

1 GUIDO SAVERI (22349)
guido@saveri.com
2 R. ALEXANDER SAVERI (173102)
rick@saveri.com
3 CADIO ZIRPOLI (179108)
cadio@saveri.com
4 TRAVIS L. MANFREDI (281779)
travis@saveri.com
5 **SAVERI & SAVERI, INC.**
706 Sansome Street
6 San Francisco, CA94111
Telephone: (415) 217-6810
7 Facsimile: (415) 217-6813

8 *Chairman of the Executive Committee*
9 *for the Direct Purchaser Plaintiffs*

10 [Additional Counsel Listed on Signature Page]

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

14
15 JLK SYSTEMS GROUP, INC., JEFF
16 KOZIK, MEIJER, INC. AND MEIJER
DISTRIBUTION, INC., PAUL NORDINE,
17 SENECA DATA DISTRIBUTORS, INC.,
GREGORY STARRETT, and ASHLEY
18 TREMBLAY, on behalf of themselves and
others similarly situated,

19 Plaintiffs,

20 v.

21 PIONEER CORPORATION, PIONEER
22 NORTH AMERICA, INC., PIONEER
ELECTRONICS (USA) INC., and PIONEER
23 HIGH FIDELITY TAIWAN CO., LTD.,

24 Defendants.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

25
26 **REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED**
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28

CLASS ACTION COMPLAINT

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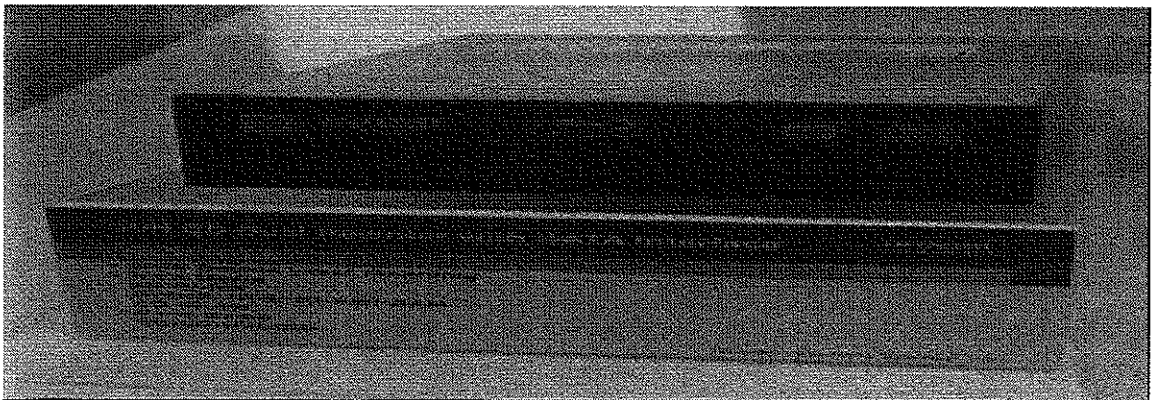
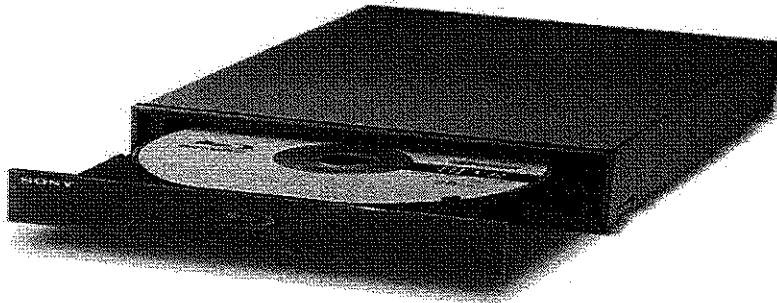
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1 1. Direct Purchaser Plaintiffs (“Plaintiffs”) JLK Systems Group, Inc., Jeff Kozik,
2 Meijer, Inc. and Meijer Distribution, Inc., Paul Nordine, Seneca Data Distributors, Inc., Gregory
3 Starrett, and Ashley Tremblay, all of whom are direct purchasers from a Defendant or Co-
4 conspirator of Optical Disk Drives (“ODDs”), either as standalone products as incorporated into
5 electronic devices such as desktop or notebook computers, individually and on behalf of the Class
6 described below, bring this class action against Defendants for damages under the antitrust laws of
7 the United States, and hereby demand a trial by jury. Plaintiffs allege on information and belief
8 that, during the period from January 1, 2004 until at least January 1, 2010 (the “Class Period”),
9 Defendants and Co-conspirators agreed among themselves to coordinate the prices of ODDs sold
10 in the United States with the object of stabilizing those prices, and that the acts committed in
11 furtherance of this agreement included, *inter alia*: the rigging of bids for ODDs in procurement
12 events conducted by certain Original Equipment Manufacturers (“OEMs”); the sharing of
13 confidential information (including ODD pricing information) that facilitated price coordination;
14 cooperation agreements pursuant to which prices for ODDs sold in the United States to both OEMs
15 and non-OEMs were set; and the allocation of customers and markets. As a result of Defendants’
16 and Co-conspirators’ unlawful conduct, Plaintiffs and members of the proposed Class paid higher
17 prices for ODDs manufactured and sold by Defendants and Co-conspirators in the United States
18 than they would have paid in a competitive market. Except as to Plaintiffs’ own actions, this
19 Complaint is based on information and belief, including public reports, and Defendants’ and Co-
20 Conspirators’ filings with the United States Securities and Exchange Commission (“SEC”) and
21 other regulatory authorities and a partial review of the over 10 million pages of documents
22 produced by certain Co-conspirators and made available to Plaintiffs after the filing of their
23 Consolidated Direct Purchaser Class Action Amended Complaint, *In re Optical Disk Drive*
24 *Antitrust Litigation*, Case No. 3:10-md-02143 RS, (N. D. Cal filed Aug. 26, 2010) Dkt. No. 159
25 (“ODD MDL”) that were also furnished to the United States Department of Justice (“DOJ”) as part
26 of its investigation into anticompetitive practices in the ODD industry, as well as other documents
27 obtained through discovery in the ODD MDL.

1 **I. NATURE OF THE ACTION**

2 2. As discussed in detail below, an ODD uses laser light (or electromagnetic
3 wavelength) to read and/or write data to or from an optical disc. ODDs consist of both internal
4 drives built to be incorporated or inserted into electronic devices (including notebook and desktop
5 computers, and Microsoft Xboxes) and external drives that attach to a notebook or desktop
6 computer or other electronic device by means of an external interface, such as a Universal Serial
7 Bus ("USB") connection. ODDs utilize the following optical disc formats: (a) compact discs
8 ("CDs"), such as CD-ROMs or CD-recordable/rewritable discs ("CD-R/RWs"); (b) digital versatile
9 discs ("DVDs"), such as DVD-ROMs or DVD-recordable/rewritable discs ("DVD±R/RWs"); (c)
10 Blu-ray products, such as Blu-ray discs ("BDs") and Blu-ray-recordable/rewritable discs ("BD-
11 R"/"BD-RWs"); (d) High Definition DVDs ("HD-DVDs"); and (e) Super Multi-Drives or other
12 combination drives that read from and/or write to various types of the foregoing media. These
13 various types of formats are described in detail below.

14 3. The following photographs are examples of ODDs as defined herein.



1 4. As used herein, ODDs consist of ODDs that are supplied by any of the named
2 Defendants or Co-conspirators, or their affiliates or subsidiaries.¹

3 5. ODDs that are external drives are sold alone, typically with some sort of connecting
4 interface. ODDs that are internal drives are used inside of electronic devices, such as computers, to
5 read and write data for a variety of uses, including software programs and data compilations. For
6 this purpose, ODDs have largely replaced “floppy” disk drives and the even-older tape drives that
7 used magnetic disks or tapes to read, record and store data.

8 6. During the Class Period, ODDs served as one of the primary means for recording
9 and reading music, movies, and other digital data. During this time, Defendants’ and Co-
10 conspirators’ sales of ODDs generated billions of dollars in annual revenues and expanded
11 exponentially with the increased utilization of computers in households and businesses throughout
12 the United States. In the United States and across the world, almost all forms of home entertainment
13 and data storage are on optical discs. Most computers that are used or sold in the United States
14 come equipped with an ODD. During the Class Period, Defendants and their Co-conspirators
15 accounted for 100% of global ODD product volume.

16 7. Defendants and their Co-conspirators, the leading manufacturers, sellers and
17 distributors of ODDs, coordinated and agreed for the purpose of stabilizing the prices of ODDs
18 manufactured and sold by them. In furtherance of this agreement, *inter alia*: (a) Defendants and
19 their Co-conspirators engaged in the rigging of bids (with respect to pricing, bid rankings and other
20 matters) for certain procurement events for ODDs conducted by major OEMs situated in the
21 United States, such as Dell Inc. (“Dell”) and Hewlett-Packard Company (“H-P”); (b) certain
22 Defendants and their Co-conspirators sold ODDs to Microsoft Corporation (“Microsoft”) during
23 the Class Period for use in its Xbox game console, and one Co-conspirator pleaded guilty to
24 colluding on the prices of ODDs sold to Microsoft; (c) certain Defendants and Co-conspirators
25

26
27 ¹ This would include ODDs manufactured by one Defendant or Co-conspirator that are sold
28 to another Defendant or Co-conspirator who then sells them to a direct purchaser. The sale to the
first purchaser outside the conspiracy constitutes a direct purchase within the meaning of the
antitrust laws.

1 engaged in cooperation agreements that resulted in the setting of prices or the allocation of
2 customers with respect to OEM and/or non-OEM ODD sales; and (d) Defendants and their Co-
3 conspirators exchanged confidential business information concerning ODDs, including, *inter alia*,
4 prices charged and to be charged for ODDs, rebate information on ODDs, production capacity with
5 respect to ODDs, business plans for ODDs, plans for the introduction of new ODDs, roadmaps for
6 product rollouts and production, product quality information, product inventory and shipping
7 information, company responses to customer initiatives, and plans for the cessation of manufacture
8 of ODDs that had reached the ends of their respective lifecycles. During the Class Period,
9 Defendants' and Co-conspirators' conduct as a whole affected billions of dollars of commerce
10 throughout the United States. The aforementioned agreement and coordination were facilitated by
11 an industry structure and a commoditized product that were conducive to collusive conduct. As a
12 result of Defendants' and their Co-conspirators' collusive conduct, Plaintiffs and members of the
13 putative Class have been injured in their business and property by paying more for ODDs than
14 they would have paid in the absence of Defendants' and their Co-conspirators' conspiracy.

15 8. In 2009, the DOJ launched an investigation into anticompetitive conduct with respect
16 to ODDs. It was initiated by an application for amnesty by one group of Co-conspirators. Many of
17 the Co-conspirators named in this complaint have a long history of engaging in anticompetitive
18 conduct, having consistently sought to fix prices for a wide variety of products sold in the United
19 States, such as Dynamic Random Access Memory ("DRAM"), Thin Film Transistor Liquid Crystal
20 Display ("TFT-LCD") panels, and Cathode Ray Tubes ("CRTs"), among others. Through the
21 conduct described herein, Defendants and their Co-conspirators entered into an agreement, the
22 object of which was to stabilize the prices for and allocate markets or customers with respect to
23 ODDs. When the prices of ODDs began to decrease, the Defendants' and their Co-conspirators'
24 conduct kept prices of ODDs at a supracompetitive level.

25 9. Plaintiffs bring this action seeking treble damages, injunctive relief, and costs of suit
26 (including reasonable attorneys' fees) under Section 1 of the Sherman Act (15 U.S.C. §1), and
27 Section 4 of the Clayton Act (15 U.S.C. § 15), to recover for the injuries that Plaintiffs and all others
28 similarly situated sustained as a result of the Defendants' and their Co-conspirators' illegal conduct.

1 **II. JURISDICTION AND VENUE**

2 10. This action arises under Section 1 of the Sherman Act (15 U.S.C. § 1) and Section 4
3 of the Clayton Act (15 U.S.C. § 15).

4 11. Jurisdiction of this Court is founded on Sections 4 and 16 of the Clayton Act (15
5 U.S.C. §§ 15, 26) for violations of Section 1 of the Sherman Act (15 U.S.C. § 1), and on 28 U.S.C.
6 §§ 1331, 1337. Each Defendant and Co-conspirator conducts substantial business in the state of
7 California, and several Defendants and Co-conspirators maintain their headquarters in this District
8 or elsewhere in California. In addition, Defendants and their Co-conspirators all purposefully
9 availed themselves of the laws of the United States and California insofar as they manufactured
10 ODDs for sale in the United States and California.

11 12. Venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. § 22
12 and 28 U.S.C. § 1391, because each Defendant and Co-conspirator is an alien corporation, transacts
13 business in this District, or is otherwise found within this District. In addition, venue is proper in
14 this District under 28 U.S.C. § 1391 because a substantial part of the events giving rise to this claim,
15 including the interstate trade and commerce described herein, occurred in this District.

16 13. Defendants and their Co-conspirators are subject to this Court's jurisdiction because
17 of their nationwide contacts and other activities, as well as their contacts and other activities with
18 the State of California.

19 **III. PARTIES**

20 **A. Plaintiffs**

21 14. Plaintiff JLK Systems Group, Inc. ("JLK") is a Pennsylvania corporation with its
22 principal place of business in Moscow, Pennsylvania. During the Class Period, JLK purchased an
23 ODD directly from one or more of the Defendants or their Co-conspirators, and suffered injury as a
24 result of Defendants' and their Co-conspirators' conduct alleged herein.

25 15. Plaintiff Jeff Kozik ("Kozik") is a resident of Pennsylvania. During the Class Period,
26 Kozik purchased an ODD directly from one or more of the Defendants or their Co-conspirators, and
27 suffered injury as a result of Defendants' and their Co-conspirators' conduct alleged herein.

1 16. Plaintiffs Meijer, Inc. and Meijer Distribution, Inc. ("Meijer") are Michigan
2 corporations with their principal place of business in Grand Rapids, Michigan. During the Class
3 Period, Meijer purchased ODDs directly from one or more of the Defendants or their Co-
4 conspirators, and suffered injury as a result of Defendants' and their Co-conspirators' conduct
5 alleged herein.

6 17. Plaintiff Paul Nordine ("Nordine") is a resident of Wisconsin. During the Class
7 Period, Nordine purchased an ODD directly from one or more of the Defendants or their Co-
8 conspirators, and suffered injury as a result of Defendants' and their Co-conspirators' conduct
9 alleged herein.

10 18. Plaintiff Seneca Data Distributors, Inc. ("Seneca") is a New York Corporation with
11 its principal place of business in North Syracuse, New York. During the Class Period, Seneca
12 purchased ODDs directly from one or more of the Defendants or their Co-conspirators, and suffered
13 injury as a result of Defendants' and their Co-conspirators' conduct alleged herein.

14 19. Plaintiff Gregory Starrett ("Starrett") is a resident of North Carolina. During the
15 Class Period, Starrett purchased an ODD directly from one or more of the Defendants or their Co-
16 conspirators, and suffered injury as a result of Defendants' and their Co-conspirators' conduct
17 alleged herein.

18 20. Plaintiff Ashley Tremblay ("Tremblay") is a resident of Washington State. During the
19 Class Period, Tremblay purchased an ODD directly from one or more of the Defendants or their Co-
20 conspirators, and suffered injury as a result of Defendants' and their Co-conspirators' conduct
21 alleged herein.

