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

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

Plaintiffs,

v.

TTE TECHNOLOGY, INC., dba TCL NORTH
AMERICA,

Defendant.

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

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

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

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

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

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

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

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

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

IT IS HEREBY ORDERED THAT:

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

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

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

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6 All individuals who, from April 24, 2016 to December 31, 2021, purchased a new TCL
7 Television marketed as having a “Hz” rating twice as high as its native panel refresh rate (Hz)
8 in the State of California.

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

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

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

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

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

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

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

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

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

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

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

12 5. Final Approval Hearing. A final approval hearing shall be held before the Honorable
13 Edward M. Chen on **Thursday January 19, 2023 at 1:30 p.m.** (the “Final Approval Hearing” or
14 “Fairness Hearing”) as set forth in the notice to the Settlement Class (described in Paragraph 6 below),
15 to determine whether the Agreement is fair, reasonable and adequate and should be approved. Papers
16 in support of final approval of the Agreement, the incentive award to Plaintiff and Class Counsel’s
17 application for an award of attorneys’ fees, costs and expenses (the “Fee Application”) shall be filed
18 with the Court according to the schedule set forth in Paragraph 13 below. The Final Approval Hearing
19 may be postponed, adjourned, or continued by order of the Court without further notice to the
20 Settlement Class. After the Final Approval Hearing, the Court may enter a settlement order and final
21 judgment in accordance with the Agreement that will adjudicate the rights of the Settlement Class
22 Members with respect to the Released Claims.

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

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

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

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

15 c. Internet Media Publication Notice. The Settlement Administrator shall
16 implement an internet media effort of digital media advertising through Google Ads or a similar
17 medium, to be distributed over desktop and mobile devices including tablets and smartphones, over a
18 period of 60 days, targeting likely Settlement Class Members in California. The notice shall be
19 substantially in the form attached to the Agreement as “Exhibit F.”

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

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

1 f. TCL Website Banner Notice. TCL will place a banner on the www.TCL.com
2 homepage for the duration of the Claim Period informing consumers about the Settlement. The banner
3 will be in a form substantially similar to the following: “Purchased a TCL TV in California from April
4 2016 through December 2021? You May Be Entitled to Benefits from a Class Action Settlement. File
5 a claim here [link].”

6 g. Push Notification Notice. TCL will issue one-time push notifications through
7 the TCL Home App and T-Cast app for iPhone and Android devices informing users about the
8 Settlement. The push notification will be in a form substantially similar to the following: “Purchased a
9 TCL TV in California from April 2016 through December 2021? You May Be Entitled to Benefits
10 from a Class Action Settlement. File a claim here [link].” The notification will link to the Settlement
11 Website, or if not feasible, will provide the address for the Settlement Website.

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

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

22 9. Exclusion from the Settlement Class.

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

27 b. Exclusion requests must: (a) state the Settlement Class Member’s name,
28 address, and phone number; (b) be personally signed by the Settlement Class Member and not the

1 Settlement Class Member's attorney or anyone acting on the Settlement Class Member's behalf; and
2 (c) include the statement "I/we request to be excluded from the class settlement in *Christopher Julian*
3 *et al. v. TTE Technology, Inc.*, Case No. 3:20-CV-02857-EMC (N.D. Cal.)." Requests to opt-out that
4 do not include all required information and/or that are not submitted on a timely basis, will be null,
5 void, and ineffective. No Settlement Class Member, or any person acting on behalf of or in concert or
6 participation with that Settlement Class Member, may exclude any other Settlement Class Member
7 from the Settlement Class.

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

13 10. Objections and Appearances.

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

19 b. All written objections and supporting papers shall (a) contain and clearly
20 identify the case name and number (*Christopher Julian et al. v. TTE Technology, Inc. dba TCL North*
21 *America*, Case No. 3:20-CV-02857-EMC (N.D. Cal.)), (b) be submitted to the Court either by mailing
22 them to the Class Action Clerk, United States District Court for the Northern District of California,
23 San Francisco Courthouse, 450 Golden Gate Avenue, Courtroom 5 - 17th Floor, San Francisco, CA
24 94102, or by filing them in person at any location of the United States District Court for the Northern
25 District of California, and (c) be filed or postmarked on or before the Objection/Exclusion Deadline.
26 Any objections that are not timely mailed or filed shall be forever barred. Written objections shall also
27 contain: (1) the full name, address and telephone number of the Settlement Class Member; (2) a
28 written statement of all grounds for the objection accompanied by legal support for the objection (if

1 any); (3) any papers, briefs or other documents upon which the objection is based; (4) a list of all
2 persons who will be called to testify in support of the objection (if any); (5) a statement of whether the
3 Settlement Class Member intends to appear at the Final Approval Hearing; (6) proof of membership in
4 the Class; (7) a list of all objections filed by the objector and his or her counsel to class action
5 settlements in the last three years; and (8) the signature of the Settlement Class Member and her or his
6 counsel, if any.

