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

13 IN RE: TFT-LCD (FLAT PANEL) )  
ANTITRUST LITIGATION )  
14 )

Master File No. M: 07-1827 SI  
MDL No. 1827

15 This Document Relates To: )  
INDIRECT PURCHASER ACTIONS )  
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**REPLY IN SUPPORT OF DEFENDANTS’  
JOINT MOTION TO STRIKE PROPOSED  
MODIFICATIONS TO CLASS  
DEFINITIONS CONTAINED IN  
INDIRECT PURCHASER PLAINTIFFS’  
REPLY BRIEF ON CLASS  
CERTIFICATION AND DECLARATIONS  
FILED WITH INDIRECT PURCHASER  
PLAINTIFFS’ REPLY BRIEF ON CLASS  
CERTIFICATION**

Date: November 19, 2009  
Time: 4:00 p.m.  
Dept.: Courtroom 10, 19<sup>th</sup> Floor  
Judge: Hon. Susan Illston

1 Defendants submit this reply memorandum in support of their Joint Motion to Strike  
2 Proposed Modifications to Class Definitions Contained in Indirect Purchaser Plaintiffs' Reply Brief  
3 on Class Certification And Declarations Filed With Indirect Purchaser Plaintiffs' Reply Brief on  
4 Class Certification (Dkt. 1326).

5 **I. Plaintiffs' Attempts To Amend The Class Definitions Do Not Comply With Fed. R. Civ.**  
6 **P. 15(a) And Should Be Struck.**

7 In their Opposition, Plaintiffs concede their attempts to use their Reply brief on class  
8 certification to amend the complaint for a fifth time do not comply with Rule 15(a) of the Federal  
9 Rules of Civil Procedure. Plaintiffs contend, however, that Rule 15(a) "has no bearing on the issue"  
10 here (Pls.' Opp. at 3), even though that rule specifically addresses the requirements for "Amended  
11 and Supplemental Pleadings," Fed. R. Civ. P. 15. But none of the cases Plaintiffs cite even remotely  
12 suggest that the law recognizes a special exemption that allows class action plaintiffs to amend their  
13 complaints at any time without regard to the Federal Rules. On the contrary, Plaintiffs' authorities  
14 merely restate the basic principle that a court has broad discretion to craft class certification orders to  
15 correspond to the evidence. *See, e.g., Schorsch v. Hewlett-Packard Co.*, 417 F.3d 748, 749-50 (7<sup>th</sup>  
16 Cir. 2005) (cited in Pls.' Opp. at 3). Indeed, Plaintiffs cite not a single case analogous to the  
17 circumstances here in which a court has allowed a plaintiff to use a reply brief on class certification  
18 under Rule 23(b)(3) to amend the complaint to redefine the class over a defendant's objections. As  
19 this Court has held in precisely these circumstances, a class action plaintiff must "seek leave to file  
20 an amended complaint" as Rule 15(a) requires, if he or she "wish[es] to redefine the putative class."  
21 *Jordan v. Paul Financial, LLC*, 2009 WL 192888, at \*6 (N.D. Cal. Jan. 27, 2009) (Illston, J.).

22 Notably, Plaintiffs never explain in their Opposition why they waited until their Reply to  
23 expand their class definitions to cover their putative class representatives. Plaintiffs state that  
24 "[their] proposed changes merely align [their proposed class definitions] with the evidence that was  
25 obtained during discovery" (Pls.' Opp. at 5), but the assertion is disingenuous. Plaintiffs' counsel  
26 presumably did not need discovery to learn that plaintiffs Baker, Jou, and Paguirigan do not reside in  
27 the states they seek to represent, that plaintiffs Griffin and Hansen did not purchase any LCD  
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1 products during the alleged Class Period, or that plaintiff Baker did not purchase any LCD product  
2 that contains a TFT-LCD panel manufactured by any Defendant.

3           Moreover, Plaintiffs are wrong in suggesting that Defendants have not identified how they  
4 would be prejudiced by the amendments. As explained in Defendants' opening memorandum,  
5 allowing Plaintiffs to revise their class definitions once again now deprives Defendants of the  
6 opportunity to take deposition and written discovery and conduct additional expert analysis based on  
7 those definitions. For example, Plaintiffs ask the Court to amend the class definitions to include  
8 purchases of LCD products that contain panels manufactured by either unnamed "co-conspirators"  
9 or Quanta Display, Inc. But, if Plaintiffs' proposed class definitions had included such purchases,  
10 Defendants potentially would have sought additional third-party discovery regarding those  
11 transactions, or altered their expert analysis to account for such transactions. Indeed, such an  
12 amendment would further complicate several important class certification issues, including  
13 ascertainability, notice, and impact. Plaintiffs' assertion that their proposed amendments "would not  
14 require any new discovery" (Pls.' Opp. 5) is simply wrong.