22 **B. Defendants**

23 21. Defendant Pioneer Corporation ("Pioneer Corp.") is a business entity organized
24 under the laws of Japan, with its principal place of business at 1-1 Shin-ogura, Saiwai-ku,
25 Kawasaki-shi, Kanagawa 212-0031, Japan. During the Class Period, Defendant Pioneer Corp.
26 manufactured, sold and/or distributed ODDs throughout the United States and directly caused
27 ODDs to be imported into the United States.

1 22. Defendant Pioneer North America, Inc. ("Pioneer N.A.") is a U.S. company with its
2 principal place of business at 1925 East Dominguez Street, Long Beach, California 90810. During
3 the Class Period, Pioneer N.A. designed, manufactured and/or distributed ODDs throughout the
4 United States. Pioneer N.A. is a wholly owned subsidiary of Defendant Pioneer Corp.

5 23. Defendant Pioneer Electronics (USA) Inc. ("Pioneer USA") is a U.S. company with
6 its principal place of business at 1925 East Dominguez Street, Long Beach, California 90810.
7 During the Class Period, Defendant Pioneer USA designed, manufactured and distributed ODDs
8 throughout the United States. Pioneer USA is a wholly owned subsidiary of Defendant Pioneer N.A.

9 24. Defendant Pioneer High Fidelity Taiwan Co., Ltd. is a Taiwanese company with its
10 principal place of business at 8F., No. 407, Ruiguang Rd., Neihu Dist., Taipei City 114, Taiwan.
11 During the Class Period, Defendant Pioneer High Fidelity Co., Ltd. designed and/or manufactured
12 ODDs with the intent and agreement to distribute throughout the United States.

13 25. Defendants Pioneer Corp., Pioneer N.A., Pioneer USA, and Pioneer High Fidelity
14 Taiwan Co., Ltd., are referred to individually and collectively herein as "Pioneer." All of the entities
15 referred to as Pioneer participated in the collusive conduct described herein, either directly or where
16 they were represented by other members of the Pioneer group of Defendants.

17 26. The conduct alleged herein was carried out by Defendants' officers, agents,
18 employees, or representatives, while they were engaged in the usual management of Defendants'
19 business.

20 27. Defendants are also liable for acts done in furtherance of the alleged conspiracy by
21 companies they acquired through mergers and acquisitions.

22 28. When Plaintiffs refer to a corporate family or a company by a single name in their
23 allegations of participation in the conspiracy, Plaintiffs are alleging that one or more employees or
24 agents of entities within the corporate family engaged in conspiratorial acts on behalf of every
25 company in that family. In fact, the individual participants in the conspiratorial acts did not always
26 know the corporate affiliation of their counterparts, nor did they distinguish between the entities
27 within a corporate family. The individual participants entered into agreements on behalf of their
28

1 respective corporate families. As a result, the entire corporate family was represented by their
2 agents with respect to such conduct and was party to the agreements reached by such agents.

3 29. Each of the Defendants named herein acted as the agent of, Co-conspirator with, or
4 joint venturer of the other Defendants and Co-conspirators with respect to the acts, violations and
5 common course of conduct alleged herein. Each Defendant or Co-conspirator that is a subsidiary of
6 a foreign parent acts as the United States agent for its parent company.

7 **IV. AGENTS AND CO-CONSPIRATORS**

8 30. Various persons that are not named as Defendants herein have participated as Co-
9 conspirators in the violations alleged herein and have performed acts and made statements in
10 furtherance thereof. These other entities have facilitated, adhered to, participated in, and/or
11 communicated with others regarding the conspiracy.

12 **1. Sony and NEC Co-conspirators**

13 31. Co-conspirator Sony Corporation ("SC") is a business entity organized under the
14 laws of Japan, with its principal place of business located at 1-7-1, Konan, Minato-ku, Tokyo 108-
15 0075, Japan. Sony Corporation controls an integrated global enterprise comprised of itself and other
16 entities, including the other Sony and Sony Optiarc Co-conspirators described herein. During the
17 Class Period, Sony manufactured, sold and/or distributed ODDs throughout the United States and
18 directly caused ODDs to be imported into the United States.

19 32. Co-conspirator Sony Optiarc Inc. was a Japanese company with its headquarters
20 located at 4-16-1 Okata, Atsugi-shi, Kanagawa 243-0021, Japan. During the Class Period, Sony
21 Optiarc Inc. manufactured, sold and/or distributed ODDs throughout the United States and directly
22 caused ODDs to be imported into the United States. Sony Optiarc Inc. was part of Sony
23 Corporation's Consumer Products & Devices Group and was headed by Shinichi Yamamura, who
24 formerly ran Sony NEC Optiarc Inc. In 2013, Sony closed its Sony Optiarc Inc. subsidiary.

25 33. Co-conspirator NEC Corporation ("NEC") is a business entity organized under the
26 laws of Japan with its principal place of business located at 7-1, Shiba 5-chome, Minato-ku, Tokyo
27 108-8001, Japan. During the Class Period, NEC manufactured, sold, and/or distributed ODDs to
28

1 customers throughout the United States and directly caused ODDs to be imported into the United
2 States.

3 34. Co-conspirator Sony NEC Optiarc Inc. ("Sony NEC") was a Japanese company with
4 its headquarters located at 4-16-1 Okata, Atsugi-shi, Kanagawa 243-0021, Japan. Sony NEC was
5 created on April 3, 2006 as a joint venture between Co-conspirators Sony Corporation and NEC in
6 which Sony Corporation had a 55% interest and NEC had a 45% interest. These percentages were
7 based on the value of future cash flows each joint venturer would receive from the joint venture,
8 including cash flows obtained through the conspiracy alleged herein. Co-conspirator Sony
9 Corporation designated the President of Sony NEC and Co-conspirator NEC designated the Vice-
10 President. Shinichi Yamamura, who was Deputy President of Video Business Group of Sony
11 Corporation, became President of the new company. Sony Corporation purchased NEC's interest in
12 Sony NEC in 2008 and renamed it Sony Optiarc Inc. During a portion of the Class Period, Sony
13 NEC manufactured, sold and/or distributed ODDs throughout the United States and directly caused
14 ODDs to be imported into the United States. The press release announcing the formation of Sony
15 NEC said that "[a]s a result of this agreement, Sony will make Sony NEC Optiarc Inc. a wholly-
16 owned subsidiary of the Sony group"; that Shinichi Yamamura, Deputy President of the Video
17 Business Group of Sony Corporation, would serve as Sony NEC's "Representative Director and
18 President"; and that other directors were "[s]cheduled to be elected from within the Sony group."
19 The directors eventually appointed were Shigeki Ishizuka, Hidenosuke Kanai, Masaharu Yanaga,
20 and Shigeru Kato, all from Sony Corporation.

21 35. Co-conspirator Sony Optiarc America Inc., previously known as Sony NEC Optiarc
22 America Inc., was a wholly owned subsidiary of Sony Optiarc Inc. Sony Optiarc America Inc. was
23 a Delaware corporation with its principal place of business located at 1730 North First Street, San
24 Jose, California 95112. Sony Optiarc America Inc. was originally established as a joint venture
25 with NEC in April of 2006 before Sony announced on September 11, 2008 that it would take over
26 NEC's 45% share. During a portion of the Class Period, Sony Optiarc America Inc. manufactured,
27 sold and/or distributed ODDs throughout the United States and imported ODDs into the United
28 States. In 2013, Sony closed its Sony Optiarc America Inc. subsidiary.

1 36. Co-conspirator Sony Electronics Inc. ("SEI") is a Delaware corporation with its
2 principal place of business in San Diego, California. SEI is a wholly owned subsidiary of Sony
3 Corporation of America, which in turn, is a wholly owned subsidiary of Co-conspirator Sony
4 Corporation. During the Class Period, SEI manufactured, sold and/or distributed ODDs throughout
5 the United States and imported ODDs into the United States.

6 37. According to Sony Corporation's SEC Form 20-F for the year ending March 21,
7 2010, Sony Corporation is divided into business segments, including Consumer Products &
8 Devices, Networked Products & Services, and B2B and Disc Manufacturing. The former two
9 segments contain ODDs. The Form 20-F states that "[i]n most cases, sales of Sony's electronics
10 products are made to sales subsidiaries of Sony Corporation located in or responsible for sales in the
11 countries and territories where Sony's products and services are marketed. These subsidiaries then
12 sell those products to unaffiliated local distributors and dealers or through direct sales via the
13 Internet. In some regions, sales of certain products and services are made directly to local
14 distributors by Sony Corporation." As the Form 20-F further explains, "Sony markets its electronics
15 products and services through Sony Electronics Inc. and other wholly-owned subsidiaries in the
16 U.S." The independent accounting report in the Form 20-F refers to Sony Corporation and its
17 consolidated subsidiaries as "Sony."

18 38. A former employee of Sony Optiarc Inc. asserted that both Sony Optiarc Inc. and
19 SEI are "controlled by Sony Corporation."

20 39. Co-conspirators Sony Optiarc America Inc., Sony NEC, and Sony Optiarc Inc. are
21 referred to individually and collectively herein as "Sony Optiarc." All of the entities referred to as
22 Sony Optiarc participated in the collusive conduct described herein, either directly or they were
23 represented by other members of the Sony Optiarc group of Co-conspirators.

24 40. Co-conspirators Sony Corporation, SEI, Sony Optiarc America Inc., Sony NEC, and
25 Sony Optiarc Inc. are referred to individually and collectively herein as "Sony." All of the entities
26 referred to as Sony participated in the collusive conduct described herein, either directly or
27 indirectly through the representation of members of the Sony group of Co-conspirators.
28

2. LG Co-conspirators

41. Co-conspirator LG Electronics, Inc. ("LGE") is a business entity organized under the laws of South Korea, with its principal place of business at LG Twin Tower 128, Yeoui-daero, Yeongdeungpo-gu, Seoul, Korea. LGE controls an integrated global enterprise comprised of itself and other entities, including the other LG Co-conspirators described herein, Hitachi-LG Data Storage, Inc. and Hitachi-LG Data Storage Korea, Inc. During the Class Period, LGE manufactured, sold and/or distributed ODDs throughout the United States and directly caused ODDs to be imported into the United States.

42. Co-conspirator LG Electronics USA, Inc. ("LGUSA") is a business entity that has its principal place of business at 1000 Sylvan Avenue, Englewood Cliffs, New Jersey 07632. LGUSA is a wholly owned subsidiary of LGE. During the Class Period, LGUSA manufactured, sold and/or distributed ODDs throughout the United States and imported ODDs into the United States.

43. LGE's 2009 Annual Report shows that the company's Vice-Chairman and CEO, Yong Nam, closely oversees LGE's five primary business segments, which operate globally. The President and CEO in charge of each such segment reports to him, as does Seog Won (Wayne) Park, Executive Vice-President and CEO for North America. The same report shows company-wide procurement, marketing and supply chain officers. It depicts the "Global Operations" of LGE, including the role of LGUSA.

44. Also of significance is a 2008 presentation by LGE at the Korea Invest Forum depicting LGE's "Global Operations." As part of the company's cost reduction efforts, page 8 of the presentation refers to "[g]lobal consolidated sourcing," "[r]ationalizing overhead," and capital spending controls. The next page refers to "[r]estructuring companies around clear product management roles to improve profit accountability" and "[g]lobalizing HR system." There are references in the presentation to performance scorecards that are maintained "for all business units and countries." The presentation noted that "30% + of key management positions [are] filled with global talent." Thus, it is clear that LGE and its subsidiaries also operate as a vertically-integrated "top-down" structure.

45. Co-conspirators LGE and LGUSA are referred to individually and collectively herein as “LG.” All of the entities referred to as LG participated in the collusive conduct described herein, either directly or indirectly through the participation of members of the LG group of Co-conspirators.

3. Hitachi Co-conspirators

46. Co-conspirator Hitachi, Ltd. is a business entity organized under the laws of Japan with its principal executive office at 6-6, Marunouchi 1-chome, Chiyoda-ku, Tokyo 100-8280, Japan. Hitachi, Ltd. controls an integrated global enterprise comprised of itself and other entities including Co-conspirator Hitachi-LG Data Storage, Inc. During the Class Period, Hitachi, Ltd., manufactured, sold and/or distributed ODDs throughout the United States and directly caused ODDs to be imported into the United States.

47. Co-conspirator Hitachi-LG Data Storage, Inc. is a business entity organized under the laws of Japan with its principal place of business located at 4F MSC Center Building, 22-23 Kaigan 3-Chome, Minato-ku, Tokyo 108-0022, Japan. Hitachi-LG Data Storage, Inc. is a joint venture formed in January of 2001 and is owned 51% by Co-conspirator Hitachi, Ltd. and 49% by Co-conspirator LGE. During the Class Period, Hitachi-LG Data Storage, Inc. manufactured, sold and/or distributed ODDs throughout the United States and directly caused to be imported into the United States.

48. Co-conspirator Hitachi-LG Data Storage Korea, Inc. is a business entity organized under the laws of South Korea with its principal place of business located at LG Gasan Digital Center, 189 Gasan digital 1-ro, Geumcheon-gu, Seoul, Korea. Hitachi-LG Data Storage Korea, Inc. is part of the joint venture formed in January of 2001 and is owned 51% by Co-conspirator Hitachi, Ltd. and 49% by Co-conspirator LG. During the Class Period, Hitachi-LG Data Storage Korea, Inc. manufactured, sold and/or distributed ODDs throughout the United States and directly caused ODDs to be imported into the United States.

49. According to Hitachi, Ltd.’s SEC Form 20-F for the year ending June 29, 2010, Hitachi, Ltd. views HLDS as a “subsidiary” in connection with the international antitrust investigations involving the ODD industry. Hitachi, Ltd. divides its international business into

multiple segments; ODDs are part of the “Digital Media & Consumer Products” segment. *Id.* at 15, 26. There is a “Hitachi group global business (Americas)” which was headed by Tadahiko Ishigaki, a Senior Vice-President and Executive Officer of Hitachi, Ltd. As part of its ongoing restructuring of operations, Hitachi, Ltd. “[p]romot[ed] shared services over a wide range of areas such as procurement, logistics, document services, cafeteria operations, security, personnel management and financial management.” In a section entitled “Strengthening of Consolidated Group Management” Hitachi, Ltd. stated:

Our consolidated group includes a number of subsidiaries and affiliates including publicly listed companies. We have taken and continue to take measures with a view to fostering closer ties and establishing a closer capital relationship among such group companies and facilitating the timely implementation of business strategies and other initiatives, leading to improved competitiveness and profitability. For example, we converted five listed consolidated subsidiaries into wholly owned subsidiaries, which we believe will benefit our Social Innovation Business by establishing closer ties and relationships and will also enable us to reflect more of those companies’ profits in our statement of operations.

Furthermore, our headquarters division will focus additional attention on generating synergies and address issues that have group-wide implications such as the adoption of a uniform advanced IT platform, and coordinating production engineering, procurement and our brand to help in-house companies and group companies strengthen competitiveness. Our headquarters division will also attempt to develop business fields that incorporate elements of our information and communication technology and social infrastructure businesses.

50. Hitachi, Ltd. and its subsidiaries are referred to collectively in this Form 20-F as “Hitachi.”

51. In its SEC Form 6-K dated November 16, 2009, that is described in more detail below, Hitachi, Ltd. disclosed that: (a) “a subsidiary” in Japan and “a subsidiary” in Korea are the targets of investigations by various countries’ antitrust agencies with respect to antitrust violations relating to ODDs; (b) these investigations may result in private actions being brought “against Hitachi”; and (c) they could have a “material adverse effect on Hitachi’s business.” Hitachi, Ltd. reports financial data for Hitachi-LG Data Storage, Inc. in its consolidated annual financial results, where it indicates that its “Optical Disk Drive operations” are conducted by Hitachi-LG Data Storage, Inc.