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

9 d. The date of the postmark on the mailing envelope or a legal proof of service
10 accompanied by a file-stamped copy of the submission shall be the exclusive means used to determine
11 whether an objection and/or notice of intention to appear has been timely filed or served. In the event
12 that the postmark is illegible, the objection and/or notice to appear shall be deemed untimely unless it
13 is received by the Court within two (2) calendar days of the Objection/Exclusion Deadline.

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

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

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

24 a. The Agreement and all orders and findings entered in connection with the
25 Agreement shall become null and void and have no further force and effect, and shall not be used or
26 referred to for any purposes whatsoever in the Action or in any other case or controversy, and that in
27 such an event, the Agreement and all negotiations and proceedings related thereto shall be deemed to
28 be without prejudice to the rights of any and all parties, who shall be restored to their respective

1 positions as of the date of the Agreement;

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

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

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

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

22 13. Deadlines Regarding Final Approval and Fee Application. The deadline to submit
23 papers in support of Final Approval of the Agreement and the Fee Application, in addition to other
24 pertinent deadlines discussed herein and in the Agreement, are as follows:¹

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26 _____
27 ¹ The deadlines below assume this Order is entered on **July 18, 2022**. To calculate and affix certain
28 deadlines in advance of entry of this Order, the parties agree that the Order shall be deemed entered on
July 18, 2022 for settlement purposes so long as the Order is entered on or before that date.

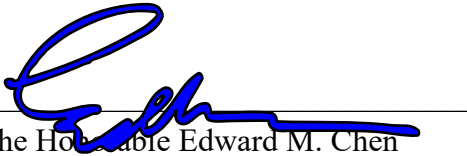
<u>Item</u>	<u>Deadline</u>
Funding of Administration Fund	August 8, 2022 (i.e., 21 days after Preliminary Approval)
Notice Deadline/Notice Date	August 8, 2022 (i.e., 21 days after Preliminary Approval)
Objection/Exclusion Deadline	October 7, 2022 (i.e., 81 days after Preliminary Approval)
Claim Deadline	October 7, 2022 (i.e., 81 days after Preliminary Approval)
Final Tally	October 14, 2022 (i.e., 7 days after Claim Deadline)
Plaintiffs' Motion for Attorneys' Fees and Incentive Awards	November 20, 2022 (i.e., 60 days prior to the date of Fairness Hearing)
Motion for Final Approval	November 20, 2022 (i.e., 60 days prior to date of Fairness Hearing)
Responses to Motion for Attorneys' Fees and Incentive Awards and Motion for Final Approval	December 20, 2022 (i.e., 30 days prior to date of Fairness Hearing)
Plaintiffs' and Defendant's Responses to Objections	January 5, 2022 (i.e., 14 days prior to date of Fairness Hearing)
Fairness Hearing	January 19, 2023 at 1:30 p.m. (i.e., the first available Thursday 180 days after Preliminary Approval (or such other date set by the Court))
Effective Date ²	January 19, 2023 (i.e., Date of Final Approval (assuming no objections))
Fund Payment for Settlement Awards	February 18, 2023 (i.e., No later than 30 days after Effective Date)
Payment of Attorneys' Fees and Incentive Awards	February 17, 2023 (i.e., No later than 21 business days after Effective Date)

² Dates tethered to entry of Final Approval are estimated and remain variable.

1 Distribution of Settlement Awards	April 19, 2023 (i.e., No later than 90 days after Effective Date)
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3 Post-Distribution Accounting	May 19, 2023 (i.e., 30 days after distribution of Settlement Awards)
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7 **IT IS SO ORDERED.**

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9 DATED: July 7, 2022

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11 The Honorable Edward M. Chen
12 United States District Judge
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