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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION

MDL No. 1917

Case No. 07-cv-05944-JST

This order relates to:

**ORDER GRANTING MOTION FOR
CLASS CERTIFICATION**

ALL DIRECT PURCHASER ACTIONS

Re: ECF No. 5962

Before the Court is a motion for class certification brought by Direct Purchaser Plaintiffs (“DPPs”) with respect to Defendants Irico Group Corporation and Irico Display Devices Co., Ltd. (collectively, “Irico”). ECF No. 5962. The Court will grant the motion.

I. BACKGROUND

The factual and procedural background of this case is well-known to the parties and will not be repeated here. In brief, Plaintiffs allege that Irico and others conspired to fix prices, allocate market share, and restrict output of products containing cathode ray tubes (“CRTs”) from March 1995 to November 2007. DPPs – direct purchasers of CRTs and finished products from Defendants, their co-conspirators, and/or their subsidiaries – have settled with all Defendants except for Irico on a classwide basis. They now seek certification of the following class:

All persons and entities who, between March 1, 1995 and November 25, 2007, directly purchased a CRT Product in the United states from any Defendant or any subsidiary or affiliate thereof, or any co-conspirator or any subsidiary or affiliate thereof. Excluded from the class are defendants, their parent companies, subsidiaries or affiliates, any co-conspirators, all governmental entities, and any judges or justices assigned to hear any aspect of this action.

United States District Court
Northern District of California

1 ECF No. 5971 at 7.¹ DPPs propose the following class representatives: Arch Electronics, Inc.;
 2 Crago, d/b/a Dash Computers, Inc.; Meijer, Inc., and Meijer Distribution, Inc.; Nathan Muchnick,
 3 Inc.; Princeton Display Technologies, Inc.; Radio & TV Equipment, Inc.; Studio Spectrum, Inc.;
 4 and Wettstein and Sons, Inc., d/b/a Wettstein's. The Court previously certified a class with the
 5 same definition, and the same representatives, as to the Thomson and Mitsubishi Defendants. *In*
 6 *re: CRT Antitrust Litig.*, 308 F.R.D. 606, 611, 630 (N.D. Cal. 2015) (also requiring DPPs "to
 7 specifically identify" the affiliates in the class definition and class notice "to enable the parties and
 8 class members to better determine who is in the class").

9 **II. LEGAL STANDARD**

10 To certify a class, a court must be satisfied, "after a rigorous analysis," that the plaintiffs
 11 meet the requirements of Rule 23 of the Federal Rules of Civil Procedure by a preponderance of
 12 the evidence. *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651,
 13 664-65 (9th Cir. 2022) (en banc) (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 161
 14 (1982)). "[P]laintiffs must make two showings." *Id.* at 663. First, they must satisfy the
 15 numerosity, commonality, typicality, and adequacy requirements of Rule 23(a):

16 One or more members of a class may sue or be sued as
 17 representative parties on behalf of all members only if: (1) the class
 18 is so numerous that joinder of all members is impracticable;
 19 (2) there are questions of law or fact common to the class; (3) the
 claims or defenses of the representative parties are typical of the
 claims or defenses of the class; and (4) the representative parties will
 fairly and adequately protect the interests of the class.

20 Fed. R. Civ. P. 23(a). Second, they "must show that the class fits into one of three categories"
 21 under Rule 23(b). *Olean*, 31 F.4th at 663. DPPs invoke Rule 23(b)(3), which requires the Court
 22 to find "that the questions of law or fact common to class members predominate over any
 23 questions affecting only individual members, and that a class action is superior to other available
 24 methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

25 "Rule 23 grants courts no license to engage in free-ranging merits inquiries at the
 26 certification stage. Merits questions may be considered to the extent – but only to the extent – that

27 _____
 28 ¹ ECF No. 5971 is the unredacted version of DPPs' class certification motion, originally filed in
 redacted form at ECF No. 5962.

