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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 OAKLAND DIVISION

18 IN RE LITHIUM ION BATTERIES
19 ANTITRUST LITIGATION

Case No. 13-MD-02420 YGR (DMR)

MDL No. 2420

20
21
22 This Documents Relates to:
23 ALL INDIRECT PURCHASER ACTIONS

INDIRECT PURCHASER PLAINTIFFS'
STATEMENT REGARDING
DISTRIBUTION OF SETTLEMENT
FUNDS

DATE ACTION FILED: Oct. 3, 2012

1 Indirect Purchaser Plaintiffs (“IPPs”) respectfully submit this statement regarding the
2 distribution of settlement funds, in response to the Court’s October 16, 2023 Order (ECF No.
3 2772). As IPPs previously reported, during the Phase I period, the claims administrators
4 experienced a high volume of requests and inquiries regarding the processing of settlement
5 payments. *See* ECF No. 2769 at 1. To ensure claimants and administrators had sufficient time to
6 resolve these issues, the deadline for claimants to make these requests was extended to September
7 29, 2023, and all such requests have now been resolved.

8 In its October 16 Order, the Court requested further information about concerns raised by
9 claimant Randy Johnson in a recent letter. *See* ECF No. 2772 at 1–2. IPPs address each of the
10 Court’s questions in turn.

11 **(1) Did class members experience widespread challenges arising out of claims**
12 **administrators’ email communications, including digital payments, being re-routed to**
13 **recipients’ spam folders?**

14 No. The claims administrators have seen nothing to suggest that class members
15 experienced widespread technical issues in receiving email communications regarding settlement
16 payments. As of September 29, 2023, the claims administrators received emails from 1,768 class
17 members requesting to have their payments resent based on initial difficulties accessing their
18 payments. These requests covered a range of situations, including class members who needed to
19 update an email address for the purpose of receiving their digital payment, class members who
20 changed their minds and wished to receive a physical check instead of a digital payment, and class
21 members who were unable to locate a payment notification. In total, these requests constitute
22 approximately *0.166 percent* of the 1,065,996 class members who requested digital payments via
23 email. Based on their prior experience, the claims administrators do not view this as indicative of
24 any widespread technical issues arising out of their email communications.

25 Moreover, initial data regarding the number of unclaimed payments—*i.e.*, payments for
26 which a claimant did not accept their funds, due to a range of factors that may have no relation to
27 spam filters—does not suggest any widespread technical problems. Specifically, the claims
28 administrators report that approximately 20,500 claimants (or 1.9 percent of all claimants who
requested digital payments) have not accepted their digital payments, representing an aggregate

1 value of approximately \$1.2 million (or 1.7 percent of the Net Settlement Fund).¹ These figures
2 are well within the normal range for claims-based programs such as this one.

3 Since receiving Mr. Johnson's letter, the claims administrators have attempted to contact
4 him twice regarding his individual request for payment. As of this filing, Mr. Johnson has not
5 responded. Provided Mr. Johnson timely responds and provides any necessary information, the
6 claims administrators plan to reissue and facilitate completion of his digital payment.²

7 **(2) If so, how extensive were these challenges, why were they not anticipated, *i.e.*, occur in
8 the first place, and what steps were taken or are being taken to address them?**

9 As explained above, class members have not experienced widespread challenges arising out
10 of the claims administrators' email communications. IPPs add that in sending payment
11 notifications to class members via email, the claims administrators utilized best practices to avoid
12 and minimize the risk of such communications being blocked or caught by internet service
13 providers and/or spam filters, similar to the methods they previously undertook to send settlement
14 notices to the class. For example, the payment notification emails used an embedded HTML text
15 format that was easy to read without graphics, tables, images, attachments, and other elements that
16 would increase the likelihood of being blocked. The emails were sent using a server known to
17 major email providers as one not used to send bulk spam or junk emails. And emails were sent in
18 small groups to avoid being flagged as spam or junk. *See* ECF No. 2671-1 ¶ 14 (describing
19 implementation of settlement notice plan).

20 **(3) Is there cause to reopen the first distribution of settlement funds to address technical
21 challenges relative to the claims administrators' email communications?**

22 No. Because the claims administrators see no evidence that widespread technical
23 difficulties occurred with respect to the email communications to class members, there is no cause
24 to reopen the first round of distribution on that basis. In order to maximize payments to class
25 members, IPPs propose an extended Phase I distribution effort for the approximately 20,500

26 ¹ The claims administrators have now sent those claimants at least four communications regarding
27 their digital payments—a warm-up/notification email, a payment email, and two reminder emails.

28 ² On October 23, 2023, a second claimant, A. Prince Farmer, filed an "objection" describing
difficulties receiving their digital payment, similar to those described by Mr. Johnson. ECF No.
2773. The claims administrators will also attempt to contact this claimant to resolve their inquiries.

1 claimants for whom digital payments were not accepted. This limited distribution would require
 2 reactivating those claimants' payments and sending a "Last Chance" email, as well as responding
 3 to a limited number of class members who have contacted the claims administrators since the
 4 September 29, 2023 deadline. Further, the claims administrators have agreed to undertake this
 5 effort at no additional cost to the class. Accordingly, IPPs propose extending the current schedule
 6 for distribution of settlement funds by seven weeks, as follows:

Event	Current Deadline (ECF No. 2772)	Proposed Modified Deadline
<p data-bbox="272 674 618 705">Report Results of Phase I</p> <p data-bbox="272 726 886 978">DigitalPay and Epiq to identify and report funds that have not yet been taken by payees. Final accounting report and reconciliation will be created, along with proposed Second Round Distribution amounts. A report on first round distribution will be filed with the Court with a proposed plan for Second Round Distribution.</p>	October 25, 2023	December 13, 2023
<p data-bbox="272 1014 776 1045">Phase II: Second Round Distribution</p> <p data-bbox="272 1066 922 1392">DigitalPay securely delivers a final pro rata payment to all payees who took a payment in the Initial Payment Offering (Phase I), as well as those that requested an updated method of payment in Phase I. This final phase delivers funds to all entitled claimants with the intent of taking the settlement balance as close to \$0 as possible (except for outstanding physical checks issued by Epiq).</p> <p data-bbox="272 1413 922 1476">Epiq to reissue checks with 30-day expiration to those who did not cash 60 days from first issuance.</p>	December 20, 2023	February 7, 2024
<p data-bbox="272 1518 492 1549">Final Reporting</p> <p data-bbox="272 1570 873 1633">DigitalPay to provide final report regarding the disbursement of the settlement funds.</p> <p data-bbox="272 1654 878 1717">Epiq to identify and report checks that have not been cashed 30 days from re-issuance.</p> <p data-bbox="272 1738 886 1843">Any remaining funds will be distributed to the Attorneys General for the Class jurisdictions for use in prosecuting consumer antitrust claims.</p>	January 12, 2024	March 1, 2024

1 Dated: October 23, 2023

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