1 52. Co-conspirators Hitachi, Ltd., Hitachi-LG Data Storage, Inc. and Hitachi-LG Data
2 Storage Korea, Inc. are referred to individually and collectively herein as “HLDS.” All of the
3 entities referred to as Hitachi participated in the collusive conduct described herein, either directly
4 or indirectly through the participation of members of the HLDS group of Co-conspirators.

5 **4. Toshiba Co-conspirators**

6 53. Co-conspirator Toshiba Corporation is a business entity organized under the laws of
7 Japan, with its principal place of business at 1-1, Shibaura 1-chome, Minato-ku, Tokyo 105-8001,
8 Japan. Toshiba Corporation controls an integrated global enterprise comprised of itself and other
9 entities, including Co-conspirators Toshiba Samsung Storage Technology Corp., Toshiba Samsung
10 Storage Technology Corp. Korea, Toshiba America Information Systems, Inc. and Toshiba America
11 Consumer Products LLC (“TACP”). During the Class Period, Toshiba Corporation manufactured,
12 sold and/or distributed ODDs throughout the United States and directly caused ODDs to be
13 imported into the United States.

14 54. Co-conspirator Toshiba America Information Systems, Inc. (“TAIS”) is a California
15 corporation that has its headquarters at 9740 Irvine Boulevard, Irvine, California 92718-1697. TAIS
16 is a wholly-owned and controlled subsidiary of Toshiba America, Inc., which is in turn a wholly-
17 owned subsidiary of Toshiba Corporation. During the Class Period, TAIS manufactured, sold and/or
18 distributed ODDs throughout the United States and imported ODDs into the United States. During
19 the Class Period, TACP also manufactured, sold and/or distributed ODDs throughout the United
20 States and imported ODDs into the United States. TACP was merged into TAIS on July 1, 2010.

21 55. Toshiba Corporation’s 2009 Annual Report contains a letter from Norio Sasaki
22 (President and CEO of Toshiba Corporation) and Atsutoshi Nishida (Toshiba Corporation’s
23 Chairman) that refers to the “Toshiba Group” and its “Group-wide efforts” to carry out a
24 profitability action plan “set up with the key objectives of transforming Toshiba Group into a Group
25 with a strongly profitable business structure....” The Annual Report depicts an organizational chart
26 that shows Toshiba Corporation’s Board, President and CEO exercising control and reporting
27 authority over multiple product segment subgroups, including the “Digital Products Group,” which
28 has responsibility for storage devices and personal computers. The Annual Report lists Toshiba

1 Samsung Storage Technology Corp. and TAIS as overseas “Consolidated Subsidiaries.” Toshiba
2 Corporation’s 2009 Financial Review incorporated in its Annual Report noted that the Toshiba
3 Group was comprised of Toshiba Corporation and various “Consolidated Subsidiaries” that operate
4 in its multiple business segments.

5 56. Co-conspirators Toshiba Corporation, Toshiba Samsung Storage Technology Corp.
6 and TAIS (which now includes the merged TACP) are referred to individually and collectively
7 herein as “Toshiba.” All of the entities referred to as Toshiba participated in the collusive conduct
8 described herein, either directly or indirectly through the participation of other members of the
9 Toshiba group of Co-conspirators.

10 5. Samsung Co-conspirators

11 57. Co-conspirator Samsung Electronics Co., Ltd. (“SECL”) is a business entity
12 organized under the laws of South Korea, with its principal place of business at 129, Samsung-ro,
13 Yeongtong-gu, Suwon-si, Gyeonggi-do, Korea. SECL controls an integrated global enterprise
14 comprised of itself and other entities, including Co-conspirators Toshiba Samsung Storage
15 Technology Corp. and Toshiba Samsung Storage Technology Corp. Korea. During the Class Period,
16 SECL manufactured, sold and/or distributed ODDs throughout the United States and directly caused
17 ODDs to be imported into the United States.

18 58. Co-conspirator Samsung Electronics America, Inc. (“SEAI”) is a subsidiary of
19 SECL, with its principal place of business at 85 Challenger Road, Ridgefield Park, New Jersey
20 07660. During the Class Period, SEAI manufactured, sold and/or distributed ODDs throughout the
21 United States and imported ODDs into the United States.

22 59. SECL’s 2008 Annual Report contains an organizational chart depicting the tight
23 control SECL exercises over its various business segments, with the “Digital Media &
24 Communications Business” reporting directly to SECL’s CEO. SECL touts its “[bo]ard-centered
25 corporate governance system” that ensures accountability in management, stating that “[t]he board
26 actively supports top management in effectively managing the company to maximize corporate
27 value.” SECL runs a “Samsung Advanced Institute of Technology” which it refers to as its “global
28

1 hub of our R&D business.” The independent auditor’s report incorporated in the Annual Report
2 refers to SECL and its “controlled subsidiaries” as “the Company.” SEAI is among them.

3 60. Co-conspirators SECL and SEAI are referred to individually and collectively herein
4 as “Samsung.” All of the entities referred to as Samsung participated in the collusive conduct
5 described herein, either directly or indirectly through the participation of members of the Samsung
6 group of Co-conspirators.

7 **6. TSST Co-conspirators**

8 61. Co-conspirator Toshiba Samsung Storage Technology Corp. is a business entity
9 organized under the laws of Japan with its principal place of business located at 1-1, Shibaura 1-
10 chome, Minato-ku, Tokyo 105-8001, Japan (the same address as Toshiba’s). Toshiba Samsung
11 Storage Technology Corp. is a joint venture formed in 2004 and owned 51% by Co-conspirator
12 Toshiba and 49% by Co-conspirator Samsung. During the Class Period, Toshiba Samsung Storage
13 Technology Corp. manufactured, sold and/or distributed ODDs throughout the United States and
14 directly caused ODDs to be imported into the United States.

15 62. Co-conspirator Toshiba Samsung Storage Technology Corp. Korea (“TSST Korea”)
16 is a business entity organized under the laws of South Korea with its principal place of business
17 located at 14th, Building No. 102, Digital Empire 2, 88, Sinwon-ro, Yeongtong-gu, Suwon-si,
18 Gyeonggi-do, Korea 443-734, which is part of the Samsung Digital Complex. In its 2009 Annual
19 Report, Toshiba lists TSST Korea as an overseas subsidiary. During the Class Period, TSST Korea
20 manufactured, sold and/or distributed ODDs throughout the United States and directly caused
21 ODDs to be imported into the United States. TSST Korea’s website notes that it operates through
22 the “common relevant organization for mutual consent. We are currently responsible for the
23 product development, marketing and sales, and have been taking advantage of the existing network
24 of Samsung Electronics and Toshiba for manufacturing, sales and after-sales service.” The website
25 notes further that “TSST is the result of close cooperation between Samsung Electronics and
26 Toshiba.”

27 63. Co-conspirators Toshiba Samsung Storage Technology Corp. and TSST Korea are
28 referred to individually and collectively herein as “TSST.” TSST operates sales offices in North

America and has had Logistics Centers in Miami, Florida and San Diego, California. All of the entities referred to as TSST participated in the collusive conduct described herein, either directly or indirectly through the participation of members of the TSST group of Co-conspirators.

7. Co-conspirator Lite-On

64. Co-conspirator Lite-On IT Corp. ("Lite-On") is a business entity organized under the laws of Taiwan with its principal place of business located at 12F, 392, Ruey Kuang Road, Neihu, Taipei 114, Taiwan. Lite-On controls an integrated global enterprise comprised of itself and other entities including Co-conspirators Philips & Lite-On Digital Solutions Corp. and Philips & Lite-On Digital Solutions USA, Inc. During the Class Period, Lite-On manufactured, sold, and/or distributed ODDs throughout the United States and directly caused ODDs to be imported into the United States.

8. Philips Co-conspirators

65. Co-conspirator Koninklijke Philips Electronics N.V. ("Philips") is a Dutch company with its principal place of business at High Tech Campus 5, 5656 AE Eindhoven, The Netherlands. During the Class Period, Philips controlled an integrated global enterprise comprised of itself and other entities including Co-conspirators Philips and Lite-On Digital Solutions Corp. and Philips & Lite-On Digital Solutions USA, Inc. Philips manufactured, sold, and/or distributed ODDs throughout the United States and directly caused ODDs to be imported into the United States.

66. Co-conspirator Philips & Lite-On Digital Solutions Corporation is a business entity organized under the laws of Taiwan, with its principal place of business located at 16F, 392, Ruey Kuang Road, Neihu, Taipei, 114, Taiwan. Philips & Lite-On Digital Solutions Corp., established in March of 2007, is a joint venture created by Philips and Lite-On. Philips & Lite-On Digital Solutions Corp.'s operations include: design, development, sales, marketing, customer support, and service of ODDs. During a portion of the Class Period, Philips & Lite-On Digital Solutions Corp. manufactured, sold, and/or distributed ODDs throughout the United States and directly caused ODDs to be imported into the United States.

67. Co-conspirator Philips & Lite-On Digital Solutions USA, Inc. is a business entity organized under the laws of Delaware, with its principal place of business located at 42000 Christy

1 Street, Fremont, California 94538. Philips & Lite-On Digital Solutions USA, Inc. is a subsidiary
2 company of Philips & Lite-On Digital Solutions Corp. Philips & Lite-On Digital Solutions USA,
3 Inc. serves customers in the North and Latin American regions. During a portion of the Class
4 Period, Philips & Lite-On Digital Solutions USA, Inc. manufactured, sold, and/or distributed ODDs
5 to customers throughout the United States and imported ODDs into the United States.

6 68. Co-conspirators Philips, Philips & Lite-On Digital Solutions Corp. and Philips &
7 Lite-On Digital Solutions USA, Inc. are referred to individually and collectively herein as "PLDS."
8 All of the entities referred to as PLDS participated in the collusive conduct described herein, either
9 directly or indirectly through the participation of members of the PLDS group of Co-conspirators.

10 69. In October of 2007, a representative of TSST stated that "PLDS & Lite-On are
11 completely identical companies with different names. Sony denies purchasing product from PLDS,
12 that's why PLDS does business with Sony as name of Lite-On, but operation and manufacturing is
13 exactly same."

14 **9. BenQ Co-conspirators**

15 70. Co-conspirator BenQ Corporation (now operating under the name QISDA
16 Corporation) is a business entity organized under the laws of Taiwan, with its principal place of
17 business at 16 Jihu Road, Neihu, Taipei 114, Taiwan. BenQ Corporation controlled an integrated
18 global enterprise comprised of itself and other BenQ entities. BenQ Corporation formed a joint
19 venture with Philips in February of 2003 to manufacture and distribute ODDs that was called BenQ
20 Philips Digital Storage ("PBDS"). PBDS was owned 51% by Philips and 49% by BenQ
21 Corporation. In April of 2006, Lite-On acquired BenQ Corporation's ODD business and eventually
22 replaced BenQ Corporation in PBDS, which was renamed PLDS. At the time of Lite-On's
23 acquisition, there was an internal memorandum saying that "[t]he consensus of both companies is to
24 further integrate R&D and [the] sales and marketing force into one entity, the PBDS." During the
25 Class Period, BenQ Corporation, separately or through PBDS, manufactured, sold and/or distributed
26 ODDs throughout the United States and directly caused ODDs to be imported into the United
27 States.

1 71. Co-conspirator BenQ America Corporation (“BenQ America”) is a California
2 corporation and a wholly-owned and controlled subsidiary of Co-conspirator BenQ Corporation.
3 During the Class Period, BenQ America manufactured, sold and/or distributed ODDs throughout
4 the United States and imported ODDs into the United States.

5 72. Co-conspirators BenQ Corporation and BenQ America are referred to individually
6 and collectively herein as “BenQ.” All of the entities referred to as BenQ participated in the
7 collusive conduct described herein, either directly or indirectly through the participation of
8 members of the BenQ group of Co-conspirators.

9 **10. TEAC Co-conspirators**

10 73. Co-conspirator TEAC Corporation is a business entity organized under the laws of
11 Japan, with its principal place of business at 1-47 Ochiai, Tama-shi, Tokyo 206-8530, Japan. TEAC
12 Corporation controls an integrated global enterprise comprised of itself and other TEAC entities.
13 During the Class Period, TEAC Corporation manufactured, sold and/or distributed ODDs
14 throughout the United States and caused ODDs to be imported into the United States.

15 74. Co-conspirator TEAC America, Inc. (“TEAC America”) is a California corporation
16 with its principal place of business at 7733 Telegraph Road, Montebello, California 90640. TEAC
17 America is a wholly-owned and controlled subsidiary of Co-conspirator TEAC Corporation. During
18 the Class Period, TEAC America manufactured, sold and/or distributed ODDs throughout the
19 United States and imported ODDs into the United States.

20 75. Co-conspirators TEAC Corporation and TEAC America are referred to individually
21 and collectively herein as “TEAC.” All of the entities referred to as TEAC participated in the
22 collusive conduct described herein, either directly or indirectly through participation of members of
23 the TEAC group of Co-conspirators.

24 **11. QSI Co-conspirators**

25 76. Co-conspirator Quanta Storage Inc. is a business entity organized under the laws of
26 Taiwan, with its principal place of business at 3F, No. 188 Wenhua 2nd Road, Guishan Shiang,
27 Taoyuan County 333, Taiwan. Quanta Storage Inc. controls an integrated global enterprise
28 comprised of itself and other Quanta entities. During the Class Period, Quanta Storage, Inc.

1 manufactured, sold and/or distributed ODDs throughout the United States and directly caused
2 ODDs to be imported into the United States.

3 77. Co-conspirator Quanta Storage America, Inc. ("Quanta America") is a California
4 corporation with its principal place of business in Fremont, California. Quanta America is a wholly-
5 owned and controlled subsidiary of Co-conspirator Quanta Storage Inc. During the Class Period,
6 Quanta America manufactured, sold and/or distributed ODDs throughout the United States and
7 imported ODDs into the United States.

8 78. Co-conspirators Quanta Storage Inc. and Quanta America are referred to individually
9 and collectively herein as "QSI." All of the entities referred to as QSI participated in the collusive
10 conduct described herein, either directly or indirectly through participation of members of the QSI
11 group of Co-conspirators.

12 12. Panasonic Co-conspirators

13 79. Co-conspirator Panasonic Corporation is a Japanese entity with its principal place of
14 business at 1006, Oaza Kadoma, Kadoma-shi, Osaka 571-8501, Japan. Up until October 1, 2008,
15 Panasonic Corporation was known as Matsushita Electric Industrial Co., Ltd. Panasonic
16 Corporation controls an integrated global enterprise comprised of itself and other Panasonic entities.
17 During the Class Period, Panasonic Corporation manufactured, sold, and/or distributed ODDs
18 throughout the United States and directly caused ODDs to be imported into the United States.

19 80. Co-conspirator Panasonic Corporation of North America ("PCNA"), formerly known
20 as Matsushita Electric Corporation of America, is a Delaware corporation with its principal place of
21 business at Two Riverfront Plaza, Newark, New Jersey 07102. PCNA is a wholly-owned and
22 controlled subsidiary of Panasonic Corporation. During the Class Period, PCNA manufactured, sold
23 and/or distributed ODDs manufactured by Panasonic Corporation throughout the United States and
24 imported ODDs into the United States.

