’Connor v. Uber Techs., Inc.*, No. 13-CV-03826-EMC, 2019 WL 1437101, at \*4 (N.D. Cal. Mar.  
8 29, 2019) (Chen, J.). Additionally, the 2018 amendment to Rule 23 “clarifies that preliminary  
9 approval should only be granted where the parties have ‘show[n] that the court will likely be able  
10 to . . . approve the proposal under [the final approval factors in] Rule 23(e)(2)’” and ‘certify the  
11 class for purposes of judgment on the proposal.’” *Id.* (citing Fed. R. Civ. P. 23(e)(1)(B)).

12 The relative degree of importance to be attached to any particular factor will depend upon .  
13 . . the unique facts and circumstances presented by each individual case.” *Officers for Justice v.*  
14 *Civil Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982). In particular,  
15 determining whether a proposed settlement is fair, adequate and reasonable depends upon:

16 (1) the strength of the plaintiffs’ case; (2) the risk, expense, complexity, and likely  
17 duration of further litigation; (3) the risk of maintaining class action status throughout  
18 the trial; (4) the amount offered in settlement; (5) the extent of discovery completed  
19 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.

20 *Churchill Village, L.L.C. v. General Electric*, 361 F.3d 566, 575 (9th Cir. 2004). Moreover, in this  
21 District, the parties seeking approval of a class action settlement must provide all information  
22 required in the District’s Procedural Guidance for Class Action Settlements guidelines.<sup>2</sup>

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28 <sup>2</sup> Procedural Guidance for Class Action Settlements, *available at* <https://www.cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements> (last visited Feb. 8, 2022).

### III. ARGUMENT

#### A. The Proposed Settlement Is Fair, Reasonable, and Adequate

The Proposed Settlement represents a fair, reasonable, and adequate resolution to this litigation, providing meaningful relief to consumers. The relevant considerations weigh in favor of preliminarily approving—and of eventually finally approving—the Proposed Settlement.

##### 1. **The Proposed Settlement is the result of good faith arm’s-length negotiations before an experienced Mediator.**

The Parties reached the Proposed Settlement after day-long negotiations overseen by the Hon. Jay C. Gandhi (Ret.) of JAMS., a retired judge with extensive experience and capable of analyzing the strengths and weaknesses of the Parties’ cases. Judge Gandhi ensured that the Parties’ negotiations were held in good faith and at arm’s-length. “[T]he assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive.” *See G. F. v. Contra Costa Cnty.*, No. 13-cv-03667-MEJ, 2015 WL 4606078, at \*13 (N.D. Cal. July 30, 2015) (citation omitted); *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09–00261 SBA (EMC), 2012 WL 5878390, at \*6 (N.D. Cal. Nov. 21, 2012) (noting that private mediation “tends to support the conclusion that the settlement process was not collusive”) (Chen, J.). The manner in which the Parties negotiated, and eventually reached, the Proposed Settlement with the assistance of an experienced mediator weighs in favor of granting preliminary approval.

##### 2. **The Proposed Settlement Falls Within the Range of Possible Approval**

It is axiomatic that “the very essence of a settlement is compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice*, 688 F.2d at 624. The Proposed Settlement provides substantial relief to the Class considering (1) the costs, risks, and delay of trial and appeal, (2) the effectiveness of the proposed distribution plan, and (3) the fair terms of the separately-negotiated attorneys’ fees. Fed. R. Civ. P. 23(e)(2)(C).

##### a. **The Proposed Settlement mitigates the risks, expenses, and delays that the Class would bear through continued litigation.**

The Proposed Settlement provides substantial relief to the Class in the face of the inherent uncertainties of litigation. “The substantial and immediate relief provided to the Class under the Settlement weighs heavily in favor of its approval compared to the inherent risk of continued

1 litigation, trial, and appeal, as well as the financial wherewithal of the defendant.” *Kim v. Space*  
 2 *Pencil, Inc.*, No. C 11-03796 LB, 2012 WL 5948951, at \*5 (N.D. Cal. Nov. 28, 2012).

3 This case presents significant risks to recovery. On the merits, TCL refused to concede any  
 4 of Plaintiff’s claims. Since inception, TCL challenged whether its marketed “effective” refresh rate  
 5 was deceptive or misleading to consumers. TCL argued that the challenged “120Hz CMI” and  
 6 “120Hz CMI Effective Refresh Rate” representations are not misleading to the consumer for many  
 7 reasons. According to TCL, the challenged representations are literally true because CMI is TCL’s  
 8 proprietary marketing term. In addition, TCL argued that consumers genuinely interested a 120Hz  
 9 native refresh rate television would not blindly assume the term “CMI” within “120Hz CMI” is  
 10 meaningless, and subsequently claim deception. Instead, consumers would question and research  
 11 the term “CMI” or “clear motion index” before purchase.

12 There is meaningful risk that a factfinder could agree with TCL at trial. Plaintiff Fiskratti  
 13 testified that, had he seen “120Hz CMI” before purchase, he may have “done research” into CMI.  
 14 Fiskratti Dep., at 102:18-25, ECF No. 105-1, Ex. 96. Plaintiff Wayne Lewald similarly “would have  
 15 questioned what those [CMI] letters meant and would have looked into it a little further.” Lewald  
 16 Dep., at 82:8-83:15, ECF No. 105-1, Ex. 97. Indeed, class action trials are inherently risky—  
 17 seemingly meritorious consumer fraud class actions have recently gone to trial in California, with  
 18 judgments returned for defendants. *See e.g., Farar v. Bayer AG*, No. 14-cv-4601 (N.D. Cal.); *Allen*  
 19 *v. Hyland’s, Inc.*, No. 12-cv-1150 DMG (MANx) (C.D. Cal.); *cf. Racies v. Quincy Bioscience, LLC*,  
 20 No. 15-cv-292 (N.D. Cal.) (declaring mistrial and decertifying class).

21 Summary judgment is also not without risk, where TCL would analogize to the Ninth  
 22 Circuit’s recent dismissal in *Moore v. Trader Joe’s Co.*, 4 F.4th 874 (9th Cir. 2021). There, the  
 23 Ninth Circuit held the statement “100% New Zealand Manuka Honey” was not false or misleading  
 24 as a matter of law. As is relevant here, the “label includes a sticker saying ‘10+,’ which represents the  
 25 honey’s rating on the UMF scale.” *Id.* “While there are no other details on the jar about what ‘10+’  
 26 means, the presence of this rating on the label puts a reasonable consumer on notice that it *must*  
 27 *represent something* about the product.” *Id.* (emphasis added). TCL, therefore, would argue that  
 28 reasonable consumers cannot assume “CMI” is meaningless, like the “10+” rating in *Moore*.



1 Accordingly, while Plaintiff vigorously disputes TCL’s contentions on the merits, the risk  
 2 of dismissal weighs in favor of settlement. *See Knapp v. Art.com, Inc.*, 283 F. Supp. 3d 823, 832  
 3 (N.D. Cal. 2017) (approving settlement where “[c]ase law suggests that plaintiff would have faced  
 4 challenges in continuing to litigate” and “[i]n most situations, unless the settlement is clearly  
 5 inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with  
 6 uncertain results.” (quotation omitted)).

7 The risk that Plaintiff may not achieve class status also weighs in favor of settlement—which  
 8 is partly why the Parties scheduled mediation before a decision on class certification. *See In re*  
 9 *Netflix Privacy Litig.*, No. 5:11-CV-00379 EJD, 2013 WL 1120801, at \*6 (N.D. Cal. Mar. 18, 2013)  
 10 (“The notion that a district court could decertify a class at any time is one that weighs in favor of  
 11 settlement.”). Indeed, articulated in TCL’s opposition to Plaintiff’s motion for class certification  
 12 (ECF No. 102), TCL argued at length that individual questions predominate over common questions  
 13 concerning exposure, reliance, materiality, causation, and injury. The risk is magnified by the Eighth  
 14 Circuit’s decision to reverse class certification in a similar refresh rate litigation against LG  
 15 Electronics, a decision upon which TCL heavily relies. *Hudock v. LG Elecs. U.S.A. Inc.*, 12 F.4th  
 16 773 (8th Cir. 2021) (applying New Jersey law).

17 Thus, there is a material risk that the Court could refuse to certify the California litigation  
 18 class here. In that event, putative class members would receive nothing. And even if the Court did  
 19 certify a litigation class, Plaintiff would still face potential review on appeal, as well as the risks  
 20 associated with proving his claims at trial, which carries serious expense and further delay—  
 21 potentially delaying recovery for years. The Proposed Settlement allows Plaintiff and Settlement  
 22 Class Members to avoid these risks, additional expense, and delay in favor of immediate recovery.

23 **b. The monetary relief is fair in relation to potential damages.**

24 Plaintiff and his counsel secured for the Settlement Class direct monetary benefits of up to  
 25 \$2.5 million, which is reasonable in relation to potential trial damages—assuming both a 100%  
 26 claims rate or a realistic 5% claims rate.

27 *First*, Plaintiff alleged that he and putative class members would not have purchased the  
 28 subject televisions, or else would not have paid as much for them, had TCL truthfully disclosed the



1 actual refresh rate of the televisions. Accordingly, Plaintiff sought the price premium associated  
 2 with these deceptive marketing statements. To this end, Plaintiff submitted the reports of experts  
 3 Colin Weir and Steven Gaskin in support of his motion for class certification, which proposed a  
 4 conjoint analysis that could calculate this price premium on a class-wide basis. ECF Nos. 87-14  
 5 through 87-15. Furthermore, in the related refresh rate litigation against LG Electronics, these same  
 6 experts calculated an approximately 5% price premium based on a 120Hz refresh rate. *See Hudock*  
 7 *v. LG Elecs. U.S.A., Inc.*, No. 16-1220 (JRT/KMM) (D. Minn.), ECF No. 226, at 73-74. And based  
 8 upon the subject televisions' average retail price of approximately \$300, a 5% price premium  
 9 equates to \$15 in damage—the same amount potentially available to each Settlement Class member.  
 10 The Proposed Settlement's cash benefits (up to \$15 per claim) were based on this 5% price premium  
 11 and provide substantial relief.

12 *Second*, the \$2.5 million settlement represents approximately 15% of the Settlement Class's  
 13 potential trial damages. Plaintiff's expert Colin Weir's class certification declaration evaluated  
 14 approximately 1,385,589 units sold at retail in California and New Jersey, totaling \$408,486,872.  
 15 ECF No. 87-14, at 13. Assuming 80% of those sales were in California,<sup>3</sup> and using the 5% price  
 16 premium assumption, trial damages would be \$16,339,474.<sup>4</sup> This \$2.5 million settlement is 15.3%  
 17 of that trial damages figure, well above other approved settlements. *E.g., Custom LED, LLC v. eBay,*  
 18 *Custom LED, LLC v. eBay, Inc.*, No. 12-cv-00350-JRT, 2014 WL 2916871, at \*4 (N.D. Cal. June  
 19 24, 2014) (“[C]ourts have held that a recovery of only 3% of the maximum potential recovery is fair  
 20 and reasonable”); *In re Endosurgical Prod. Direct Purchaser Antitrust Litig.*, No. SACV 05-8809  
 21 JVS (MLGx), 2008 WL 11504857, at \*6 (C.D. Cal. Dec. 31, 2008) (approving “settlement [] worth  
 22 approximately 1.7% of relevant sales”); *McCabe v. Six Continents Hotels, Inc.*, No. 12-cv-04818  
 23 NC, 2015 WL 3990915, at \*10 (N.D. Cal. June 30, 2015) (preliminarily approving settlement  
 24 representing between 0.3% and 2% of potential recovery); *see also Heim v. Heim*, No. 5:10-CV-

25 <sup>3</sup> California's population is roughly four times that of New Jersey. *Compare*  
 26 <https://www.census.gov/quickfacts/CA> with <https://www.census.gov/quickfacts/NJ>.

27 <sup>4</sup> Plaintiff notes that discovery was ongoing and that final expert reports had not yet been exchanged,  
 28 including an actually fielded conjoint survey. Nonetheless, Mr. Weir's declaration in support of  
 Plaintiffs' Motion for Class Certification provides useful context in evaluating the strength of the  
 present Proposed Settlement, even if it is only a preliminary set of opinions.

03816-EJD, 2014 WL 1340063, at \*5-6 (N.D. Cal. Apr. 2, 2014) (noting that “[d]istrict courts have approved settlements as being in good faith for payment of 3% of an alleged tortfeasor’s potential liability” in light of the total claims rate).

**c. The Class is eligible for relief through a straightforward claims process.**

The Proposed Settlement creates a straightforward framework for Settlement Class Members to submit claims demonstrating proof of purchase of a subject television within the Class Period in exchange for up to a \$15 cash payment. Each Settlement Class Member will receive information about the Proposed Settlement, including how to submit a claim, through the proposed Notice program. Once a claim is submitted, it will be reviewed for completeness and eligibility. If the Settlement Administrators deems the claim valid, a cash payment up to \$15 per claim will be issued.

**d. Class Counsel will seek reasonable attorneys’ fees and costs.**

The Class Members’ benefits under the Proposed Settlement will not be reduced to pay Class Counsel’s requested attorneys’ fees and expenses. Should the Court award Class Counsel attorneys’ fees and expenses, they will be paid directly by TCL separate and apart from the Settlement funds. This ensures that Class Members do not pay any fees and costs out of the Settlement proceeds. And courts routinely favor parties who fully negotiate and finalize Settlement terms before discussing fees and expenses. *E.g., In re Volkswagen “Clean Diesel” Mktg., Sales Practices & Prod. Liab. Litig.*, MDL No. 2672 CRB, 2016 WL 6248426, at \*23 (N.D. Cal. Oct. 25, 2016).

**3. The Proposed Settlement treats all Class Members equitably.**

The Proposed Settlement provides benefits to all Class Members who submit valid claims, without any preferential treatment of Class Representatives or segments of the Class. *See* Fed. R. Civ. P. 23(e)(2)(D). Specifically, *all* Class Members who submit valid claims will receive the *same* cash payment, up to \$15.

Class Counsel intends to apply for a \$2,500 incentive award for the Class Representative for his dedication to and time expended for this litigation and in furtherance of putative Settlement Class Members’ interests. Such incentive rewards “are fairly typical in class action cases” and are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness

1 to act as a private attorney general.” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958-59 (9th Cir.  
 2 2009). Such an incentive award, if awarded here, would not constitute preferential treatment.  
 3 Plaintiff was not promised that he would receive such an award for his participation in this litigation,  
 4 and his agreement to serve as a Class Representative was not a conditioned on receiving such an  
 5 award. Edwards Decl. ¶ 13. If granted, such an award would be offered for the significant time the  
 6 Class Representative expended in this litigation, working tirelessly on behalf of the Class; it would  
 7 not replace his recovery as a Class Member. *See supra* Section I.E.; *see also* Edwards Decl. ¶¶ 11-  
 8 13.

9 **B. The Court Can Certify the Settlement Class for Settlement Purposes**

10 Certification of a settlement class is a “two-step process.” *In re Volkswagen “Clean Diesel”*  
 11 *Mktg., Sales Practices & Prod. Liab. Litig.*, No. 2672 CRB, 2016 WL 4010049, at \*10 (N.D. Cal.  
 12 July 26, 2016) (citing *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613 (1997)). First, the court  
 13 must determine that the proposed settlement class satisfies the four requirements of Rule 23(a). *Id.*  
 14 (citing Fed. R. Civ. P. 23(a)). The court then must examine whether a “class action may be  
 15 maintained under [Rule 23(b)].” *Id.* (citing *Amchem Prods.*, 521 U.S. at 613). Unlike other class  
 16 actions, however, when presented with a class action settlement, the court need not consider  
 17 manageability concerns. *Amchem Prods.*, 521 U.S. at 620.

18 The Settlement Class here meets all the requirements of Rule 23(a), and certification is  
 19 appropriate under Rule 23(b)(3).

20 **1. The Settlement Class meets the requirements of Rule 23(a).**

21 **a. The Settlement Class satisfies numerosity.**

22 Rule 23(a)(1) requires that a class be sufficiently numerous so as to make the joinder of all  
 23 class members “impracticable.” Fed. R. Civ. P. 23(a)(1).<sup>5</sup> “Although there is no exact number, some  
 24 courts have held that numerosity may be presumed when the class comprises forty or more  
 25 members.” *Bailey v. Rite Aid Corp.*, 338 F.R.D. 390, 398 (N.D. Cal. 2021) (citation omitted). TCL  
 26

27 \_\_\_\_\_  
 28 <sup>5</sup> TCL did not contest numerosity in its opposition to Plaintiffs’ Motion for Class Certification. ECF  
 No. 102.

1 has sold hundreds of thousands of the subject televisions to consumers across California, making  
2 joinder impracticable.

3 **b. There are common questions of law and fact.**

4 Rule 23 also requires that there be “questions of law or fact common to the class.” Fed. R.  
5 Civ. P. 23(a)(2). A common question must be of “such nature that it is capable of class-wide  
6 resolution—which means that the determination of its truth or falsity will resolve an issue that is  
7 central to the validity of each of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S.  
8 338, 350 (2011). The commonality requirement should be “construed permissively,” and “[a]ll  
9 questions of fact and law need not be common to satisfy the rule.” *Ellis v. Costco Wholesale Corp.*,  
10 657 F.3d 970, 981 (9th Cir. 2011) (quoting *Dukes*, 564 U.S. at 350).

11 Courts routinely find commonality where, as here, the class claims arise from the uniform  
12 conduct of the defendant. *See, e.g., Cohen v. Trump*, 303 F.R.D. 376, 382 (S.D. Cal. 2014) (“Here,  
13 Plaintiff argues his RICO claim raises common questions as to ‘Trump’s scheme and common  
14 course of conduct, which ensnared Plaintiff[] and the other Class Members alike.’ The Court  
15 agrees.”). “[P]laintiff’s burden for showing commonality is ‘minimal.’” *Mezzadri v. Med. Depot,*  
16 *Inc.*, No. 14-CV-2330-AJB-DHB, 2016 WL 5107163, at \*3 (S.D. Cal. May 12, 2016). Here, whether  
17 TCL’s “120Hz CMI” and similar representations regarding refresh rate are misleading are issues  
18 common to the putative class.

19 **c. The named Plaintiff’s claims are typical of other Class  
20 Members’ claims.**

21 Rule 23(a)(3) requires that “the claims or defenses of the representative parties are typical  
22 of the claims or defenses of the class,” and “assure[s] that the interest of the named representative[s]  
23 align[] with the interests of the class,” *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168,  
24 1175 (9th Cir. 2010) (citation omitted). This requirement, like commonality, is “permissive and  
25 requires only that the representative’s claims are reasonably co-extensive with those of absent class  
26 members; they need not be substantially identical.” *Rodriguez v. Hayes*, 591 F.3d 1105, 1124 (9th  
27 Cir. 2010) (citation and internal quotation marks omitted). *Stearns v. Ticketmaster Corp.*, 655 F.3d  
28 1013, 1019 (9th Cir. 2011) (noting that typicality is “satisfied when each class member’s claim

1 arises from the same court of events, and each class member makes similar legal arguments to prove  
2 the defendant's liability").

3 Here, all Plaintiff's claims arise from the same course of conduct—TCL's deceptive  
4 marketing regarding its "effective" refresh rate, an artificially inflated marketing statement. Because  
5 all consumers purchasing the subject televisions were exposed to the same deceptive marketing  
6 statements, all "unnamed class members have injuries similar to those of the named plaintiffs and  
7 the injuries result from the same, injurious course of conduct." *Armstrong v. Davis*, 275 F.3d 849,  
8 869 (9th Cir. 2001).

9 **d. The Class Representatives and Class Counsel will continue to**  
10 **protect the interests of the Settlement Class.**

11 The adequacy requirement of Rule 23 demands that "the representative parties will fairly  
12 and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). Courts employ a two-  
13 pronged approach to analyze adequacy, examining whether "the named plaintiffs and their counsel  
14 have any conflicts of interest with other class members" and whether "the named plaintiffs and their  
15 counsel [will] prosecute the action vigorously on behalf of the class." *Evon v. Law Offices of Sidney*  
16 *Mickell*, 688 F.3d 1015, 1031 (9th Cir. 2012) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011,  
1020 (9th Cir. 1998)). The named Plaintiffs and Class Counsel meet both these requirements.

17 Plaintiff's interests are perfectly aligned with those of putative class members because their  
18 individual class claims arise from the same course of TCL's marketing and Plaintiff seeks remedies  
19 equally applicable and beneficial to putative class members. *See supra* Section III.B.1.c. There are  
20 no conflicts between Plaintiff's claims and those of Class Members. Plaintiff played an active role  
21 throughout this litigation, reviewing filings, answering discovery, preparing for and sitting for his  
22 deposition, and staying informed of new developments in this action. *Clemens v. Hair Club for Men,*  
23 *LLC*, No. C 15-01431 WHA, 2016 WL 1461944, at \*2-3 (N.D. Cal. Apr. 14, 2016); *Cole v. Asurion*  
24 *Corp.*, 267 F.R.D. 322, 327-28 (C.D. Cal. 2010). Plaintiff also played an important role in the  
25 settlement process before approving the Proposed Settlement. Edwards Decl. ¶ 7. Since the  
26 inception of this litigation, Plaintiff zealously acted in the interests of the Class as a whole, and will  
27  
28

1 continue to protect the interests of the Settlement Class through final approval. *See* Pls.’ Mot. for  
 2 Class Certification, at 19-20; *see also* Fiskratti Dep., ECF No. 87-13.

3 Likewise, Plaintiff’s counsel are committed to pursuing this action on behalf of Class  
 4 Members’ interests. Further, they have no conflicts of interest in representing the interests of absent  
 5 class members. Plaintiffs’ counsel—Milberg Coleman Bryson Phillips Grossman, PLLC; Crueger  
 6 Dickinson LLC; and Hudock Law Group, S.C.—have extensive experience in complex and class  
 7 action litigation. ECF Nos. 87-20, 87-21, 88-22. Plaintiff’s counsel seek appointment as Class  
 8 Counsel under Rule 23(g). Plaintiff’s counsel have demonstrated their skill and experience  
 9 throughout this litigation by successfully conducting motion and discovery practice in an efficient  
 10 manner, and by retaining and interfacing with qualified experts to establish the deceptive conduct  
 11 in this case. In addition to their extensive class action and complex litigation experience, including  
 12 in litigating consumer product class actions, Plaintiff’s counsel brought their significant resources  
 13 to bear in vigorously representing the interests of Plaintiffs and putative class members, and they  
 14 will continue to do so on behalf of the Settlement Class through final approval and the disbursement  
 15 of relief to the Class. The Court should appoint Plaintiff’s counsel as Class Counsel and should find  
 16 that the adequacy requirement of Rule 23 has been met.

## 17 **2. The Settlement Class Meets the Requirements of Rule 23(b)(3).**

### 18 **a. Common issues of law and fact predominate.**

19 Rule 23(b)’s first requirement—predominance—is satisfied here. “The predominance  
 20 inquiry ‘asks whether the common, aggregation-enabling, issues in the case are more prevalent or  
 21 important than the non-common, aggregation-defeating, individual issues.’” *Tyson Foods, Inc. v.*  
 22 *Bouaphakeo*, 577 U.S. 442, 453 (2016) (citation omitted). Merely because certain issues “will have  
 23 to be tried separately, such as damages or some affirmative defenses peculiar to some individual  
 24 class members,” that alone will not defeat predominance. *Id.* at 453-54 (citation omitted). Where  
 25 common questions “present a significant aspect of the case and they can be resolved for all members  
 26 of the class in a single adjudication, there is clear justification for handling the despite on a  
 27 representative rather than on an individual basis” and predominance will be satisfied. *In re NJOY*,  
 28

1 *Inc. Consumer Class Action Litig.*, 120 F. Supp. 3d 1050, 1102 (C.D. Cal. 2015) (quoting *Hanlon*,  
2 150 F.3d at 1022).

