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September 12, 2012

VIA OVERNIGHT DELIVERY AND ELECTRONIC CASE FILING

Honorable Susan Illston, Judge
UNITED STATES DISTRICT COURT
450 Golden Gate Avenue
Courtroom 10, 19th Floor
San Francisco, CA 94102

Re: *In re TFT-LCD (Flat Panel) Antitrust Litig.*, Case No. 3:07-md-1827-SI.

Your Honor:

On behalf of Dell Inc., a party in these MDL proceedings, we write on an expedited basis regarding your Order today setting the hearing on Plaintiffs' Motion for Preliminary Approval of Class Settlement with the Toshiba Defendants for this Friday, September 14, 2012 at 9:00am (MDL Dkt. No. 6690). The proposed settlement agreement was only filed publicly on Monday, September 10, 2012 after 5:00pm and contains a number of provisions that are designed to affect Dell and other Direct Action Plaintiffs in this MDL litigation. Specifically, Par. 11(c) of the proposed settlement agreement (*see* MDL Dkt. No. 6675-3) requires that Toshiba and the Direct Purchaser Plaintiffs seek an order from this Court "vacating and setting aside the special verdict returned by the jury on July 3, 2012, such that it is null and void and without any force or effect."

Par. 11(c) of the proposed settlement agreement raises a number of issues for Dell and other Direct Action Plaintiffs, particularly given the pending Summary Judgment Motion Against Toshiba on Liability Issues Determined in the Toshiba Trial, which is premised upon the special jury verdict (*see* MDL Dkt. No. 6359) and the intention of various Direct Action Plaintiffs to inform the jury of the existence of the special jury verdict at upcoming trials. A request for vacatur is an extraordinary request that should be evaluated only after a full opportunity for affected parties to be heard given the important policy issues at play. *See U.S. Bancorp Mortg. Co., v. Bonner Mall P'ship*, 513 U.S. 18, 26, 29 (1994) (vacatur is an "extraordinary remedy" and "[w]e hold that mootness by reason of settlement does not justify vacatur of a judgment under review," absent "exceptional circumstances," which "do not include the mere fact that the settlement agreement provides for vacatur").

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Dell and potentially other Direct Action Plaintiffs intend to object to the mandatory requirement of vacatur in the Toshiba settlement and request additional time to fully brief the vacatur issues for the Court. As noted, the proposed settlement agreement was only filed late on Monday, September 10, 2012, and there is no reason that it must be heard for preliminary approval this Friday, September 14, 2012. To the extent preliminary approval is granted and the Court later determines that the vacatur provisions should not be ordered, time and expense would be wasted on premature notice provisions. Dell respectfully suggests instead that the Court delay the preliminary hearing on Toshiba's settlement to October 12, 2012 so that Dell and any additional Direct Action Plaintiffs can fully present their positions on vacatur before a preliminary hearing on the Toshiba settlement.

Respectfully Submitted,

/s/ Michael P. Kenny

Michael P. Kenny

cc: Douglas R. Young, Esq.

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