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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 OAKLAND DIVISION
19

20 IN RE: LITHIUM ION BATTERIES
21 ANTITRUST LITIGATION

Case No. 13-MD-02420 YGR (DMR)
MDL NO. 2420

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24 This Document Relates to:
25 ALL INDIRECT PURCHASER ACTIONS
26

DECLARATION OF STEVEN N.
WILLIAMS IN SUPPORT OF INDIRECT
PURCHASER PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF
SETTLEMENT WITH HITACHI MAXELL,
LTD., MAXELL CORPORATION OF
AMERICA, AND NEC CORPORATION

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1 I, Steven N. Williams, declare as follows:

2 1. I am an attorney duly licensed to practice law in the State of California and
3 admitted to practice in this Court and the courts of the State of California. I am a partner with
4 Cotchett, Pitre & McCarthy, LLP (“CPM”), and Interim Co-Lead Counsel for Indirect Purchaser
5 Plaintiffs (“IPPs”). I make this Declaration in support of IPPs’ Motion for Preliminary Approval
6 of Settlements with Hitachi Maxell, Ltd and Maxell Corporation of America (collectively,
7 “Hitachi Maxell”), and NEC Corporation (“NEC”). The matters described are based on my
8 personal knowledge, and if called as a witness, I could and would testify competently thereto. I
9 make this declaration pursuant to 28 U.S.C. § 1746.

10 2. IPPs and Hitachi Maxell have discussed possible resolution of this litigation over
11 the past several months. The terms of the final settlement agreement between IPPs and Hitachi
12 Maxell were agreed to on December 16, 2016. The signed settlement agreement is attached hereto
13 as Exhibit A. Each class representative identified in IPPs’ Fourth Consolidated Amended
14 Complaint (“FCAC”) has reviewed and approved the terms of this settlement.¹

15 3. Four defendant families (Panasonic, Samsung/SDI, Sanyo, and Toshiba) remain in
16 the IPP case, including two of the largest defendants by market share – Samsung/SDI and Sanyo.²
17 Claims against these remaining defendants are not released by the IPPs’ settlements with Hitachi
18 Maxell and NEC.

19 4. The settlement with Hitachi Maxell is the third proposed settlement in the IPPs’
20 case. The first was the proposed settlement with the Sony defendants for \$19.5 million. The Court
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23 ¹ IPPs note that, as stated during the class certification hearing, Mr. Beson is no longer a class
representative.

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25 ² The remaining defendants in the IPP case are: Samsung SDI Co. Ltd.; Samsung SDI America,
26 Inc.; Panasonic Corporation; Panasonic Corporation of North America; Sanyo Electric Co., Ltd.;
Sanyo North America Corporation; NEC Tokin Corporation; and Toshiba Corporation.

1 heard argument on IPPs’ motion for final approval of the Sony settlement on November 8, 2016,
2 and it remains pending. The second was the settlement with LG Chem, which totals \$39 million
3 for the IPP class. That amount is approximately 31.6% of the IPPs’ estimated damages attributable
4 to LG Chem’s sales. IPPs’ proposed settlement with Hitachi Maxell, which totals \$3.45 million,
5 represents approximately 108% of the IPPs’ estimated damages attributable to Hitachi Maxell’s
6 sales.

7 5. IPPs propose to distribute the funds *pro rata* to class members based on: (1) the
8 number of approved purchases per class member of products containing lithium-ion cylindrical
9 batteries (“LIBs”) during the settlement class period; and (2) the number of valid claims filed.

10 6. The decision to enter these settlements is based on a thorough understanding of the
11 strengths and weaknesses of IPPs’ case.

12 7. IPPs have propounded and responded to multiple sets of discovery and appeared in
13 front of Magistrate Judge Ryu on various discovery issues. Plaintiffs have taken at least 25
14 depositions of defendants’ witnesses to date (both individual percipient witness depositions, as
15 well depositions of corporate representatives pursuant to Rule 30(b)(6) of the Federal Rules of
16 Civil Procedure). On information and belief, defendants have produced more than eight million
17 pages of documents from 273 document custodians and centralized files, and produced
18 voluminous electronic transactional data.³

19 8. The parties have fully briefed IPPs’ motion for class certification, which included
20 IPPs’ submission of the expert reports of Dr. Edward Leamer and Dr. Rosa Abrantes-Metz. IPPs’
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24 ³ See also the October 4, 2016 Declaration of Steven N. Williams in Support of IPPs’ Motion
25 for Final Approval Class Action Settlement with Sony (ECF No. 1504-1)(“October 4 Williams
26 Declaration”).
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1 experts performed extensive analysis of defendants’ transactional data and proposed a multivariate
2 regression model, in addition to using a regression model to measure pass-through on data from 71
3 non-parties, and from each defendant.