3 Where a deceptive scheme is alleged, as here, class treatment is generally favored. *See In re*  
4 *First Alliance Mortg. Co.*, 471 F.3d 977, 990 (9th Cir. 2006); *Hanlon*, 150 F.3d at 1022-23. Plaintiff  
5 brought claims under the California Consumers Legal Remedies Act (“CLRA”), which applies an  
6 objective reasonable person standard, meaning that all issues regarding such claims predominate.  
7 *Williams v. Gerber Prods. Co.*, 552 F.3d 934, 938 (9th Cir. 2008). The reliance and causation prongs  
8 under CLRA likewise are “objective, classwide inquir[ies].” *In re NJOY*, 120 F. Supp. 3d at 1103  
9 (citation omitted); *see also Fitzhenry-Russell v. Pepper Snapple Grp. Inc.*, 326 F.R.D. 592, 612  
10 (N.D. Cal. 2018).

11 Here, the operative Complaint alleged that TCL deceptively marked the subject televisions  
12 as having a CMI or effective refresh rate that they were actually incapable of displaying. Whether  
13 reasonable consumers would be deceived and whether such statements are material to reasonable  
14 consumers are susceptible to common proof based on objective standards, leaving the common  
15 questions to predominate over any potential individualized inquiries. Moreover, Plaintiffs presented  
16 a conjoint analysis methodology for calculating a price premium, on a class-wide basis, associated  
17 with the deceptive “effective” refresh rate statements. Such a methodology is commonly accepted  
18 for calculating class-wide damages of this kind. Thus, Plaintiffs have satisfied the predominance  
19 requirement of Rule 23(b)(3).<sup>6</sup>

20 **b. A class action is the superior method for adjudicating, and**  
21 **settling, the Plaintiff’s and the Class’s claims.**

22 The superiority requirement inquires “whether the objectives of the particular class action  
23 procedure will be achieved in the particular case,” *Hanlon*, 150 F.3d at 1023, and whether  
24 maintaining the “litigation as a class action is efficient and . . . fair.” *Wolin*, 617 F.3d at 1175-76.  
25 Pursuant to Rule 23(b)(3), a court must consider four factors for this inquiry: (1) class members’  
26 interests in individually controlling separate actions; (2) the extent and nature of any litigation  
27 concerning the controversy already commenced by or against the class; (3) the desirability of

28 <sup>6</sup> For a more fulsome discussion of predominance, see Pls.’ Mot. for Class Certification, at 20-24.



1 maintaining the litigation in the particular forum; and (4) the difficulties likely to be encountered in  
 2 managing a class action. Fed. R. Civ. P. 23(b)(3).

3 All four factors favor certification here. *First*, the price of the subject televisions is not  
 4 significant enough to provide the financial incentive necessary for individual consumers to pursue  
 5 this action. *Mazza v. Am. Honda Motor Co.*, 254 F.R.D. 610, 628 (C.D. Cal. 2008) (finding that “the  
 6 individual class members do not have a strong interest in controlling the litigation” when “the  
 7 potential damages for each class member are approximately \$4,000[.]”). And individual consumers  
 8 are not likely aware of their rights against misleading, deceptive marketing practices, like those  
 9 taken by TCL against them. *Id.*

10 *Second*, “it does not appear that any members of the class have commenced any other  
 11 litigation concerning the controversy alleged herein.” *Menagerie Prods. v. Citysearch*, No. CV 08-  
 12 4263 CAS (FMO), 2009 WL 3770668, at \*19 (C.D. Cal. Nov. 9, 2009).

13 *Third*, “[c]lass action certifications to enforce compliance with consumer protection laws are  
 14 ‘desirable and should be encouraged.’” *Ballard v. Equifax Check Servs., Inc.*, 186 F.R.D. 589, 600  
 15 (E.D. Cal. 1999). This action accomplishes just that.

16 *Fourth*, Plaintiffs’ and the Class members’ ability to adjudicate all their claims efficiently in  
 17 a unified mechanism falls favors certification. *Wiener v. Dannon Co., Inc.*, 255 F.R.D. 658, 672  
 18 (C.D. Cal. 2009) (“[P]ermitt[ing] the potential class members, who individually would be unable to  
 19 vindicate their rights, to collectively assert their causes of action is consistent with the primary  
 20 purpose of a Rule 23(b)(3) class action.”). Accordingly, all of Rule 23(b)(3)’s considerations favor  
 21 settlement approval.

### 22 3. The Proposed Settlement merits approval pursuant to the Northern 23 District’s procedural guidance.

24 Pursuant to this District’s Procedural Guidance for Class Action Settlements, Plaintiff  
 25 specifically addresses the provisions which are relevant to the Proposed Settlement and not  
 26 discussed in detail above.  
 27  
 28



**a. The Settlement Class and the proposed California class are practically identical.**

Where a litigation class has not been certified—as here—this District requires the parties to explain what differences, if any, exist between the settlement class and claims to be released by the Settlement compared to the class and claims sought in the operative complaint or class certification motion. Procedural Guidance for Class Action Settlements (1)(a), (1)(c). Here, the proposed Settlement Class is essentially identical to the California Class Plaintiff sought in his Second Amended Class Action Complaint, ECF No. 63, and his motion for class certification, ECF No. 87.<sup>7</sup>

Plaintiffs’ operative Complaint brings claims on behalf of two state classes—a California and New Jersey class. Second Am. Compl. ¶ 78; Pls.’ Mot. for Class Certification, at 1. Following this Court’s ruling on TCL’s motions to dismiss and the evidence gathered during discovery, and based upon the mediator’s frank analysis of the strengths and weaknesses of Plaintiffs’ claims, Plaintiffs and their counsel determined there were significant risks that their proposed New Jersey class may not be certified—and that the New Jersey Plaintiffs and putative class members would receive no relief for TCL’s deceptive marketing. Accordingly, Plaintiffs and their counsel determined it was in the best interests of Plaintiffs Pacana and Lewald and New Jersey putative class members to voluntarily dismiss their claims, while they continue to investigate and potentially re-allege their claims in the future. As these same risks did not exist for the Plaintiff Fiskratti and California putative class members, Plaintiff and Plaintiffs’ counsel pursued settlement *only* on behalf of the California class.

The Settlement Class includes “all persons who, during the Class Period, purchased a new TCL Television marketed as having a ‘Hz’ rating twice as high as its native panel refresh rate (Hz) in the state of California.” This essentially matches the California litigation class proposed in Plaintiffs’ motion for class certification, defined as “All individuals who, during the class period, purchased a TCL television labeled as having a “Hz” rating twice as high as its actual refresh rate (Hz) in the state of California.” Pls.’ Mot. for Class Certification, at 1. The only difference between these definitions is that the Settlement Class requires that Class Members have purchased their

<sup>7</sup> The Court has not yet ruled on Plaintiffs’ motion for class certification and, thus, has not certified the proposed litigation classes on behalf of California and New Jersey consumers.

1 subject televisions *new*, rather than either new or used. Notably, those putative class members under  
 2 the proposed litigation class who are not members of the proposed Settlement Class (that is, those  
 3 who bought a used subject television) are *not* releasing their claims.

4 **b. If approved, the Settlement Class will release only those future**  
 5 **claims of California Class Members, which are identified in the**  
 6 **Second Amended Complaint.**

7 Pursuant to the Proposed Settlement, Class Members who receive Settlement benefits are  
 8 only releasing those claims that were brought or could have been brought in this action relating to  
 9 TCL's deceptive marketing of the "effective" refresh rate. Specifically, Class Members agree to  
 10 release all claims "on the basis of, connected with, or arising from [TCL's] representations,  
 11 advertising, marketing and/or sales of the Televisions during the Class Period relating in any way  
 12 to the refresh rate and/or effective refresh rate of the [subject] Televisions, and the claims alleged in  
 13 the operative complaint in the Action." Thus, the claims being released are essentially identical to  
 14 those Plaintiffs have raised in their operative Complaint.

15 **c. Reversion**

16 The Proposed Settlement is designed as a "claims-made" settlement, meaning that TCL has  
 17 agreed to compensate each valid claim, and any unclaimed funds revert to TCL. It is true that claims-  
 18 made settlements are considered reversionary, and that reversionary settlements are disfavored in  
 19 the Ninth Circuit. But claims-made settlements are not prohibited. As the Ninth Circuit explained,  
 20 "reversion clauses can also have perfectly benign purposes and impacts, and so are *not per se*  
 21 *forbidden*. Rather, to exercise its discretion appropriately, a district court must explain why the  
 22 reversionary component of a settlement negotiated before certification is consistent with proper  
 23 dealing by class counsel and defendants." *In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., &*  
 24 *Prod. Liab. Litig.*, 895 F.3d 597, 612 (9th Cir. 2018) (emphasis added); *see also Six (6) Mexican*  
 25 *Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1308 (9th Cir. 1990) ("[R]everision to the  
 26 defendant may be appropriate when deterrence is not a goal of the statute or is not required by the  
 27 circumstances").<sup>8</sup> Here, a claims-made settlement is reasonable, adequate, and fair. As noted above,

28 <sup>8</sup> Claims-made settlements are often approved in employment class actions. *Nur v. Tatitlek Support*  
*Servs., Inc.*, No. 15-CV-00094 SVW, 2016 WL 3039573, at \*3 (C.D. Cal. Apr. 25, 2016) ("The

1 there is significant risk on the merits and at class certification. *See supra* Section III.A.2.a. The  
 2 proposed claims-made settlement is appropriate in light of these risks. Further, the Proposed  
 3 Settlement was negotiated in good faith with these concerns in mind, with an eye towards ensuring  
 4 meaningful relief to consumers in light of these risks.

5 Furthermore, TCL presented evidence indicating that many consumers do not understand  
 6 “120Hz” as referring to 120 images per second, or do not care about refresh rates. TCL’s survey  
 7 results showed that 58% of TCL purchasers claimed absolutely no understanding of “refresh rate  
 8 (Hz)” (and therefore could not have been misled), and 74% of respondents either did not know what  
 9 refresh rate means or did not believe it refers to images per second. ECF No. 103 ¶¶ 102-105, 107,  
 10 111. Thus, while Plaintiff continues to dispute TCL’s arguments and conclusions, TCL may be  
 11 correct that a sizeable segment of consumers simply *do not* understand or care about refresh rates.  
 12 And for those that *do* care, they can self-identify and submit claims under the Proposed Settlement.

#### 13 **d. The Settlement Administrator selection process**

14 The Parties jointly selected AB Data, Ltd. to serve as the Settlement Administrator.  
 15 Plaintiffs’ counsel solicited bids from five potential administrators—AB Data, KCC LLC, Epiq  
 16 Global, Angeion Group, and CPT Group, Inc. These five potential administrators were proposed by  
 17 both Plaintiffs’ and Defendant’s counsel. Once the list of the five potential administrators was  
 18 compiled, Plaintiffs’ counsel solicited bids from all five and compared them against one another  
 19 regarding the sufficiency of their proposed notice plan, their experience in administering settlements  
 20 such as this, and the cost-effectiveness of their engagement.

21 All administrators proposed notice plans with robust digital advertising that would ensure at  
 22 least a 70% reach of exposure to potential claimants, and all administrators were sufficiently  
 23 experienced in administering notice and handling claims in cases such as this. However, while the  
 24 other four potential administrators all anticipated a total estimated cost of over \$200,000.00 (and at  
 25 times significantly higher than that), AB Data’s bid was below \$150,000.00. As such, Plaintiffs’

26 \_\_\_\_\_  
 27 Court finds that a claims-made settlement, with a revision of unclaimed funds to the employer to be  
 28 fair, reasonable, and adequate under the circumstances. Indeed, claims-made settlements, with a  
 reversion of unclaimed funds to the employer are routinely approved by the Ninth Circuit and Courts  
 in California. The following list summarizes only a small sample of those cases . . .”).

1 counsel suggested, and TCL's counsel agreed, that AB Data would be selected based on its expertise  
2 in the area, its proposed notice plan, and the fact that its bid was significantly more cost-effective  
3 than the other four potential administrators.

4       Given the nature of digital advertising campaigns and the millions of members of the  
5 Settlement Class, AB Data's estimated expense is reasonable. Further, AB Data will not be paid out  
6 of the Settlement Fund—instead, a separate account will be established to compensate it for its  
7 efforts. Defendant will contribute \$75,000 to this administrative fund, and the remaining costs and  
8 expenses will be taken from any attorneys' fee award granted to Plaintiffs' counsel.

9       Per the District's Procedural Guidance for Class Action Settlements guidelines, Plaintiffs'  
10 counsel states that it has contracted with AB Data to administer one other class action settlement  
11 and one class certification notice in the past two years.

12                   **e. Attorneys' fees**

13       Class Counsel will seek reasonably attorneys' fees plus costs and expenses, subject to the  
14 procedures of Rule 23(h). The amount awarded will be paid by TCL and will not reduce Class  
15 Members' recovery in any way. TCL has agreed not to challenge Class Counsel's request, so long  
16 as that request does not exceed \$1,000,000.00. The Parties negotiated fees separately from the  
17 Proposed Settlement, so as to ensure that the interests of Class Members were fully protected.

18       Class Counsel has already expended many hours in this litigation. Thus far, Class Counsel's  
19 total lodestar exceeds \$1,000,000.00, in addition to various case expenses. Class Counsel believes  
20 that this lodestar is reasonable. However, as noted, Class Counsel will only request up to  
21 \$1,000,000.00 in attorneys' fees and expenses.

22                   **f. Notice of compliance with CAFA**

23       Pursuant to CAFA and the Proposed Settlement, the Settlement Administrator will serve  
24 noticed in accordance with the requirements of 28 U.S.C. § 1715(b) within ten (10) days of the filing  
25 of this motion. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) and  
26 CAFA. The Proposed Settlement does not provide for a recovery of coupons, does not result in a  
27 new loss to any Class Member, and does not provide for payment of greater sums to some Class  
28

Members solely on the basis of geographic proximity to the Court. 28 U.S.C. §§ 1712-1714. Accordingly, the Proposed Settlement fully complies with CAFA.

**g. Information about distributions in previous, comparable class settlements**

Despite exhaustive research, the Parties have been unable to identify any previous, comparable class settlements, which involve similar deceptive marketing of similarly priced consumer products.

**C. The Proposed Notice Program Provides Practicable Notice**

For a settlement class, 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.” Fed. R. Civ. P. 23(c)(2)(B). Notice should “generally describe[] the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and come forward and be heard.” *Churchill*, 361 F.3d at 575; *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

The proposed notice program meets these standards. The Parties developed the proposed notice program with the aid of the Settlement Administrator, AB Data, an experienced firm specializing in the management of class settlements. The notice program includes a short and long form notice and a comprehensive settlement website, all of which provide clear, complete instructions to Class Members of how to submit a valid claim. Notice will be sent to Class Members by email, online advertising, a case-specific toll-free number, and on the settlement website. The notice program informs Class Members of their right to opt-out from or object to the Settlement. Such a program meets the requirements of Rule 23.

**IV. CONCLUSION**

For the reasons stated above, Plaintiffs respectfully request that the Court (1) preliminarily approve the Proposed Settlement and certify the Settlement Class; (2) direct notice to the Class through the proposed notice program; and (3) schedule the final approval hearing.

1 Dated: February 15, 2022

/s/ Adam E. Edwards

Gregory F. Coleman (*pro hac vice*)

Adam A. Edwards (*pro hac vice*)

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*Attorneys for Plaintiffs*

*and the Proposed Classes*

**[PROPOSED] ORDER**

Having considered the Plaintiffs' Motion for Preliminary Approval of Class Settlement and Direction of Notice Under Fed. R. Civ. P. 23(e), and good cause appearing, the Court hereby Grants the Plaintiffs' Motion for Preliminary Approval.

IT IS SO ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Edward M. Chen  
United States District Judge

## **Exhibit A as to the Motion**



## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (the “Settlement” or the “Agreement”) is made and entered into by and between Plaintiffs Mark Pacana, individually, Wayne Lewald, individually, and Paul Fiskratti, individually and on behalf of the Settlement Class (“Plaintiffs” or “Class Representatives”), on the one hand, and Defendant TTE Technology, Inc. dba TCL North America (“TCL” or “Defendant”), on the other hand, in the action entitled *Christopher Julian et al. v. TTE Technology, Inc.*, Case No. 3:20-CV-02857-EMC, pending in the United States District Court for the Northern District of California (the “Court”).

### **I. DEFINITIONS**

As used in this Agreement and all related documents, the following terms have the following meanings:

A. “**Action**” means *Christopher Julian, et al. v. TTE Technology, Inc.*, Case No. 3:20-CV-02857-EMC (U.S.D.C. N.D. Cal.).

B. “**Administration Fund**” means a fund consisting of Seventy-Five Thousand Dollars (\$75,000 USD) that Defendant will pay or cause to be paid to the Settlement Administrator no later than twenty-one (21) calendar days of Preliminary Approval.

C. “**CAFA Notice**” refers to the notice requirements imposed by 28 U.S.C. § 1715(b).

D. “**Class Counsel**” means Crueger Dickinson LLC, Milberg Coleman Bryson Phillips Grossman PLLC, and Hudock Law Group S.C.

E. “**Class Period**” means April 24, 2016 through the Notice Date (defined below).

F. “**Claim(s)**” or “**Claim Form(s)**” means the claim form submitted by a Settlement Class Member, in the form attached hereto as “**Exhibit C**”, to receive a Settlement Award pursuant to Section III. Each Settlement Class Member must attest under penalty of perjury that they purchased a TCL Television during the Class Period, and the information supplied in the Claim Form is true and correct to the best of the Settlement Class Member’s knowledge. For a Claim to be considered valid, each Settlement Class Member must enter the following information into the Claim Form: (1) Television model number(s), (2) approximate date(s) of purchase, and (3) the

place(s) of purchase (selling retailer name and state of purchase). Additionally, for a Claim to be considered valid, each Settlement Class Member must provide “proof of purchase” concurrently with the Claim Form by submitting one (1) of the following:

1. A copy of the receipt(s) of the Television purchase (must identify Television model number, date of purchase, and selling retailer, and if an online purchase, your state of residence); or
2. The serial number of the Television(s); or
3. A statement under penalty of perjury that the Settlement Class Member sold, donated, or gave away the Television(s) prior to January 1, 2018; or
4. A statement under penalty of perjury that the Settlement Class Member recycled the Television(s) under California law, including the name and location of the collector/recycler where the Television was dropped off, the approximate date of drop off, and acknowledgement of following: “California law prohibits the disposal of electronic devices in garbage and in landfills. The California Electronic Waste Recycling Act of 2003 requires that televisions be dropped off by their owners at accredited collectors or recyclers. I understand that my claim may be verified against available accredited collector/recycler information, including Covered Electronic Waste (CEW) Collection Logs submitted by each collector/recycler to the State of California Department of Resources Recycling and Recovery.”

G. “**Claim Deadline**” means the date by which Claims must be submitted to be determined valid, which shall be eighty-one (81) days after Preliminary Approval and no less than sixty (60) days after the Notice Date.

H. “**Claim Period**” means the time period in which Settlement Class Members may submit a Claim Form. The Claim Period begins on the Notice Deadline and expires on the Claim Deadline.

I. “**Claims Process**” means the process for Settlement Class Members’ submission of Claims, as described in Section III.

J. **“Class Notice”** means all types of notice that will be provided to the Settlement Class, as described in Section IV of the Agreement, and includes the Website Notice, Internet Media Publication Notice, Email Notice, as well as any additional notice that might be ordered by the Court.

K. **“Settlement Administrator”** means the third-party agent or administrator agreed to by the Parties and appointed by the Court. The Parties agree that, subject to the Court’s approval, AB Data, Ltd. shall be retained to implement the Class Notice and Claims administration requirements of this Agreement.

L. **“Effective Date”** means (a) if no objection is raised to the proposed Settlement at the Fairness Hearing, including with respect to Class Counsel’s attorneys’ fees and any incentive awards, the date on which the Final Approval Order and Judgment is entered; or (b) if any objections are raised to the proposed Settlement at the Fairness Hearing or thereafter through third-party intervention or otherwise, including with respect to Class Counsel’s attorneys’ fees and any incentive awards, the latest of: (i) the expiration date of the time for filing any appeal from the Final Approval Order and Judgment; or (ii) the date of final disposition of any appeal of the Final Approval Order and Judgment..

M. **“Email Notice”** means notice of the proposed Settlement to be provided to Settlement Class Members substantially in the form attached hereto as **“Exhibit A”**.

N. **“Fairness Hearing”** or **“Final Approval Hearing”** means the hearing at or after which the Court will make a final decision whether to approve this Agreement and the Settlement set forth herein as fair, reasonable and adequate and to enter the Final Approval Order. Pursuant to Section VI, the Parties shall request the Fairness Hearing be scheduled One Hundred and Eighty (180) days after Preliminary Approval.

O. **“Final Approval”** means the date the Court finally approves the Settlement of this Action, including but not limited to, the terms and conditions of this Agreement.

P. **“Final Approval Order”** means the order and judgment that the Court enters upon finally approving the Settlement in connection with the Fairness Hearing, the proposed form of which is attached hereto as **“Exhibit E”**.

Q. **“Internet Media Publication Notice”** means notice of the proposed Settlement to be provided to Settlement Class Members under Section IV.C. of the Agreement. In advance of the hearing on the motion for Preliminary Approval, the Parties shall agree to the form and content of the Internet Media Publication Notice and submit the proposed Internet Media Publication Notice to the Court for approval. If the parties are unable to agree to the form and content of said Notice, the parties shall submit the areas of disagreement to the Court.

R. **“Long Form Notice”** means notice of the proposed Settlement to be provided to Settlement Class Members substantially in the form attached hereto as **“Exhibit B”**.

S. **“Notice Deadline”** or **“Notice Date”** means the date on which the notice described in Section IV of the Agreement is first issued, which shall be twenty-one (21) calendar days following entry of Preliminary Approval.

T. **“Objection/Exclusion Deadline”** means the date eighty-one (81) days after Preliminary Approval, which shall in no event be less than sixty (60) calendar days after the Notice Date.

U. **“Parties”** mean the Class Representatives and Defendant.

V. **“Preliminary Approval”** means the date the Court preliminarily approves the Settlement of the Action, including but not limited to, the terms and conditions of this Agreement.

W. **“Preliminary Approval Order”** means the order to be submitted to the Court in connection with the preliminary approval hearing on the Settlement, the proposed form of which is attached hereto as **“Exhibit D”**.

X. **“Released Claims”** means all claims to be released pursuant to Section III.C of this Agreement.

Y. **“Settlement Award”** means an electronic payment to an eligible Settlement Class Member pursuant to Section III.D. of this Agreement. The Settlement Awards will be capped at

Fifteen Dollars (\$15 USD) per valid Claim and subject to *pro rata* decrease, depending on the number of all approved Claims submitted, as described in Section III.D.

Z. **“Settlement Class”** means all persons who, during the Class Period, purchased a new TCL Television marketed as having a “Hz” rating twice as high as its native panel refresh rate (Hz) in the state of California. Excluded from the Settlement Class are all persons who validly opt out of the Settlement in a timely manner; governmental entities; counsel of record (and their respective law firms) for the Parties; Defendant and any of its parents, affiliates, subsidiaries, independent service providers and all of its respective employees, officers, and directors; the presiding judge in the Action or judicial officer presiding over the matter, and all of their immediate families and judicial staff; and any natural person or entity that entered into a release with Defendant prior to the Effective Date concerning the Televisions.

AA. **“Settlement Class Member(s)”** means any member of the Settlement Class.

BB. **“Settlement Costs”** means (a) any award of attorneys’ fees and costs to Class Counsel approved by the Court; (b) any incentive awards to Plaintiffs approved by the Court; (c) all costs of printing and providing notice to persons in the Settlement Class (including, but not limited to Website Notice, Internet Media Publication Notice, and any additional notice that might be ordered by the Court); (d) all costs of administering the Settlement; and (e) the fees, expenses and all other costs of the Settlement Administrator.

CC. **“Settlement Consideration”** means the benefits available to Settlement Class Members, as described in detail in Section III.

DD. **“Settlement Website”** means the website to be established by the Settlement Administrator for purpose of providing notice, Claim Forms, and other information regarding this Agreement, as described in Section IV.B.