25 81. Co-conspirators Panasonic Corporation and PCNA are referred to individually and
26 collectively herein as "Panasonic." All of the entities referred to as Panasonic participated in the
27 collusive conduct described herein, either directly or indirectly through the participation of
28 members of the Panasonic group of Co-conspirators.

82. Whenever in this Complaint reference is made to any act, deed or transaction of any corporation, the allegation means that the corporation engaged in the act, deed or transaction by or through its officers, directors, agents, employees or representatives while they were actively engaged in the management, direction, control or transaction of the corporation's business or affairs.

V. CLASS ACTION ALLEGATIONS

83. Plaintiffs bring this action both on behalf of themselves, and as a class action pursuant to Federal Rules of Civil Procedure, Rule 23(a) and (b)(3), on behalf of the following class (the "Class"):

All individuals and entities who, during the period from January 1, 2004 until at least January 1, 2010 (the "Class Period") purchased one or more Optical Disc Drives in the United States directly from the Defendants or their Co-conspirators, or their subsidiaries or affiliates. Excluded from the Class are Defendants and Co-conspirators, their parents, subsidiaries and affiliates, and all governmental entities. As used herein the term "Optical Disc Drive" includes (a) a drive sold by a Defendant or their Co-Conspirator or its subsidiary or affiliate as a separate unit that is to be inserted into, or incorporated in, an electronic device; (b) a drive sold by a Defendant or their Co-conspirator, or their subsidiary or affiliate as a separate unit that is to be attached to an electronic device through an external interface such as a Universal Serial Bus connection; and (c) an internal drive sold as a component of a laptop or desktop computer by a Defendant or their Co-conspirator, or their subsidiary or affiliate.

84. This class definition includes those who purchased ODDs, either as standalone products or as incorporated into desktop or notebook computers, directly from a Defendant or a Co-conspirator, and excludes those who purchased ODDs from third parties as alleged below. Thus, for example, Dell, H-P, and Microsoft are members of the putative Class. Persons or entities who bought ODDs only from Dell, H-P or Microsoft (or other third parties) are *not* members of the putative Class. Likewise, persons who bought an ODD, either as a standalone product or a product that was incorporated into a desktop or notebook computer, from a Defendant or a Co-conspirator where the ODD or the computer in which it was incorporated was not supplied by a Defendant or a Co-conspirator are *not* members of the putative Class.

85. During the Class Period, Defendants and their Co-conspirators operated (and some continue to operate) retail websites through which purchasers in the United States could purchase directly their respective ODDs. These include:

(a) Pioneer Electronics (USA) Inc. Online Store

(<http://www.pioneerelectronics.com/PUSA/>)

(b) Toshiba Direct (<http://www.toshibadirect.com/>;
now <http://www.toshiba.com/us/>);

(c) Sony Style USA (<http://www.sonystyle.com/>; now <http://store.sony.com/>);
and

(d) Philips Online Store
(<http://store.philips.com/store/>; now <http://www.philips-store.com/store/>).

Sony also operates brick-and-mortar sales outlets in the United States where its ODDs can be purchased directly. Direct purchases from a Defendant or a Co-conspirator through these various channels are all included in the definition of the putative Class. In all instances, however, the Class is limited to purchases made in the United States.

86. The Class is so numerous that joinder of all members is impracticable. Due to the nature of the trade and commerce involved, Plaintiffs believe that the members of the Class are geographically dispersed throughout the United States, and that joinder of all Class members would be impracticable. While the exact number of Class members is unknown to Plaintiffs at this time, Plaintiffs believe that there are, at least, thousands of members of the Class and that their identities can be learned from Defendants' and their Co-conspirators' books and records.

87. Plaintiffs' claims are typical of the claims of the other members of the Class because Plaintiffs directly purchased ODDs from one or more of the Defendants or their Co-conspirators.

88. Plaintiffs and the members of the Class directly purchased ODDs at artificially maintained, non-competitive price levels established by the actions of Defendants and their Co-conspirators in connection with the restraint of trade alleged herein. Plaintiffs and the members of the Class have all sustained damage in that they paid inflated prices for ODDs due to Defendants' and their Co-conspirators' conduct in violation of federal law as complained of herein.

89. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class action and antitrust litigation.

1 90. Common questions of law and fact exist as to all members of the Class and
2 predominate over any questions solely affecting individual members of the Class. Among the
3 questions of law and fact common to the Class are:

- 4 (a) Whether Defendants and their Co-conspirators engaged in a contract,
5 combination or conspiracy among themselves to fix, maintain, or stabilize the
6 price of ODDs sold by Defendants and their Co-conspirators in the United
7 States through various means;
- 8 (b) Whether the conduct of Defendants and their Co-conspirators caused the
9 prices of ODDs to be artificially inflated;
- 10 (c) Whether Defendants and their Co-conspirators engaged in a contract,
11 combination, and/or conspiracy to restrict output or restrain capacity of
12 ODDs sold in the United States;
- 13 (d) Whether the conduct of Defendants and their Co-conspirators caused injury
14 to the members of the Class and, if so, the proper measure of damages;
- 15 (e) Whether Plaintiffs and the other members of the Class are entitled to, among
16 other things, injunctive relief, and if so, the nature and extent of such
17 injunctive relief; and
- 18 (f) Whether Defendants and their Co-conspirators undertook actions to conceal
19 the unlawful contract, combination or conspiracy described herein.

20 91. A class action is superior to other available methods for the fair and efficient
21 adjudication of this controversy since joinder of all Class members is impracticable. The
22 prosecution of separate actions by individual members of the Class would impose heavy burdens
23 upon the courts and Defendants, and would create a risk of inconsistent or varying adjudications of
24 the questions of law and fact common to the Class. A class action would achieve substantial
25 economies of time, effort and expense, and would assure uniformity of decision as to persons
26 similarly situated without sacrificing procedural fairness.

27
28

1 **VI. INTERSTATE TRADE AND COMMERCE**

2 92. During the Class Period, each Defendant and Co-conspirator, or one or more of its
3 subsidiaries and/or affiliated joint ventures, sold ODDs in the United States in a continuous and
4 uninterrupted flow of interstate commerce and foreign commerce, including through and into this
5 District.

6 93. During the Class Period, Defendants and their Co-conspirators collectively imported
7 at least tens of millions of ODDs into the United States.

8 94. During the Class Period, Defendants and their Co-conspirators collectively
9 controlled a majority of the market for ODDs, globally, in the United States, and within this
10 District.

11 95. The business activities of Defendants and their Co-conspirators substantially affected
12 interstate trade and commerce in the United States and caused antitrust injury in the United States.

13 96. Pioneer had net sales of \$5.7 billion for the year ending in March 2009.

14 97. Sony Optiarc had sales of \$1.52 billion for the year ending in March of 2008.

15 98. HLDS had revenue of \$2.4 billion in 2005, while TSST forecast revenue of 250
16 billion yen in fiscal 2004, when it was established.

17 99. Samsung in 2008 estimated that the ODD market for personal computers was 313
18 million units per year and the ODD market for all other applications was 200 million units per year.

19 100. Defendants and their Co-conspirators sell their ODDs through various direct
20 channels, including to manufacturers of electronic products and devices, to resellers of ODDs and
21 through the retail internet sites described above. As noted above, at least one Defendant also sells
22 ODDs directly to end users, either online or in brick-and-mortar stores.

23 101. California is the worldwide center of the personal computer industry and other
24 industries that depend upon the ODD market. Statements concerning the prices and market
25 conditions for ODDs were disseminated by Defendants and/or their Co-conspirators from and into
26 California on a regular and continuous basis.

1 **VII. FACTUAL ALLEGATIONS**

2 **A. ODD Technology**

3 102. Optical discs contain microscopic pits where data are stored. These pits are made
4 from a crystalline metal alloy and are usually pressed into the disc in a spiral arrangement, starting
5 at the center of the disc. Once a disc containing information is inserted into the ODD, the disc spins
6 while a lens inside the device guides a semiconductor laser beam over the disc and a photodiode
7 detects the light reflected from the disc's bumps and pits. The laser moves outward from the center
8 of the disc, scanning over the disc's surface. Then the photodiode reads the light's reflection as a
9 binary code—a series of ones and zeroes—that the computer translates into usable data. Changes in
10 the intensity of the beams as the lasers hit the pits are detected and translated into electrical signals.
11 The more pits that can be packed onto the disc, the more data the disc can store. The pits are
12 approximately 0.8 micrometers on CDs, 0.4 micrometers on DVDs, and 0.15 micrometers on BDs.
13 Reading the different disc formats requires the ODD to have lasers of different wavelengths. BD
14 players use a shorter wavelength laser, which is blue-violet, to read discs. Additional layers can be
15 added to the disc as well, increasing storage capacity. In addition to reading discs, ODDs can write
16 and rewrite on the disc, depending on the technology of the drive and accompanying disc.

17 103. When a recordable disk is inserted into an ODD that has the ability to record data,
18 the ODD's laser is used to heat selectively parts of the organic photosensitive dye layer. By
19 exposing the disc to light with the laser, the reflective properties of the disc's surface change, which
20 causes the photodiode to recognize these changes as bumps and pits and read the new information
21 on the disc.

22 104. ODDs include half height ("HH"), slim and ultraslim models. HH ODDs are thicker
23 and generally incorporated into desktop computer towers. Slim and ultraslim ODDs are thinner and
24 generally incorporated into laptop computers. As laptop computers became more popular with
25 consumers, demand for slim optical disk drives increased.

26 105. An ODD is about the size of a thin book. The front of the drive typically has a small
27 Open/Close button that ejects and retracts the drive bay door. This is how media like CDs, DVDs,
28 and BDs are inserted into and removed from the drive. Where the ODD is intended for internal use

in a computer, the sides of the drive have pre-drilled, threaded holes for easy mounting in the drive bay in the computer case. In that case, the ODD is mounted so the end with the connections faces inside the computer and the end with the drive bay faces outside. The back end of the ODD typically contains a port for a cable that connects to the motherboard. There is also a connection for power from the power supply. Most ODDs installed in computers also have jumper settings on the back end that define how the motherboard is to recognize the drive when more than one is present. These settings vary from drive to drive. ODDs connect to the motherboard of a computer through either a Serial Advanced Technology Attachment (“SATA”) or Parallel Advanced Technology Attachment (“PATA”) interface. Where the ODD is intended for external use with a computer, it is connected to the computer through some type of interface, such as a USB connection.

106. The following table provides an overview of the names, sizes and capabilities of the main optical disc media standards that existed during the Class Period.

Overview of Optical Disc Media Standards		
Drive Standard	Capacity [a]	Capability
CD-ROM	700 MB	Read Only
CD-R	700 MB	Read, Write
CD-RW	700 MB	Read, Write, Rewritable
DVD-ROM	4.7 GB	Read Only
DVD-RAM	4.7 GB	Read, Write
DVD-R [b]	4.7 GB	Read, Write
DVD-RW [b]	4.7 GB	Read, Write, Rewritable
BD-ROM	25 GB Single Layer; 50 GB Dual Layer	Read Only
BD-R	25 GB Single Layer; 50 GB Dual Layer	Read, Write
BD-RW	25 GB Single Layer; 50 GB Dual Layer	Read, Write, Rewritable
[a] These are standard capacities. Depending on the number of layers, or if the disc can be read double-sided, the capacity will be larger.		
[b] There are other DVD standards such as DVD+R/RW, which include other features or improvements.		
Source: See http://www.videohelp.com/dvd and http://www.tech-faq.com/Blu-ray.shtml .		

107. As explained in a May 17, 2009 article that appeared on the Geeks.com website:

The important thing to know is that the drives are pretty much backwards compatible, so if you get a DVD±RW DL it can pretty much read and write to the formats before it (for example, a DVD±RW DL can read a CD-ROM disc, burn to a CD-RW disc, etc.) (emphasis omitted).

All that alphabet soup of letters can be confusing, but all you need to know are the three basic (currently used) optical formats: CD, DVD, BLU-RAY (also called BD). Each of these formats have a read-only mode (-ROM), a write only (recordable) mode (-R or +R) and a read-write (re-recordable) mode (-RW, +RW, -RAM or -RE). The DL tacked onto the end of the alphabet soup means that the drive is a Double Layer drive (it can read or write to 8.5 GB double layer discs).

B. Evolution of ODDs and Sales

108. The optical disc was invented in 1958. In 1961 and 1969, patents were registered for the analog optical disc for video recording. In 1969, Philips began its first optical videodisc experiments. The first ODD was invented with the creation of the audio compact disc (audio CD), which was jointly invented by Sony and Philips and intended to store analog video signals and store music and computer software. In 1972, Philips announced a technique for storing audio recordings on an optical disc with a small diameter. At the same time, Sony was exploring optically recording audio on a larger disc but was focusing on developing an error correction technique. In 1978, Sony and Philips agreed on a single format for the disc and the error correction method that would be used. The CD system was introduced to the public in Japan and Europe in 1982. Since the 1980s, several companies have created spin-offs of the CD project by covering specific CD-based applications and extending the previously established standards set by Sony and Philips.

109. The first generation of ODDs utilized CDs that could store 650 megabytes of data, but for several years, the CDs were available only in a read-only format (CD-ROMs). Once the standard of how to create a CD and an optical device that reads the information on the CD were established, CD-ROM drives began to penetrate the computer market. ODDs have been in common use in computers since the 1990s, when CD-ROM drives became affordable for the average consumer. Both HLDS and TSST stopped making CD-ROM drives and CD-RW drives at the beginning of 2008.

1 110. In the mid-1990s, a consortium of manufacturers (including Hitachi, Pioneer, Philips,
2 Sony and Toshiba) developed the second generation of the optical disc, the DVD. The second
3 generation of drives used DVDs that could store 4.7 gigabytes, but DVDs were more quickly
4 available in both a read-only format and a format that allowed both reading and recording. The
5 DVD was intended to store great amounts of data, including broadcast-quality digital video. ODDs
6 using DVDs are currently the most prevalent in both consumer electronics products and computers.

7 111. The third generation of ODDs uses BDs that can store in excess of 20 gigabytes, and
8 also have both read-only and read/record formats. Toshiba developed and promoted an HD-DVD
9 format for third generation ODDs, but in June of 2008, it announced that it would no longer develop
10 or manufacture ODDs using HD-DVDs, and would instead use the BD format developed and
11 promoted by Sony.² In 2006, the specifications for the third generation optical disc, the BD format,
12 were finalized. The Blu-ray standard was developed by the Blu-ray Disc Association (discussed in
13 detail below), an industry group that included makers of consumer electronics, computer hardware,
14 and motion pictures. The Blu-ray format was designed to supersede the DVD format and
15 dramatically improve on the quality and capacity of the DVD. The BD was meant to be able to
16 distribute high-definition video and support greater data storage capacity than the DVD. Afterwards,
17 manufacturers began to develop ODDs for computers that could read and write both DVDs and
18 BDs.

19 112. Sony introduced the first laptop equipped with a BD drive (the Sony Vaio® AR
20 Premium) in June of 2006; its first multimedia desktop PC (the RC300) soon followed.

21 113. The latest ODDs, which can read from, write, and rewrite onto all kinds of optical
22 discs and are thus fully backwards compatible, are known as “super multi-drives.”

23 114. Throughout its history, but especially after 2000, the ODD industry, which requires
24 significant technical resources and advanced manufacturing capabilities, has been dominated by a
25 small group of manufacturers, as discussed in further detail below.

26
27 ² Indeed, in 2006, TSST began manufacturing BD drives using the Blu-ray format, so
28 Toshiba had access to that technology at an early point. Similarly, the Sony NEC joint venture
manufactured both BD and HD-DVD drives.