1 they are relevant to determining whether the Rule 23 prerequisites for class certification are
2 satisfied.” *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 466 (2013). Thus, for
3 example, “[i]n determining whether the ‘common question’ prerequisite is met, a district court is
4 limited to resolving whether the evidence establishes that a common question is *capable* of class-
5 wide resolution, not whether the evidence in fact establishes that plaintiffs would win at trial.”
6 *Olean*, 31 F.4th at 666-67 (emphasis in original).

7 **III. DISCUSSION**

8 **A. Expert Report of Dr. Phillip Johnson**

9 The Court first considers whether DPPs may rely on the expert report of Dr. Phillip
10 Johnson in support of their motion. When seeking class certification of claims against other
11 Defendants, DPPs previously relied on the expertise of Dr. Jeffrey Leitzinger. Leitzinger was
12 unavailable to serve as an expert for this motion, and, as both DPPs and Irico acknowledge, much
13 of the language in Johnson’s report is the same as what appeared in Leitzinger’s report.

14 Irico accuses Johnson of plagiarism and asserts that his report is unreliable and should be
15 excluded. “In a class proceeding, defendants may challenge the reliability of an expert’s evidence
16 under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and Rule 702 of the
17 Federal Rules of Evidence.” *Olean*, 31 F.4th at 665 n.7. But Irico relies on neither *Daubert* nor
18 Rule 702 in its effort to exclude Dr. Johnson’s report. Instead, it relies on two district court cases
19 and one case from the Court of Federal Claims, all of which are factually distinguishable. Johnson
20 did not, for example, give “deliberately misleading” answers when asked about how he prepared
21 his report and whether he consulted with an expert who authored an earlier report. *Raymo v. Sec’y*
22 *of Health & Hum. Servs.*, No. 11-0654V, 2014 WL 1092274, at *13 (Fed. Cl. Feb. 24, 2014). Nor
23 did he copy from a report written by an unrelated expert in a different case, as in *Spiral Direct,*
24 *Inc. v. Basic Sports Apparel, Inc.*, No. 6:15-cv-641-Orl-28TBS, 2017 WL 11457208, at *2 (M.D.
25 Fla. Apr. 13, 2017), and *Moore v. BASF Corp.*, Civ. Action No. 11-1001, 2012 WL 6002831, at
26 *7 (E.D. La. Nov. 30, 2012). Unlike the facts of those cases, Johnson worked with Leitzinger on
27 this case – spending “more than 1,500 hours over the course of nearly 12 years,” including
28 working on his report and “every aspect of every analysis done for the prior reports submitted by

1 Dr. Leitzinger.” ECF No. 5993-2 ¶ 3. He “participated in the development of Dr. Leitzinger’s
2 analysis for his opinions” and has affirmatively stated that, “to the extent my opinions and words
3 overlap with Dr. Leitzinger, it is because I also hold those opinions and believe those words most
4 effectively express my own opinions.” *Id.*; *see also, e.g.*, ECF No. 5989-2 at 35 (“These words do
5 a good job of expressing the opinions that I have and the material that I think is relevant to those
6 opinions, and so I saw no reason to artificially change to different words to express the same
7 opinions that I have.”).

8 Irico is free to raise the similarity between Leitzinger’s and Johnson’s reports to cast doubt
9 on Johnson’s credibility before the jury, but those arguments go to the weight and not the
10 admissibility of the testimony. The Court will consider Johnson’s report in determining whether
11 DPPs have met their burden at class certification.

12 **B. Numerosity and Commonality**

13 Irico does not challenge numerosity and commonality, and the Court finds these
14 requirements to be satisfied. On numerosity, there is no dispute that the proposed class includes
15 thousands of potential members. *E.g.*, ECF No. 2968-5 ¶ 2. The class size far exceeds the 40
16 members for whom “a presumption of impracticability of joinder” arises. *Smith v. City of*
17 *Oakland*, 339 F.R.D. 131, 138 (N.D. Cal. 2021) (citation omitted). Irico presents no evidence or
18 argument to overcome that presumption.

19 On commonality, Irico argues that common issues do not predominate – an issue the Court
20 addresses below – but does not assert that there are no questions of law or fact common to the
21 class. Nor could it. “Where an antitrust conspiracy has been alleged, courts have consistently
22 held that the very nature of a conspiracy antitrust action compels a finding that common questions
23 of law and fact exist.” *Wortman v. Air New Zealand*, 326 F.R.D. 549, 556 (N.D. Cal. 2018)
24 (quotation marks and citation omitted).