EE. **“Television(s)”** means a new TCL-branded television marketed as having a “Hz” rating twice as high as its native panel refresh rate (Hz). The Televisions are comprised of the following model numbers: 32S327, 40D100, 40S303, 40S305, 40S325, 43S303, 43S305, 43S325, 43S403, 43S405, 43S421, 43S423, 43S425, 43S431, 43S433, 43S434, 43S435, 43S513, 43S515,

43S517, 43S525, 49D100, 49S303, 49S305, 49S325, 49S403, 49S405, 49S425, 49S515, 49S517, 50S421, 50S423, 50S425, 50S431, 50S433, 50S434, 50S435, 50S525, 55C803, 55C807, 55P605, 55P607, 55R613, 55R615, 55R617, 55S401, 55S403, 55S405, 55S421, 55S423, 55S425, 55S431, 55S433, 55S434, 55S435, 55S515, 55S517, 55S525, 65C807, 65R613, 65R615, 65R617, 65S4, 65S401, 65S403, 65S405, 65S421, 65S423, 65S425, 65S431, 65S433, 65S434, 65S435, 65S517, 65S525, 75C803, 75C807, 75R615, 75R617, 75S423, 75S425, 75S431, 75S433, 75S434, and 75S435 only.

FF. “**Website Notice**” means the notice made available on the Settlement Website pursuant to Section IV.B. of this Agreement, including the Long Form Notice.

## **II. LITIGATION BACKGROUND**

A. Plaintiffs allege that, during the Class Period, Defendant deceptively advertised that certain of its Televisions with 60Hz native refresh rate panels as “120Hz CMI,” “120Hz Clear Motion Index,” and/or “120Hz CMI Effective Refresh Rate.” Based on these allegations, on April 24, 2020, Plaintiffs filed the Action. The Action alleges violations of certain California and New Jersey consumer protection statutes and a claim for unjust enrichment. Plaintiffs seek injunctive relief, compensatory damages, and restitution in amounts by which Defendant was allegedly unjustly enriched based on its sale of the Televisions.

B. Defendant expressly denies any liability or wrongdoing of any kind or that Plaintiffs or any putative class member has been damaged in any amount or at all in connection with the claims alleged in the Action, and further contends that, for any purpose other than Settlement, this Action is not appropriate for class treatment. Defendant does not admit or concede any actual or potential fault, wrongdoing, or liability against it in the Action or any other actions. Defendant maintained during the entire pendency of the Action, and continues to maintain, that the challenged representations are in fact true, are substantiated through science, and are not deceptive or misleading as a matter of law.

C. The Parties engaged in vigorous litigation over an eighteen-month period relating to the facts and legal issues in the Action. The Parties exchanged extensive written discovery,

including tens of thousands of pages of documents, took numerous depositions of TCL representatives and Plaintiffs, and engaged in expert discovery and third-party discovery. As a result of this lengthy and contentious litigation, Class Counsel was able to assess thoroughly the claims of the Settlement Class Members and Defendant's practices as they relate to the marketing of the Televisions.

D. The Court granted in part and denied in part Defendant's Motion to Dismiss the First Amended Complaint in this Action on November 17, 2020 (Dkt. 61). The Court also granted Defendant's narrowly targeted Motion to Dismiss the Second Amended Complaint in this Action on March 3, 2021 (Dkt. 76). Following discovery, Plaintiffs filed their Motion for Class Certification on August 27, 2021 (Dkt. 86) and Defendant opposed on October 8, 2021 (Dkt. 102). The Motion for Class Certification was scheduled to be heard on December 9, 2021. The Settlement was then reached at mediation on October 15, 2021, before Plaintiffs' reply brief in support of Motion for Class Certification was due, and before the Motion was heard.

E. Counsel for the Parties engaged in a full-day mediation on October 15, 2021 before the Honorable Jay C. Gandhi (Ret.) of JAMS, as well as many meetings, discussions, and conference calls prior to finally resolving this Action. The result was a Settlement of the Action as to the putative California subclass only, culminating with this Agreement. Based on the above-outlined investigation and litigation, the current state of the law, the expense, burden and time necessary to prosecute the Action through trial and possible appeals, the risks and uncertainty of further prosecution of this Action considering the defenses at issue, the sharply contested legal and factual issues involved, and the relative benefits to be conferred upon Plaintiffs and the Settlement Class Members pursuant to this Agreement, Class Counsel has concluded that a Settlement with Defendant on the terms set forth herein is fair, reasonable, adequate, and in the best interests of the Settlement Class in light of all known facts and circumstances.

F. Defendant and Defendant's counsel recognize the expense and length of continued proceedings necessary to continue the Action through trial and through possible appeals. Defendant also recognizes that the expense and time spent pursuing this Action has and will further

detract from resources that may otherwise be used to run Defendant's business. While Defendant denies any wrongdoing or liability arising out of any of the facts or conduct alleged in the Action and believes that it has valid defenses to Plaintiffs' claims, Defendant has determined that the Settlement is fair, adequate and reasonable.

G. Based on the foregoing, which the Parties expressly incorporate as material terms of the Agreement, it is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all disputes and claims arising from or related to the Action which exist between the Parties. Therefore, it is the intention of Plaintiffs and the Settlement Class that this Agreement shall constitute a full and complete Settlement and release of the Released Claims against Defendant.

### **III. TERMS OF SETTLEMENT**

In consideration of the mutual covenants and promises set forth herein, and subject to Court approval, the Parties agree as follows:

A. Conditional Certification of Class. For Settlement purposes only, and without any finding or admission of any wrongdoing or fault by Defendant, and solely pursuant to the terms of this Agreement, the Parties consent to and agree to the establishment of a conditional certification of the Settlement Class, pursuant to Federal Rule of Civil Procedure 23(b)(3).

B. Certification is Conditional. This certification is conditional on the Court's approval of this Agreement. In the event the Court does not approve all terms of the Agreement, or if the Agreement is voluntarily or involuntarily terminated for any reason, then certification of the Settlement Class shall be void and this Agreement and all orders entered in connection therewith, including but not limited to any order conditionally certifying the Settlement Class, shall become null and void and shall be of no further force and effect and shall not be used or referred to for any purposes whatsoever in the Action or in any other case or controversy. And, in such an event, this Agreement and all negotiations and proceedings related thereto shall be deemed to be without prejudice to the rights of any and all parties hereto, who shall be restored to their respective positions as of the date of this Agreement, and Defendant has not and shall not be deemed to have



waived any opposition or defenses it has to any aspect of the claims asserted herein or to whether those claims are amenable to class-based treatment. Defendant supports certification of the Settlement Class for settlement purposes only.

In the event the Settlement is not preliminarily approved, the parties agree to resume settlement discussions in good faith for at least 14 days. If after 14 days the parties have not agreed to amended settlement terms, then all pre-trial and trial deadlines and dates shall be reset by the Court. The parties agree to provide the Court with a proposed schedule starting with the reply and hearing on the pending Motion for Class Certification (Dkt. 86), and resetting all other existing case deadlines, within 14 days after an order of the Court denying preliminary approval.

C. Releases.

1. Release of Defendant. Upon the Effective Date, and except as to such rights or claims as may be created by this Agreement, and in consideration for the Settlement benefits described in this Agreement, Plaintiffs and the Settlement Class shall fully release and discharge Defendant and all its present and former parent companies, subsidiaries, shareholders, officers, directors, employees, agents, servants, registered representatives, affiliates, successors, personal representatives, heirs and assigns, retailers, suppliers, distributors, endorsers, consultants, and any and all other entities or persons upstream and downstream in the production/distribution channels (together, the “Discharged Parties”) from all claims, demands, actions, and causes of action of any kind or nature whatsoever, whether at law or equity, arising under federal, state, or local law, that Plaintiffs or Settlement Class Members ever had, now have, or may have against the Discharged Parties in any other court, tribunal, arbitration panel, commission, or agency, or before any governmental and/or administrative body, or any other adjudicatory body, on the basis of, connected with, or arising from the Discharged Parties’ representations, advertising, marketing and/or sales of the Televisions during the Class Period relating in any way to the refresh rate and/or effective refresh rate of the Televisions, and the claims alleged in the operative complaint in the Action. This is notwithstanding that Plaintiffs and the Settlement Class acknowledge that they may hereafter discover facts in addition to or different from those that they now know or believe to be

true concerning the subject matter of the Action and/or the Released Claims herein. The Released Claims shall include, but are not limited to, all claims that have or could have been asserted by any or on behalf of any Settlement Class Member in this Action and that are based on the same factual predicate as the Action.

2. Class Representatives' Release of Unknown Claims. Plaintiffs expressly understand and acknowledge that certain principles of law, including but not limited to Section 1542 of the Civil Code of the State of California, provide that:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Plaintiffs hereby agree that the provisions of all such principles of law or similar federal or state laws, rights, rules or legal principles, are hereby knowingly and voluntarily waived, relinquished and released by Plaintiffs.

3. Release of Class Representatives and Class Counsel. Upon the Effective Date, and except as to such rights or claims as may be created by this Agreement, and in consideration for the Settlement benefits described in this Agreement, Defendant shall fully release and discharge Class Representatives, Settlement Class Members, and Class Counsel from all claims, demands, actions, and causes of action of any kind or nature whatsoever, whether at law or equity, known or unknown, direct, indirect, or consequential, liquidated or unliquidated, foreseen or unforeseen, developed or undeveloped, arising under common law, regulatory law, statutory law, or otherwise, whether based on federal, state or local law, statute, ordinance, regulation, code, contract, common law, or any other source, or any claim that Defendant ever had, now has, may have, or hereafter can, shall or may ever have against Class Representatives, Settlement Class Members, and Class Counsel in any other court, tribunal, arbitration panel,

commission, or agency, or before any governmental and/or administrative body, or any other adjudicatory body, on the basis of, connected with, arising from, or in any way whatsoever relating to the institution or prosecution of the Action, notwithstanding that Defendant acknowledges that it may hereafter discover facts in addition to or different from those that it now knows or believes to be true concerning the subject matter of the Action and/or the Released Claims herein.

Defendant expressly understands and acknowledges that certain principles of law, including but not limited to Section 1542 of the Civil Code of the State of California, provide that:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Defendant hereby agrees that the provisions of all such principles of law or similar federal or state laws, rights, rules or legal principles are hereby knowingly and voluntarily waived, relinquished and released by Defendant.

D. Compensation to the Settlement Class.

1. Claim Process. Given the specific legal, procedural, and factual issues in the Action, including as set forth in the Motion for Class Certification and Opposition thereto, Settlement Awards will be provided on a “claims made” basis. Settlement Class Members must make a Claim for a Settlement Award by submitting a valid Claim Form to the Settlement Administrator via a web form on the Settlement Website during the Claim Period. Settlement Class Members may, at their option, submit a paper Claim Form, which will be accepted upon receipt as valid by the Settlement Claims Administrator if the claim is otherwise valid.

Defendant shall have the option and the opportunity, but not the obligation, to verify Television serial numbers, model numbers, purchasing information, and/or disposal information for any Claim submitted or to be determined valid. The Settlement Administrator will use adequate and customary procedures and standards to prevent the payment of fraudulent claims. This may

include measures such as using a class member identifier to access and file claims and/or validating claims against Defendant's records. The Settlement Administrator shall have the right to audit claims, and the Settlement Administrator may request additional information from Settlement Class Members submitting claims. If any fraud is detected or reasonably suspected, the Settlement Administrator may request further information from the Settlement Class Member or deny claims, subject to the ultimate oversight by the Court. The Settlement Administrator shall have sole authority to approve or deny all claims, and the Settlement Administrator's decision shall be final and not be subject to appeal. The Settlement Administrator shall maintain records of all Claim Forms until ninety (90) days after all valid Claims have been finally resolved and the Settlement Administrator has issued payment to those Settlement Class Members who submitted valid Claims, and such records will be made available upon request to Defendant's counsel at the end of the ninety (90) day period. The Settlement Administrator also shall provide such reports, declarations, and such other information to the Court as the Court may require or as Class Counsel or Defendant requests.

2. Settlement Awards and Settlement Cap. The Settlement Award shall consist of a \$15 cash payment per valid Claim to each Settlement Class Member submitting a valid Claim, subject to potential *pro rata* decrease as described below. Defendant shall pay the value of all valid Claims up to a maximum of Two Million Five Hundred Thousand Dollars (\$2,500,000 USD) (the "**Settlement Cap**").

3. Pro Rata Distribution. If the total amount of Settlement Awards would exceed the Settlement Cap, the Settlement Awards will be reduced *pro rata* so that the total payment in the aggregate to Settlement Class Members for Settlement Awards does not exceed the Settlement Cap. For the avoidance of doubt, in no event will Defendant be obligated to pay more than the Settlement Cap (\$2,500,000) in total to all Settlement Class Members, not including the incentive award to the Named Plaintiffs as discussed below.

4. Final Tally. The Settlement Administrator shall provide weekly reports to counsel for Defendant and Plaintiffs stating the number of claims received, the number of claims

denied, and the number of claims approved. Within **seven (7) calendar** days after the close of the Claim Period, the Settlement Administrator shall provide the Parties with the total number of valid and timely Claims received and approved.

5. Injunctive Relief. Without admitting any liability or that it is required by law to do so, Defendant agrees to the following injunctive relief: for new TCL-branded television models first manufactured after the date the Settlement is finally approved and the time for appeal has expired, TCL shall refrain from labeling such televisions as “120Hz CMI” or “120Hz Clear Motion Index” for four years. TCL shall not be obligated to recall or modify labeling for any existing television model and any new variation of a previously introduced model (e.g., model variations introduced for a specific retailer). TCL may, in its sole and absolute discretion, label such televisions as “120 CMI” or “120 Clear Motion Index” without reference to the Hz measurement, or as “120 CMI, 60Hz native” or “120 Clear Motion Index, 60Hz native.”

E. Payment Schedule. In settlement of the claims of Plaintiffs and the Settlement Class Members, Defendant shall remit payment on the following schedule:

1. Within **twenty-one (21) calendar days** of Preliminary Approval, Defendant shall pay the Administration Fund of \$75,000 into an escrow account established by the Settlement Administrator. The Administration Fund shall be used to pay the costs of Class Notice and the Claims Process, including exclusions and objections. Defendant shall not be obligated to pay, reimburse, or indemnify, and Class Counsel shall not seek reimbursement or indemnification from Defendant, for the costs of Class Notice or the Claims Process in excess of the \$75,000 Administration Fund. Any such costs in excess of \$75,000 shall be deducted from the award of attorneys’ fees, costs and expenses.

2. Within **thirty (30) calendar days** of the Effective Date, Defendant shall deposit the value of all valid Claims, up to the Settlement Cap (\$2,500,000), into a mutually agreeable bank account (the “**Fund Payment**”). Subject to Court approval and oversight, the account receiving the Fund Payment shall be an interest-bearing account mutually agreed to by the

Parties and controlled by the Settlement Administrator. Any interest earned on any amounts in the account shall be allocated to pay Settlement Costs.

3. Settlement Awards to Settlement Class Members who submit a valid Claim will be paid within **ninety (90) days** of the Effective Date or as soon thereafter as is feasible for the Settlement Administrator.

F. Attorneys' Fees/Costs and Class Representative Enhancement.

1. Class Counsel may move the Court for an award of attorneys' fees plus costs and expenses of no more than One Million Dollars (\$1,000,000 USD), to be paid to Class Counsel by Defendant separate and apart from the Settlement Awards and Settlement Cap. Any such motion shall be noticed for the same date as the Fairness Hearing and filed at least **sixty days (60) days** before the Fairness Hearing. Defendant shall not object to such a motion so long as the amount requested for attorneys' fees plus costs and expense is less than or equal to \$1,000,000. Class Counsel shall not be entitled to interest on any amount sought at any time. The actual amount of attorneys' fees, costs, and expenses to be awarded is in the discretion of the Court. Court approval of attorneys' fees, costs, and expenses, or their amount, will not be a condition of the Settlement. In the event the Court declines to approve, in whole or in part, the payment of attorneys' fees, expenses, and costs in the amounts requested, the remaining provisions of this Agreement shall remain in full force and effect.

2. Class Counsel further agrees that it will apply to the Court for an incentive award to named Plaintiff Paul Fiskratti in an amount not to exceed \$2,500 USD, for his participation as a Class Representative, for taking on the risks of litigation, and for Settlement of his individual claims as a Settlement Class Member in this Action, to be paid by Defendant separate and apart from the Settlement Awards and Settlement Cap. Court approval of the incentive awards, or their amount, will not be a condition of the Settlement. Furthermore, Defendant agrees to pay \$2,500 to each of Mark Pacana and Wayne Lewald in settlement of their individual claims by no later than twenty-one (21) business days after the Effective Date. Mr.

Pacana and Mr. Lewald are New Jersey consumers and do not seek to represent the Settlement Class consisting of California consumers.

3. Any Court approved attorneys' fees shall be paid within **twenty-one (21) business days** of the Effective Date. The Settlement Administrator shall deliver to Class Counsel a check payable to "Crueger Dickinson LLC Client Trust Account" in the total amount actually awarded by the Court as attorneys' fees, expenses, costs, and incentive awards. Plaintiffs and Class Counsel agree to provide Defendant all identification information necessary to effectuate the payment of the fees and costs including, but not limited to, Taxpayer Identification Number(s), and completed Internal Revenue Service Form(s) W-9.

4. Except for the fees and costs to be paid to Class Counsel and Plaintiffs as specifically provided in this subsection F and elsewhere in this Agreement, Defendant does not agree to pay and shall not be responsible or liable for the payment of any attorneys' fees and expenses of Class Counsel, Plaintiffs, the Settlement Class, and Settlement Class Members, any person or entity that may object to the Agreement, or any attorney who may represent any person or entity that may object to the Agreement, in connection with the Action or in connection with any claim that was or could have been alleged in the Action.

G. Defendant's Maximum Potential Monetary Obligation. In no event shall Defendant's total monetary obligation with respect to this Agreement exceed Three Million Five Hundred Eighty-Two Thousand Five Hundred Dollars USD (\$3,582,500). For clarity, the Settlement Awards (up to \$2,500,000), Administrative Fund (up to \$75,000), Court-approved attorneys' fees, costs, and expenses (up to \$1,000,000), Class Representative incentive awards (up to \$2,500), and individual settlement amounts (up to \$5,000 in total) represent the total extent of Defendant's potential monetary obligations under this Agreement, and Defendant shall not have any other monetary obligation related to or arising out of the Action.

#### **IV. NOTICE TO THE SETTLEMENT CLASS**

The Settlement Administrator shall provide Class Notice in the forms approved by the Court, as detailed below, no later than the Notice Deadline.

A. Email Notice. The Settlement Administrator shall provide for Email Notice by sending an email substantially in the form of **Exhibit A** to the email addresses for Settlement Class Members identified by Defendant.

B. Website Notice. The Settlement Administrator will establish and maintain the Settlement Website. The Settlement Website will be dedicated to the Settlement. On the Settlement Website will be posted the Long Form Notice, the Claim Form, a copy of this Agreement, the Preliminary Approval Order, and any other materials the Parties agree to include. The Settlement Website shall also provide for online submission of Claim Forms, and instructions as to how to access the case docket via PACER or in person at any of the court's locations. The Settlement Website shall also state the date of the Fairness Hearing, that the date may change without further notice, and that Settlement Class Members should be advised to check the Settlement Website or the Court's PACER site to confirm that the date has not been changed. These documents and information shall be available on the Settlement Website no later than the Notice Deadline and remain until 30 days after distribution of all Settlement Awards. The Settlement Website shall not include any advertising, and shall not bear or include Defendant's logo or trademarks.

C. Internet Media Publication Notice. The Settlement Administrator shall implement an internet media effort of digital media advertising through Google Ads or a similar medium, to be distributed over desktop and mobile devices including tablets and smartphones, over a period of 60 days, targeting likely Class Members in California.

D. Toll-Free Number. The Settlement Administrator shall establish and host an automated case-specific toll-free number to allow Class Members to learn more and to request further information about the Action.

E. CAFA Notice. The Settlement Administrator shall be responsible for timely compliance with all CAFA notice requirements. The Settlement Administrator and the parties shall work together in good faith to come to agreement regarding the form and content of, and secure any necessary court approval of, the CAFA Notice. All costs associated with effectuating



CAFA Notice, including but not limited to postage and printing, shall be deemed Settlement Costs and paid exclusively from the Administration Fund.

**V. PROCEDURES FOR OBJECTING TO OR REQUESTING EXCLUSION FROM SETTLEMENT**

A. Objections. Only Settlement Class Members may object to the Settlement. A Settlement Class Member who wishes to object to the Settlement must do so in writing by the Objection/Exclusion Deadline. All written objections and supporting papers must (a) contain and clearly identify the case name and number; and (b) be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 450 Golden Gate Avenue, Courtroom 5 - 17th Floor, San Francisco, CA 94102, or by filing them in person at any location of the United States District Court for the Northern District of California. Written objections must also contain: (1) the full name, address and telephone number of the Settlement Class Member; (2) a written statement of all grounds for the objection accompanied by legal support for the objection (if any); (3) any papers, briefs or other documents upon which the objection is based; (4) a list of all persons who will be called to testify in support of the objection (if any); (5) a statement of whether the Settlement Class Member intends to appear at the Fairness Hearing; (6) proof of membership in the Class; (7) a list of all objections filed by the objector and his or her counsel to class action settlements in the last ten years; and (8) the signature of the Settlement Class Member and her or his counsel, if any. No Settlement Class Member shall be heard at the Fairness Hearing (whether individually or through separate counsel) unless written notice of the Settlement Class Member's intention to appear at the Fairness Hearing, and copies of any written objections or briefs, have been timely submitted to the Court. The date of the postmark on the mailing envelope or a legal proof of service accompanied by a file-stamped copy of the submission shall be the exclusive means used to determine whether an objection and/or notice of intention to appear has been timely filed and served. In the event that the postmark is illegible, the objection and/or notice to appear shall be deemed untimely unless it is received by the Court within **two (2) calendar days** of the Objection/Exclusion Deadline. Settlement Class

Members who fail to timely submit a written objection in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. Class Counsel shall, at least **fourteen (14) calendar days** (or such other number of days as the Court shall specify) before the Fairness Hearing, file any responses to any written objections submitted to the Court by Settlement Class Members in accordance with this Agreement.

B. Procedure for Requesting Exclusion. Settlement Class Members who wish to opt out of this Settlement must submit a written statement to the Settlement Administrator by the Objection/Exclusion Deadline. To be valid, each request for exclusion must: (a) state the Settlement Class Member's name, address, and phone number; (b) be personally signed by the Settlement Class Member and not the Settlement Class Member's attorney or anyone acting on the Settlement Class Member's behalf; and (c) include the statement "I/we request to be excluded from the class settlement in *Christopher Julian, et al. v. TTE Technology, Inc.*, Case No. 43:20-CV-02857-EMC (N.D. Cal.)." Requests to opt-out that do not include all required information and/or that are not submitted on a timely basis, will be null, void, and ineffective. The date of the postmark on the mailing envelope shall be the exclusive means used to determine whether a Settlement Class Member's opt-out/exclusion request has been timely submitted. In the event that the postmark is illegible, the opt-out/exclusion request shall be deemed untimely unless it is received by the Settlement Administrator within **two (2) calendar days** of the Objection/Exclusion Deadline. Any Settlement Class Member who properly opts out of the Settlement Class using this procedure will not be entitled to any Settlement Award, will not be bound by the Settlement, and will not have any right to object, appeal or comment thereon. Settlement Class Members who fail to submit a valid and timely request for exclusion on or before the Objection/Exclusion Deadline shall be bound by all terms of the Settlement and any final judgment entered in this litigation if the Settlement is approved by the Court, regardless of whether they ineffectively or untimely requested exclusion from the Settlement.

C. Termination Right. In its sole discretion and at its sole option, Defendant has the unconditional right, but not the obligation, to terminate this Agreement if the total number of opt-outs exceeds 5,000 persons in the Settlement Class.

D. No Solicitation of Settlement Objections or Exclusions. The Parties agree to use their best efforts to carry out the terms of this Settlement. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class Members to object to the Settlement or request exclusion from participating as a Settlement Class Member, or encourage any Settlement Class Member to appeal from the final judgment.