115. The industry has also consistently been faced with downward pricing pressures, including those resulting from the technological advances in ODD technology described above. As Defendants and their Co-conspirators honed their ability to manufacture ODDs more efficiently and at a lower cost, the price of this technology invariably began to decline. However, Defendants and their Co-conspirators, sensing that prices for ODDs were declining, colluded to fix prices and allocate markets or customers in order to prevent such prices from dropping too quickly, a phenomenon not uncommon in conspiracies involving electronic products.

116. During the Class Period, ODDs were a standard component on almost every computer used in the United States. Due to the popularity of personal computers, hundreds of millions of ODDs are shipped by Defendants and their Co-conspirators each year, generating billions of dollars in annual revenues. According to an analysis by IDC, an industry data source, between 2004 and 2008, worldwide ODD shipments generated over \$45 billion in revenues. Research from *Digitimes* estimated that worldwide ODD shipments increased at an annual rate of approximately 10%, exceeding 300 million units by 2007.

117. Co-conspirator Sony's then-President and CEO, Ryobi Chubachi, stated after the signing of a Memorandum of Understanding between Sony and NEC in 2005 that "[o]ptical disc drives are key components for a broad range of devices and we are strategically focused our development resources in this sector." NEC's then-President Akinobu Kanasugi added that "[t]he market for high value-added drives to be integrated into PCs and consumer electronics products is rapidly expanding."

118. Notwithstanding the changes in the ODDs, Defendants and their Co-conspirators remained leaders in the industry because of their conspiratorial acts. When the market for CDs decreased, the market for DVDs and BDs grew exponentially as consumers shifted towards the new formats. For example, in a 2008 consumer survey, 56% of respondents would have considered purchasing a BD player if there had been a significant price drop.

C. Structural Market Factors Favoring, and Acts Indicative of, Collusion

119. During the Class Period, the ODD industry exhibited several factors that have contributed to the ability of Defendants and their Co-conspirators to carry out their conspiracy,

including but not limited to: (1) market concentration; (2) joint venture or other collaborations; (3) significant barriers to entry (including patent pools); (4) common trade associations and business organizations; (5) the use of auctions for supply contracts, some of which included most favored nations clauses, whereby Defendants and their Co-conspirators could (and, as explained below, did) collude; and (6) the standardization of ODDs.

1. Market Concentration

120. The market for ODDs is large. The global market for ODDs in 2005 was approximately worth \$9.23 billion and approximately 303.8 million units were shipped. For example, HLDS reported \$2.4 billion in revenue in 2005, the last year for which figures are available, and Sony Optiarc Inc. reported \$1.52 billion in sales for the year that ended March 2008. According to some market estimates, at its height, the ODD industry generated yearly worldwide revenues in excess of \$8 billion.

121. Despite its large size, the ODD industry is highly concentrated and dominated by a small group of suppliers.

122. Since the ODD market is dominated by a small group of suppliers and is oligopolistic in nature, the market is conducive to and facilitates the collusive conduct alleged herein. According to published reports, during the Class Period, the ODD industry was dominated by Defendants and their Co-Conspirators. According to data from IDC, an industry analyst, the worldwide aggregate market share of HLDS, TSST, Sony Optiarc, PLDS and Panasonic in 2008 was 84.4%. Pioneer Defendants were responsible for another 6.3%.

2. Joint Venture or Other Collaboration

123. The ODD industry has experienced significant consolidation. As manufacturing migrated toward lower-cost drive makers in Korea and Taiwan between 2001 and 2003, early Japanese manufacturers still held key competitive advantages in the form of intellectual property rights. To mitigate the high cost of royalty payments for licensing this intellectual property, Taiwanese and Korean Co-conspirators partnered with the patent holders through strategic alliances and joint ventures. These alliances include:

- a. HLDS, formed on November 1, 2000 in Tokyo, Japan;

- b. JVC Lite-On IT Manufacturing & Sales Ltd., a production and marketing company founded in October of 2001 in Hong Kong;
- c. PBDS, founded in February of 2003 and specializing in the manufacture of DVD+RW ODDs;
- d. The Lite-On Sony "Alliance," a memorandum of understanding signed in May of 2003 and that, as described below, led to acts of price-fixing of ODDs;
- e. TSST, established in April of 2004;
- f. The Sony-NEC joint venture, formed in 2006, which was followed by Sony's purchase of NEC's interest in September of 2008;
- g. Lite-On's acquisition of BenQ's ODD production facilities in 2006, by which Lite-On obtained a 27% share in global ODD production;
- h. PLDS, formed in March of 2007; and
- i. Pioneer Digital Design and Manufacturing Corporation ("PDDMC"), the joint venture between Pioneer Corp. (which owned 66%) and Sharp Corporation (which owned 34%) was signed into effect in June 2009 and anticipated to commence operations in October of 2009, and was finalized in November of 2009.

124. The mutually beneficial nature of the business relations between certain Defendants and their Co-conspirators provided the opportunity for their parent entities to conspire and created a financial incentive to do so. As Gerald Cavanagh, a Sony spokesman in Tokyo, explained when announcing the formation of Sony NEC, the joint venture was formed because "[t]here was a feeling that those two complementary strengths [of Sony and NEC] would make more sense in a joint venture than competing against each other."

125. Similarly, after the formation of PLDS, the company's general manager, Charlie Tseng, stated that "Philips and Lite-On in the future will target at making profits and avoid price wars." According to *Digitimes*, "[w]hile aiming for large shipment volumes, PLDS will maintain

1 steady profits and therefore will maintain a minimum gross margin by refusing low-priced orders as
2 well as not participating in price-cutting competition, Tseng pointed out.”

3 126. In addition, at various points during the Class Period, one Defendant or Co-
4 conspirator produced ODDs for another Defendant or Co-conspirator. For example, in November of
5 2004, it was reported that Lite-On would produce more non-Blu-ray ODDs for Sony. As another
6 example, in 2000, TEAC entered into an ODD co-development arrangement with Philips. As a third
7 example, QSI has manufactured ODDs for Pioneer, PLDS and Sony Optiarc.

8 127. These joint ventures and collaborations among Defendants and their Co-
9 conspirators enabled them to, among other things, force out most of Taiwan’s second-tier
10 manufacturers and almost all Chinese manufacturers from the ODD industry (the entities which,
11 with their lower labor costs, normally would drive down prices on products such as ODDs).

12 3. Barriers to Entry

13 128. The market for the manufacture and sale of ODDs is subject to high manufacturing
14 and technological barriers to entry. Efficient manufacturing plants are large and costly. When
15 developing and manufacturing ODDs, Defendants and Co-conspirators face technological
16 advances, which require them to undertake significant research and development expenses. For
17 example, from 2002 to 2005, a time in which all or most of its sales came from ODDs, Lite-On
18 spent approximately \$79.7 million in research and development.

19 129. Another important barrier to entry is the difficulty in landing sizeable OEM orders.
20 OEMs usually require a lengthy qualification process before entering into supply agreements. An
21 analyst in 2003 noted that, “[l]ocal competition remains slow because of entry barriers. PC OEMs,
22 in our view, may retain two-three suppliers from Taiwan, Japan and Korea on the list as a strategy
23 to diversify country risk, which suggests a smaller pie to divide up among late entrants.”

24 130. ODD sellers’ strong relationships with patent holders for component technology
25 create yet another barrier to entry in the ODD market. This is especially notable in the PC market.
26 Establishing these important relationships with patent holders is difficult for low-volume
27 manufacturers of ODDs, and therefore, makes it difficult for them to compete effectively in the
28 market.

1 131. PLDS noted the importance of access to patents on its website with respect to BD
2 drives:

3 Philips & Lite-On Digital Solutions has a strong and long-term
4 commitment to the Blu-ray format. PLDS is one of the few companies in
5 the ODD industry that has access to an extensive Blu-ray patent portfolio
6 and a large Optical Disc Drive production facility. Combining these two
7 aspects makes PLDS a leading company in the Blu-ray Optical Disc Drive
8 marketplace. Other traditional ODD manufacturers will need to pay Blu-
9 ray royalties to the original patent holders or outsource their production of
10 BD drives to other manufacturers. The combination of access to Blu-ray
11 patents and being a true manufacturer of Blu-ray drives, gives PLDS a
12 competitive advantage.

13 132. Defendants' and their Co-conspirators' licensing structures included the imposition
14 of high licensing costs that also effectively deterred entry. In the ODD industry, these structures
15 have often taken the form of patent pools. In such pools, industry competitors pool their various
16 technology patents and grant a license with sublicensing rights to a license administrator (typically a
17 member of the pool) who issues licenses to manufacturers of ODDs. The licensees pay per-unit
18 royalties to the administrator and the resulting revenue is allocated among members of the pool,
19 typically pursuant to a prearranged formula.

20 133. For example, in 1998, Sony, Pioneer and Philips formed the 3C DVD Patent Group
21 to jointly exploit their various patents relating to the DVD format. LG joined the group in July of
22 2003, when John Koo, its Chairman and CEO, stated: "We will cooperate with those companies on
23 patent protection and patent exploitation now and in the future. LG Electronics is excited to join
24 the most professional licensing organization in the field of optical storage patent licensing and will
25 consider future cooperation with the same partners in other optical storage programs in which LG
26 Electronics has important patent portfolios...." Pioneer joined the 3C DVD Patent Group as well.
27 Philips acts as the licensor for the group. The licensing agreement imposed a DVD player license
28 fee of 3.5% of the net selling price for each player sold. As of 2006, the 3C DVD Patent Group
controlled the licensing of 115 patents relating to the manufacture of DVD players.

134. As a second example, commencing in June of 1999, leading developers of DVD
technology and formats—including Hitachi, Panasonic, and Toshiba—commenced a worldwide
joint licensing program for patents essential for DVD-Video players, DVD-ROM drives, DVD
decoders and DVD-Video and DVD-ROM discs that conform to the specifications promulgated by

1 the DVD Forum (described below), known as the “DVD 6C Patent Pool.” The companies
 2 authorized Toshiba to act as portfolio licensor, although Hitachi and Panasonic now act as regional
 3 agents for certain world regions. Sharp and Samsung joined the DVD 6C Patent Pool in April of
 4 2005 and November of 2006, respectively. The DVD 6C Patent Pool royalties for licenses with
 5 respect to, *inter alia*, DVD-ROM drives and DVD decoders were initially set at 4% of the net
 6 selling price or \$4 for these items. As of 2006, the DVD 6C Patent Pool controlled the licensing of
 7 377 patents.

8 135. As a third example, in March of 2010, the BD4C Licensing Group, which includes
 9 Toshiba, announced that it had commenced a worldwide joint licensing program for Blu-ray and the
 10 patents needed for BD decoders, encoders, recorders, players, read-only discs, recordable discs,
 11 drives and BD/DVD hybrid discs. Once again, Toshiba was authorized to act as the licensing agent.

12 136. As a fourth example, various patent pools were established for CD, CD-R and CD-
 13 RW technology. One was established by Sony and Philips for CD technology. A second was
 14 established by Philips, Sony and Ricoh for CD-RW technology. A third was established by Philips,
 15 Sony, and Taiyo-Yuden Co., Ltd. (“Taiyo-Yuden”) with respect to CD-R technology.

16 137. The history of the patent pool for CD-R technology illustrates how patent pools can
 17 be, and have been, used for anticompetitive collusion. To facilitate patent licensing to CD-R
 18 producers around the world, Philips, Sony and Taiyo-Yuden adopted a joint licensing arrangement
 19 whereby Sony and Taiyo-Yuden first licensed their patent rights to Philips, and then Philips bundled
 20 the rights together for licensing to other companies. In a decision entered in December of 2008, the
 21 Taiwanese Fair Trade Commission (“TFTC”) concluded that these companies engaged in unlawful
 22 “concerted action,” improperly excluded competitors from the market and overcharged patent
 23 licensees. As stated on TFTC’s website:

24 After considering the unlawful acts’ impact on the functioning of market
 25 mechanisms of the technology patent licensing markets and associated
 26 products at issue, as well as the respondents’ motives for the violation,
 27 benefits obtained thereby, and considerable business scales and prominent
 28 market standing, the [T]FTC imposed administrative fines of NT\$ 8
 million on Philips, NT\$ 4 million on Sony, and NT\$ 2 million on Taiyo
 Yuden, and ordered the companies to immediately cease the illegal
 practices pursuant to the fore part of Article 41 of the [Taiwanese Fair
 Trade Law].

1 138. Not surprisingly, some customers have rebelled against onerous patent pool licenses.
2 In October of 2008, Steve Jobs of Apple, Inc. said it was holding off licensing Blu-ray technology
3 for Macintosh notebooks because “Blu-ray is a bag of hurt.”

4 139. Indeed, intellectual property licensing rights are critical to understanding the ODD
5 industry, because high-technology licensing royalties are a meaningful part of the costs for
6 manufacturing ODDs. Japanese companies adopted the strategy of charging high royalties in order
7 to prevent Taiwanese and South Korean manufacturers with their superior cost controls from
8 quickly entering the DVD-ROM drive market. One report noted that “[e]xpensive royalty
9 payments have driven most Taiwanese companies out of the DVD-ROM drive market. Taiwan
10 shipped only 600,000 DVD-ROM drives in 1999, out of 14.7 million units shipped worldwide.”
11 Michael Gong, General Manager of Lite-On’s ODD business unit, announced cutbacks in 2002
12 with respect to DVD-ROM drive shipments: “Licensing fees for DVD-ROM drive technology
13 costs about US\$10 per unit, about one-third of a drive’s manufacturing contract price. If Taiwan-
14 based companies cannot solve this issue, they will not be able to sustain profitable operations when
15 DVD-ROM drive prices fall further.” This cost only increases when a licensee has to pay
16 cumulative royalties to multiple patent pools. In a 2008 presentation, Hisashi Kato of Mitsubishi
17 Corporation estimated that a DVD Recorder manufacturer would have to pay \$17 per unit in
18 royalties to four different patent pools, including the 3C DVD Patent Group and the DVD 6C
19 Patent Pool.

20 140. In response to high license royalties, Taiwanese and South Korean ODD makers
21 sought to become part of the cartel and to tie up strategically with patent pool members (who enjoy
22 cross-licensing privileges), procure drive kits, or sell product through such members. In exchange,
23 members of the cartel controlled prices to prevent low cost producers from cutting prices. A
24 September 2003 analyst report pointed out:

25 As a result [of intellectual property issues], optical drive makers
26 increasingly gravitated towards strategic alliances with intellectual
27 property holders, attempting to shield themselves under the umbrella of
28 joint venture partners in an effort to reduce royalty requirements. While
the specifics of joint ventures remain well guarded, the most common
structures involve joint ownership (LG-Hitachi, Philips-BenQ, JVC-Lite-
On, and the recently formed Toshiba-Samsung) or ODD makers selling

product through IP holders...Strategic alliances, which have followed the model of Hitachi-LG, are becoming the norm in the industry.

141. The ODD industry thus increasingly coalesced around a “Gang of Four” oligopoly consisting of Sony NEC (later Sony Optiarc), HLDS, TSST, and PBDS (later PLDS). An analyst report in 2003 noted that “the collective market share of this group will swell further to about 80%-90% over the next two years.” As discussed above, that is exactly what happened during the Class Period and, as it has happened, prices for ODDs have been controlled by the cartel.

4. Trade Associations and Business Organizations

142. Defendants and their Co-conspirators acted to prevent downward pricing pressures from causing ODDs to be sold at truly competitive prices.