25 **C. Typicality and Adequacy**

26 Irico raises two challenges to typicality and adequacy. First, it asserts that DPPs’ class
27 representatives lack standing – and are therefore neither typical nor adequate – because they are
28 primarily indirect purchasers who did not purchase any finished products from Irico or from any

1 entity that was owned or controlled by Irico. The Court has already rejected that argument. Irico
2 does not argue that DPPs did not purchase finished products from controlled entities; it argues
3 only that Irico did not itself control those entities. That assertion does not undermine DPPs'
4 standing for the reasons the Court explained when it denied in part summary judgment to
5 Defendant Technology Displays Americas LLC ("TDA"):

6 TDA argues that this evidence . . . shows only that Plaintiffs
7 purchased finished CRT products from direct purchasers owned or
8 controlled by other conspirators, not by TDA. But the *Illinois Brick*
9 direct purchaser rule is a standing requirement, meaning the focus is
10 on whether the plaintiff purchased from a controlled entity, not
11 whether a particular defendant was doing the controlling.
12 Eliminating any doubt on this point is the fact that "[n]othing in
13 *Illinois Brick* displaces the rule of joint and several liability, under
14 which each member of a conspiracy is liable for all damages caused
15 by the conspiracy's entire output." *Paper Sys. Inc. v. Nippon Paper*
16 *Indus. Co.*, 281 F.3d 629, 632 (7th Cir. 2002). In other words, if
17 Plaintiffs can overcome *Illinois Brick*'s standing requirement via the
18 control exception, and TDA is a participant in the CRT conspiracy,
19 TDA is jointly and severally liable for Plaintiffs' damages, even if
20 TDA was not the conspirator who controlled the direct purchasers
21 from whom Plaintiffs bought CRT products.

22 *In re: CRT Antitrust Litig.*, 2017 WL 11679812, at *5 (N.D. Cal. Jan. 30, 2017) (alteration in
23 original) (footnotes and citations omitted); *see also In re: CRT Antitrust Litig.*, 911 F. Supp. 2d
24 857, 872 (N.D. Cal. 2012) ("[T]he Named DPPs have standing to sue for alleged overcharges
25 passed on to them when they purchased [a finished product] containing an allegedly price-fixed
26 CRT from an entity allegedly owned or controlled by any allegedly conspiring Defendant."
27 (emphasis added)). The Court has also already rejected Irico's argument that the control exception
28 does not apply to DPPs' claims because market forces are not superseded: "The control exception
under *Royal Printing* . . . does not require that market forces be superseded." *In re: CRT Antitrust*
Litig., 2016 WL 7805628, at *20 (N.D. Cal. Aug. 4, 2016) (citing *Royal Printing Co. v. Kimberly*
Clark Corp., 621 F.2d 323, 326 n.4 (9th Cir. 1980)), *rev'd in part on other grounds*, 720 F. App'x
835 (9th Cir. 2017).

Second, Irico argues that, even if DPPs' class representatives have standing, they are
nonetheless atypical and inadequate because they "purchased only small quantities at standardized
prices, whereas absent class members purchase[d] large quantities under individually negotiated