## **VI. PRELIMINARY APPROVAL OF SETTLEMENT**

Following full execution of this Agreement, Plaintiffs will move the Court for entry of the Preliminary Approval Order, which shall specifically include provisions that: (a) preliminarily approve the Settlement as fair, adequate and reasonable to the Settlement Class, and within the reasonable range of possible final approval; (b) conditionally certify the Settlement Class for Settlement purposes only and appoint Class Counsel as counsel for the Settlement Class for Settlement purposes only; (c) approve the forms of Class Notice and find that the notice constitutes the best notice practicable under the circumstances, provides due and sufficient notice to the Settlement Class and fully satisfies the requirements of due process and Federal Rule of Civil Procedure 23; (d) direct that notice be provided to the Settlement Class, in accordance with this Agreement, by the Notice Deadline; (e) establish a procedure for persons in the Settlement Class to object to the Settlement or exclude themselves from the Settlement Class by the Objection/Exclusion Deadline, after which no one shall be allowed to object to the Settlement or exclude himself or herself from the Settlement Class or seek to intervene; (f) approve the Claim Form and the Claims Process described herein, and set a deadline for timely submission of claims; (g) pending final determination of whether the Settlement should be approved, bar all persons in the Settlement Class, directly, on a representative basis or in any other capacity, from commencing or prosecuting against any of the Discharged Parties any action, arbitration, or proceeding in any court, arbitration forum or tribunal asserting any of the Released Claims; (h) pending final

determination of whether the Settlement should be approved, stay all proceedings in the Action except those related to effectuation of the Settlement; (i) schedule the Fairness Hearing on Final Approval of the Settlement, which shall be **one hundred and eighty (180) calendar days** after Preliminary Approval (or such other date ordered by the Court); and (j) provide that, in the event the proposed Settlement set forth in this Agreement is not approved by the Court, or in the event that this Agreement becomes null and void pursuant to its terms, this Agreement and all orders entered in connection therewith, including but not limited to any order conditionally certifying the Settlement Class, shall become null and void and shall be of no further force and effect and shall not be used or referred to for any purposes whatsoever in the Action or in any other case or controversy; and that in such an event, this Agreement and all negotiations and proceedings related thereto shall be deemed to be without prejudice to the rights of any and all parties hereto, who shall be restored to their respective positions as of the date of this Agreement. In the event the Court does not enter the Preliminary Approval order described herein, or decides to do so only with modifications, then this entire Agreement shall become null and void, unless the Parties hereto agree in writing to proceed with this Agreement as modified.

## **VII. FINAL APPROVAL OF SETTLEMENT**

Not later than **sixty (60) calendar days** before the Fairness Hearing, Class Counsel shall file a Motion for Final Approval of the Settlement. Plaintiffs shall request that the Court enter the Final Approval Order, which shall specifically include provisions that: (a) finally approve the Settlement as fair, reasonable and adequate to the Settlement Class Members; (b) find that the Class Notice as given was the best notice practicable under the circumstances, is due and sufficient notice to the Settlement Class and fully satisfies the requirements of due process and Federal Rule of Civil Procedure 23; (c) approve the plan of distribution of the Settlement Awards; (d) finally certify the Settlement Class; (e) confirm that Plaintiffs and the Settlement Class Members have released all Released Claims and are permanently barred and enjoined from asserting, commencing, prosecuting or continuing any of the Released Claims against the Discharged Parties; and (f) dismiss the Action with prejudice, without costs to any Party, except as provided in this

Agreement, and subject to the Court's retaining continuing jurisdiction over the Parties for the purpose of enforcement of the terms of this Agreement.

#### **VIII. POST-DISTRIBUTION ACCOUNTING**

Pursuant to the Northern District of California's Guidance for Class Action Settlements, within **30 days** after the distribution of Settlement Awards and payment of Settlement Costs, Plaintiffs will file a Post-Distribution Accounting, which shall provide the following information, to the extent possible: "The total settlement fund, the total number of class members, the total number of class members to whom notice was sent and not returned as undeliverable, the number and percentage of claim forms submitted, the number and percentage of opt-outs, the number and percentage of objections, the average and median recovery per claimant, the largest and smallest amounts paid to class members, the method(s) of notice and the method(s) of payment to class members, the number and value of checks not cashed, the amounts distributed to each cy pres recipient, the administrative costs, the attorneys' fees and costs, the attorneys' fees in terms of percentage of the settlement fund, and the multiplier, if any."

#### **IX. UNCASHED SETTLEMENT AWARDS**

To the extent Settlement Awards are provided by check instead of electronically (if any), the expiration date for settlement checks will be 180 calendar days from the date the settlement checks are issued, unless otherwise extended by agreement of the parties. Un-cashed settlement checks may be reissued where appropriate, including where the Settlement Class member states that he or she never received the check, in which case the Settlement Administrator will stop payment on the uncashed check and re-issue the check. Any funds remaining because of un-cashed checks shall escheat to the State of California as unclaimed funds pursuant to California Code of Civil Procedure section 1510, et seq.

#### **X. PARTIES' AUTHORITY**

The signatories represent that they are fully authorized to enter into this Agreement and bind the Parties to its terms and conditions.

#### **XI. MUTUAL FULL COOPERATION**

The Parties agree to cooperate fully with each other to accomplish the terms of this Agreement, including but not limited to, execution of such documents and the taking of such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Agreement. As soon as practicable after execution of this Agreement, Class Counsel, with the assistance and cooperation of Defendant and its counsel, shall take all necessary steps to secure the Court's final approval of this Agreement. Defendant agrees that Defendant will not attempt to discourage Settlement Class Members from filing claims.

## **XII. NO ADMISSION**

This Agreement is not to be construed or deemed as an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant. Defendant denies all liability for claims asserted in the Action. Each of the Parties has entered into this Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses. This Agreement is a settlement document and shall, pursuant to Fed. R. Evid. 408 and related or corresponding state evidence laws, be inadmissible in evidence in any proceeding, action, arbitration, or hearing, including without limitation any litigation or regulatory proceeding or action, to establish liability. The preceding sentence shall not apply to an action or proceeding to approve or enforce this Agreement.

## **XIII. NOTICES**

Unless otherwise specifically provided, all notices, demands or other communications in connection with this Agreement shall be in writing and shall be deemed served on the date of mailing by United States registered or certified mail, return receipt requested, addressed as follows:

<b><u>For The Class</u></b>	<b><u>For Defendant</u></b>
Charles J. Crueger, Esq. CRUEGER DICKINSON LLC 4532 North Oakland Avenue Whitefish Bay, WI 53211 cjc@cruegerdickinson.com	Isabelle L. Ord, Esq. DLA PIPER LLP (US) 555 Mission Street, Suite 2400 San Francisco, CA Isabelle.Ord@dlapiper.com

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#### **XIV. CONSTRUCTION**

The Parties agree that the terms and conditions of this Agreement are the result of lengthy, intensive arms-length negotiations and drafting by and between the Parties, and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his or its counsel participated in the drafting of this Agreement.

#### **XV. MATERIAL TERMS; CAPTIONS**

Each term of this Agreement is a material term of the Agreement not merely a recital, and reflects not only the intent and objectives of the Parties but also the consideration to be exchanged by the Parties hereunder.

Paragraph titles or captions are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any of its provisions.

#### **XVI. INTEGRATION CLAUSE**

This Agreement contains the entire agreement between the Parties relating to the Settlement, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel, are extinguished.

#### **XVII. PUBLIC STATEMENTS**

The Parties and their counsel shall issue no public statements and shall make no comments to media or press with respect to the substance of the Agreement at any time (including but not limited to press releases), except as required by law. In addition, the Parties and their counsel shall not make, publish, circulate or cause to be made, published or circulated any statements that (i) disparage Plaintiffs, Defendants, or their counsel, or (ii) represent or suggest any wrongdoing by or liability of Defendant, or that this Agreement or any order by the Court regarding the Settlement or this Agreement represents or implies any wrongdoing by, or any admission of liability by, Defendant, or a finding by the Court of liability or wrongdoing.

**XVIII. NON-EVIDENTIARY USE**

Neither this Agreement nor any of its terms shall be offered or received into evidence in the Action, or in any other action or proceeding; provided, however, that nothing contained in this section shall prevent this Agreement from being used, offered, or received in any proceeding to enforce, construe, or finalize this Agreement.

**XIX. NO COLLATERAL ATTACK**

This Agreement shall not be subject to collateral attack by any Settlement Class Member or any recipient of the notices to the Settlement Class after the judgment and dismissal is entered. Such prohibited collateral attacks shall include claims that a Settlement Class Member's Settlement Award was improperly calculated or adjusted or that a Settlement Class Member failed to receive timely notice of the procedure for disputing the calculation of the individual Settlement Award or failed to submit a timely dispute letter for any reason.

**XX. AMENDMENTS**

The terms and provisions of this Agreement may be amended only by a written agreement, which is both (1) signed by the Parties who have executed this Agreement and (2) approved by the Court.

**XXI. ASSIGNMENTS**

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any party or Settlement Class Member without the express written consent of each other Party hereto. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties and Settlement Class Members under this Agreement, and shall not be construed to confer any right or to avail any remedy to any other person.

**XXII. GOVERNING LAW**

This Agreement shall be governed by, construed, and interpreted and the rights of the Parties determined in accordance with the laws of the State of California, irrespective of the State of California's choice of law principles.



**XXIII. BINDING ASSIGNS**

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.

**XXIV. CONFIDENTIALITY**

Class Counsel and Plaintiffs' counsel of record in the Action warrant and represent that they have not shared any information regarding the substance of this Settlement or confidential information learned in the Action with any third party, beyond what was permitted under the Stipulated Protective Order in the Action. Nothing in this Agreement changes the terms of the Stipulated Protective Order or the parties' obligations thereunder, and the parties and their counsel continue to be bound by the Stipulated Protective Order.

**XXV. TAX CONSEQUENCES**

No opinion concerning the tax consequences of this Settlement to any Settlement Class Member is given or will be given by Defendant, Defendant's counsel, or Class Counsel, nor is any Party or his/her/its counsel providing any representation or guarantee respecting the tax consequences of the Settlement as to any Settlement Class Member. The Class Notice will direct Settlement Class Members to consult their own tax advisors regarding the tax consequences of the Settlement and any tax reporting obligations with respect thereto. Each Settlement Class Member is responsible for his/her taxes or tax reporting and other obligations respecting the Settlement, if any.

**XXVI. CLASS COUNSEL SIGNATORIES**

It is agreed that because the Settlement Class appears to be so numerous, it is impossible or impractical to have each member of the class execute this Agreement. The notice plan set forth herein will advise Settlement Class Members of all material terms of this Agreement, including the binding nature of the releases and such shall have the same force and effect as if this Agreement were executed by each Settlement Class Member.

**XXVII. SETTLEMENT TIMELINE**

For the Court's and the Parties' convenience, the pertinent deadlines contained in this Agreement are listed below.

<b><u>Item</u></b>	<b><u>Deadline</u></b>
Filing of Motion for Preliminary Approval	February 11, 2022
Funding of Administration Fund	21 days after Preliminary Approval
Notice Deadline/Notice Date	21 days after Preliminary Approval
Objection/Exclusion Deadline	81 days after Preliminary Approval
Claim Deadline	81 days after Preliminary Approval
Final Tally	7 days after Claim Deadline
Plaintiffs' Motion for Attorneys' Fees and Incentive Awards	60 days prior to the date of Fairness Hearing.
Motion for Final Approval	60 days prior to date of Fairness Hearing
Responses to Motion for Attorneys' Fees and Incentive Awards and Motion for Final Approval	30 days prior to date of Fairness Hearing
Plaintiffs' and Defendant's Responses to Objections	14 days prior to date of Fairness Hearing
Fairness Hearing	180 days after Preliminary Approval (or such other date set by the Court)
Effective Date	Date of Final Approval (assuming no objections)
Fund Payment for Settlement Awards	No later than 30 days after Effective Date
Payment of Attorneys' Fees and Incentive Awards	No later than 21 business days after Effective Date
Distribution of Settlement Awards	No later than 90 days after Effective Date

Post-Distribution Accounting	30 days after distribution of Settlement Awards
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**XXVIII. COUNTERPARTS**

This Agreement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all Parties and the Settlement Class.

**IN WITNESS WHEREOF**, the Parties have duly executed this Agreement as of the dates indicated below:

*[Signatures on following pages.]*

**CLASS REPRESENTATIVES AND CLASS COUNSEL:**

Dated: February 11, 2022

By: Mark Pacana  
Mark Pacana, individually

Dated: February \_\_\_\_, 2022

By: \_\_\_\_\_  
Paul Fiskratti, individually and on  
behalf of the Settlement Class

Dated: February \_\_\_\_, 2022

By: \_\_\_\_\_  
Wayne Lewald, individually

Dated: February \_\_\_\_, 2022

CRUEGER DICKINSON LLC

By: \_\_\_\_\_  
Charles J. Crueger  
Attorneys for Plaintiffs

Dated: February \_\_\_\_, 2022

MILBERG COLEMAN BRYSON PHILLIPS  
GROSSMAN PLLC

By: \_\_\_\_\_  
Alex Straus  
Attorneys for Plaintiffs

Dated: February \_\_\_\_, 2022

HUDOCK LAW GROUP S.C

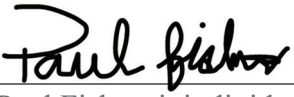
By: \_\_\_\_\_  
Luke Hudock  
Attorneys for Plaintiffs

**CLASS REPRESENTATIVES AND CLASS COUNSEL:**

Dated: February \_\_\_\_, 2022

By: \_\_\_\_\_  
Mark Pacana, individually

Dated: February 11, 2022

By:   
Paul Fiskratti, individually and on  
behalf of the Settlement Class

Dated: February \_\_\_\_, 2022

By: \_\_\_\_\_  
Wayne Lewald, individually

Dated: February \_\_\_\_, 2022

CRUEGER DICKINSON LLC

By: \_\_\_\_\_  
Charles J. Crueger  
Attorneys for Plaintiffs

Dated: February \_\_\_\_, 2022

MILBERG COLEMAN BRYSON PHILLIPS  
GROSSMAN PLLC

By: \_\_\_\_\_  
Alex Straus  
Attorneys for Plaintiffs

Dated: February \_\_\_\_, 2022

HUDOCK LAW GROUP S.C

By: \_\_\_\_\_  
Luke Hudock  
Attorneys for Plaintiffs

**CLASS REPRESENTATIVES AND CLASS COUNSEL:**

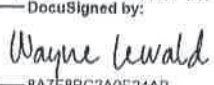
Dated: February \_\_\_\_, 2022

By: \_\_\_\_\_  
Mark Pacana, individually

Dated: February \_\_\_\_, 2022

By: \_\_\_\_\_  
Paul Fiskratti, individually and on  
behalf of the Settlement Class

Dated: February <sup>11</sup> \_\_\_\_, 2022

By:  \_\_\_\_\_  
DocuSigned by:  
Wayne Lewald, individually

Dated: February 11, 2022

CRUEGER DICKINSON LLC

By:  \_\_\_\_\_  
Charles J. Crueger  
Attorneys for Plaintiffs

Dated: February 15, 2022

MILBERG COLEMAN BRYSON PHILLIPS  
GROSSMAN PLLC

By:  \_\_\_\_\_  
Alex Straus  
Attorneys for Plaintiffs

Dated: February \_\_\_\_, 2022

HUDOCK LAW GROUP S.C

By: \_\_\_\_\_  
Luke Hudock  
Attorneys for Plaintiffs

**CLASS REPRESENTATIVES AND CLASS COUNSEL:**

Dated: February 11, 2022 By: Mark Pacana  
Mark Pacana, individually

Dated: February \_\_\_\_, 2022 By: \_\_\_\_\_  
Paul Fiskratti, individually and on  
behalf of the Settlement Class

Dated: February \_\_\_\_, 2022 By: \_\_\_\_\_  
Wayne Lewald, individually

Dated: February \_\_\_\_, 2022 CRUEGER DICKINSON I.L.C  
By: \_\_\_\_\_  
Charles J. Crueger  
Attorneys for Plaintiffs


Dated: February \_\_\_\_, 2022 MILBERG COLEMAN BRYSON PHILLIPS  
GROSSMAN PLLC  
By: \_\_\_\_\_  
Alex Straus  
Attorneys for Plaintiffs

Dated: February 15, 2022 HUDOCK LAW GROUP S.C  
By: Luke Hudock  
Luke Hudock  
Attorneys for Plaintiffs

**DEFENDANT AND COUNSEL FOR DEFENDANT:**

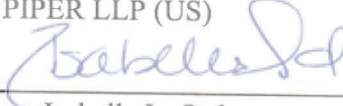
Dated: February 14, 2022

TTE TECHNOLOGY, INC.

By:   
Jonathan King  
V.P. Corporate and Legal Affairs

Dated: February 15, 2022

DLA PIPER LLP (US)

By:   
Isabelle L. Ord  
Attorneys for Defendant



## **Exhibit A**

**TO ALL PERSONS WHO PURCHASED TCL TELEVISIONS IN THE STATE OF CALIFORNIA FROM APRIL 24, 2016 THROUGH [REDACTED]**

**Read This Notice Carefully. You Could Receive Benefits From This Class Action Settlement.**

**This Court-Authorized Notice describes your rights and gives information about the proposed settlement. This notice is only a summary. Details of the settlement are available at [WEBSITE] or by writing to or calling the Class Action Settlement Administrator at the address or toll-free number below.**

**What Is This Case About?** In the lawsuit entitled *Christopher Julian, et al. v. TTE Technology, Inc.*, Case No. 3:20-CV-02857-EMC, U.S. District Court for the Northern District of California, plaintiff Paul Fiskratti (“Plaintiff” or “Class Representative”), on behalf of himself and a proposed class, alleges that TTE Technology, Inc. dba TCL North America (“TCL”) marketed certain of its LCD televisions as having a “Hz” rating twice as high as its actual refresh rate. Specifically, Plaintiffs allege TCL deceptively advertised certain of its televisions with 60Hz native refresh rate panels as “120Hz CMI,” “120Hz Clear Motion Index,” and/or “120Hz CMI Effective Refresh Rate.” TCL denies that it misled consumers, disputes that it has done anything wrong, and believes its advertising was truthful and accurate and asserts that does not mislead consumers regarding Hz ratings. The lawsuit seeks money damages, as well as attorneys’ fees and costs and a court order requiring TCL to stop the foregoing advertising practices. The Court has not ruled on the merits of the claims or TCL’s defenses.

**Who Is A Class Member?** All persons who purchased, new, one of the TCL Television models listed on [website] between April 24, 2016 and the present date in the state of California. (“Settlement Class Members”).

**What Are The Terms Of The Settlement?** TCL has agreed to pay up to \$2,500,000 (the “Settlement Cap”) in full and complete settlement and release of all claims of Plaintiffs and the Settlement Class Members, as described in the Settlement Agreement. The funds will be used to pay Settlement Awards to Settlement Class Members who submit a valid Claim to the Settlement Administrator via a web form on the Settlement Website during the Claim Period. The Settlement Awards will be capped at \$15 per valid Claim and subject to *pro rata* decrease, depending on the number of all approved Claims submitted. Class Counsel will ask the Court to approve an award of up to \$1,000,000 for attorneys’ fees and costs, \$75,000 for notice and settlement administration costs, and \$2,500 to each of the Class Representatives, all to be paid separately and apart from the Settlement Cap.

**How Do You Make A Claim?** In order to receive a Settlement Award, you must submit a signed and completed Claim Form online to the Class Action Settlement Administrator by **no later than [REDACTED]**. Claim Forms may also be submitted to the Class Action Settlement Administrator by mail if postmarked **no later than [REDACTED]**. The Claim Form is available at [website].

**What Are My Other Options?** If you do not want to be legally bound by the Settlement, you may opt out of the Settlement by sending a request for exclusion to the Class Action Settlement Administrator **no later than [REDACTED]**. If you exclude yourself from the Settlement, you will not receive any money from the Settlement. If you stay in the Settlement (i.e., do not exclude yourself from the Settlement), you may object to the Settlement by writing to the Court explaining why you do not like the Settlement by **no later than [REDACTED]**. You will be bound by the Settlement if your objection is rejected. If you do nothing (i.e., submit no Claim Form or request for exclusion), you will not receive any benefits from the Settlement, but will nevertheless be bound by any judgment approving the Settlement and will give up any right to sue TCL or related parties for any known or unknown claims relating to marketing by TCL of the “Hz” rating of the televisions at issue.

**Final Approval Hearing.** The Court will hold a hearing in this case to consider whether to approve the Settlement on [REDACTED], at [REDACTED] a.m., U.S. District Court for the Northern District of California, 450 Golden Gate Avenue, Courtroom 5 - 17th Floor, San Francisco, CA 94102. The date of the Final Approval Hearing may change without further notice to the class. Class members should be advised to check the settlement website or the Court’s PACER site to confirm that the date has not been changed and whether the hearing may be held virtually due to COVID-19.

**THIS NOTICE IS ONLY A SUMMARY. MORE INFORMATION ABOUT THE LAWSUIT AND THE PRECISE TERMS AND CONDITIONS OF THE SETTLEMENT IS AVAILABLE AT [website], OR WRITE OR CALL THE CLASS ACTION SETTLEMENT ADMINISTRATOR AT [REDACTED] OR ( ) - [REDACTED] (TOLL-FREE), OR CLASS COUNSEL WHOSE CONTACT INFORMATION CAN BE FOUND AT <https://cruegerdickinson.com/> OR <https://milberg.com/>, OR BY**

ACCESSING THE COURT DOCKET IN THIS CASE, FOR A FEE, THROUGH THE COURT'S PUBLIC ACCESS TO COURT ELECTRONIC RECORDS (PACER) SYSTEM AT <https://ecf.cand.uscourts.gov>, OR BY VISITING THE OFFICE OF THE CLERK OF THE COURT FOR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 450 GOLDEN GATE AVENUE, COURTROOM 5 - 17TH FLOOR, SAN FRANCISCO, CA 94102, BETWEEN 9:00 A.M. AND 4:00 P.M., MONDAY THROUGH FRIDAY, EXCLUDING COURT HOLIDAYS.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

## **Exhibit B**

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA***Christopher Julian, et al. v. TTE Technology, Inc. dba TCL North America, Case No. 3:20-CV-02857*

**If you bought a new TCL television marketed as having a “Hz” rating twice as high as its native panel refresh rate (Hz) in California between April 24, 2016 and \_\_\_\_\_, you may be entitled to payment from a class action settlement.**

*A federal court authorized this Notice. This is not a solicitation from a lawyer.*

- TTE Technology, Inc. (“TCL”) has agreed to pay up to \$2,500,000 (the “Settlement Cap”) to fully resolve and release claims of all persons who purchased a new TCL television marketed as having a “Hz” rating twice as high as its native panel refresh rate (Hz) in the state of California during the time period set forth above, as described in the settlement agreement (“Settlement”).
- The Settlement Cap shall include all settlement awards (“Settlement Awards”) to claiming Settlement Class Members. An attorneys’ fee award to be determined by the Court, notice and administration costs, and any incentive award to the Class Representatives to be determined by the Court will be paid separately and apart from the Settlement Cap and Settlement Awards.
- The Settlement Awards are capped at \$15 per valid Claim and subject to *pro rata* decrease, depending on the number of all approved Claims submitted.
- The Settlement resolves a lawsuit alleging that TCL deceptively advertised certain of its Televisions with 60Hz native refresh rate panels as “120Hz CMI,” “120Hz Clear Motion Index,” and/or “120Hz CMI Effective Refresh Rate.”
- The two sides disagree on whether Plaintiffs and the Settlement Class could have prevailed at trial. By entering into the Settlement, TCL has not conceded the truth or validity of any of the claims against it.
- Your legal rights may be affected whether you act, or don’t act. Read this Notice carefully.

<b>Your Legal Rights and Options In This Settlement:</b>	
SUBMIT A CLAIM FORM	If you submit a valid Claim Form by [Claim Deadline], you will receive a cash refund in the form of an electronic payment, and will give up certain rights to sue TCL.
EXCLUDE YOURSELF FROM THE CASE	This is the only option that allows you to sue TCL on your own regarding the legal claims in this case, but you will not receive compensation under the Settlement. The deadline for excluding yourself is [Objection/Exclusion Deadline].
OBJECT TO THE SETTLEMENT	Write to the Court about why you do not like the Settlement. The deadline for objecting is [Objection/Exclusion Deadline].