143. Various industry trade organizations or events facilitated Defendants’ and their Co-conspirators’ cartel activities with respect to ODDs. Defendants and Co-conspirators participated in many of those meetings and events, which provided a forum where Defendants and their Co-conspirators could discuss and exchange information with respect to the pricing and production of ODDs with the purpose and effect of raising, fixing and stabilizing the prices of such products, bid rigging and market allocation. In several instances, these trade association meetings and events preceded examples of alleged collusive pricing conduct described below. Some examples of the trade association meetings include:

a. CD Trade Associations

144. CDs21 Solutions (“CDs21”) is a trade association formed in April of 2001 that was created by the merger of the Multimedia CD Consortium, which promoted CD-i (an interactive multimedia CD player developed by Philips) and Video CD formats, and the Orange Forum, which focused on CD-R/RW standards. Hitachi, HLDS, Sony, Panasonic, Lite-On, TSST and Philips Japan, Ltd. were among its members. Among the stated purposes of CDs21 were:

To pursue ever more development of the industrial sector concerned by striving to closely unite the technology and the contents in the area of CD platform as well as by looking into future technologies.

To aim for the creation of a new AV [audiovisual] culture which can further enrich the life of people.

To promote the development of mutual businesses by fostering an environment where the knowledge and information can be shared by all as a common property.

b. DVD Trade Associations

145. The DVD Forum is a global group of hardware manufacturers, software firms and content providers formed in 1997 to ostensibly promote and improve standards for the DVD format and products associated with that format. Hitachi, LG, Lite-On, NEC, Philips, Panasonic, Pioneer, Samsung, Sony, TEAC, QSI, and Toshiba are all members of the DVD Forum. The stated purpose of the DVD Forum is “to exchange and disseminate ideas and information about the DVD Format and its technical capabilities, improvements and innovations.”

146. Over the years, the DVD Forum had various conferences and seminars in Taiwan, Japan, China, Europe and the United States that allowed its members to exchange competitively sensitive information on ODDs.

147. The DVD Forum has a Steering Committee, which consists of, among others, Hitachi, LG, NEC, Panasonic, Pioneer, Sony, Samsung, Toshiba, and Sharp.

148. The Steering Committee of the DVD Forum met regularly, including meetings held on June 9-10, September 22 and December 1, 2004; February 23, May 26, September 12, and November 16-17, 2005; February 22, May 24, September 12 and November 29, 2006; February 28, June 19, September 12, and November 15, 2007; February 27, June 11, September 17, and November 19, 2008; February 25 and September 10, 2009; and February 24, 2010.

149. Among those present at one or more of these meetings were: (a) Yutaka Komai, Yukinori Kawauchi, and a Mr. Saito from Sony; (b) Young-Min Cheong, In-Sik Park, and Yong-Chae Jeong from Samsung; (c) Kiyong Lee, Kun Suk Kim, and Jea-Yong Joo from LG; (d) Yasuo Ogasawara and Hiroshi Inada from NEC; (e) Hideki Mimura, Hiruharu Sato, Yoshihide Fujii, and Messrs. Nishioka and Kaneda from Toshiba; (f) Yoshiho Gotoh, Yoshiharu Sakurada and Messrs. Nakano, Murase and Kozuka from Panasonic; (g) Messrs. Imaide, Noguchi, and Owashi from Hitachi; (h) a Ms. Ikei and a Mr. Heijnemans from Philips; (i) Junsaku Nakajima, Akira Takahashi, Taiji Nishizawa, Masatoshi Tsujimoto, Hiroyuki Okada, and a Mr. Egawa from Sharp; and (j) Matsumi Fujita, Shinichi Tsuji, and Messrs. Inoue and Yamada from Pioneer.

1 150. These meetings took place in Japan, South Korea, Taiwan, the Netherlands, France,
2 Hawaii, and in many instances, California. For example, the September 10, 2009 Steering
3 Committee meeting was held at the Universal Hilton Hotel in Los Angeles, California. Co-
4 conspirator Toshiba was the chair of that Steering Committee meeting.

5 151. In April of 2001, the Recordable DVD Council ("RDVDC") was formed. The
6 executive members of RDVDC included: Hitachi, Ltd.; Hitachi Maxell Ltd.; Matsushita Electric
7 Industrial Co., Ltd. (now Panasonic); Samsung Electronics Co., Ltd.; and Toshiba Corporation. Its
8 58 general members as of August of 2001 were major Japanese and Korean companies in the ODD
9 supply chain.

10 152. Bon-Guk Koo, chairman of the RDVDC, as well as Senior Corporate Advisor and
11 former Executive Vice-President of Samsung, stated that "[t]he Council will make its chief targets
12 industry outreach at major trade shows, information exchanges among Council members and
13 discussions aimed at expanding the recordable DVD market." Mr. Koo noted that "[t]he
14 Recordable DVD Council has held six seminars in Japan, sponsored a joint Pavilion at the Fall
15 COMDEX in Las Vegas, and launched other promotional activities in 2001.... The Council's
16 membership has grown from 58 to 87 companies since the RDVDC was established a year ago,
17 making it the largest recordable DVD industry alliance among similar kinds of promotional
18 groups. This is proof that our activities have been supported by the industry and we are proud of
19 it." In August of 2003, the RDVDC announced the establishment of the Compatibility Working
20 Group to ensure interoperability of products using RDVDC-supported recordable DVD formats.

21 153. The RAM Promotion Group ("RAMPRG") is an organization formed at COMDEX
22 in 2003. Its members include Hitachi, TEAC, HLDS, Panasonic, LG, Toshiba, and Samsung.
23 RAMPRG is ostensibly committed to promoting the DVD-RAM format and popularizing DVD-
24 RAM related products on an international basis. RAMPRG is supported by the RDVDC, and all of
25 the founding members of the RAMPRG are also members of the RDVDC. RAMPRG was launched
26 internationally in August of 2003, with its first appearance at the Internationale Funkausstellung
27 (discussed below) in Berlin, Germany. It then appeared in Tokyo, Japan in October of 2003.
28

1 154. The DVD+RW Alliance is a group of electronic hardware, optical storage and
2 software manufacturers who in 1997 created and promoted a format standard of recordable and
3 rewritable DVDs, known as the “plus” format. As of 2004, plus format DVDs were available in
4 various forms, including DVD+R and DVD+RW. Sony and Philips were members of the DVD+RW
5 Alliance, which has both a Product Promotions Group and a Compatibility and Convergence Group.

6 **c. Blu-ray Trade Association**

7 155. The Blu-ray Disc Association (“BDA”) is a worldwide group inaugurated in 2005
8 to promote the BD format and products associated with that format, with members including
9 Hitachi, LG, NEC, Philips, Samsung, Sony, TEAC, QSI, and Toshiba. Pioneer, Sony, LG, and
10 Hitachi are all founding board members of the BDA. The BDA was created and maintained by its
11 members to, *inter alia*, establish standardized formats and cross license technology.

12 156. The BDA has several different committees, including a Promotion Committee. The
13 role of that committee is described as follows on BDA’s website:

14 The promotion committee formulates a strategic approach to promote BD
15 formats in various product categories. It creates and participates in events
16 and activities that: promote BD formats, showcase BD products, educate
17 and train key audiences on BD formats and technology, promote
compatibility of BD products and create a community for General
Members of the BDA.

18 Current Promotion Committee groups:
19 - Americas Promotion Team
20 - Europe Promotion Team
 - Japan and Asia/Pacific Promotion Team
 - China Promotion Team

21 157. In April of 2007, Warren Lieberfarb, the former President of Warner Home Video,
22 said of the BDA that “[i]t was clear to me that a cartel like consortium was being created for the
23 purpose of forcing a *de facto* standard on other manufacturers.”

24 158. In April of 2008, Stan Glasgow, the then-President of Sony Electronics Inc., stated
25 that in order to ensure that the prices of ODDs that play BDs would not fall precipitously, the BDA
26 would not be soon licensing to any manufacturers in China.

d. Multi-Format Trade Associations

159. According to its website, the Optical Storage Technology Association (“OSTA”) was:

incorporated as an international trade association in 1992 to promote the use of writable optical technologies and products for storage of computer data. The organization’s membership includes optical product manufacturers and resellers from three continents, representing more than 85 percent of worldwide writable optical product shipments. They work to shape the future of the industry through regular meetings of CD/DVD, file interchange, market development, magneto-optical and planning committees.

160. During the Class Period, OSTA’s membership included ODD manufacturers such as Sony, LG, Panasonic, Toshiba, Philips Electronics, Samsung Electronics, and Pioneer.

161. OSTA works to “shape the future of the industry” through regularly scheduled meetings covering a variety of industry topics and an annual Optical Storage Symposium described below. Benefits of OSTA membership for all members, as listed on its website, include:

Influenc[ing] the health and direction of the industry.
Meet[ing] with industry peers for information exchange.
Receiv[ing] early foresight into industry strategies.

162. OSTA also plays an important role in the industry through its efforts to establish industry-wide specifications for optical disc and ODD technologies including MultiRead (as described below), MultiPlay, and Universal Disk Format.

163. In 2005, OSTA meetings were held on February 28, March 1-2, June 13-15, September 12-14 and December 5-7. Each of these meetings occurred at the Embassy Suites Hotel, 250 Gateway Boulevard, South San Francisco, California. In 2006, OSTA meetings were held on March 2-3, June 12-14, October 5-6, and December 4-6. Each of these meetings occurred at the same location in South San Francisco, with the exception of the meetings on October 5-6, which took place in Tokyo, Japan, at the Akihabara Convention Center. In 2007, OSTA meetings were held on March 5-7, June 11-13, September 17-19, and December 3-5. Each of these meetings occurred at the same location in South San Francisco. In 2008, OSTA meetings were held on March 17-19, June 16-18, October 6-8 and December 8-10. Each of these meetings occurred at the same location in South San Francisco, with the exception of the March 2008 meetings, which occurred at the DoubleTree Hotel, San Francisco Airport, 835 Airport Blvd., Burlingame, California. The last

1 known general meeting of the OSTA took place on March 16-18, 2009 at the Pacific Business
2 Centers, 19925 Stevens Creek Blvd, Cupertino, California.

3 164. Attendees at one or more of these various meetings included: Christopher Smith of
4 Sony Corporation; Paul Castellana of Toshiba; Maciek Brzeski of Toshiba; Yong Cheol Park of LG;
5 Patrick Yen of Lite-On; Frank Simon is of Philips; and Young Yoon Kim of SECL. Under the guise
6 of an industry forum, these representatives had opportunities to meet and communicate regarding
7 the price-fixing conspiracy for ODDs.

8 165. The International Symposium of Optical Memory ("ISOM") is an organization
9 created in Japan that is concerned with the technology of optical memory and provides a forum
10 where its members can share information on that subject. Its members include Sony, Sharp,
11 Panasonic, Toshiba, Hitachi, LG, NEC and Samsung. It has met annually since 1985. The 2004
12 meeting took place on October 11-15 at Jeju Island, South Korea; the 2005 meeting took place on
13 July 10-14 in Honolulu, Hawaii; the 2006 meeting took place on October 15-19 in Kagawa, Japan;
14 the 2007 meeting took place on October 21-25 in Singapore; the 2008 meeting took place on July
15 13-17 in Waikoloa, Hawaii; and the 2009 meeting took place on October 4-8 in Nagasaki, Japan.

16 166. Attendees at these various meetings included: (a) T. Maeda, H. Miyamoto, M.
17 Nakamura, M. Ojima, Hiroyuki Minemura, and T. Shintani of Hitachi; (b) Jin-Yong Kim, Yun-Sup
18 Shin, and In-Ho Choi of LG; (c) Ryuchi Katayama, H. Inada, T. Iwanaga, Y. Yamanaka, and H.
19 Fukuchi of NEC; (d) J.A.M.M. van Haaren of Philips; (e) Isao Ichimura, Atsushi Fukumoto,
20 Kimihiro Saito, Masataka Shinoda, M. Takeda, K. Nishitani, M. Toishi, S. Kubota, and S.
21 Higashino of Sony; (f) Yutaka Kahihara, Y. Honguh, H. Yamada, Hiromichi Kobori, and A.
22 Hiraoof Toshiba; and (g) Chong Sam Cheung, Dong-Ho Shin, Kyung-Guen Lee, Jooho Kim, and
23 S. Park of Samsung.

24 167. Under the cover of these annual meetings, Co-conspirators who were members of
25 ISOM had the opportunity to conspire on pricing and supply with respect to ODDs. The 2010 ISOM
26 meeting occurred on October 24-28 in Hualien, Taiwan.

27 168. The RW Products Promotion Initiative ("RWPPPI") is a trade association formed in
28 Tokyo, Japan in May of 2000 to promote rewritable optical discs. The founding members included

Hitachi Maxell (now a wholly-owned subsidiary of Hitachi), LG, Pioneer, Sharp, Sony, and Samsung. Lite-On, NEC, TSST and Sony Optiarc subsequently joined the association. Its main activities were stated to include exchanges of various types of commercial and technical information. In January of 2001, RWPPI created a United States Liaison Office located at the Long Beach, California office of Pioneer North America, Inc. According to a January 6, 2001 press release, a goal of this office was to “facilitate the exchange of information among RWPPI members in North America.”

169. The RWPPI held numerous meetings at the Japanese locations of Sharp and Pioneer during the Class Period, that provided a forum to communicate and agree upon prices for ODDs and carry out the conspiracy relating to them. The dates and locales of those meetings are set forth in the following chart:

Date of Meeting	Meeting Location
3/13/2009	Pioneer (Meguro, Tokyo, Japan)
12/5/2008	Sharp (Makuhari, Chiba, Japan)
9/19/2008	location unknown
6/18/2008	Pioneer (Meguro, Tokyo, Japan)
2/14/2008	Pioneer (Meguro, Tokyo, Japan)
12/7/2007	Sharp (Makuhari, Chiba, Japan)
9/13/2007	location unknown
6/12/2007	Pioneer (Meguro, Tokyo, Japan)
4/18/2007	Pioneer (Meguro, Tokyo, Japan)
2/14/2007	Pioneer (Meguro, Tokyo, Japan)
12/6/2006	Sharp (Makuhari, Chiba, Japan)
10/20/2006	Pioneer (Meguro, Tokyo, Japan)
8/23/2006	Pioneer (Meguro, Tokyo, Japan)
6/21/2006	Pioneer (Meguro, Tokyo, Japan)
4/28/2006	location unknown
2/17/2006	Pioneer (Meguro, Tokyo, Japan)

Date of Meeting	Meeting Location
12/7/2005	Sharp (Makuhari, Chiba, Japan)
10/28/2005	Pioneer (Meguro, Tokyo, Japan)
8/3/2005	Pioneer (Meguro, Tokyo, Japan)
6/16/2005	location unknown
4/15/2005	Pioneer (Meguro, Tokyo, Japan)
2/17/2005	location unknown
12/9/2004	Sharp (Makuhari, Chiba, Japan)
10/29/2004	Pioneer (Meguro, Tokyo, Japan)
8/26/2004	Pioneer (Meguro, Tokyo, Japan)
6/15/2004	Pioneer (Meguro, Tokyo, Japan)
4/14/2004	Pioneer (Meguro, Tokyo, Japan)
2/25/2004	Pioneer (Meguro, Tokyo, Japan)

170. The RWPPI appears to have disbanded, and closed its website in March of 2009, shortly before a federal grand jury began issuing subpoenas concerning an antitrust investigation into the ODD industry.

e. Trade Shows

171. The International Consumer Electronics Show (“CES”), the world’s largest consumer electronics show, was held annually during the Class Period. The 2010 CES took place from January 7-10, 2010 at the Venetian Hotel in Las Vegas, Nevada. Members of the conspiracy had the opportunity to communicate with each other about the conspiracy during the 2010 CES.