1 prices.” ECF No. 5989 at 17. “In cases involving an alleged price-fixing conspiracy, the
2 representative plaintiff’s claim is often considered typical even where the plaintiff followed
3 different purchasing procedures, purchased in different quantities or at different prices, or
4 purchased a different mix of products than did the members of the class.” *In re Optical Disk*
5 *Drive Antitrust Litig.*, 303 F.R.D. 311, 317 (N.D. Cal. 2014) (“*ODD*”). However, “overwhelming
6 disparities [can] defeat typicality.” *In re Graphics Processing Units Antitrust Litig.*, 253 F.R.D.
7 478, 490 (N.D. Cal. 2008) (“*GPU*”). In *GPU*, for example, the named plaintiffs each purchased a
8 single graphics card at a non-negotiable price, while the putative class included “wholesale
9 purchasers who collectively comprised over 99.5% of defendants’ business” and “purchased a vast
10 array of products on individually negotiated terms.” *Id.* at 489. The court concluded that the
11 “representative plaintiffs simply do not have the appropriate incentive to establish antitrust
12 violations with respect to all of the absent class members” based on those differences. *Id.* at 490.
13 The *ODD* court, finding that case “remarkably similar” to *GPU*, concluded that the named
14 plaintiffs’ claims were atypical because they “purchased non-customized ODDs (or computers
15 containing ODDs) from a defendant at nonnegotiable, list prices through a defendant’s distribution
16 subsidiary or retail website,” and “the putative class encompasses a myriad of other ODD
17 purchasers whose volumes and means of ODD purchases do not compare.” *ODD*, 303 F.R.D. at
18 317. Irico seeks to rely on these cases, but the Court has already explained why *GPU* is
19 “unpersuasive”: “Here, customization was far more limited, there are far fewer types of CRT
20 products at issue and wholesale purchases were rarely negotiated individually. *GPU* also did not
21 include guilty pleas or ongoing criminal investigations (thus lacking ‘extrinsic evidence of harm’)
22 and the products involved in *GPU* were customized and not fungible.” *In re: CRT*, 308 F.R.D. at
23 627. This case does not present the type of overwhelming disparities that render the proposed
24 class representatives atypical or inadequate. The history of this case – in which the proposed class
25 representatives have settled on behalf of DPPs with all non-Irico Defendants, without objection
26 from any DPP class members – further supports the conclusion that they are able to adequately
27 represent the class, including large purchasers.

28 Irico does not challenge typicality or adequacy on any other grounds, and the Court finds

1 these requirements to be satisfied.

2 In addition, the Court has considered the qualifications of proposed class counsel, Saveri &
3 Saveri, Inc., and finds that the firm meets the requirements of Rule 23(g) of the Federal Rules of
4 Civil Procedure and is capable of fairly and adequately representing the class.

5 **D. Predominance and Superiority**

6 Having found that DPPs satisfy all of the requirements of Rule 23(a), the Court now turns
7 to the requirements of Rule 23(b)(3). “[T]o carry their burden of proving that a common question
8 predominates, [plaintiffs] must show that the common question relates to a central issue in the
9 plaintiffs’ claim.” *Olean*, 31 F.4th at 665. For antitrust cases, these elements are: “(i) the
10 existence of an antitrust violation; (ii) ‘antitrust injury’ or ‘impact’ flowing from that violation
11 (i.e., the conspiracy); and (iii) measurable damages.” *Id.* at 665-66. Plaintiffs must show that
12 “essential elements of the cause of action, such as the existence of an antitrust violation or antitrust
13 impact, are capable of being established through a common body of evidence, applicable to the
14 whole class,” and that such common questions predominate over individual issues. *Id.* at 666
15 (quotation marks and citation omitted). The question is not whether plaintiffs would prevail at
16 trial. To the contrary:

17 a district court cannot decline certification merely because it
18 considers plaintiffs’ evidence relating to the common question to be
19 unpersuasive and unlikely to succeed in carrying the plaintiffs’
20 burden of proof on that issue. Rather, *Tyson Foods* established the
21 rule that if “each class member could have relied on [the plaintiffs’
22 evidence] to establish liability if he or she had brought an individual
23 action,” and the evidence “could have sustained a reasonable jury
24 finding” on the merits of a common question, then a district court
25 may conclude that the plaintiffs have carried their burden of
26 satisfying the Rule 23(b)(3) requirements as to that common
27 question of law or fact.

28 *Id.* at 667 (alteration in original) (citations omitted) (quoting *Tyson Foods, Inc. v. Bouaphakeo*,
577 U.S. 442, 455 (2016)).