QUESTIONS? CALL [number] TOLL-FREE OR VISIT [WEBSITE]

DO NOTHING	If you do nothing, you will receive no money from the Settlement, but you will still give up certain rights to sue TCL.
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- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court in charge of this case has still to decide whether to approve the Settlement. Compensation will be issued if the Court approves the Settlement and after appeals are resolved, if any.

## BASIC INFORMATION

### 1. Why was this notice issued?

This notice was issued because a Court has conditionally “certified” this case as a class action lawsuit for settlement purposes only and your rights may be affected. If you bought a new TCL television marketed as having a “Hz” rating twice as high as its native panel refresh rate (Hz) in California between April 24, 2016 and [REDACTED], you may have legal rights and options in this case. This Notice explains all of these issues. Judge Edward M. Chen of the United States District Court for the Northern District of California is overseeing this class action. The case is known as *Christopher Julian, et al. v. TTE Technology, Inc. dba TCL North America*, Case No. 3:20-CV-02857 (the “Action”). The people who sued are called the Plaintiffs. The company they sued, TTE Technology, Inc. dba TCL North America, is called the Defendant or TCL.

### 2. Why is this a class action?

In a class action, one or more people, called “Class Representatives” (in this case Paul Fiskratti), sue on behalf of all people who have similar claims. Together, these people are called a Class or Class Members. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class. Here, the Court has certified a class action for settlement purposes only. More information about why this is a class action can be found in the Court’s Class Certification Order, which is available at [WEBSITE].

### 3. Why is there a settlement?

The Court did not decide in favor of Plaintiffs or TCL. Plaintiffs think they would have prevailed at trial. TCL thinks the Plaintiffs would not have won anything from a trial. But there was no trial. Instead, both sides agreed to this Settlement. That way, both sides avoid the risk and cost of a trial, and the Class Members will receive compensation. The Class Representatives and their attorneys think the Settlement is best for all Class Members.

## THE CLAIMS IN THE LAWSUIT

### 4. What is the lawsuit about?

The lawsuit claims that TCL deceptively advertised certain of its Televisions with 60Hz native refresh rate panels as “120Hz CMI,” “120Hz Clear Motion Index,” and/or “120Hz CMI Effective Refresh Rate.” The lawsuit claims that TCL violated, among others, the California Consumers Legal Remedies Act, California’s False Advertising Law, California’s Unfair Competition Law, and that TCL was unjustly

enriched. TCL denied these claims. More information can be found in the Second Amended Class Action Complaint, available at [\[WEBSITE\]](#).

## MEMBERS OF THE SETTLEMENT CLASS

### 5. How do I know if I am a part of the Settlement Class?

The Court has certified this case for settlement purposes only as a class action. The class (the “Settlement Class”) is defined as:

All individuals who, from April 24, 2016 to the Date of Notice, purchased a new TCL television marketed as having a “Hz” rating twice as high as its native panel refresh rate (Hz) in the state of California.

Excluded from the Settlement Class are all persons who validly opt out of the Settlement in a timely manner; governmental entities; counsel of record (and their respective law firms) for the Parties; TCL and any of its parents, affiliates, subsidiaries, independent service providers and all of its respective employees, officers, and directors; the presiding judge in the Action or judicial officer presiding over the matter, and all of their immediate families and judicial staff; and any natural person or entity that entered into a release with TCL prior to the Effective Date concerning the refresh rate of TCL televisions.

## THE SETTLEMENT BENEFITS

### 6. What does the Settlement provide?

TCL has agreed to pay up to \$2,500,000 to Settlement Class Members in full and complete settlement and release of all claims of Plaintiffs and the Settlement Class Members, as described in the Settlement. Class Counsel will ask the Court to approve an award of up to \$1,000,000 for attorneys’ fees and costs, \$75,000 for notice and settlement administration costs, and \$2,500 to each of the Class Representatives, all to be paid separately and apart from the Settlement Cap and Settlement Awards. You cannot receive compensation unless you submit a Claim Form as set forth below.

The Settlement Awards will be capped at \$15 per valid Claim and subject to *pro rata* decrease, depending on the number of all approved Claims submitted.

### 7. How much will my payment be?

Your Settlement Award will depend on the number of valid Claims that Settlement Class Members submit. Settlement Awards are capped at \$15 per valid Claim and may be subject to *pro rata* decrease, depending on the number of all approved Claims submitted. The \$2,500,000 Settlement Cap represents the maximum combined value of all Settlement Awards.

### 8. What am I giving up to stay in the Settlement Class?

Unless you exclude yourself from the Settlement, you will be part of the Settlement Class, and you will be bound by the release of claims in the Settlement. This means that, if the Settlement is approved, you cannot sue, continue to sue, or be part of any other lawsuit against TCL asserting a released claim. It also means that all of the Court’s orders will apply to you and legally bind you. If you sign the Claim Form or

do nothing, you will agree to release TCL from any and all claims under federal and state law that arise from the “Hz” marketing representations at issue in this action.

## THE LAWYERS REPRESENTING YOU

### 9. Do I have a lawyer in this case?

Yes. The Court has appointed Charles J. Crueger, Esq. and Benjamin Kaplan, Esq. of Crueger Dickinson LLC, and the law firms Milberg Coleman Bryson Phillips Grossman PLLC and Hudock Law Group S.C., as Class Counsel to represent you and the Class in this case. These lawyers have experience handling similar cases. More information about these lawyers and their law firms is available at <https://cruegerdickinson.com> and <https://milberg.com>.

### 10. Should I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel is representing you and all the other members of the Settlement Class. If you want someone other than Class Counsel to speak for you, you may hire your own lawyer at your own expense.

### 11. How will the lawyers be paid?

Class Counsel will ask the Court to approve payment of up to \$1,000,000 in attorneys’ fees and costs, and up to \$75,000 in notice and administration costs, to be paid separately and apart from the Settlement Cap. The requested fees would pay Class Counsel for investigating the facts, litigating the case, and negotiating the Settlement. Class Counsel also will ask the Court to approve payment of \$2,500 to Paul Fiskratti for his services as Class Representative, to be paid separately and apart from the Settlement Cap. The Court may award less than these amounts. Defendant has agreed not to oppose these requested fees and expenses.

## HOW TO APPLY FOR COMPENSATION

### 12. How can I get compensation under the Settlement?

To qualify for compensation under the Settlement, you must submit a Claim Form. A Claim Form is available on the internet at [\[website\]](#). Read the instructions carefully, fill out the form, sign it, and submit it online no later than [\[Objection/Exclusion Deadline\]](#). You may also submit a Claim Form by mail if postmarked by no later than [\[Objection/Exclusion Deadline\]](#).

To receive a Settlement Award, each Settlement Class Member must attest under penalty of perjury that they purchased a TCL Television during the Class Period, and the information supplied in the Claim Form is true and correct to the best of the Settlement Class Member’s knowledge. For a Claim to be valid, each Settlement Class Member must enter the following information into the Claim Form: (1) Television model number(s), (2) approximate date(s) of purchase, and (3) the place(s) of purchase (selling retailer name and state of purchase). For online purchases, the place of purchase is your state of residence at the time of the purchase.

Additionally, for a Claim to be valid, each Settlement Class Member must provide “proof of purchase” concurrently with the Claim Form by submitting one (1) of the following:



- A copy of the receipt(s) of the Television purchase (must identify Television model number, date of purchase, and selling retailer, and if an online purchase, your state of residence); or
- The serial number of the Television(s); or
- A statement under penalty of perjury that the Settlement Class Member sold, donated, or gave away the Television(s) prior to January 1, 2018; or
- A statement under penalty of perjury that the Settlement Class Member recycled the Television(s) under California law, including the name and location of the collector/recycler where the Television was dropped off, the approximate date of drop off, and acknowledgement of following: “California law prohibits the disposal of electronic devices in garbage and in landfills. The California Electronic Waste Recycling Act of 2003 requires that televisions be dropped off by their owners at accredited collectors or recyclers. I understand that my claim may be verified against available accredited collector/recycler information, including Covered Electronic Waste (CEW) Collection Logs submitted by each collector/recycler to the State of California Department of Resources Recycling and Recovery.”

The “Television(s)” included in the Settlement are comprised of the following TCL model numbers: 32S327, 40D100, 40S303, 40S305, 40S325, 43S303, 43S305, 43S325, 43S403, 43S405, 43S421, 43S423, 43S425, 43S431, 43S433, 43S434, 43S435, 43S513, 43S515, 43S517, 43S525, 49D100, 49S303, 49S305, 49S325, 49S403, 49S405, 49S425, 49S515, 49S517, 50S421, 50S423, 50S425, 50S431, 50S433, 50S434, 50S435, 50S525, 55C803, 55C807, 55P605, 55P607, 55R613, 55R615, 55R617, 55S401, 55S403, 55S405, 55S421, 55S423, 55S425, 55S431, 55S433, 55S434, 55S435, 55S515, 55S517, 55S525, 65C807, 65R613, 65R615, 65R617, 65S4, 65S401, 65S403, 65S405, 65S421, 65S423, 65S425, 65S431, 65S433, 65S434, 65S435, 65S517, 65S525, 75C803, 75C807, 75R615, 75R617, 75S423, 75S425, 75S431, 75S433, 75S434, and 75S435 only.

### **13. When would I receive compensation?**

The Court will hold a hearing on [Fairness Hearing Date] to decide whether to approve the Settlement. If the Court approves the Settlement, after that, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. Everyone who sends in a Claim Form will be informed of the progress of the Settlement through information posted at [website]. Please be patient.

## **EXCLUDING YOURSELF FROM THE SETTLEMENT**

### **14. How do I get out of the Settlement?**

If you do not want a Settlement Award under this Settlement, and you want to keep the right to sue or continue to sue TCL regarding its “Hz” rating marketing that is the subject of the Action, then you must take steps to get out of the Settlement Class. This is called excluding yourself from, or opting out of, the Settlement Class.

To exclude yourself from the Settlement, you must send a letter by mail to the Class Action Settlement Administrator that (a) states your name, address, and phone number; (b) is personally signed by you, and not your attorney or anyone acting on your behalf; and (c) include the statement “I/we request to be excluded from the class settlement in *Christopher Julian, et al. v. TTE Technology, Inc.*, Case No. 3:20-

CV-02857-EMC (N.D. Cal.).” No request for exclusion will be valid unless all of the information described above is included.

You must mail your exclusion request postmarked no later than [Objection/Exclusion Deadline] to the Class Action Settlement Administrator at the following address: [address]

**15. If I do not exclude myself, can I sue Defendant for the same thing later?**

No. If you do not exclude yourself, you give up any right to sue (or continue to sue) TCL for the claims that this Settlement resolves.

**16. If I exclude myself, can I get compensation under this Settlement?**

No. If you ask to be excluded, you will not get any compensation under the Settlement, and you cannot object to the Settlement.

## **OBJECTING TO THE SETTLEMENT**

**17. How do I tell the Court that I do not agree with the Settlement?**

You can ask the Court to deny approval of the Settlement by filing an objection. You can’t ask the Court to order a different Settlement; the Court can only approve or reject the Settlement. If the Court denies approval, no Settlement Awards will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

Any objection to the proposed Settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number (*Christopher Julian, et al. v. TTE Technology, Inc.*, Case No. 3:20-CV-02857-EMC (N.D. Cal.)), (b) be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, San Francisco Courthouse, 450 Golden Gate Avenue, Courtroom 5 - 17th Floor, San Francisco, CA 94102, or by filing them in person at any location of the United States District Court for the Northern District of California, and (c) be filed or postmarked on or before [Objection/Exclusion Deadline].

Written objections must also contain: (1) your full name, address and telephone number; (2) a written statement of all grounds for the objection accompanied by any legal support for the objection (if any); (3) copies of any papers, briefs or other documents upon which the objection is based (if any); (4) a list of all persons who will be called to testify in support of the objection (if any); (5) a statement of whether you intend to appear at the Final Approval Hearing; (6) proof of membership in the Class (if any); (7) a list of all objections filed by you and your counsel to class action settlements in the last ten years (if any); and (8) your signature and your attorney’s signature (if any).

**18. What is the difference between objections and excluding myself from the Settlement?**

Objecting means telling the Court that you do not like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself from the Settlement means that you do not

want to be part of the Settlement Class. If you exclude yourself, then you have no basis to object to the Settlement.

## IF YOU DO NOTHING

### 19. What happens if I do nothing at all?

If you do nothing, you will remain a member of the Settlement Class and you will give up your rights to sue TCL; however, you will not receive any compensation because you must submit a valid Claim Form in order to receive compensation under this Settlement.

## THE COURT'S FINAL APPROVAL HEARING

### 20. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at [redacted] a.m. on [redacted], at the United States District Court for the Northern District of California, San Francisco Courthouse, 450 Golden Gate Avenue, Courtroom 5 - 17th Floor, San Francisco, CA 94102. At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate. If there are valid objections that comply with the requirements herein, the Court also will consider them and will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel and the Class Representatives.

The date of the Final Approval Hearing may change without further notice to the Settlement Class. Settlement Class Members should check the Settlement Website or the Court's PACER site to confirm that the date has not been changed and whether the hearing may proceed virtually due to COVID-19.

### 21. Do I have to come to the hearing?

No. Class Counsel will appear on behalf of the Settlement Class. But, you are welcome to come, or have your own lawyer appear, at your own expense.

### 22. May I speak at the hearing?

You, or any lawyer you retain, may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must include in your objection to the Settlement a statement saying that it is your intent to appear at the Final Approval Hearing. Your Objection and notice of intent to appear must be submitted to the Court and postmarked no later than [Objection/Exclusion Deadline]. You cannot speak at the hearing if you excluded yourself from the Settlement.

## GETTING MORE INFORMATION

### 23. Is this the entire Settlement?

No. This notice is only a summary of the proposed Settlement. More information about the lawsuit and the precise terms and conditions of the Settlement is available at [WEBSITE], or by calling toll-free [phone number], or by writing to TCL Class Action Administrator at [address], or by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United

States District Court for the Northern District of California, 450 Golden Gate Avenue, Courtroom 5 - 17th Floor, San Francisco, CA 94102, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays, or by contacting Class Counsel at the information listed immediately below.

Crueger Dickinson LLC

Charles J. Crueger  
Benjamin Kaplan  
4532 N. Oakland Ave.  
Whitefish Bay, Wisconsin 53211  
(414) 210-3868  
[cjc@cruegerdickinson.com](mailto:cjc@cruegerdickinson.com)  
[bak@cruegerdickinson.com](mailto:bak@cruegerdickinson.com)

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Hudock Law Group S.C.

Luke Hudock  
P.O. Box 83  
Muskego, Wisconsin 53150  
(414) 526-4906  
[lphudock@law-hlg.com](mailto:lphudock@law-hlg.com)

**Please do not telephone the Court or the Court Clerk's Office to inquire about  
this Settlement or the Claims Process.**

## **Exhibit C**

# TCL TV SETTLEMENT

## CLAIM FORM

### INSTRUCTIONS

This class action alleges TCL violated certain California laws, harming competition and causing Settlement Class Members to overpay for TCL LCD televisions labeled as having a “Hz” rating twice as high as its actual refresh rate. TCL denies these allegations.

**You are a Settlement Class Member if you:**

- During the Class Period (April 24, 2016, to [REDACTED], 2022), purchased a new TCL Television marketed as having a “Hz” rating twice as high as its native panel refresh rate (Hz) in the state of California.

**To be eligible for payment you must submit a valid Claim no later than [REDACTED], 2022.**

**Settlement payments will be digitally sent to you via email.** Please ensure you provide a current, valid email address and mobile phone number with your Claim submission. If the email address or mobile phone number you include with your submission becomes invalid for any reason, it is your responsibility to provide accurate contact information to the Settlement Administrator to receive a payment. When you receive the email and/or mobile phone text notifying you of your Settlement payment, you will be provided with a number of digital payment options, such as PayPal, Amazon, or a virtual debit card, to immediately receive your Settlement payment. You will also at that time have the option to request a paper check.

The information provided on this Claim Form will be used solely by the Court-approved Settlement Administrator for the purposes of administering the Settlement and will not be provided to any third party or sold for marketing purposes.

**CLAIM FORM****NAME\****FIRST NAME LAST NAME***STREET ADDRESS****APT****CITY****STATE****ZIP\*****MOBILE PHONE NUMBER\****XXX-XXX-XXXX***EMAIL ADDRESS\*****VERIFY EMAIL ADDRESS\***

Please ensure you provide a current, valid email address and mobile phone number with your Claim submission. If the email address or mobile phone number you include with your submission becomes invalid for any reason, it is your responsibility to provide the Settlement Administrator with a current, valid email address and mobile phone number for payment.

\*Denotes required field

**TCL TV INFORMATION****PURCHASE DATE****TELEVISION MODEL  
NUMBER****RETAILER TV  
PURCHASED FROM****STATE OF  
PURCHASE**

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**DOCUMENTATION**

For a Claim to be considered valid, you must provide proof of purchase by submitting one (1) of the following:

1. A copy of the receipt(s) of the Television purchase (must identify Television model number, date of purchase, and selling retailer, and if an online purchase, your state of residence); or
2. The serial number of the Television(s); or
3. A statement under penalty of perjury that the Settlement Class Member sold, donated, or gave away the Television(s) prior to January 1, 2018; or
4. A statement under penalty of perjury that the Settlement Class Member recycled the Television(s) under California law, including the name and location of the collector/recycler

where the Television was dropped off, the approximate date of drop off, and acknowledgement of following: "California law prohibits the disposal of electronic devices in garbage and in landfills. The California Electronic Waste Recycling Act of 2003 requires that televisions be dropped off by their owners at accredited collectors or recyclers. I understand that my Claim may be verified against available accredited collector/recycler information, including Covered Electronic Waste (CEW) Collection Logs submitted by each collector/recycler to the State of California Department of Resources Recycling and Recovery."

**CERTIFICATION**

By signing this Claim submission, I certify, under penalty of perjury, that the information included with this Claim submission is accurate and complete to the best of my knowledge, information, and belief. If I am submitting this Claim submission on behalf of a Claimant, I certify that I am authorized to submit this Claim submission on the individual's behalf. I am, or the individual on whose behalf I am submitting this Claim submission is, a member of the Settlement Class, and have not submitted a request to exclude myself, or "opt out of," the Settlement. I agree and consent to be communicated with electronically via email and/or mobile phone text (message & data rates may apply). I agree to furnish additional information regarding this Claim submission if so requested to do so by the Settlement Administrator.

**SIGNATURE****DATE**

	<i>mm/dd/yyyy</i>
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## **Exhibit D**

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11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13

14 CHRISTOPHER JULIAN, PAUL FISKRATTI,  
15 MARK PACANA, and WAYNE LEWALD,  
16 individually and on behalf of all others similarly  
situated,

17 Plaintiffs,

18 v.

19 TTE TECHNOLOGY, INC., dba TCL NORTH  
20 AMERICA,

21 Defendant.  
22  
23  
24  
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26  
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Case No.: 3:20-CV-02857-EMC

**[PROPOSED] ORDER CERTIFYING  
PROVISIONAL SETTLEMENT CLASS,  
PRELIMINARILY APPROVING CLASS  
ACTION SETTLEMENT, AND  
PROVIDING FOR NOTICE TO THE  
SETTLEMENT CLASS**

**[PROPOSED] ORDER CERTIFYING PROVISIONAL SETTLEMENT CLASS,  
PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT, AND PROVIDING FOR  
NOTICE TO THE SETTLEMENT CLASS**

WHEREAS, a class action is pending in this court entitled *Christopher Julian et al. v. TTE Technology, Inc. dba TCL North America*, Case No. 3:20-CV-02857-EMC (the “Action”);

WHEREAS, Plaintiffs Paul Fiskratti, individually and on behalf of the Settlement Class, Mark Pacana, individually, and Wayne Lewald, individually (“Plaintiffs” or “Class Representatives”), on the one hand, and Defendant TTE Technology, Inc. dba TCL North America (“TCL” or “Defendant”) on the other hand, have agreed, subject to Court approval following notice to the proposed Settlement Class (as described in Paragraph 6 below) and a hearing, to settle this Action upon the terms and conditions set forth in the settlement agreement lodged with this Court (the “Agreement”);

WHEREAS, this Court has reviewed the Agreement, as well as the files, records and proceedings to date in this matter;

WHEREAS, for purposes of this Order, capitalized terms used herein shall have the meaning ascribed to them in the Agreement, unless otherwise defined; and

WHEREAS, for purposes of the Action, this Court has subject matter and personal jurisdiction over the Parties, including all Settlement Class Members.

NOW, THEREFORE, based on this Court’s review of the Agreement and all of the files, records and proceedings herein, the Court concludes, upon preliminary examination, that the Agreement and Settlement appear fair, reasonable and adequate, and within the range of reasonableness for preliminary settlement approval, and that a hearing should and will be held after notice to the Settlement Class (as described in Paragraph 6 below) to confirm that the Agreement and Settlement are fair, reasonable and adequate and to determine whether the Settlement should be approved and final judgment entered in the Action based upon the Agreement.

IT IS HEREBY ORDERED THAT:

1. Preliminary Approval of Proposed Settlement. The Agreement, including all exhibits thereto, is preliminarily approved as fair, reasonable and adequate and within the range of reasonableness for preliminary settlement approval. The Court finds that: (a) the Agreement resulted from extensive arm’s length negotiations; and (b) the Agreement is sufficient to warrant notice of the

1 Settlement to persons in the Settlement Class and a full hearing on the approval of the Settlement.

2       2.     Class Certification for Settlement Purposes Only. Pursuant to Federal Rule of Civil  
3 Procedure 23(c), the Court conditionally certifies, for settlement purposes only, the following  
4 Settlement Class:

5  
6       All individuals who, from April 24, 2016 to the Notice Date, purchased a new TCL Television  
7 marketed as having a “Hz” rating twice as high as its native panel refresh rate (Hz) in the State  
8 of California.

9       Excluded from the Settlement Class are all persons who validly opt out of the Settlement in a  
10 timely manner; governmental entities; counsel of record (and their respective law firms) for the  
11 Parties; Defendant and any of its parents, affiliates, subsidiaries, independent service providers and all  
12 of their respective employees, officers, and directors; the presiding judge in the Action or any judicial  
13 officer presiding over the matter, and all of their immediate families and judicial staff; and any natural  
14 person or entity that entered into a release with Defendant prior to the Effective Date concerning the  
15 Televisions.

16       In connection with this conditional certification, the Court makes the following preliminary  
17 findings for settlement purposes only:

18           a.     The Settlement Class appears to be so numerous that joinder of all members is  
19 impracticable;

20           b.     There appear to be questions of law or fact common to the Settlement Class for  
21 purposes of determining whether this Settlement should be approved;

22           c.     Plaintiff’s claims appear to be typical of the claims being resolved through the  
23 proposed Settlement;

24           d.     Plaintiff appears to be capable of fairly and adequately protecting the interests  
25 of the Settlement Class in connection with the proposed Settlement;

26           e.     Common questions of law and fact appear to predominate over questions  
27 affecting only individual persons in the Settlement Class. Accordingly, the Settlement Class appears  
28 to be sufficiently cohesive to warrant settlement by representation;

f. Certification of the Settlement Class appears to be superior to other available methods for the fair and efficient resolution of the claims of the Settlement Class; and

g. Certification of the Settlement Class appears to meet all applicable requirements of law, including Federal Rule of Civil Procedure 23, the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715, and the U.S. Constitution.

3. Class Representative. Plaintiff Paul Fiskratti is designated as Class Representative for the Settlement Class.

4. Class Counsel. The Court appoints Crueger Dickinson LLC, Milberg Coleman Bryson Phillips Grossman PLLC, and Hudock Law Group S.C., as counsel for the Settlement Class. The Court finds that counsel is competent and capable of exercising all responsibilities as Class Counsel for the Settlement Class.