172. As noted above, the Optical Storage Symposium is a worldwide conference held annually from 2001-07 at various locations sponsored by OSTA. The 2007 event was held in South San Francisco on September 18-19, 2007. The 2006 event, held in Tokyo, Japan on October 5, 2006, included presenters from Sony, Hitachi and CDs21. The 2004 event held in Burlingame, California on September 25, 2005 and co-sponsored by, among others, Sony and Toshiba, included presenters from Sony and Toshiba.

1 173. The Internationale Funkausstellung (“IFA”) is a worldwide exhibition of consumer
2 electronics products that is held annually in Berlin, Germany and is attended by representatives of
3 Co-conspirators. Recent IFA shows occurred on September 3-8, 2010; September 4-9, 2009; August
4 29-September 3, 2008; August 31-September 5, 2007; September 1-6, 2006; and September 2-7,
5 2005.

6 174. The conduct of the “business” of these organizations or events gave Defendants and
7 their Co-conspirators the cover needed to contact one another to communicate competitive
8 information and reach and/or implement anticompetitive agreements.

9 **5. Standardization of ODDs**

10 175. A product is considered standard across suppliers when there is a high degree of
11 substitutability among different suppliers in the market. When purchasers view products as
12 interchangeable, it is easier to agree on a single price for the good in question and effectively
13 monitor those prices. Standardization makes it easier to form and sustain a cartel. As part of the
14 conspiracy, Defendants and their Co-conspirators standardized products in the ODD market. For
15 example, OSTA developed “MultiRead,” which was an industry consensus aimed at defining the
16 parameters and specifications necessary for all classes of optical discs to be able to be read on
17 current and future ODDs. On March 7, 2000, OSTA announced that 17 ODD manufacturers,
18 representing well over 90 percent of the ODD market at the time, achieved compliance with its
19 MultiRead specification. Those 17 manufacturers included Pioneer and Co-conspirators Hitachi,
20 LG, Lite-On, Philips, Samsung, Sony, and Toshiba.

21 176. The ODD industry has been typified by standardization of ODDs driven by industry
22 participants and a variety of industry-related organizations such as ECMA International, the
23 International Standardization Organization (“ISO”), and the International Electrotechnical
24 Commission. These organizations and their members are dedicated to “standardizing the use of
25 information communication technology and consumer electronics.”

26 177. As stated by Philips Consumer Electronics B.V., which is responsible for the
27 development of CD technology and continues to hold patents and licensing rights arising therefrom:
28

Standardization offers many other advantages to industry as a whole. For example: [1] Improvements to performance, compatibility, reliability, safety and interoperability; [2] Economies of scale and lower costs—for example, by allowing manufacturers to address multiple regions with a single product or manufacturing line; and [3] Cooperation between industry leaders, reducing the risk for “first-mover” companies which pioneer new products or technologies.

178. As noted above, the ODD industry is also subject to patents and intellectual property rights, which are utilized to require adoption of standardized product specifications.

179. The standardization of the ODD industry provided Defendants and their Co-conspirators with the mechanism to implement, enforce, and oversee their agreements to stabilize the prices of ODDs. Furthermore, as a result of this standardization, ODDs are commodity products, and buyers make decisions to purchase such products based largely, if not exclusively, on price. As one industry analyst noted in a treatise on optical and magnetic storage, “[a]s with DRAM chips, the market for magnetic and optical drives is a commodity one; brand name matters little if at all....Optical drives are provided by consumer appliance companies, mostly Japanese, Korean and Taiwanese.” Likewise, Kris Williams of NEC, in a 2006 e-mail, referred to “commodity products like DVD-ROM and CD-RW.”

D. Acts of Collusion with Respect to ODDs

180. Throughout the Class Period, Defendants and Co-conspirators reached agreements, the object of which was to stabilize the prices for ODDs, in numerous ways.

181. Acts in furtherance of this collusion involved bid-rigging. Several OEMs in the United States, including, but not limited to, Dell and H-P, conducted auctions among suppliers of ODDs during the Class Period. Dell’s auctions began as early as 2002 and were conducted from its headquarters in Austin, Texas during most of the Class Period. H-P’s auctions began in 2004 and were conducted from either Palo Alto, California or Houston, Texas during most of the Class Period. Defendants and/or their Co-conspirators rigged the bidding for ODDs purchased through such auctions. Certain Defendants and their Co-conspirators sold ODDs to Microsoft during the Class Period for use in its Xbox game console, and one Co-conspirator pleaded guilty to colluding on the prices of ODDs sold to Microsoft.

182. Other acts in furtherance of this collusion involved regular exchanges of information among Defendants and their Co-conspirators of confidential business information concerning

1 ODDs, prices charged and to be charged for ODDs, production capacity with respect to ODDs,
2 business plans for ODDs, plans for the introduction of new ODDs, confidential roadmaps for
3 product rollouts and production, confidential product quality information, confidential product
4 inventory and shipping information, company responses to customer initiatives, and plans for the
5 cessation of manufacture of ODDs that had reached the ends of their respective lifecycles. All of
6 these information exchanges were undertaken for the purpose of fixing the prices of, and allocating
7 customers with respect to, ODDs.

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205. Examples of the confidential information exchanges and agreements reached through this web of relationships are as follows. These examples are intended to be illustrative, not comprehensive, and reflect a review of only a small percentage of the over 10 million pages of documents that certain Co-conspirators produced to the DOJ.

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337. As noted above, Defendants and Co-conspirators created joint ventures or other cooperation arrangements that functioned as means to fix prices for competitive products manufactured or sold by the joint venturers.

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18 **7. Other Pricing and Related Conduct by Defendants and Co-conspirators
Relating to ODDs**

19 359. In addition to what has already been discussed, Defendants and Co-conspirators
20 engaged in other acts of anticompetitive conduct in furtherance of the alleged conspiracy.

21 360. In March of 2005, Liao of Lite-On, said at a press conference that he expected any
22 price competition for the global market of ODDs to slacken in 2005, because Japanese
23 manufacturers had forced out most of Taiwan's second tier manufacturers and almost all of China's
24 manufacturers.

25 361. As yet another example, beginning in February of 2008, prices on many ODDs that
26 played BDs began to climb. In August of 2008, personal computer vendors, including H-P, Dell,
27 Acer and ASUS, sought reductions in OEM and Original Design Manufacturer ("ODM") prices of
28 BD Combo and BD-ROM drives. At the time, ODM/OEM quotations were at \$120-\$130 for a BD

1 Combo drive and \$95-\$100 for a BD-ROM drive, but computer vendors asked for the lowering of
2 the former by \$20-\$30 and the latter by \$5-\$10. Leading ODM/OEM manufacturers, such as
3 Pioneer, Lite-On, HLDS and TSST, were all steadfast in refusing to lower current quotations,
4 however. Andy Parsons, Chairman of the BDA and a Senior Vice-President of Pioneer, said in
5 October of 2008 that the prices for BD players would not be coming down soon. In a competitive
6 market, at least one or more of the Defendants and their Co-conspirators in question would have
7 broken ranks to capture market share.

8 362. The patent pools described above also facilitated the operations of the conspiracy.
9 Patent pools restricted competition among members and, as reflected in the CD-R patent pool
10 involving Philips, Sony, and Taiyo-Yuden (described above). They also limit competition in
11 downstream products incorporating the pooled patents and can remove incentives to engage in
12 further innovation. Licensees from the 3C DVD Patent Group and DVD 6C Patent Pool, for
13 example, must report customer, sales and pricing data to those pools, thus ensuring that the co-
14 conspirators who operate them can have access to sensitive non-public commercial information that
15 facilitates the conspiracy. For example, the license agreement for the DVD 6C Patent Pool
16 specifically requires the patent licensee to agree that such information can be shared among the
17 members of the licensing group.

18 **E. Economic Data on Pricing and Supply**

19 363. ODD pricing during the Class Period has not behaved as would be expected in a
20 competitive market.

21 364. After introduction into a market, consumer electronics products and their component
22 parts are typically characterized by downward pricing trends. However, the ODD market has been
23 characterized by unnatural price stability and certain periods of upward pricing trends.

24 365. The cost of manufacturing ODDs should have declined as the industry consolidation
25 and manufacturing bases shifted to lower-cost countries. In a competitive market, this would be
26 reflected in downward pricing trends as well. However, according to U.S. Bureau of Labor
27 Statistics, around the beginning of 2004, the Producer Price Index ("PPI") for computer storage
28 devices, which includes ODDs, started to level off.

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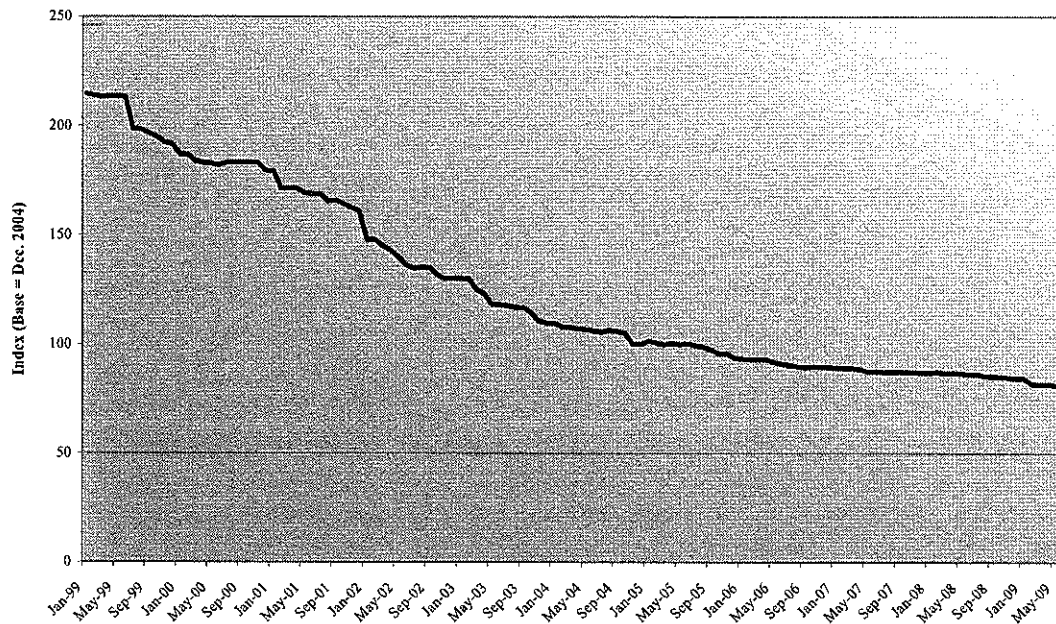
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Producer Price Index for Computer Storage Device Manufacturing
Jan. 1999-May 2009



Source: U.S. Bureau of Labor Statistics

Producer Price Index for Exports 334112334112: Computer Storage Device Manufacturing

Note: Includes devices that allow the storage and retrieval of data from a phase change, magnetic, optical, or magnetic/optical media.

366. As noted above, according to industry sources and statements from Defendants' and/or Co-conspirators' representatives, firms increasingly attempted to stabilize pricing and avoid continued decreases in pricing and, presumably, profit margins.

367. If they were acting independently, ODD makers would have had disparate incentives, depending on the size of their market share in an existing generation of ODD technology. The fact that Defendants and Co-conspirators uniformly held off on significant price reductions regardless of market share demonstrates that they were acting conspiratorially. Because of these disparate incentives, stable prices cannot be explained merely as conscious parallelism.

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17 369. As one news report issued at the time of the announcement of the DOJ's
18 investigation of Sony's ODD subsidiary observed,

19 Analysts have been wondering why Blu-ray prices have remained high
20 even though the technology has been commercially available for over
21 three years. HD-DVD has been gone for nearly two-thirds of that time and
22 one would have expected costs to have declined by now. The fact that they
23 haven't is causing some to question whether or not Sony is doing
24 something to keep the prices up.

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³“A correlation coefficient is a statistical measure of the co-movement between two series, such as two prices. It always lies between one and negative one: a correlation coefficient near one indicates a strong positive correlation (i.e., a change in one series coincides with a proportional change in the other series), a correlation coefficient near negative one indicates a strong negative correlation (i.e., a change in one series coincides with a proportional, but opposite, change in the other series), and a correlation coefficient of zero indicate no correlation (i.e., a change in one series is not associated with any systematic change in the other series).” Johnson, Paul A., *The Economics of Common Impact in Antitrust Class Certification*, 77 Antitrust Law Journal 559, Issue 2 (2011). Any positive correlation coefficient close to 1.0 implies that the two price series showed highly proportional patterns of change. In his article, Paul Johnson describes coefficients of 0.8 or 0.9 as “indisputably large.” *Id.* at 561.

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3 **F. History of Collusion in Other Industries**

4 381. Many of the Co-conspirators named herein have a long history of collusion, and
5 have been involved in antitrust investigations into other technology-related products, or have
6 admitted to participating in anticompetitive cartels involving technology-related or other products.
7 To the extent these prior instances of conspiratorial conduct involved consumer electronics
8 products, the products in question were marketed through the same or related channels used for the
9 marketing of ODDs, and were overseen by the same divisions or departments within the relevant
10 Co-conspirators for at least a portion of the Class Period.

11 382. **Televisions.** In February of 1993, the Japan Fair Trade Commission (“JFTC”)
12 entered a cease and desist order against the sales subsidiaries of Sony, Toshiba, Hitachi and what is
13 now Panasonic, finding that the subsidiaries requested large discount stores in the Akihabara
14 district in Tokyo and the Nipponbashi shopping district in Osaka not to display discount rates
15 larger than 10% of the maker’s recommended retail prices for products including televisions on
16 price tags at stores and in their handbills. The JFTC noted that similar practices had occurred in
17 1988 when it instructed two major industry associations, including the Japan Electronics Industry
18 Association, to stop them, but the practices had continued.

19 383. **Magnetic Videotapes.** In November of 2007, the European Commission (“EC”)
20 fined Sony and various related entities and the Hitachi Maxell Limited joint venture \$110 million
21 for fixing the prices of professional videotapes sold in Europe between 1999 and 2002.

22 384. **Optical Disc Licensing Policies.** In July of 1994, the DOJ announced that it was
23 conducting an investigation into the licensing practices of several leading companies that own and
24 license CD manufacturing patents to determine if there have been violations of United States
25 antitrust laws. The companies were believed to include Sony and Philips. It was reported that the
26 two companies signed a “pact” in the late 1970s, agreeing to “cross-license each other’s basic
27 patents on CD technology” and collect fees from vendors. It was further reported that the DOJ had
28

1 issued subpoenas to several companies dealing with Philips and Sony, including DiscoVision
2 Associates, a subsidiary of Pioneer.

3 385. In August of 2006, the EC initiated an investigation regarding the procedures
4 required in order to obtain a license for BD and HD-DVD standards.

5 386. As noted above, in October of 2008, it was announced that two of the major players
6 in the ODD market, Sony and Philips, were fined by the TFTC for their anticompetitive business
7 practices in connection with their abuse of monopoly power in the licensing of the technology for
8 CD-Rs.

9 387. **Gas Insulated Switchgears.** In January of 2007, Hitachi and Toshiba were fined by
10 the EC for their roles in a conspiracy to control prices and allocate market shares in the market for
11 gas insulated switchgears between 1988 and 2004.

12 388. **DRAM.** In October of 2005, Samsung admitted guilt and paid a \$300 million fine
13 following an investigation by the DOJ into price-fixing among manufacturers of DRAM.