15 **II. The Declarations Of The Three CPT Employees Are Not Proper Rebuttal Evidence**  
16 **And Should Be Struck.**

17           Nowhere in their Opposition do Plaintiffs provide any support for their assertion that the  
18 untimely declarations of the three CPT employees are in fact "rebuttal evidence" properly offered for  
19 the first time in Reply. Indeed, Plaintiffs' discussion of the declarations of Mr. Kuan and Ms. Hsu  
20 makes no attempt even to identify anything at all from Defendants' class certification opposition that  
21 the declarations are intended to rebut. On the contrary, Plaintiffs' Opposition makes clear that these  
22 two declarations are, at most, simply cumulative evidence that purportedly supplements the points  
23 raised in Plaintiffs' initial briefs. (*See* Pls.' Opp. at 7 (asserting Mr. Kuan's declaration is simply  
24 "corroborating evidence" and "reveals *yet another example*" of evidence to support their expert's  
25 economic analysis); *id.* at 8 (asserting that Ms. Hsu's declaration merely "confirms" and is "[a]dding  
26 to" the evidence "submitted with Plaintiffs' Opening brief".))

1 If anything, Plaintiffs' discussion of Mr. Kuan's declaration is focused more on arguing that  
2 Mr. Kuan did not mean what he said in his declaration. In that declaration, Mr. Kuan states that he  
3 collected information on the "retail prices in the United States" for notebook computers and  
4 computer monitors that contained TFT-LCD panels "because U.S. street prices for monitors and  
5 notebooks affected the demand for TFT-LCD panels and affected the prices Chunghwa was able to  
6 obtain for the TFT-LCD panels it sold." (Kuan Decl. ¶¶ 2-3 (Dkt. 1271).) As Defendants have  
7 explained, this statement is inconsistent with a finding of class-wide impact for all end-user  
8 purchasers. (*See* Defs.' Mot. at 10.) This is so because the statement strongly suggests CPT sought  
9 to avoid any impact on the "street prices" of computer monitors and laptop computers that would  
10 reduce the demand for TFT-LCD panels. Although Plaintiffs now contend in their Opposition that  
11 Mr. Kuan's declaration does *not* support the inference "that LCD panel makers set prices based upon  
12 LCD product street prices" (Pls.' Opp. at 7), that is simply not true.

13 Plaintiffs' Opposition also fails to address the fact that by submitting these declarations for  
14 the first time in Reply, Plaintiffs have effectively deprived Defendants of a fair opportunity to  
15 depose the declarants and take other appropriate discovery concerning the declarations. As noted in  
16 Defendants' motion, CPT has entered into a proposed settlement with Plaintiffs. (Defs.' Mot. at 5 &  
17 n.2.) More importantly, Plaintiffs in their Opposition do not dispute that CPT agreed to cooperate  
18 with Plaintiffs as part of that proposed settlement, or that CPT provided the three employee  
19 declarations at issue here as part of that cooperation. These facts underscore the need to allow  
20 Defendants a fair opportunity to depose the three CPT employees and take other discovery regarding  
21 the proposed settlement and the circumstances under which the declarations were provided if the  
22 declarations are to be included in the class certification record.

### 23 **CONCLUSION**

24 For all the foregoing reasons, Defendants respectfully request the Court (i) to strike  
25 Plaintiffs' attempts in their Reply to amend the proposed class definitions set forth in the Second  
26 Amended Complaint, and (ii) to strike in their entirety the declarations of Ms. Hsu, Mr. Kuan, and  
27 Mr. Tai.

1 DATED: November 5, 2009

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Pursuant to General Order 45, Part X-B, the filer attests that concurrence in the filing of this document has been obtained from Christopher A. Nedeau, Hugh F. Bangasser, Kent M. Roger; Michael R. Lazerwitz; Michael W. Scarborough; Jacob R. Sorensen; and Wayne Cross.