5. Final Approval Hearing. A final approval hearing shall be held before the Honorable Edward M. Chen on [REDACTED] (the “Final Approval Hearing” or “Fairness Hearing”) as set forth in the notice to the Settlement Class (described in Paragraph 6 below), to determine whether the Agreement is fair, reasonable and adequate and should be approved. Papers in support of final approval of the Agreement, the incentive award to Plaintiff and Class Counsel’s application for an award of attorneys’ fees, costs and expenses (the “Fee Application”) shall be filed with the Court according to the schedule set forth in Paragraph 13 below. The Final Approval Hearing may be postponed, adjourned, or continued by order of the Court without further notice to the Settlement Class. After the Final Approval Hearing, the Court may enter a settlement order and final judgment in accordance with the Agreement that will adjudicate the rights of the Settlement Class Members with respect to the Released Claims.

6. Class Notice. The Court hereby appoints and authorizes A.B. Data to be the Settlement Administrator, and thereby to perform and execute the notice responsibilities set forth in the Agreement. Class Notice shall commence on the Notice Date, which is defined in the Agreement as twenty-one (21) calendar days following entry of Preliminary Approval.

a. Email Notice. The Settlement Administrator shall provide for Email Notice by sending an email to the email addresses for Settlement Class Members identified by Defendant. The

Email Notice shall be substantially in the form attached to the Agreement as “Exhibit A.”

b. Website Notice. The Settlement Administrator will establish and maintain the Settlement Website. The Settlement Website will be dedicated to the Settlement. On the Settlement Website will be posted the Long Form Notice, the Claim Form, a copy of this Agreement, the Preliminary Approval Order, and any other materials the Parties agree to include. The Settlement Website shall also provide for online submission of Claim Forms, and instructions as to how to access the case docket via PACER or in person at any of the court’s locations. The Settlement Website shall also state the date of the Fairness Hearing, that the date may change without further notice, and that Settlement Class Members should be advised to check the Settlement Website or the Court’s PACER site to confirm that the date has not been changed. These documents and information shall be available on the Settlement Website no later than the Notice Deadline and remain until 30 days after distribution of all Settlement Awards. The Settlement Website shall not include any advertising, and shall not bear or include Defendant’s logo or trademarks. The Long Form Notice shall be substantially the form attached to the Agreement as “Exhibit B.”

c. Internet Media Publication Notice. The Settlement Administrator shall implement an internet media effort of digital media advertising through Google Ads or a similar medium, to be distributed over desktop and mobile devices including tablets and smartphones, over a period of 60 days, targeting likely Settlement Class Members in California.

d. Toll-Free Number. The Settlement Administrator shall establish and host a case specific toll-free number to allow Settlement Class Members to learn more and to request further information about the Action.

e. CAFA Notice. The Settlement Administrator shall be responsible for timely compliance with all CAFA notice requirements. The Settlement Administrator and the Parties shall work together in good faith to come to agreement regarding the form and content of, and secure any necessary court approval of, the CAFA Notice. All costs associated with effectuating CAFA Notice, including but not limited to postage and printing, shall be deemed Settlement Costs and paid exclusively from the Administration Fund.

7. Findings Concerning Class Notice. The Court finds that the foregoing program of

Class Notice and the manner of its dissemination is the best practicable notice under the circumstances and is reasonably calculated to apprise the Settlement Class of the pendency of this Action and their right to object to or exclude themselves from the Settlement Class. The Court further finds that the Class Notice program is reasonable, that it constitutes due, adequate and sufficient notice to all persons entitled to receive notice and that it meets the requirements of due process and Federal Rule of Civil Procedure 23. The Court hereby approves that Notices in substantially the same forms as those attached as Exhibits to the Agreement.

8. Administration. The Claim Form and the Claims Process described in the Agreement are hereby approved.

9. Exclusion from the Settlement Class.

a. Persons in the Settlement Class will possess the right to opt out by sending a written request to the Settlement Administrator by the Objection/Exclusion Deadline. All Settlement Class Members who do not opt out in accordance with the terms set forth herein will be bound by all determinations and judgments in the Action.

b. Exclusion requests must: (a) state the Settlement Class Member's name, address, and phone number; (b) be personally signed by the Settlement Class Member and not the Settlement Class Member's attorney or anyone acting on the Settlement Class Member's behalf; and (c) include the statement "I/we request to be excluded from the class settlement in *Christopher Julian et al. v. TTE Technology, Inc.*, Case No. 43:20-CV-02857-EMC (N.D. Cal.)." Requests to opt-out that do not include all required information and/or that are not submitted on a timely basis, will be null, void, and ineffective. No Settlement Class Member, or any person acting on behalf of or in concert or participation with that Settlement Class Member, may exclude any other Settlement Class Member from the Settlement Class.

c. The date of the postmark on the mailing envelope shall be the exclusive means used to determine whether a Settlement Class Member's opt-out/exclusion request has been timely submitted. In the event that the postmark is illegible, the opt-out/exclusion request shall be deemed untimely unless it is received by the Settlement Administrator within two (2) calendar days of the Objection/Exclusion Deadline.

10. Objections and Appearances.

a. Only Settlement Class Members may object to the Settlement. Any person in the Settlement Class who has not timely submitted a valid request for exclusion from the Settlement Class, and thus is a Settlement Class Member, may appear at the Final Approval Hearing to argue that the proposed Settlement should not be approved and/or to oppose the application of Class Counsel for an award of attorneys' fees and incentive awards to the Plaintiffs.

b. All written objections and supporting papers shall (a) contain and clearly identify the case name and number (*Christopher Julian et al. v. TTE Technology, Inc. dba TCL North America*, Case No. 3:20-CV-02857-EMC (N.D. Cal.)), (b) be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, San Francisco Courthouse, 450 Golden Gate Avenue, Courtroom 5 - 17th Floor, San Francisco, CA 94102, or by filing them in person at any location of the United States District Court for the Northern District of California, and (c) be filed or postmarked on or before the Objection/Exclusion Deadline. Any objections that are not timely mailed or filed shall be forever barred. Written objections shall also contain: (1) the full name, address and telephone number of the Settlement Class Member; (2) a written statement of all grounds for the objection accompanied by legal support for the objection (if any); (3) any papers, briefs or other documents upon which the objection is based; (4) a list of all persons who will be called to testify in support of the objection (if any); (5) a statement of whether the Settlement Class Member intends to appear at the Final Approval Hearing; (6) proof of membership in the Class; (7) a list of all objections filed by the objector and his or her counsel to class action settlements in the last ten years; and (8) the signature of the Settlement Class Member and her or his counsel, if any.

c. In order to be heard at the Final Approval Hearing, the person also must file a Notice of Intention to Appear with the Court not later than the Objection/Exclusion Deadline.

d. The date of the postmark on the mailing envelope or a legal proof of service accompanied by a file-stamped copy of the submission shall be the exclusive means used to determine whether an objection and/or notice of intention to appear has been timely filed or served. In the event that the postmark is illegible, the objection and/or notice to appear shall be deemed untimely unless it



1 is received by the Court within two (2) calendar days of the Objection/Exclusion Deadline.

2 e. Settlement Class Members who fail to timely submit a written objection in the  
3 manner specified above shall be deemed to have waived any objections and shall be foreclosed from  
4 making any objection (whether by appeal or otherwise) to the Settlement.

5 f. Class Counsel shall, at least fourteen (14) calendar days (or such other number  
6 of days as the Court shall specify) before the Final Approval Hearing, file any responses to any written  
7 objections submitted to the Court by Settlement Class Members in accordance with the Agreement.

8 11. Effect of Failure to Approve the Agreement. In the event the Agreement is not  
9 approved by the Court or is approved only with modifications, or the Agreement becomes null and  
10 void pursuant to its terms, or the Parties fail to obtain a Final Judgment as contemplated in the  
11 Agreement for any reason, then the following shall apply:

12 a. The Agreement and all orders and findings entered in connection with the  
13 Agreement shall become null and void and have no further force and effect, and shall not be used or  
14 referred to for any purposes whatsoever in the Action or in any other case or controversy, and that in  
15 such an event, the Agreement and all negotiations and proceedings related thereto shall be deemed to  
16 be without prejudice to the rights of any and all parties, who shall be restored to their respective  
17 positions as of the date of the Agreement;

18 b. The conditional certification of the Settlement Class pursuant to this Order shall  
19 be vacated automatically and void; no doctrine of waiver, estoppel or preclusion shall be asserted in  
20 any litigated certification proceedings in the Action; and the Agreement and its existence shall be  
21 inadmissible to establish any fact relevant to class certification or any alleged liability of Defendant for  
22 the matters alleged in the Action or for any other purpose;

23 c. The Parties agree to resume settlement discussions in good faith for at least 14  
24 days; if after 14 days the Parties have not agreed to amended settlement terms, then all pre-trial and  
25 trial deadlines and dates shall be reset by the Court; the Parties agree to provide the Court with a  
26 proposed schedule starting with the reply and hearing on the pending Motion for Class Certification  
27 (Dkt. 86), and resetting all other existing case deadlines, within 14 days after an order of the Court  
28 denying preliminary approval; and

d. Nothing contained in this Order is, or may be construed as, any admission or concession by or against Defendant or Plaintiffs on any point of fact or law.

12. Stay/Bar of Other Proceedings. All proceedings in this Action are stayed until further order of the Court, except as may be necessary to implement the terms of the Settlement. Pending final determination of whether the Settlement should be approved, Plaintiffs, all persons in the Settlement Class and persons purporting to act on their behalf are enjoined from commencing or prosecuting (either directly, representatively or in any other capacity) against any of the Discharged Parties any action, arbitration or proceeding in any court, arbitration forum or tribunal asserting any of the Released Claims.

13. Deadlines Regarding Final Approval and Fee Application. The deadline to submit papers in support of Final Approval of the Agreement and the Fee Application, in addition to other pertinent deadlines discussed herein and in the Agreement, are as follows:

<u>Item</u>	<u>Deadline</u>
Funding of Administration Fund	[REDACTED] (i.e., 21 days after Preliminary Approval)
Notice Deadline/Notice Date	[REDACTED] (i.e., 21 days after Preliminary Approval)
Objection/Exclusion Deadline	[REDACTED] (i.e., 81 days after Preliminary Approval)
Claim Deadline	[REDACTED] (i.e., 81 days after Preliminary Approval)
Final Tally	[REDACTED] (i.e., 7 days after Claim Deadline)
Plaintiffs' Motion for Attorneys' Fees and Incentive Awards	[REDACTED] (i.e., 60 days prior to the date of Fairness Hearing)
Motion for Final Approval	[REDACTED] (i.e., 60 days prior to date of Fairness Hearing)
Responses to Motion for Attorneys' Fees and Incentive Awards and Motion for Final Approval	[REDACTED] (i.e., 30 days prior to date of Fairness Hearing)

1	Plaintiffs' and Defendant's Responses to		(i.e., 14 days prior to date of
2	Objections		Fairness Hearing)
3	Fairness Hearing		(i.e., 180 days after Preliminary
4			Approval (or such other date set by the Court))
5	Effective Date		(i.e., Date of Final Approval
6			(assuming no objections))
7	Fund Payment for Settlement Awards		(i.e., No later than 60 days after
8			Effective Date)
9	Payment of Attorneys' Fees and Incentive		(i.e., No later than 21 business
10	Awards		days after Effective Date)
11	Distribution of Settlement Awards		(i.e., No later than 90 days after
12			Effective Date)
13	Post-Distribution Accounting		(i.e., 30 days after distribution
14			of Settlement Awards)

14 **IT IS SO ORDERED.**

16 DATED:

17 \_\_\_\_\_  
The Honorable Edward M. Chen  
18 United States District Judge

## **Exhibit E**

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11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**  
13

14 CHRISTOPHER JULIAN, PAUL FISKRATTI,  
15 MARK PACANA, and WAYNE LEWALD,  
16 individually and on behalf of all others similarly  
situated,

17 Plaintiffs,

18 v.

19 TTE TECHNOLOGY, INC., dba TCL NORTH  
20 AMERICA,

21 Defendant.  
22  
23  
24  
25  
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27  
28

Case No.: 3:20-CV-02857-EMC

**[PROPOSED] FINAL APPROVAL  
ORDER AND ORDER OF DISMISSAL**

**[PROPOSED] ORDER**

The Court having held a Final Approval Hearing on [REDACTED], notice of the Final Approval Hearing having been duly given in accordance with this Court's Order Certifying Provisional Settlement Class, Preliminarily Approving Class Action Settlement, and Providing for Notice to the Settlement Class ("Preliminary Approval Order"), and having considered all matters submitted to it at the Final Approval Hearing and otherwise, and finding no just reason for delay in entry of this Final Approval Order and Order of Dismissal, and good cause appearing therefore,

It is hereby ORDERED, ADJUDGED, AND DECREED as follows:

1. The Settlement Agreement dated [REDACTED], including exhibits (the "Agreement"), and the definition of the words and terms contained therein, are incorporated by reference in this Order.

2. The Court has jurisdiction over the subject matter of the Action and over the Parties, including all members of the following Settlement Class certified for settlement purposes only in this Court's Preliminary Approval Order:

All individuals who, from April 24, 2016 to the Notice Date, purchased a new TCL Television marketed as having a "Hz" rating twice as high as its native panel refresh rate (Hz) in the State of California.

Excluded from the Settlement Class are all persons who validly opt out of the Settlement in a timely manner; governmental entities; counsel of record (and their respective law firms) for the Parties; Defendant and any of its parents, affiliates, subsidiaries, independent service providers and all of their respective employees, officers, and directors; the presiding judge in the Action or any judicial officer presiding over the matter, and all of their immediate families and judicial staff; and any natural person or entity that entered into a release with Defendant prior to the Effective Date concerning the Televisions.

3. The Settlement Administrator determined that [REDACTED] persons timely and validly opted out of the Settlement and, thus, are excluded from the Settlement Class. The list of such persons timely and validly opting out of the Settlement is attached to the Declaration of [REDACTED] in

support of Plaintiffs' Motion for Final Approval as "**Exhibit [REDACTED]**." (Dkt. No. [REDACTED].) All Settlement Class Members not identified in Exhibit [REDACTED] shall be bound by this Order.

4. The Court hereby finds that the Agreement is the product of arm's length settlement negotiations among Plaintiffs, Class Counsel, and Defendant.

5. This Court now gives final approval to the Agreement, and finds that the Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class. The settlement consideration provided under the Agreement constitutes fair value given in exchange for the release of the Released Claims against the Discharged Parties. The Court finds that the consideration to be paid to Settlement Class Members is reasonable, and in the best interests of the Settlement Class Members, considering the total value of their claims compared to (i) the disputed factual and legal circumstances of the Action, (ii) defenses asserted in the Action, and (iii) the potential risks and likelihood of success of pursuing litigation on the merits. The complex legal and factual posture of this case, the amount of discovery completed, and the fact that the Settlement is the result of arm's-length negotiations between the Parties all support this finding. The Court finds that these facts, in addition to the Court's observations throughout the litigation, demonstrate that there was no collusion present in the reaching of the Agreement, implicit or otherwise.

6. The Court has considered the factors relevant to class action settlement approval, including: (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. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 944 (9th Cir. 2015).

7. The Court finds that the requirements of Rule 23(b)(3) of the Federal Rules of Civil Procedure have been satisfied for certification of the Settlement Class for settlement purposes only because: Settlement Class Members are so numerous that joinder of all members is impracticable; there are questions of law and fact common to the Settlement Class; the claims and defenses of the Class Representatives are typical of the claims and defenses of the Settlement Class they represent; the

1 Class Representative has fairly and adequately protected the interests of the Settlement Class with  
2 regard to the claims of the Settlement Class he represents; common questions of law and fact  
3 predominate over questions affecting only individual Settlement Class Members, rendering the  
4 Settlement Class sufficiently cohesive to warrant a class settlement; and the certification of the  
5 Settlement Class is superior to individual litigation and/or settlement as a method for the fair and  
6 efficient resolution of this matter.

7 8. The Court hereby finds and concludes that Class Notice was disseminated to members  
8 of the Settlement Class in accordance with the terms set forth in Section IV of the Agreement and was  
9 in compliance with this Court's Preliminary Approval Order.

10 9. The Court further finds and concludes that the Class Notice and Claims submission  
11 procedures set forth in Sections III through IV of the Settlement Agreement fully satisfy Rule 23 of the  
12 Federal Rules of Civil Procedure and the requirements of due process, were the best notice practicable  
13 under the circumstances, provided notice to members of the Settlement Class who could be identified  
14 through reasonable effort and support the Court's exercise of jurisdiction over the Settlement Class as  
15 contemplated in the Settlement and this Order.

16 10. The Court finds that the Parties properly and timely notified the appropriate  
17 government officials of the Settlement Agreement, pursuant to the Class Action Fairness Act of 2005  
18 ("CAFA"), 28 U.S.C. § 1715.

19 11. Accordingly, the Agreement is hereby finally approved in all respects, and the Court  
20 certifies the above-referenced Settlement Class.

21 12. The Parties are hereby directed to further implement the Agreement according to its  
22 terms and provisions, but may agree to reasonable extensions of time to carry out any provisions of the  
23 Agreement without further order from the Court. The Agreement is hereby incorporated into this Final  
24 Approval Order and Order of Dismissal in full and shall have the full force of an Order of this Court.

25 13. The Court reserves jurisdiction over all matters arising out of the Agreement.

26 14. Plaintiffs and the Settlement Class hereby fully release and discharge Defendant and all  
27 its present and former parent companies, subsidiaries, shareholders, officers, directors, employees,  
28 agents, servants, registered representatives, affiliates, successors, personal representatives, heirs and



1 assigns, retailers, suppliers, distributors, endorsers, consultants, and any and all other entities or  
2 persons upstream and downstream in the production/distribution channels (together, the “Discharged  
3 Parties”) from all claims, demands, actions, and causes of action of any kind or nature whatsoever,  
4 whether at law or equity, arising under federal, state, or local law, that Plaintiffs or Settlement Class  
5 Members ever had, now have, or may have against the Discharged Parties in any other court, tribunal,  
6 arbitration panel, commission, or agency, or before any governmental and/or administrative body, or  
7 any other adjudicatory body, on the basis of, connected with, or arising from the Discharged Parties’  
8 representations, advertising, marketing and/or sales of the Televisions during the Class Period relating  
9 in any way to the refresh rate and/or effective refresh rate of the Televisions, and the claims alleged in  
10 the operative complaint in the Action. This is notwithstanding that Plaintiffs and the Settlement Class  
11 acknowledge that they may hereafter discover facts in addition to or different from those that they now  
12 know or believe to be true concerning the subject matter of the Action and/or the Released Claims  
13 herein. The Released Claims shall include, but are not limited to, all claims that have or could have  
14 been asserted by any or on behalf of any Settlement Class Member in this Action and that are based on  
15 the same factual predicate as the Action.

16 15. In addition, any rights of the Plaintiffs to the protections afforded under Section 1542 of  
17 the California Civil Code and/or any other similar, comparable or equivalent laws, are terminated.

18 16. Each and every Settlement Class Member, and any person actually or purportedly  
19 acting on behalf of any Settlement Class Member(s), is hereby permanently barred and enjoined from  
20 commencing, instituting, continuing, pursuing, maintaining, prosecuting or enforcing any Released  
21 Claims (including, without limitation, in any individual, class or putative class, representative or other  
22 action or proceeding), directly or indirectly, in any judicial, administrative, arbitral, or other forum,  
23 against the Discharged Parties. This permanent bar and injunction is necessary to protect and  
24 effectuate the Agreement, this Final Approval Order and Order of Dismissal, and this Court’s  
25 authority to effectuate the Agreement, and is ordered in aid of this Court’s jurisdiction and to protect  
26 its judgments.

27 17. The Agreement (including, without limitation, its exhibits), and any and all  
28 negotiations, documents and discussions associated with it, shall not be deemed or construed to be an

admission or evidence of any violation of any statute, law, rule, regulation or principle of common law or equity, of any liability or wrongdoing, by Defendant, or of the truth of any of the claims asserted by Plaintiffs in the Action, and evidence relating to the Agreement shall not be discoverable or used, directly or indirectly, in any way, whether in the Action or in any other action or proceeding, except for purposes of enforcing the terms and conditions of the Agreement, the Preliminary Approval Order and/or this Order.

18. If for any reason the Agreement terminates or Final Approval does not occur, then certification of the Settlement Class shall be deemed vacated. In such an event, the certification of the Settlement Class for settlement purposes shall not be considered as a factor in connection with any subsequent class certification issues, and the Parties shall return to the status quo ante in the Action, without prejudice to the right of any of the Parties to assert any right or position that could have been asserted if the Settlement had never been reached or proposed to the Court.

19. In the event that any provision of the Agreement or this Final Approval Order and Order of Dismissal is asserted by Defendant as a defense in whole or in part to any cause of action, or otherwise asserted (including, without limitation, as a basis for a stay) in any other suit, action, or proceeding brought by a Settlement Class Member or any person actually or purportedly acting on behalf of any Settlement Class Member(s), that suit, action or other proceeding shall be immediately stayed and enjoined until this Court or the court or tribunal in which the claim is pending has determined any issues related to such defense or assertion. Solely for purposes of such suit, action, or other proceeding, to the fullest extent they may effectively do so under applicable law, the Parties irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of the Court, or that the Court is, in any way, an improper venue or an inconvenient forum. These provisions are necessary to protect the Agreement, this Order and this Court's authority to effectuate the Agreement, and are ordered in aid of this Court's jurisdiction and to protect its judgment.

20. The Court approves Class Counsel's application for \$ [REDACTED] in attorneys' fees and costs.

21. The Court approves a service award to Class Representative Paul Fiskratti in the

1 amount of \$ [REDACTED].

2 22. No later than 30 calendar days after the Settlement Awards are distributed to the  
3 Settlement Class Members who submitted timely and valid Claim Forms, Plaintiffs shall file a Post-  
4 Distribution Accounting, which includes, to the extent possible, the information required under  
5 Northern District of California Procedural Guidance for Class Action Settlements, and post the same  
6 on the Settlement Website. This Final Order and Order of Dismissal, and any Final Judgment to be  
7 entered hereon, shall also be posted on the Settlement Website.

8 23. Without affecting the finality of this Final Approval Order and Order of Dismissal, or  
9 any Final Judgment to be entered hereon, the Court shall retain jurisdiction over all matters relating to  
10 administration, consummation, enforcement, and interpretation of the Agreement.

11 24. The Court overrules any and all objections to the Settlement submitted by Settlement  
12 Class Members.

13 25. This Court hereby dismisses the Action with prejudice, without costs to any party,  
14 except as expressly provided for in the Agreement.

15  
16 **IT IS SO ORDERED.**

17  
18 DATED:

\_\_\_\_\_  
19 The Honorable Edward M. Chen  
20 United States District Judge  
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## **Exhibit B as to the Motion**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CHRISTOPHER JULIAN, MARK  
PACANA, PAUL FISKRATTI, and  
WAYNE LEWALD, on Behalf of  
Themselves and All Others Similarly  
Situated,

Plaintiffs,

v.

TTE TECHNOLOGY, INC., dba  
TCL NORTH AMERICA,

Defendant.

Case No. 3:20-CV-02857-EMC

**DECLARATION OF ADAM A. EDWARDS  
IN SUPPORT OF MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
SETTLEMENT AND DIRECTION OF  
NOTICE UNDER FED. R. CIV. P. 23(e)**

Judge: Hon. Edward M. Chen  
Hearing: April 28, 2022  
Time: 1:30 pm  
Courtroom: 5, 17th Floor

I, Adam A. Edwards, hereby declare as follows:

1. I am attorneys admitted to the bar of the State of Tennessee, and I have been granted *pro hac vice* admission in this Action. I am counsel of record for the Plaintiffs in these proceedings. I respectfully submit this Declaration in support of the Motion for Preliminary Approval of Class Settlement and Direction of Notice under Federal Rule of Civil Procedure Rule 23(e). I have personal knowledge of the facts set forth herein, and, if called as a witness, I could and would testify competently to them.

2. I have been personally involved in prosecuting and resolving this litigation since its inception.

**This Litigation**

3. This Action required a considerable amount of effort and resources. Prior to filing the original complaint, Plaintiffs' counsel performed extensive research regarding the facts and potential claims and worked with multiple experts and consultants to develop the legal theories Plaintiffs pursued. Throughout this litigation, Defendant has vehemently denied Plaintiffs' allegations. On the pleadings, Plaintiffs' counsel engaged in substantial and contentious motion practice. For example, the Parties fully briefed two separate motions to dismiss, and Plaintiffs

1 amended their complaint twice. After the close of the pleadings, the Parties conducted extensive  
2 discovery, with Plaintiffs' counsel reviewing thousands of pages of documents and preparing for,  
3 taking, and defending multiple depositions. Following discovery, Plaintiffs filed a motion for class  
4 certification, which Defendant opposed.