14 389. On May 19, 2010, the EC announced that it was fining ten companies a total of €331
15 million for participating in an international cartel to fix DRAM prices. Among those fined were
16 Samsung, NEC, Hitachi and Toshiba.

17 390. **CRTs.** In a cease and desist order dated October 7, 2009, the JFTC levied \$37.4
18 million in fines against five companies for alleged participation in a price-fixing cartel for CRTs,
19 including Panasonic, LG Philips Displays Korea Co. and an arm of South Korea's Samsung group
20 and their affiliates.

21 391. On November 26, 2009, the EC confirmed that it had sent a Statement of
22 Objections to participants in the CRTs cartel in Europe. It has been reported that "[t]he EC believes
23 that Chunghwa Picture Tubes (a unit of Tatung), LG Electronics, Matsushita (Panasonic), Philips,
24 Samsung and Toshiba have formed cartels to boost pricing of CRT-based devices, such as
25 computer monitors or TV-sets."

26 392. In November of 2007, Hitachi Canada Ltd., a subsidiary of Hitachi, received
27 requests for information from the Canadian Competition Bureau with respect to alleged antitrust
28 violations relating to CRTs.

1 393. **TFT-LCDs.** The DOJ, the EC, and the JFTC have also investigated Samsung,
2 Toshiba, LG and Hitachi, among others, concerning collusion among manufacturers of TFT-LCDs.

3 394. In December of 2008, the JFTC fined Sharp and Hitachi with respect to a conspiracy
4 involving TFT-LCDs sold for use in Nintendo game consoles.

5 395. Also in December of 2008, the DOJ announced that:(a) LG Display, a joint venture
6 between LG and Philips, pleaded guilty to an information alleging antitrust price-fixing allegations
7 with respect to TFT-LCDs and had agreed to pay a \$400 million fine and (b) Sharp pleaded guilty to
8 bid-rigging with respect to certain customers of TFT-LCDs and had agreed to pay a fine of \$120
9 million.

10 396. On March 10, 2009, the DOJ announced that Hitachi Displays, Ltd. had pled guilty
11 to participation in the price-fixing conspiracy involving TFT-LCDs and had agreed to pay a \$31
12 million fine.

13 397. Although it has not been publicly acknowledged by Samsung, it is widely believed
14 that Co-conspirator SECL is in the DOJ's leniency program with respect to the investigation into the
15 market for TFT-LCDs, meaning that it has admitted its participation in the cartel.

16 398. In July of 2009, the EC confirmed that it had sent a Statement of Objections to
17 participants in the TFT-LCD cartel in Europe.

18 399. The facts as alleged herein show that the conduct of Defendants and Co-
19 conspirators was directed both at customers in the United States and at United States import
20 commerce for ODDs. The conduct alleged herein was directed specifically at customers
21 throughout the United States, including customers in California, Texas, and Washington. The
22 conduct of Defendants and Co-conspirators also had a direct, substantial and reasonably
23 foreseeable effect on United States commerce of ODDs. Publicly available United States customs
24 data indicates that Defendants and Co-conspirators collectively imported many millions of ODDs
25 into the United States, which were purchased by persons and entities in the United States,
26 throughout the Class Period. The collective monetary value of such commerce was in the billions
27 of dollars.
28

1 **VIII. CAUSE OF ACTION FOR VIOLATION OF U.S. ANTITRUST LAWS**

2 400. Plaintiffs incorporate by reference the allegations in the above paragraphs as if fully
3 set forth herein.

4 401. On or about January 1, 2004, the exact date being unknown to Plaintiffs, Defendants
5 and their Co-conspirators agreed to stabilize the prices of ODDs sold in the United States in
6 violation of Section 1 of the Sherman Act (15 U.S.C. §1).

7 402. In furtherance of this agreement, *inter alia*: (a) Defendants and Co-conspirators
8 engaged in the rigging of bids (with respect to pricing, bid rankings and other matters) for certain
9 procurement events for ODDs conducted by major OEMs situated in the United States, such as
10 Dell and H-P; (b) certain Defendants and their Co-conspirators sold ODDs to Microsoft for use in
11 its Xbox game console, and one Co-conspirator pleaded guilty to colluding on the prices of ODDs
12 sold to Microsoft; (c) certain Defendants and Co-conspirators engaged in cooperation agreements
13 that resulted in the setting of prices or the allocation of customers and/or markets with respect to
14 OEM and/or non-OEM ODD sales; and (d) Defendants and their Co-conspirators exchanged
15 confidential business information concerning ODDs, including, *inter alia*, prices charged and to be
16 charged for ODDs, rebate information on ODDs, production capacity with respect to ODDs,
17 business plans for ODDs, plans for the introduction of new ODDs, roadmaps for product rollouts
18 and production, product quality information, product inventory and shipping information, company
19 responses to customer initiatives, and plans for the cessation of manufacture of ODDs that had
20 reached the ends of their respective lifecycles.

21 403. This agreement and coordination caused the prices of ODDs manufactured and sold
22 by Defendants and Co-conspirators to be inflated at supracompetitive levels.

23 404. The contract, combination or conspiracy has resulted in an agreement, understanding
24 or concerted action between and among Defendants and their Co-conspirators in furtherance of
25 which Defendants and their Co-conspirators instituted, fixed, maintained, raised or stabilized prices
26 for ODDs at supracompetitive levels. Such a contract, combination, or conspiracy constitutes a per
27 se violation of the federal antitrust laws and is an unreasonable and unlawful restraint of trade.
28

1 405. Defendants' and their Co-conspirators' contract, combination, agreement,
2 understanding or concerted action occurred in or affected interstate and international commerce.

3 406. The contract, combination or conspiracy has had the following effects:

- 4 a. Plaintiffs and the Class have been deprived of the benefits of free, open and
5 unrestricted competition in the market for ODDs;
- 6 b. Competition in establishing the prices paid for ODDs has been unlawfully
7 restrained, suppressed and eliminated; and
- 8 c. Prices charged to Plaintiffs and the Class for ODDs were raised, fixed,
9 maintained or stabilized at higher, artificially inflated, non-competitive levels.

10 407. As a proximate result of Defendants' and their Co-conspirators' unlawful conduct,
11 Plaintiffs and the Class have suffered injury in that they have paid higher prices for ODDs, either as
12 standalone products as were incorporated into desktop or notebook computers, than they otherwise
13 would have paid in the absence of the unlawful conduct of Defendants and their Co-conspirators.

14 408. By reason of the violations of Section 1 of the Sherman Act and Section 4 of the
15 Clayton Act, Plaintiffs and the members of the Class have sustained injury. As a direct result of
16 Defendants' and their Co-conspirators' conduct, the injury sustained by Plaintiffs and the Class is
17 the payment of supracompetitive prices for ODDs. This is an antitrust injury of the type that the
18 federal laws were meant to punish and prevent.

19 **IX. PLAINTIFFS' CLAIMS ARE NOT BARRED BY THE STATUTE OF LIMITATIONS**

20 409. Plaintiffs did not discover and could not have discovered, through the exercise of
21 reasonable diligence, the existence of Pioneer's role in the conspiracy alleged herein until a
22 reasonable period of time after June 3, 2011, when the grand jury documents were first produced to
23 Plaintiffs in the ODD MDL. Until then, Pioneer's role as a conspirator was not publicly disclosed.

24 410. Plaintiffs only became aware of Pioneer's involvement in the conspiracy after their
25 review of grand jury documents produced in the ODD MDL on June 3, 2011, and recent deposition
26 testimony. This is because Defendants and their Co-conspirators actively and fraudulently
27 concealed the existence of their contract, combination or conspiracy. Because Defendants'
28 agreement, understanding and conspiracy were kept secret, Plaintiffs were unaware of Defendants'

1 unlawful conduct alleged herein and did not know that they were paying artificially high prices for
2 ODDs when purchasing those products.

3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 412. Publicly, Pioneer stated that it maintained antitrust policies, which prohibited the
13 type of collusion as alleged herein. For example, in Pioneer's 2004 "Pioneer Group Code of
14 Conduct," the company publicly stated that it maintained "Fair Business Conducts [sic]: We
15 maintain fair and transparent relationships with our business partners, engaging in fair transaction
16 practices in accordance with applicable laws and regulations, such as an antitrust law. We do not
17 take part in collusion, cartels, or similar activities with other companies within our industry that
18 would unlawfully impede free competition, or any other activities that may give rise to such
19 concerns."

20 413. The affirmative acts of Defendants and their Co-conspirators alleged herein,
21 including acts in furtherance of the conspiracy, were wrongfully concealed and carried out in a
22 manner that precluded detection, as described in part above.

23 414. By their very nature, Defendants' price-fixing conspiracy is inherently self-
24 concealing. The ODD industry is not exempt from antitrust regulation, and thus, before June 3,
25 2011, Plaintiffs reasonably considered it to be a well-regulated competitive industry.

26 415. In the context of the circumstances surrounding Defendants' pricing practices,
27 Defendants' acts of concealment were more than sufficient to preclude suspicion by a reasonable
28 person that Defendants' pricing was conspiratorial. Accordingly, a reasonable person under the

1 circumstances would not have been alerted to investigate the legitimacy of Defendants' ODD prices
2 before June 3, 2011.

3 416. Plaintiffs and members of the Class could not have discovered the alleged contract,
4 conspiracy, or combination at an earlier date by the exercise of reasonable diligence because of the
5 deceptive practices and techniques of secrecy employed by Defendants and their Co-conspirators to
6 avoid detection of, and fraudulently conceal, their contract, combination or conspiracy.

7 417. Because the alleged conspiracy was both self-concealing and affirmatively concealed
8 by Defendants and their Co-conspirators, Plaintiffs and members of the Class had no knowledge of
9 the alleged conspiracy, or of any facts or information that would have caused a reasonably diligent
10 person to investigate whether a conspiracy existed. Prior to June 3, 2011, there was nothing that
11 Plaintiffs could have done through the exercise of reasonable diligence that could or would have led
12 to the discovery of Pioneer's participation in the conspiracy.

13 418. Defendants and/or their Co-conspirators also committed affirmative acts of
14 concealment of the conspiracy, including, *inter alia*, periodically issuing press statements falsely
15 asserting that ODDs were competitively priced. For example, in October 2004 Lite-On President
16 Danny Liao claimed that increasing competition for OEM orders had pushed down prices for 16x
17 DVD burners to as little as \$60, and that competition would drive some manufacturers from the
18 market.

19 [REDACTED]
20 [REDACTED]
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[REDACTED]

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

(1) That the Court determine that this action may be maintained as a class action under Rule 23 (b)(3) of the Federal Rules of Civil Procedure, that Plaintiffs be certified as class representatives and Plaintiffs' counsel be appointed as counsel for the Class;

(2) That the unlawful contract, combination or conspiracy alleged be adjudged and decreed to be an unreasonable restraint of trade or commerce in violation of Section 1 of the Sherman Act and Section 4 of the Clayton Act;

(3) That Plaintiffs and the Class recover damages, as provided by law, determined to have been sustained as to each of them, in an amount to be trebled in accordance with the antitrust laws, and that judgment be entered against Defendants on behalf of Plaintiffs and of the Class;

(4) That Plaintiffs and the Class recover their costs of the suit, including attorneys' fees, as provided by law;

(5) That Defendants, their subsidiaries, affiliates, successors, transferees, assignees and the respective officers, directors, partners, agents, and employees thereof and all other persons acting or claiming to act on their behalf be permanently enjoined and restrained from continuing and maintaining the combination, conspiracy, or agreement alleged herein;

(6) That Plaintiffs and members of the Class be awarded pre-judgment and post-judgment interest, and that such interest be awarded at the highest legal rate from and after the date of service of the initial complaint in this action; and

(7) For such other and further relief as is just under the circumstances.

JURY TRIAL DEMANDED

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of all of the claims asserted in this Complaint that are so triable.

DATED: August 18, 2014

By: /s/ R. Alexander Saveri

Guido Saveri
R. Alexander Saveri
Cadio Zirpoli
Travis L. Manfredi
Saveri & Saveri, Inc.
706 Sansome Street
San Francisco, CA 94111
Telephone: (415) 217-6810
Facsimile: (415) 217-6813

*Chairman of the Executive Committee for the Direct
Purchaser Plaintiffs*

Joseph M. Alioto
Theresa Moore
Alioto Law Firm
555 California Street, Suite 3160
San Francisco, CA 94104
Telephone: 415-434-8900
Facsimile: 415-434-9200
jmalieto@aliotolaw.com
tmoore@aliotolaw.com

Joseph J. Tabacco Jr.
Christopher T. Heffelfinger
Todd A. Seaver
Sarah Khorasanee
Berman DeValerio
One California Street, Suite 900
San Francisco, CA 94111
Telephone: 415-433-3200
Facsimile: 415-433-6382
jtabacco@bermandevalerio.com
cheffelfinger@bermandevalerio.com
tseaver@bermandevalerio.com
SKhorasanee@bermandevalerio.com

Joseph W. Cotchett
Steven N. Williams
Cotchett, Pitre & McCarthy
840 Malcolm Road, Suite 200
Burlingame, CA 94010
Telephone: 650-697-6000
Facsimile: 650-697-0577
jcotchett@cpmlegal.com
swilliams@cpmlegal.com

Michael P. Lehmann
Christopher L. Lebsock
Hausfeld LLP
44 Montgomery Street, Suite 3400
San Francisco, CA 94104
Telephone: 415-633-1909
Facsimile: 415-358-4980
mlehmann@hausfeldllp.com
clebsock@hausfeldllp.com

Robert N. Kaplan
Gregory Arenson
Kaplan Fox & Kilsheimer, LLP
850 Third Avenue, 14th Floor
New York, NY 10022
Telephone: 212-687-1980
Facsimile: 212-687-7714
rkaplan@kaplanfox.com
garenson@kaplanfox.com

Gary L. Specks
Kaplan Fox & Kilsheimer, LLP
423 Sumac Rd.
Highland Park, IL 60035
Telephone: 847-831-1585
Facsimilie: 847-831-1580
gspecks@kaplanfox.com

Eric B. Fastiff
Brendan P. Glackin
Lieff Cabraser Heimann & Bernstein, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Telephone: 415-956-1000
Facsimile: 415-956-1008
efastiff@lchb.com
bglackin@lchb.com

Bruce L. Simon
Aaron M. Sheanin
William J. Newsom
Pearson Simon Warshaw & Penny LLP
44 Montgomery Street, Suite 2450
San Francisco, CA 94104
Telephone: 415-433-9000
Facsimile: 415-433-9008

bsimon@pswplaw.com
asheanin@pswplaw.com
wnewsom@pswplaw.com

*Executive Committee of Direct Purchaser Plaintiffs'
Counsel and Special Trial Counsel*

David Paul Germaine
Vanek, Vickers & Masini P.C.
55 West Monroe, Ste. 3500
Chicago, IL 60603
Telephone: 312-224-1505
dgermaine@vaneklaw.com

Jonathan Shub
Seeger Weiss LLP
77 Water Street
New York, NY 10005
Telephone: 212-584-0700
jshub@seegerweiss.com

Simon Paris
Patrick Howard
Saltz, Mongeluzzi, Barrett & Bendesky, P.C.
1650 Market Street, 52nd Floor
Philadelphia, PA 19103
Telephone: 215-575-3895
sparis@smbb.com
phoward@smbb.com

Gregory A. Frank
Frank & Bianco LLP
275 Madison Avenue, Suite 801
New York, NY 10016
Telephone: 212-682-1818
gfrank@frankandbianco.com

Counsel for Direct Purchaser Plaintiffs