Here, Irico does not dispute, and the Court is persuaded, that the existence of the
conspiracy and Irico’s role in it, if any, are subject to common proof. Every class member could
rely on the same evidence presented in DPPs’ motion to attempt to establish that the conspiracy
existed and, if it did exist, how it operated and Irico’s involvement, if any. Likewise, although

1 Irico argues that there is no evidence that it joined any conspiracy before August 1998, DPPs
2 dispute that assertion, and Irico does not contend that any individualized questions must be
3 resolved to decide when, if at all, Irico joined the conspiracy. “In price-fixing cases,” like this
4 one, “courts repeatedly have held that the existence of the conspiracy is the predominant issue and
5 warrants certification even where significant individual issues are present.” *Thomas & Thomas*
6 *Rodmakers, Inc. v. Newport Adhesives & Composites, Inc.*, 209 F.R.D. 159, 167 (C.D. Cal. 2002)
7 (quoting *In re NASDAQ Market-Makers Antitrust Litig.*, 169 F.R.D. 493, 518 (S.D.N.Y. 1996)).

8 In addition, for the reasons discussed below, the Court agrees with DPPs that Johnson’s
9 expert analysis is capable of demonstrating antitrust impact and damages on a classwide basis.
10 First, Irico does not dispute that evidence of a price-fixing conspiracy like the one at issue in this
11 case can show classwide impact, but it contends that Johnson’s conclusion that price targeting
12 “directly impacted products accounting for about 94 percent of CRT shipments during the Class
13 Period” is inaccurate. ECF No. 5971-2 ¶ 51. Irico’s opposition includes charts that purport to
14 show gaps during which target prices did not exist, ECF No. 5989 at 20, but Johnson explains in
15 his reply report why he believes Irico’s chart is misleading. For example, Johnson asserts that
16 Irico’s chart fails to consider when prices were allegedly set for more than one quarter at a time;
17 that price targets set in one quarter had statistically significant impacts on actual prices for two
18 additional quarters; that price targets were not the only mechanism by which the conspiracy
19 operated, and that output controls also led to higher prices; or that sales volume was lower during
20 periods when no target prices were found. ECF No. 5993-2 ¶¶ 6-16. For these and other reasons,
21 Johnson explains, the expert report of Dr. Robert Willig, on which Irico relies in a footnote, ECF
22 No. 5989 at 20 n.24, is unpersuasive as to the percentage of shipments impacted by price targets.
23 ECF No. 5993-2 ¶¶ 17-18.

24 Irico also criticizes Johnson’s regression models, arguing that they show only correlation
25 between target and actual prices and not causation; that Johnson failed to “perform any of the
26 basic and customary tests available to economists to test for, and weed out, *spurious* correlations
27 from regression models,” ECF No. 5989 at 22 (emphasis in original); and that Johnson
28 inappropriately averaged correlation coefficients for non-targeted CRTs to “mask” discrepancies

1 between different non-targeted CRT products, *id.* at 23. These arguments are not persuasive,
 2 particularly in light of Irico’s failure to submit any competing expert analysis. First, Irico attempts
 3 to make too much of Johnson’s deposition testimony that a high degree of correlation does not
 4 imply a causal relationship. As Johnson persuasively explains, the question asked at deposition
 5 “was a general concept question of whether high correlation in and of itself implies causation,
 6 without a reference to the target price regression analysis” in Johnson’s report. ECF No. 5993-2
 7 ¶ 21. Second, Johnson adequately explains – for purposes of class certification analysis – why he
 8 did not perform the tests identified by Irico. *Id.* ¶¶ 22-27. For example, he discusses why, when
 9 he considered the possibility that the relationship between target and actual prices arose “solely
 10 from common time-series patterns, instead of actual economic relationships,” he used an “error-
 11 correction” approach instead of other tests Irico argues he should have performed to “account for
 12 the possibility of a spurious relationship.” *Id.* ¶¶ 23-24. He concludes that there is “statistically
 13 strong evidence of a positive relationship between target prices and actual prices, *separate and*
 14 *apart from the effects of other market factors.*” ECF No. 5971-2 ¶ 55 (emphasis added). Finally,
 15 as to the non-targeted CRTs, Johnson calculated an “average correlation coefficient between
 16 prices for CRTs without targets and prices for a targeted CRT” of 0.93 based on “[w]eight[ing] by
 17 sales dollars.” *Id.* ¶ 64. He also listed all median correlation coefficients for 18 different sizes and
 18 types of non-targeted CRTs, which ranged from -0.37 to 0.97. *Id.* & Fig. 13. He explains why a
 19 “quantity-weighted average correlation is . . . the most appropriate way to summarize the
 20 evidence”:

21 The sizes with negative correlations or correlations below 0.8 are
 22 sizes with the lower volume of sales, representing merely 2.5% of
 23 non-targeted product sales and less than 0.5% of all sales between
 24 1995 and 2007. Lower or negative correlations for these low-
 25 volume sales do not suggest that those products were immune from
 the impact of the conspiracy but are, instead, likely the result of
 limitations in those data inhibiting the ability to accurately detect the
 relationships between those prices and the prices of other products.

26 ECF No. 5993-2 ¶ 29.

27 Irico next argues that Johnson failed to account for differentiations between CRT products,
 28 including the different demand that results from products that are not interchangeable, and the

1 difficulty with changing production lines from one product to another. However, Johnson
2 explains that his evaluation “included analyses of prices by CRT types, sizes, geographic regions,
3 and customers.” ECF No. 5993-2 ¶ 33. He further explains that some production lines could
4 produce “a range of sizes” of CRTs; that “[e]very co-conspirator had several production lines
5 capable of producing multiple CRT sizes”; and that “many conspiracy documents discuss how
6 manufacturers were able to switch production between CRT types in response to changing demand
7 conditions.” *Id.* ¶¶ 37, 41; *see also id.* ¶¶ 34-42. Irico cites some evidence that converting
8 production lines to produce different products would be expensive, ECF No. 5989 at 25, but this
9 goes to the persuasiveness of Johnson’s testimony and not whether it is capable of establishing
10 classwide impact.

11 Finally, Irico criticizes Johnson for taking an average of R-squared values to conclude that
12 variability between pricing among different CRT products can be explained by the product
13 characteristics unrelated to the impact of the conspiracy. Johnson’s report presents “each of the
14 104 quarterly regressions associated with the two types of CRTs over the 13 years covered by the
15 analysis.” ECF No. 5971-2 ¶ 29. He observes that: “The median R-squared for the CPT hedonic
16 regressions was 96 percent and 93 percent for CDTs. The R-Squared exceeded 0.7 in all but four
17 of the 104 results.” *Id.* Thus, Johnson concludes, “the vast majority of the variability associated
18 with prices can be explained statistically by factors other than the conspiracy.” *Id.*; *see also id.*
19 ¶ 28 (explaining that R-squared values range from 0 to 1 and that, in this context, “reveal[] the
20 percentage of the CRT customer price variation each quarter that can be explained by the product
21 characteristics”). Contrary to Irico’s criticisms, Johnson did not attempt to obscure variation
22 between R-squared values or combine them into a single regression. Additionally, Johnson
23 explains that “[v]ariability in the R-square values from over 100 quarterly regressions is expected,
24 at the very least, due to variations in the quarterly sales data and prices.” ECF No. 5993-2 ¶ 46.

25 In sum, although Irico criticizes Johnson’s testimony, its criticisms go to the weight of the
26 testimony and not to whether DPPs have put forth evidence that is capable of demonstrating
27 classwide impact of the alleged conspiracy. Even if Irico’s “critique” of Johnson’s models might
28 “be persuasive to a jury at trial,” the question at this stage is whether the “evidence [is] capable of

1 showing class-wide impact”; the Court is not tasked with determining whether Johnson’s opinions
 2 are correct on the merits. *Olean*, 31 F.4th at 676; *see also id.* at 679 (“A lack of persuasiveness is
 3 not fatal at certification.”). DPPs have satisfied their burden as to impact.

4 The Court next considers whether DPPs have demonstrated that damages can be
 5 determined via classwide proof. Irico argues that Johnson’s damages model fails to adequately
 6 match damages to the alleged harm for three reasons: (1) it includes products that were not subject
 7 to the alleged conspiracy; (2) it fails to consider the impact of mandatory price floors imposed by
 8 the Chinese government during the class period; and (3) it includes “years for which Irico could
 9 not be liable given their limited participation in any alleged conspiracy.” ECF No. 5989 at 26.