5 4. Plaintiffs served upon Defendant several sets of discovery totaling 27 Requests for  
6 Production of Documents, 18 Interrogatories, and 13 Requests for Admission. While Defendant  
7 responded to some discovery, they additionally raised objections to other requests. Plaintiffs'  
8 counsel reviewed Defendant's objections and responses and undertook meet and confers to ensure  
9 Defendant provided meaningful and informative responses. Plaintiffs' counsel reviewed over ten  
10 thousand pages of documents Defendant produced, and met and conferred with Defendant's  
11 counsel numerous times regarding the Defendant's responses and objections to Plaintiffs' discovery  
12 requests and deposition notices. Further, Plaintiffs' counsel took the depositions of three Defendant  
13 employees and issued subpoenas to various third parties including retailers and consultants of  
14 Defendant. And Plaintiffs' counsel has defended the depositions of the named Plaintiffs, including  
15 those who have since been voluntarily dismissed.

16 5. Plaintiffs' counsel, and their respective law firms, have undertaken an enormous  
17 amount of work, effort, and expense in this litigation, demonstrating their devotion of whatever  
18 resources are necessary to see this case through to a successful outcome. Collectively, thus far,  
19 Plaintiffs' counsel have invested hundreds of hours, as well as significant costs and expenses, in  
20 this pursuit. Plaintiffs' counsel have pledged to continue this work, effort, and expenses through to  
21 the final approval of the Proposed Settlement, including through the settlement administration and  
22 distribution processes.

### 23 **Settlement Negotiations**

24 6. The Parties informally engaged in settlement negotiations during discovery.  
25 Following the filing of Plaintiffs' motion for class certification, the Parties formally negotiated  
26 settlement, engaging the Honorable Jay Gandhi as mediator. With the aid of Judge Gandhi, the  
27 Parties reached an agreement, memorialized as the Proposed Settlement now before the Court.

28 7. Plaintiffs played an important role in the settlement process, including reviewing,

1 agreeing to, and executing the Proposed Settlement.

2 8. During negotiations, the Parties and the mediator discussed potential concerns regarding  
3 certification and future prosecution of claims under New Jersey law. Following an analysis of the  
4 New Jersey claims and discussion with the New Jersey class representatives, Plaintiffs' counsel  
5 determined that there were significant risks associated with certifying a class under New Jersey law  
6 under the facts presented here. Plaintiffs Pacana and Lewald, the class representatives for the  
7 putative New Jersey class, were advised of these risks and as a result they agreed to instead settle  
8 their claims on an individual basis. Plaintiffs Pacana and Lewald, along with New Jersey  
9 consumers, are *not* included in the Proposed Settlement being presently considered for preliminary  
10 approval. Accordingly, New Jersey consumers are not releasing claims against Defendant for its  
11 allegedly deceptive marketing of the subject televisions. Plaintiffs' counsel will continue to  
12 examine whether they can bring similar claims in the future on behalf of a New Jersey class.

13 9. In preparation for filing for preliminary approval of the Proposed Settlement and  
14 direction of notice to the proposed Class, the Parties solicited bids from experienced notice and  
15 settlement administration vendors, receiving a total of 5 bids. The Parties cooperatively selected  
16 AB Data Ltd. as the Settlement Administrator. AB Data Ltd. has extensive experience as an  
17 administrator of class settlements, handling the administration, notice, and claims process in  
18 numerous settlements in all types of class actions, including those involving consumer products.

19 **Contributions of Class Representative Plaintiff Fiskratti**

20 10. Plaintiff Fiskratti, as the Class Representative of the California class, expended  
21 serious effort and time in helping Plaintiffs' counsel litigate this case. Plaintiff Fiskratti spoke  
22 extensively with Plaintiffs' counsel, reviewed filings, reviewed and responded to discovery  
23 requests, produced documents pursuant to discovery requests, prepared for and sat for a multi-hour  
24 deposition, and played an active role in helping to negotiate settlement. Plaintiff Fiskratti regularly  
25 communicated with Plaintiffs' counsel to stay abreast of developments in this case.

26 11. During all phases of litigation, Plaintiff Fiskratti worked to ensure that the interests  
27 of absent class members were protected, including when reviewing and agreeing to the terms of the  
28 Proposed Settlement.





## **Exhibit C as to the Motion**

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12

**UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA**

CHRISTOPHER JULIAN, MARK PACANA, PAUL FISKRATTI, and WAYNE LEWALD,  
on Behalf of Themselves and All Others  
Similarly Situated,

Plaintiffs,

vs.

TTE TECHNOLOGY, INC., dba  
TCL NORTH AMERICA,

Defendant.

Case No. 3:20-CV-02857-EMC

**DECLARATION OF ERIC  
SCHACHTER REGARDING  
NOTICE AND CLAIMS  
ADMINISTRATION**

13 I, Eric Schachter, hereby declare as follows:

14 1. I am a Vice President with A.B. Data, Ltd. ("A.B. Data"). A.B. Data has been  
15 selected by Plaintiffs as the Settlement Administrator in this case after a competitive process in  
16 which we were asked to submit more than one proposal. I am fully familiar with the facts contained  
17 herein based upon my personal knowledge, and if called as a witness, could and would testify  
18 competently thereto.

19 2. At the request of Class Counsel, I have prepared a proposed settlement notice and  
20 claims administration program for this litigation. This Declaration will describe the proposed notice  
21 program and how it will meet the requirements of Rule 23 of the Federal Rules of Civil Procedure  
22 and provide due process to the Settlement Class Members. This Declaration is based upon my  
23 personal knowledge and upon information provided to me by Class Counsel, my associates, and  
24 A.B. Data staff members.

25 3. I have implemented and coordinated some of the largest and most complex class  
26 action notice and administration programs in the country. The scope of my work includes  
27 notification, claims processing and distribution programs in all types of class actions, including but  
28

1 not limited to consumer, antitrust, securities, ERISA, insurance and government agency  
2 settlements.

3 4. A.B. Data has also been appointed as notice, claims, and/or settlement administrator  
4 in hundreds of high-volume consumer, civil rights, insurance, antitrust, ERISA, securities, and  
5 wage and hour class action cases. A profile of A.B. Data's background and capabilities, including  
6 representative case and client lists, is included as **Exhibit 1**.

7 5. The objective of the proposed notice program is to provide the best practicable  
8 notice under the circumstances of the proposed settlement to potential Settlement Class Members.  
9 The Settlement Class is as follows:

10 All persons who, during the Class Period (April 24, 2016 to [Notice Date], 2022),  
11 purchased a new TCL Television marketed as having a "Hz" rating twice as high as  
its native panel refresh rate (Hz) in the state of California.

12 The following are NOT members of the Settlement Class:

13 All persons who validly opt out of the Settlement in a timely manner; governmental  
14 entities; counsel of record (and their respective law firms) for the Parties; Defendant  
15 and any of its parents, affiliates, subsidiaries, independent service providers and all  
16 of its respective employees, officers, and directors; the presiding judge in the Action  
or judicial officer presiding over the matter, and all of their immediate families and  
judicial staff; and any natural person or entity that entered into a release with  
Defendant prior to the Effective Date concerning the Televisions.

#### 17 **NOTICE PROGRAM**

18 6. I understand from Class Counsel that the Defendant has offered to provide AB Data  
19 with email addresses for approximately 5,500 potential Settlement Class Members. However, due  
20 to the voluminous nature of the Class and since comprehensive Settlement Class Member direct  
21 contact information is not readily available, direct notice alone in this case is not sufficient and a  
22 paid-media notice plan is necessary to reach individuals and share information concerning this  
23 litigation with them.

24 7. The Notice Plan includes a combination of: direct notice by email; digital  
25 advertisements on websites, social media, and search engines; and a press release in English and  
26 Spanish.

27 8. Direct notice will be provided via a Short-Form Notice formatted as an email. The  
28 Short-Form Notice will also be utilized for the press release. The more detailed Long-Form Notice

1 will be available on the case-specific website. The Short-Form Notice and Long-Form Notice will  
2 include detailed information concerning the Action and the Settlement, including: that this is a class  
3 action; the class definition in plain and engaging language (“Purchased a TCL TV Between April  
4 24, 2016 and [Notice Date]? You Could Be Eligible for a Payment from a Class Action  
5 Settlement”); that the class alleges consumer protection claims; that a class member may appear  
6 through an attorney if the member wants; that class members can be excluded; the time and manner  
7 for requesting exclusion; and the binding effect of a class judgment.

#### 8 **DIRECT NOTICE**

9 9. Prior to sending the Short-Form Notice to the Settlement Class Members with a  
10 known email address, A.B. Data will perform several tasks to maximize deliverability and avoid  
11 SPAM and junk filters. These tasks include running the list of recipient email addresses through a  
12 deliverability analysis to ensure the email addresses are valid, and working with our contacts at the  
13 email service providers to develop sending strategies to achieve optimal deliverability. A.B. Data  
14 will also incorporate certain best practices to maximize deliverability, such as not including words  
15 or phrases known to trigger SPAM or junk filters, not including attachments to the email, and  
16 sending the emails in tranches over a period of days.

#### 17 **DIGITAL MEDIA**

18 10. Digital advertising allows the viewer to click on a banner or newsfeed advertisement  
19 and instantly be directed to the case website. A.B. Data’s digital media experts will place digital  
20 banner, text, and/or newsfeed ads through Google Display Networks and Google AdWords, and  
21 the social media platforms Facebook, YouTube and Instagram. Spanish language banner ads will  
22 run on appropriate Hispanic websites. A sample digital ad is attached as Exhibit B. These digital  
23 ads will feature a graphic image, brief copy describing the litigation, and links and directions to  
24 access the case-specific website.

25 11. Guided by our in-house Comscore data analysis, the digital impressions will be  
26 highly targeted, specifically delivered to the social media feeds of the target audience, the potential  
27 Settlement Class Members, and digital users that have expressed an interest in information relevant  
28 to the subject of this case, with a focus on users in or with connections to the state of California. To

1 avoid repeatedly targeting certain potential Settlement Class Members, A.B. Data will cap the  
2 frequency of digital ad views per unique user and exclude users who visit the case website from  
3 receiving subsequent digital ads.

4 12. All banner and newsfeed ads will include embedded and trackable links to the case-  
5 specific website using Google Analytics tracking codes, providing a way to optimize ads based on  
6 traffic and conversions. A.B. Data employs a fully staffed digital buying team to manage all digital  
7 and social media plans in-house for the greatest control and oversight. A.B. Data's digital media  
8 experts will monitor the success, conversions, and activity associated with the digital and social  
9 media and will optimize the number of impressions delivered across each platform to achieve  
10 maximum engagement and efficiency.

11 13. The digital and social media ad campaign, including utilization of the digital  
12 networks and social media described above, will run for 30 days to ensure ample time to deliver  
13 the targeted impressions and drive potential Settlement Class Members to the website. We expect  
14 a minimum of 40 million impressions to be delivered across digital networks and social media,  
15 enabling maximum exposure and delivering the reach required to satisfy due process.

16 14. A.B. Data will also disseminate the Short Form Notice as a press release over PR  
17 Newswire's US1 and Hispanic Newslines. After the press release is disseminated, both A.B. Data  
18 and PR Newswire will post the press release on their respective Twitter pages.

19 **EARNED MEDIA**

20 15. A.B. Data will cause the Summary Notice to be disseminated as a news release over  
21 PR Newswire specifically targeted to California. This news release will be distributed via PR  
22 Newswire to thousands of news desks of California general market and Hispanic print and  
23 broadcast newsrooms and websites.

24 **WEBSITE AND TELEPHONE**

25 16. To assist potential Settlement Class Members in understanding the terms of the  
26 Settlement and their rights, A.B. Data will establish a case-specific toll-free telephone number and  
27 a case-specific website.  
28

1           17.     A.B. Data will implement and maintain a toll-free telephone number with an  
2 automated interactive voice response system. The toll-free telephone number will appear on both  
3 the Short Form Notice and Long Form Notice. The automated interactive voice response system  
4 will present callers with a series of choices to hear prerecorded information concerning the  
5 Settlement.

6           18.     A.B. Data will also implement and maintain a case-specific website for this matter.  
7 The website address will appear on both the Short Form Notice and Long Form Notice. The website  
8 will provide, among other things, a summary of the case, functionality for Settlement Class  
9 Members to submit their claims online, all relevant documents, important dates and any pertinent  
10 updates concerning the litigation or the settlement process.

#### 11                                   **EXCLUSION PROCESSING**

12           19.     The Short Form Notice and Long Form Notice provide that Settlement Class  
13 Members may request exclusion by sending a written, mailed request to the Settlement  
14 Administrator. A.B. Data will receive and process all requests for exclusion. A.B. Data will also  
15 promptly circulate to the parties copies of all such requests and a report that tracks each request and  
16 whether the required information was included.

#### 17                                   **CLAIMS PROGRAM**

18           20.     To receive money from the Settlement, Settlement Class Members must complete a  
19 claim form that requires the claimant's name, mailing address and email address; information  
20 concerning their purchase of a TCL TV, and supporting documentation. As such, the Claim  
21 Program does not require unnecessarily burdensome information but instead requires only the  
22 information necessary to process the claim and validate the claimant is in fact a legitimate  
23 Settlement Class Member. A.B. Data will also implement a number of fraud prevention techniques  
24 to identify claims filed from suspicious locations, by repeat actors and/or by Internet "bots". The  
25 Claim Form can be completed and submitted either online at the case specific website or by mail.

26           21.     Settlement payments will be digitally sent to each eligible claimant using the email  
27 address provided on the Claim Form. Each eligible claimant will be provided with a number of  
28

1 digital payment options such as PayPal, Amazon, or a virtual debit card. Claimants will also have  
2 the opportunity to request a traditional paper check payment by mail.

3 **CONCLUSION**

4 22. It is my opinion, based on my individual expertise and experience and that of my  
5 A.B. Data colleagues, that the proposed notice program is designed to effectively reach potential  
6 Settlement Class Members, will deliver plain language notices that will capture potential Settlement  
7 Class Members' attention, and provide them with the information in an informative and easy to  
8 understand manner that is necessary to effectively understand their rights and options. This  
9 proposed notice program will deliver a calculated reach of at least 70% and conforms to the  
10 standards employed by A.B. Data in notification programs designed to reach potential class  
11 members of settlement groups or classes that are national in scope and reach narrowly defined  
12 entities and demographic targets. In particular, the digital nature of the notice program and payment  
13 methods are the best and most cost-effective way to reach Settlement Class Members and encourage  
14 participation in a manner that will actually come to their attention.

15 23. For all these reasons, in my opinion, the proposed notice program satisfies the  
16 requirements of Rule 23 and due process.

17  
18 I declare under penalty of perjury under the laws of the United States that the foregoing is true and  
19 correct.

20 Executed this 14<sup>th</sup> day of February, 2022 in Milwaukee, Wisconsin.

21  
22 

23 Eric Schachter  
24  
25  
26  
27  
28

# EXHIBIT 1



**Class  
Action  
Administration**



**Headquarters**  
600 A.B. Data Drive  
Milwaukee, WI 53217  
P: 866-217-4470  
F: 414-961-3099

**New York**  
One Battery Park Plaza  
32<sup>nd</sup> Floor  
New York, NY 10004  
P: 646-290-9137

**Washington DC**  
915 15<sup>th</sup> St., NW, Ste. 300  
Washington, DC 20005  
P: 202-618-2900  
F: 202-462-2085


**Florida**  
5080 PGA Boulevard, Ste. 209  
Palm Beach Gardens, FL 33418  
P: 561-336-1801  
F: 561-252-7720

**Israel**  
19 Weissburg Street  
Tel Aviv 69358  
Israel  
P: +972 (3) 720-8782




# CAPABILITIES

## About A.B. Data


 Founded in 1981, **A.B. Data** has earned a reputation for expertly managing the complexities of class action administration in consumer, antitrust, securities, Securities and Exchange Commission (SEC) enforcement actions, and ERISA, Attorneys General, employment, civil rights, insurance, environmental, wage and hour, and other class action cases. **A.B. Data's work in all aspects of class action administration** has been perfected by decades of experience in hundreds of class action cases involving billions of dollars in total settlements. Dedicated professionals deliver **A.B. Data's all-inclusive services**, working in partnership with its clients to administer their class action cases effectively, efficiently, and affordably, regardless of size or scope.

**A.B. Data offers unmatched resources and capacity** and is capable of expertly administering any class action notice, settlement, and/or fund administration. Whether notifying millions of class members in the United States or throughout the world, processing millions of claims, distributing payments digitally via A.B. Data's Digital PayPortal<sup>SM</sup>, or printing and distributing millions of checks, **A.B. Data matches its talent and technology** to the specific needs of its clients, delivering unparalleled service on time and on budget without ever compromising quality.

## Location, Ownership Structure

 **A.B. Data is an independently owned**, 39-year-old, Milwaukee, Wisconsin-based company that prides itself on its vast expertise and industry-leading innovations. We like to remind our clients and partners that we're not just a class action administration company, but a group of experienced, dedicated professionals who believe that relationships are just as important as the accurate and timely management of class action administrations. In other words, we are people who do business with people.

## Services

 **Every A.B. Data client is deserving of the best job we can put forward.** A.B. Data makes class action administration easy for our clients with clarity, convenience, and efficiency. Our priority is to navigate the intricacies of our clients' matters and deliver successful results by using our solid expertise, advanced technology, and top-quality products and services. We pay attention to the details and get it right the first time.

We aim to provide our clients the full experience of a truly collaborative working relationship. It is why we believe much of our success originates from our philosophy of "people doing business with people."

## Services

### All Digital — From Notice to Distribution

**A.B. Data is uniquely positioned to design, implement, and maintain notice and settlement administration programs** using an innovative, "all-digital" approach that replaces the more traditional and less efficient methods of administration, such as newspaper ads, mailed notices, and paper checks. Many of our recent proposed notice plans and claim programs utilize the latest technologies such as microtargeted digital ads for notice, streamlined online claims, and distributing settlement funds electronically using a digital paywall. These methods provide significant cost savings, are consistent with the amendments to Rule 23 that are now in effect, and importantly provide much-needed alignment of class action notice and administration with current consumer behaviors.

### Pre-Settlement Consultation

**The pre-settlement consultation is a collaborative session** designed to help A.B. Data clients prepare a stronger case. Our support teams simplify the task of sorting through a maze of documents during investigation and discovery, streamlining the process and preserving fund assets. From there, we assist with fully interactive media packages for court presentations and settlement negotiations. A.B. Data works closely with our clients, offering expert testimony on documents, processing, class and notice manageability, and proposed plans of allocation.

### Media Services

**A.B. Data continues to earn our reputation** as the early innovator in integrating advanced micro-targeting techniques, including contextual targeting, behavioral targeting, and predictive modeling. Coupled with inventive digital media strategies to drive claims, case-specific banner ad development, class member research, and comScore analysis services, our multi-tiered media programs are designed to cost-effectively deliver notice to potential class members and increase claims rates.

### Notice Administration

**In A.B. Data, clients have a comprehensive resource** with a depth of experience in direct notice. Our compliance and understanding of Rule 23 of the Federal Rules of Civil Procedure are crucial in meeting the "plain language" legal requirements for any campaign. From our sophisticated digital media capabilities and extensive global experience with class member research, our experts create notice documents that are easily understandable and cost-efficient to produce. We consult with our clients to deliver notice documents from multi-page, mailed, or emailed notice packets to concise postcards that establish the most influential and cost-effective means of communicating with potential claimants.

## Claims Processing

**A.B. Data continues to bring game-changing technologies** to improve the speed and precision in claims processing. Our robust system for online claims submissions allows us to meticulously verify data and documentation, preserve and authenticate claims, and calculate and verify settlement amounts. In addition, our data network infrastructure includes on-site data storage, backup, contingency plans, and security for electronic and hard copy claim filings. It is all part of a total commitment to be the most innovative and comprehensive resource in the industry. At A.B. Data, we take pride in having the in-house capacity to process millions of pages, as well as the organizational integrity to treat every claim as if it were the only one.

## Contact Center

**A.B. Data's Contact Center is comprised of a full staff** that is trained on and equipped with online and telecommunication systems to monitor and connect with class members. Associates routinely monitor class member communication for all class action administrations, including antitrust, consumer, and securities.

Utilizing monitoring software, associates watch multiple social media channels simultaneously, allowing for instantaneous routing of inquiries and interaction with claimants. Detailed and concise analytical reports outlining Contact Center activities are always provided.

Our Contact Center and case websites are capable of handling millions of class member engagements, as recently displayed in a campaign which garnered over 1.2 million website visits in two months and had more than 72,500 Facebook engagements. Facebook comments and threads are monitored and claimants are guided to the website for more information. Google AdWords and display advertising have also brought hundreds of thousands of visitors to various case websites.

A.B. Data's Contact Center also has Spanish language associates in-house and we can accommodate any language, given proper lead time. Traditional call center facilities are also available, if needed.

## Case Websites

**We offer a state-of-the-art technology platform** that supports every step of our class action administration process. Our expert marketing professionals design customized case-specific websites that provide potential class members easy access to case information, critical documents, important deadlines, as well as the capability to file claim forms and register for future mailings about the case. Claimants can use the website to elect to receive their settlement payments by mail or by one of several digital payment options, all accessible by mobile devices.

## Settlement Fund Distribution

**From complete escrow services to establishment of qualified settlement funds**, check printing and mailing, electronic cash or stock distribution and tax services, A.B. Data has always provided a full-service solution to Settlement Fund Distribution. Our IT team has decades of experience in developing and implementing fast, secure databases and claims administration systems that ensure class members receive the correct amount in their settlement disbursement. Today's digital capabilities allow even greater convenience for class members. In certain instances, claimants can now elect to instantaneously receive settlement payments through popular digital-payment options, such as PayPal, Amazon, and virtual debit cards.

## A.B. Data's Leadership



**A.B. Data's administration team** is composed of the following key executives, who collectively have decades of experience settling and administering class actions:

**Bruce A. Arbit, Co-Managing Director** and one of the founders of the A.B. Data Group, serves as Chairman of the Board and oversees the day-to-day operations of the A.B. Data Group of companies, employing almost 400 people in the United States and Israel. Mr. Arbit is also Chairman of the Board of Integrated Mail Industries, Ltd. and has served as a member of the Board of Directors of University National Bank and State Financial Bank. He is the past Chairman of Asset Development Group, Inc., Home Source One, and American Deposit Management and is a member of the National Direct Marketing Association, the Direct Marketing Fundraising Association, and the American Association of Political Consultants. He was named 1996 Direct Marketer of the Year by the Wisconsin Direct Marketing Association.

A.B. Data's work in class action litigation support began with the Court selecting A.B. Data to oversee the restitution effort in the now-famous Swiss Banks Class Action Case, the International Commission on Holocaust Era Insurance Claims, and every other Holocaust Era Asset Restitution program, in which it was the company's job to identify, contact, and inform survivors of the Holocaust. A.B. Data delivered by reaching out to millions of people in 109 countries who spoke more than 30 languages. Since those days, Mr. Arbit has guided the class action division through phenomenal growth and success. Today, A.B. Data manages hundreds of administrations annually that distributes billions of dollars to class members.

**Thomas R. Glenn, President**, Mr. Glenn's management of A.B. Data's Class Action Administration Company includes designing and implementing notice plans and settlement administration programs for antitrust, securities, and Securities and Exchange Commission settlements and SEC disgorgement fund distributions, as well as consumer, employment, insurance, and civil rights class actions. Mr. Glenn previously served as Executive Vice President at Rust Consulting and has more than 30 years of executive leadership experience.

**Eric Miller, Senior Vice President**, as a key member of A.B. Data's Class Action Administration Leadership Team, oversees the Case Management Department and supervises the operations and procedures of all of A.B. Data's class action administration cases. Mr. Miller is recognized in the class action administration industry as an expert on securities, SEC, consumer, product recall, product liability, general antitrust, pharmaceutical antitrust, and futures contract settlements, to name a few settlement types. Prior to joining A.B. Data, Mr. Miller served as the Client Service Director for Rust Consulting, responsible there for its securities practice area. He has more than 20 years of operations, project management, quality assurance, and training experience in the class action administration industry. In addition, Mr. Miller manages A.B. Data's office in Palm Beach Gardens, Florida.

**Ravin Raj, Vice President-Operations**, has more than 15 years of experience in class action claims management, document management, and insurance claims remediation. Mr. Raj's responsibilities for A.B. Data's Class Action Administration Company include heading the shared operations center, which includes mailroom, contact center, claims processing, quality control, and information systems operations. His areas of expertise include business process development, strategic/tactical operations

planning and implementation, risk analysis, budgeting, business expansion, growth planning and implementation, cost reduction, and profit, change, and project management. In his previous position, as Assistant Vice President-Operations at RR Donnelley India Pvt. Ltd., in Chennai, India, he led a team of more than 400 employees with the capacity to process more than 4 million claims a year, servicing several leading claims administrators. Mr. Raj managed six of the top ten securities class action settlements, by settlement value, including several multibillion-dollar settlements. His background also includes work as a Project Lead for iMarque Solutions Pvt. Ltd., Chennai, India.

**Linda V. Young, Vice President, Media**, oversees the Media Department and is responsible for the direction, development, and implementation of media notice plans for A.B. Data's clients. Ms. Young is an expert in media planning using most forms of advertising including digital, print, and broadcast. She developed some of the first Court-approved Notice Plans using an all-digital approach for cases such as *In re Vizio Consumer Privacy Litigation*, *In re Qualcomm Antitrust Litigation*, and *In re Google Inc. Street View Electronic Communications Litigation*, among others. Her ability to create notice plans that efficiently extend reach and drive class member engagement and participation has made a significant impact across many types of administrations. Ms. Young has developed and implemented national and international print, digital-, and earned-media notice plans for some of the industry's leading pharmaceutical, insurance, and securities class action cases, including Libor-based Financial Instruments Antitrust Litigation, Cipro Antitrust Cases I and II, Euribor and Euroyen-based Derivatives cases, and many more. She has more than 20 years of general market and ethnic media advertising and media planning experience, having managed advertising for brands such as Georgia-Pacific, American Express, Denny's, and Coca-Cola USA.

**Eric Schachter, Vice President**, is a member of A.B. Data's Class Action Administration Leadership Team. He has over 15 years of experience in the legal settlement administration services industry. Mr. Schachter's responsibilities include ensuring successful implementation of claims administration services for A.B. Data's clients in accordance with settlement agreements, court orders, and service agreements. He also works closely with Project Managers to develop plans of administration to provide the highest level of effective and efficient delivery of work product. A frequent speaker on claims administration innovation and best practices at industry events nationwide, Mr. Schachter has a bachelor's degree in sociology from Syracuse University, earned his law degree at Hofstra University School of Law, and was previously an associate at Labaton Sucharow LLP in New York City.

**Paul Sauberer, Director of Quality Assurance**, is responsible for overseeing quality assurance and process management, working diligently to mitigate risk, ensure exceptional quality control, and develop seamless calculation programming. Mr. Sauberer brings more than 20 years of experience as a quality assurance specialist with a leading claims-processing company where he developed extensive knowledge in securities class action administration. He is recognized as the class action administration industry's leading expert on claims and settlement administrations of futures contracts class actions.

**Justin Parks, Business Development Director**, provides expertise in legal marketing strategies and brings extensive experience in client relations to A.B. Data's business development team. Previously, Mr. Parks served the legal industry as part of the marketing group at a major class action administration firm where he successfully managed and consulted on notice plans and other administrative aspects in hundreds of cases with an estimated value of several hundred million dollars in settlement funds distributed to class members, including some of the largest Employment settlements in history. Mr. Parks is uniquely experienced in Data Privacy matters, having consulted with clients on numerous matters stemming from data breaches as well as violations of the Illinois Biometric Information Privacy Act (BIPA), several of which resulted in the first ever Biometric Privacy related settlements in history. Mr. Parks' knowledge and understanding of the class action industry, as well as his client relationship skills, expand A.B. Data's capacity to achieve its business development and marketing goals effectively.



**Camron Assadi, Vice President, Digital Marketing**, has more than 20 years of experience in digital marketing leadership, which includes directing and overseeing all aspects of the company's digital notice plans and campaigns across multiple networks and platforms. Mr. Assadi is an expert in online advertising and social media campaigns including Facebook, Google Ads, LinkedIn, Twitter, Amazon, Pinterest, Verizon Media, and others. He holds certifications in Google Ads Display and Search, and is a Facebook Certified Digital Marketing Associate. His ability to create and optimize business opportunities, extend brand reach, and capture the interest and support of local and international audiences has proven him an invaluable leader of A.B. Data's effort to maximize and streamline class member notice and engagement. Mr. Assadi has managed the notice plans for cases that have garnered millions of unique visitors and social media interactions. He holds a BS in Psychology from the University of Utah.

**Adam Walter, PMP, Senior Project Manager**, has nearly fifteen years of experience managing the administration of securities class action settlements and SEC disgorgements totaling more than \$4 billion. He has managed settlement programs in engagements involving some of the largest securities class action settlements and is a key contributor to the development of administration strategies that meet the evolving needs of our clients. His responsibilities include developing case administration strategies to ensure that all client and court requirements and objectives are met, overseeing daily operations of case administrations, ensuring execution of client deliverables, providing case-related legal and administration support to class counsel, overseeing notice dissemination programs, implementing complex claims-processing and allocation methodologies, establishing quality assurance and quality control procedures, and managing distribution of settlement funds. Mr. Walter holds a bachelor's degree in business administration from Florida Atlantic University, Boca Raton, Florida. He also has been an active member of the Project Management Institute since 2010 and is PMP®-certified.

**Steve Straub, Senior Project Manager**, joined A.B. Data in February 2012. As a Senior Project Manager, his responsibilities include developing case administration strategies, overseeing daily operations of case administrations, ensuring execution of client deliverables, providing case-related legal and administration support to case counsel, overseeing notice dissemination programs, implementing complex claims processing and allocation methodologies, establishing quality assurance and quality control procedures, and managing distribution of settlement funds. Mr. Straub's experience in administering class action settlements includes securities, consumer, and antitrust settlements, with a primary focus on antitrust cases. He holds a Juris Doctor degree from Seton Hall University School of Law, Newark, New Jersey.

**Patty Nogalski, Project Manager**, is a veteran in the equity and securities industry and now contributes her talents to A.B. Data as a Project Manager specializing in class action administrations for securities litigation. Ms. Nogalski brings to A.B. Data many new ideas, methods, and technologies to achieve project efficiency and organizational integration. For much of her twenty-year career, she served as Vice President Equity Trading for BMO Global Asset Management Corporation where she managed equity trading for mutual funds and institutional accounts. She works closely with Eric Miller and the project management team to deliver strategies that meet the unique needs of securities and commodities settlements. Ms. Nogalski attended the University of Wisconsin-Milwaukee where she earned her Bachelor of Arts in Communications, and has also obtained her Financial Industry Regulatory Authority (FINRA) Series 7, Series 63, and Series 65 licenses.

**Eric Schultz, MCSE, Information Technology Manager and Security Team Chairperson**, has been with A.B. Data for more than 19 years, and is currently responsible for overseeing all information technology areas for all A.B. Data divisions across the United States and abroad, including network infrastructure and architecture, IT operations, data security, disaster recovery, and all physical, logical, data, and information systems security reviews and audits required by our clients or otherwise. As a Microsoft Certified Systems Engineer (MCSE) with more than 25 years of experience in information technology systems and solutions, Mr. Schultz has developed specializations in network security, infrastructure, design/architecture, telephony, and high-availability network systems.

## Secure Environment



**A.B. Data's facilities provide the highest level of security** and customization of security procedures, including:

- A Secure Sockets Layer server
- Video monitoring
- Limited physical access to production facilities
- Lockdown mode when checks are printed
- Background checks of key employees completed prior to hire
- Frequency of police patrol - every two hours, with response time of five or fewer minutes
- Disaster recovery plan available upon request

## Data Security



**A.B. Data is committed to protecting the confidentiality, integrity, and availability of personal identifying information** and other information it collects from our clients, investors, and class members and requires that its employees, subcontractors, consultants, service providers, and other persons and entities it retains to assist in distributions do the same. A.B. Data has developed an Information Security Policy, a suite of policies and procedures intended to cover all information security issues and bases for A.B. Data, and all of its divisions, departments, employees, vendors, and clients. A.B. Data has also recently taken the necessary, affirmative steps toward compliance with the EU's General Data Protection Regulation and the California Consumer Privacy Act.

A.B. Data has a number of high-profile clients, including the Securities and Exchange Commission (SEC), the United States Department of Justice, the Attorneys General of nearly all 50 states, other agencies of the United States government, and the Government of Israel, as well as direct banking and payment services companies with some of the most recognized brands in United States financial services and some of the largest credit card issuers in the world.

We are therefore frequently subjected to physical, logical, data, and information systems security reviews and audits. We have been compliant with our clients' security standards and have also been determined to be compliant with ISO/IEC 27001/2 and Payment Card Industry (PCI) data-security standards, the Gramm-Leach-Bliley Act (GLB) of 1999, the National Association of Insurance Commissioners (NAIC) Regulations, the Health Insurance Portability and Accountability Act (HIPAA) of 1996, and the Health Information Technology for Economic and Clinical Health Act (HITECH).

The Government of Israel has determined that A.B. Data is compliant with its rigorous security standards in connection with its work on Project HEART (Holocaust Era Asset Restitution Taskforce).

A.B. Data's fund distribution team has been audited by EisnerAmper LLP and was found compliant with class action industry standards and within 99% accuracy. EisnerAmper LLP is a full-service advisory and accounting firm and is ranked the 15th-largest accounting firm in the United States.



In addition, as part of PCI compliance requirements, A.B. Data has multiple network scans and audits from third-party companies, such as SecurityMetrics and 403 Labs, and is determined to be compliant with each of them.

## Fraud Prevention and Detection



**A.B. Data is at the forefront of class action fraud prevention.**

A.B. Data maintains and utilizes comprehensive proprietary databases and procedures to detect fraud and prevent payment of allegedly fraudulent claims.

We review and analyze various filing patterns across all existing cases and claims. Potential fraudulent filers are reported to our clients as well as to the appropriate governmental agencies where applicable.

## Representative Class Action Engagements



**A.B. Data and/or its team members have successfully administered hundreds of class actions, including many major cases. Listed below are just some of the most representative or recent engagements.**

### Consumer & Antitrust Cases

- *Phil Shin, et al. v. Plantronics, Inc.*
- *In re: Qualcomm Antitrust Litigation*
- *In re Resistors Antitrust Litigation*
- *The Hospital Authority of Metropolitan Government of Nashville and Davidson County, Tennessee v. Momenta Pharmaceuticals, Inc. and Sandoz Inc. ("Lovenox Antitrust Matter")*
- *William Kivett, et al. v. Flagstar Bank, FSB, and DOES 1-100, inclusive*
- *Adelphia, Inc. v. Heritage-Crystal Clean, Inc.*
- *LLE One, LLC, et al. v. Facebook, Inc.*
- *Bach Enterprises, Inc., et al. v. Advanced Disposal Services South, Inc., et al.*
- *JWG Inc., et al. v. Advanced Disposal Services Jacksonville, L.L.C., et al.*
- *State of Washington v. Motel 6 Operating L.P. and G6 Hospitality LLC*
- *In re GSE Bonds Antitrust Litigation*
- *Wave Lengths Hair Salons of Florida, Inc., et al. v. CBL & Associates Properties, Inc., et al.*
- *In re Loestrin 24 FE Antitrust Litigation*
- *Office of the Attorney General, Department of Legal Affairs, State of Florida v. Pultegroup, Inc. and Pulte Home Company, LLC*
- *In re Cigna-American Specialties Health Administration Fee Litigation*
- *In re: Intuniv Antitrust Litigation*
- *High Street, et al. v. Cigna Corporation, et al.*
- *Gordon Fair, et al. v. The Archdiocese of San Francisco, San Mateo, and Marin County*

- *Bizzarro, et al. v. Ocean County Department of Corrections, et al.*
- *Meeker, et al. v. Bullseye Glass Co.*
- *MSPA Claims 1, LLC v. Ocean Harbor Casualty Insurance Company*
- *Tennille v. Western Union Company - Arizona*
- *Garner, et al. v. Atherotech Holdings, Inc. and Garner, et al. v. Behrman Brothers IV, LLC, et al.*
- *Robinson, et al. v. Escallate, LLC*
- *Josefina Valle and Wilfredo Valle, et al. v. Popular Community Bank f/k/a Banco Popular North America*
- *Vision Construction Ent., Inc. v. Waste Pro USA, Inc. and Waste Pro USA, Inc. and Waste Pro of Florida, Inc.*
- *Plumley v. Erickson Retirement Communities, et al.*
- *In re London Silver Fixing, Ltd. Antitrust Litigation*
- *In re EpiPen Marketing, Sales Practices and Antitrust Litigation*
- *Ploss v. Kraft Foods Group, Inc. and Mondelēz Global LLC*
- *In re Mexican Government Bonds Antitrust Litigation*
- *In re Ready-Mixed Concrete Antitrust Litigation*
- *In re: Marine Hose Antitrust Litigation*
- *Iowa Ready Mixed Concrete Antitrust Litigation*
- *In re Potash Antitrust Litigation (II)*
- *In re Evanston Northwestern Healthcare Corp. Antitrust Litigation*
- *In re Polyurethane Foam Antitrust Litigation*
- *In re LIBOR-Based Financial Instruments Antitrust Litigation*
- *In re Lorazepam and Clorazepate Antitrust Litigation*
- *In re Cardizem CD Antitrust Litigation*
- *Vista Healthplan, Inc., and Ramona Sakiestewa v. Bristol-Myers Squibb Co., and American BioScience, Inc.*
- *In re Lupron Marketing and Sales Practices Litigation*
- *In re Terazosin Hydrochloride Antitrust Litigation*
- *In re Warfarin Sodium Antitrust Litigation*
- *Rosemarie Ryan House, et al. v. GlaxoSmithKline PLC and SmithKline Beecham Corporation*
- *Carpenters and Joiners Welfare Fund, et al. v. SmithKline Beecham*
- *New Mexico United Food and Commercial Workers Union's and Employers' Health and Welfare Trust Fund, et al. v. Purdue Pharma L.P.*
- *In Re Pharmaceutical Industry Average Wholesale Price Litigation*
- *Alma Simonet, et al. v. SmithKline Beecham Corporation, d/b/a GlaxoSmithKline*
- *In re Relafen Antitrust Litigation*
- *In Re Remeron Direct Purchaser Antitrust Litigation*
- *In re TriCor Indirect Purchasers Antitrust Litigation*
- *Nichols, et al., v. SmithKline Beecham Corporation*
- *In re: DDAVP Indirect Purchaser Antitrust Litigation*

### Securities Cases

- *Laydon v. Mizuho Bank, Ltd., et al.*
- *Lomingkit, et al. v. Apollo Education Group, Inc., et al.*
- *In re Caraco Pharmaceutical Laboratories, Ltd. Shareholder Litigation*
- *Norfolk County Retirement System, et al. v. Community Health Systems, Inc., et al.*
- *Chester County Employees' Retirement Fund v. KCG Holdings, Inc., et al.*
- *Oklahoma Law Enforcement Retirement System, et al. v. Adeptus Health Inc., et al.*
- *Di Donato v. Insys Therapeutics, Inc., et al.*
- *Lundgren-Wiedinmyer, et al. v. LJM Partners, Ltd, et al.*

- *Martin, et al. v. Altisource Residential Corporation, et al.*
- *Stephen Appel, et al. v. Apollo Management, et al.*
- *In re Medley Capital Corporation Stockholder Litigation*
- *Forman, et al. v. Meridian BioScience, Inc., et al.*
- *Public Employees' Retirement System of Mississippi, et al. v. Endo International PLC, et al.*
- *In Re Flowers Foods, Inc. Securities Litigation*
- *Jiangchen, et al. v. Rentech, Inc., et al.*
- *In re Liberty Tax, Inc. Stockholder Litigation*
- *In re RH, Inc. Securities Litigation*
- *Lazan v. Quantum Corporation, et al.*
- *Nabhan v. Quantum Corporation, et al.*
- *Edmund Murphy III, et al. v. JBS S.A.*
- *Public Employees' Retirement System of Mississippi, et al. v. Sprouts Farmers Market, Inc., et al.*
- *In re Starz Stockholder Litigation*
- *Judith Godinez, et al. v. Alere Inc., et al.*
- *Rahman and Giovagnoli, et al. v. GlobalSCAPE, Inc., et al.*
- *Arthur Kaye, et al. v. ImmunoCellular Therapeutics, Ltd., et al.*
- *In re CPI Card Group Inc. Securities Litigation*
- *Daniel Aude, et al. v. Kobe Steel, Ltd., et al.*
- *In re Quality Systems, Inc. Securities Litigation*
- *Cooper, et al. v. Thoratec Corporation, et al.*
- *Washtenaw County Employees' Retirement System, et al. v. Walgreen Co., et al.*
- *Elkin v. Walter Investment Management Corp., et al.*
- *In Re CytRx Corporation Securities Litigation*
- *Ranjit Singh, et al. v. 21Vianet Group, Inc., et al.*
- *In re PTC Therapeutics, Inc. Securities Litigation*
- *Securities and Exchange Commission v. Mark A. Jones*
- *In re Sequans Communications S.A. Securities Litigation*
- *In re Henry Schein, Inc. Securities Litigation*
- *Ronge, et al. v. Camping World Holdings, Inc., et al.*
- *Oklahoma Firefighters Pension & Retirement System v. Lexmark International, Inc.*
- *Christakis Vrakas, et al. v. United States Steel Corporation, et al.*
- *Emerson et al. v. Mutual Fund Series Trust, et al. ("Catalyst")*
- *In re Fannie Mae 2008 Securities Litigation*
- *In re Anadarko Petroleum Corporation Class Action Litigation*
- *Ge Dandong, et al., v. Pinnacle Performance Limited, et al.*
- *In Re: Rough Rice Commodity Litigation*
- *Xuechen Yang v. Focus Media Holding Limited et al.*
- *In re Massey Energy Co. Securities Litigation*
- *In re Swisher Hygiene, Inc.*
- *The City of Providence vs. Aeropostale, Inc., et al.*
- *In re Metrologic Instruments, Inc. Shareholders Litigation*
- *Public Pension Fund Group v. KV Pharmaceutical Company et al.*
- *Pension Trust Fund for Operating Engineers, et al. v. Assisted Living Concepts, Inc., et al.*
- *In re Lehman Brothers Equity/Debt Securities Litigation*
- *In re: Platinum and Palladium Commodities Litigation (Platinum/Palladium Physical Action)*
- *In re: Platinum and Palladium Commodities Litigation (Platinum/Palladium Futures Action)*
- *In re General Electric Co. Securities Litigation*
- *In re CNX Gas Corporation Shareholders Litigation*
- *Oscar S. Wyatt, Jr. et al. v. El Paso Corporation, et al.*
- *In re Par Pharmaceutical Securities Litigation*

- *In re Par Pharmaceutical Companies, Inc. Shareholders Litigation*
- *In re Delphi Financial Group Shareholders Litigation*
- *In re SLM Corporation Securities Litigation*
- *In re Del Monte Foods Company Shareholder Litigation*
- *Leslie Niederklein v. PCS Edventures!.com, Inc. and Anthony A. Maher*
- *In re Beckman Coulter, Inc. Securities Litigation*
- *Michael Rubin v. MF Global, Ltd., et al.*
- *Allen Zametkin v. Fidelity Management & Research Company, et al.*
- *In re BP Prudhoe Bay Royalty Trust Securities Litigation*
- *Police and Fire Retirement System of the City of Detroit et al. v. SafeNet, Inc., et al.*
- *In re Limelight Networks, Inc. Securities Litigation*
- *In re Gilead Sciences Securities Litigation*
- *In re ACS Shareholder Litigation, Consolidated C.A. No. 4940-VCP*
- *Lance Provo v. China Organic Agriculture, Inc., et al.*
- *In re LDK Solar Securities Litigation*

### Labor & Employment Cases

- *Talisa Borders, et al. v. Wal-mart Stores, Inc.*
- *Reale v. McClain Sonics Inc., et al.*
- *Larita Finisterre and Songhai Woodard, et al. v. Global Contact Services, LLC*
- *Adebisi Bello v. The Parc at Joliet*
- *Garcia, et al. v. Vertical Screen, Inc.*
- *Brook Lemma and Matthieu Hubert, et al. v. 103W77 Partners LLC, et al. ("Dovetail Settlement")*
- *American Federation of Government Employees, Local 1145 v. Federal Bureau of Prisons, U.S. Penitentiary, Atlanta, Georgia*
- *Lisa Ferguson, Octavia Brown, et al. v. Matthew G. Whitaker, Acting AG, DOJ Bureau of Prisons ("USP Victorville")*
- *American Federation of Government Employees, Local 2001 v. Federal Bureau of Prisons, Federal Correctional Institution, Fort Dix, New Jersey*
- *American Federation of Government Employees, Local 506 v. U.S. Department of Justice, Federal Bureau of Prisons, U.S. Penitentiary Coleman II, Coleman, Florida*
- *Vargas v. Sterling Engineering*
- *Rosenbohm v. Verizon*
- *Alex Morgan, et al. v. United States Soccer Federation, Inc.*
- *Iskander Rasulev v. Good Care Agency, Inc.*
- *Kyndl Buzas, et al., v. Phillips 66 Company and DOES 1 through 10*
- *American Federation of Government Employees, Local 408 v. U.S. Dept. of Justice, Federal Bureau of Prisons, Federal Correctional Complex, Butner, NC*
- *In re 2014 Avon Products, Inc. ERISA Litigation*
- *In re Eastman Kodak ERISA Litigation*
- *Taronica White, et al. v. Attorney General Loretta Lynch, Department of Justice*
- *Lisa Ferguson, et al. v. Acting Attorney General Matthew Whitaker, Department of Justice*
- *Melissa Compere v. Nusret Miami, LLC, et al.*
- *Abelar v. American Residential Services, L.L.C., Central District of California*
- *Flores, et al. v. Eagle Diner Corp., et al., Eastern District of Pennsylvania*
- *Michael Furman v. Godiva Chocolatier, Inc., 15<sup>th</sup> Judicial Circuit, Palm Beach County, Florida*
- *Finisterre et. al v. Global Contact Services, LLC, New York State Supreme Court, Kings County*
- *McGuire v. Intelident Solutions, LLC, et al., Middle District of Florida, Tampa Division*
- *Duran De Rodriguez, et al. v. Five Star Home Health Care Agency, Inc. et al., Eastern District of New York*

### Data Breach/BIPA Cases

- *In re: Vizio, Inc. Consumer Privacy Litigation*
- *In re: Google, Inc. Street View Electronic Communications Litigation*
- *Devin Briggs and Bobby Watson, et al. v. Rhinoag, Inc.* ("Briggs Biometric Settlement")
- *Trost v. Pretium Packaging L.L.C.*

### Telephone Consumer Protection Act (TCPA) Cases

- *Lowe and Kaiser, et al. v. CVS Pharmacy, Inc., et al.*
- *Johansen v. HomeAdvisor, Inc., et al.*
- *Charvat, et al. v. National Holdings Corporation*
- *Hopkins, et al. v. Modernize, Inc.*
- *Diana Mey vs. Frontier Communications Corporation*
- *Matthew Donaca v. Dish Network, L.L.C.*
- *Matthew Benzion and Theodore Glaser v. Vivint, Inc.*
- *John Lofton v. Verizon Wireless (VAW) LLC, et al.*
- *Lori Shamblin v. Obama for America et al.*
- *Ellman v. Security Networks*

## For More Information

For more detailed information regarding A.B. Data's experience, services, or personnel, please see our website at [www.abdataclassaction.com](http://www.abdataclassaction.com)

# EXHIBIT 2





# Purchased a TCL TV IN CALIFORNIA?

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