10 None of Irico’s arguments regarding damages is persuasive. First, as discussed above, a
 11 factfinder could conclude from Johnson’s analysis that the alleged conspiracy had an impact on
 12 pricing of all products, not just those for which price targets have been documented. Second,
 13 Johnson opines that the price regulations imposed by the Chinese government would not “have
 14 had a measurable effect on actual global market prices (if any),” and also observes that “Irico
 15 provided no information or analysis of the regulations, whether they were enforced or how they
 16 might have been impacted by the existence of the cartel.” ECF No. 5993-2 ¶ 51. He further
 17 explains that “Irico provided no evidence that these regulations actually constrained its CRT prices
 18 or would have but for the conspiracy,” and that “the possibility of government punishment of
 19 lower prices is an additional facilitating factor for the success of the cartel’s efforts to keep prices
 20 above competitive levels.” *Id.* ¶¶ 52-53. Finally, Irico argues that it was not part of any alleged
 21 conspiracy before 1998, three years after the start of the class period. As noted above, however,
 22 this is a disputed question of fact that is capable of classwide resolution. Moreover, if a jury were
 23 to find that Irico joined the alleged conspiracy after the start of the alleged class period, Johnson’s
 24 model can calculate damages “not only for the entire Class Period, but also for any subperiod for
 25 which Irico might be found liable” because it calculates the difference between actual and but-for
 26 prices by quarter. *Id.* ¶ 55; ECF No. 5971-2 ¶¶ 79-80. As the Court previously concluded when
 27 considering Leitzinger’s damages model, which is substantially similar to Johnson’s, *compare id.*
 28 ¶¶ 72-80 (Johnson) *with* ECF No. 5191-2 at 164-71 (¶¶ 64-72) (Leitzinger), the Court “is satisfied

1 that DPPs have shown by a preponderance of the evidence that there is a viable methodology
2 DPPs could present at trial to show damages (irrespective of whether such a methodology would
3 ultimately succeed).” *In re: CRT*, 308 F.R.D. at 629-30.

4 For the reasons set forth above, DPPs have met their burden of demonstrating that common
5 issues predominate over individualized questions. Irico challenges the superiority of a class action
6 only on the basis of predominance. In light of the Court’s conclusion that common issues
7 predominate, and for reasons the Court noted when certifying a prior DPP class, including the
8 interests of judicial efficiency and that a class action “is likely the only means of recovery for
9 many plaintiffs whose recovery would otherwise be too low to justify the cost of individual
10 litigation,” DPPs have satisfied the superiority requirement under Rule 23(b)(3). *Id.* at 630.

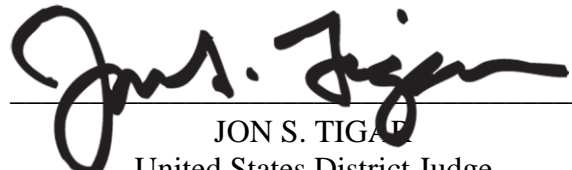
11 **CONCLUSION**

12 DPPs have satisfied all of the requirements of Rule 23(a) and 23(b)(3) of the Federal Rules
13 of Civil Procedure. Accordingly, their motion for class certification is granted. The following
14 entities are appointed as class representatives: Arch Electronics, Inc.; Crago, d/b/a Dash
15 Computers, Inc.; Meijer, Inc., and Meijer Distribution, Inc.; Nathan Muchnick, Inc.; Princeton
16 Display Technologies, Inc.; Radio & TV Equipment, Inc.; Studio Spectrum, Inc.; and Wettstein
17 and Sons, Inc., d/b/a Wettstein’s. Saveri & Saveri, Inc., is appointed as class counsel.

18 The parties shall appear for a case management conference on August 30, 2022, at
19 9:30 a.m. A joint case management statement is due by August 23, 2022. The statement shall
20 include a proposed schedule for the remainder of the DPP actions, including a deadline for the
21 parties to propose a plan for disseminating notice to the class.

22 **IT IS SO ORDERED.**

23 Dated: August 1, 2022

24 
25 JON S. TIGARD
26 United States District Judge
27
28