4 9. The representatives of the IPP class have been actively involved in the litigation of
5 this case. On information and belief, each representative has responded to over 22 interrogatories
6 and 28 document requests. Defendants also have deposed each representative at length.⁴ Interim
7 Co-Lead Counsel and supporting counsel prepared the class representatives for, and defended
8 them in, these depositions.

9 10. Because of this extraordinary service and perseverance, IPPs have requested
10 service awards for the class representatives in the amount of \$1,500 each. While IPPs request the
11 service awards be approved at the same time as final approval of these settlements, IPPs will defer
12 the payment of these awards until the distribution of funds to other class members takes place.

13 I declare under the penalty of perjury under the laws of the United States of America that
14 the foregoing is true and correct.

15 Executed on January 24, 2017 in Burlingame, California.

17 /s/ Steven N. Williams
18 Steven N. Williams

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25 ⁴ See also October 4 Williams Declaration.
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EXHIBIT A

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE LITHIUM ION BATTERIES
ANTITRUST LITIGATION

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

MDL No. 2420

This Documents Relates to:
ALL INDIRECT PURCHASER ACTIONS

SETTLEMENT AGREEMENT

DATE ACTION FILED: Oct. 3, 2012

1 WHEREAS, Indirect Purchaser Plaintiffs' Class Counsel have concluded, after due
2 investigation and after carefully considering the relevant circumstances, including, without
3 limitation, the claims asserted in the Indirect Purchaser Plaintiffs' Fourth Consolidated Amended
4 Class Action Complaint filed in MDL Docket No. 2420, the legal and factual defenses thereto and
5 the applicable law, that it is in the best interests of the Indirect Purchaser Plaintiffs and the Classes
6 to enter into this Agreement to avoid the uncertainties of litigation and to assure that the benefits
7 reflected herein are obtained for the Indirect Purchaser Plaintiffs and the Classes, and, further, that
8 Indirect Purchaser Plaintiffs' Class Counsel consider the Settlement set forth herein to be fair,
9 reasonable and adequate and in the best interests of the Indirect Purchaser Plaintiffs and the
10 Classes; and

11 WHEREAS, Hitachi Maxell, despite its belief that it is not liable for the claims asserted
12 against it in the Actions and that it has good defenses thereto, has nevertheless agreed to enter into
13 this Agreement to avoid the further expense, inconvenience and distraction of burdensome and
14 protracted litigation, and thereby to put to rest this controversy with respect to the Indirect
15 Purchaser Plaintiffs and the Classes and avoid the risks inherent in complex litigation.

16 **A G R E E M E N T**

17 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the
18 Settling Parties, by and through their attorneys of record, that, subject to the approval of the Court,
19 the Actions and the Released Claims as against Hitachi Maxell shall be finally and fully settled,
20 compromised and dismissed on the merits and with prejudice upon and subject to the terms and
21 conditions of this Agreement, as follows:

22 **A. Definitions**

23 1. As used in this Agreement the following terms have the meanings specified below:

- 24 (a) "Actions" means *In re Lithium Ion Batteries Antitrust Litigation – All*
25 *Indirect Purchaser Actions*, Case No. 13-MD-02420 YGR (DMR), and each
26 of the cases brought on behalf of indirect purchasers previously consolidated
27 and/or included as part of MDL Docket No. 2420.

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- (b) **“Affiliates”** means entities controlling, controlled by or under common control with a Releasee or Releasor.
- (c) **“Authorized Claimant”** means any Indirect Purchaser Plaintiff who, in accordance with the terms of this Agreement, is entitled to a distribution consistent with any Distribution Plan or order of the Court.
- (d) **“Class” or “Classes”** are generally defined as all persons and entities who, as residents of the United States and during the period from January 1, 2000 through May 31, 2011, indirectly purchased new for their own use and not for resale one of the following products which contained a lithium-ion cylindrical battery manufactured by one or more defendants or their co-conspirators: (i) a portable computer; (ii) a power tool; (iii) a camcorder; or (iv) a replacement battery for any of these products. Excluded from the class are any purchases of Panasonic-branded computers. Also excluded from the class are any federal, state, or local governmental entities, any judicial officers presiding over this action, members of their immediate families and judicial staffs, and any juror assigned to this action, but includes all non-federal and non-state governmental entities in California.
- (e) **“Class Counsel”** means the law firms of Cotchett, Pitre & McCarthy, LLP; Hagens Berman Sobol Shapiro LLP; and Lief Cabraser Heimann & Bernstein, LLP.
- (f) **“Class Member”** means a Person who or California government entity that falls within the definition of the Classes and does not timely and validly elect to be excluded from the Classes in accordance with the procedure to be established by the Court.
- (g) **“Court”** means the United States District Court for the Northern District of California.

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- (h) **“Distribution Plan”** means any plan or formula of allocation of the Gross Settlement Fund, to be approved by the Court, whereby the Net Settlement Fund shall in the future be distributed to Authorized Claimants. Any Distribution Plan is not part of this Agreement.
- (i) **“Effective Date”** means the first date by which all of the events and conditions specified in ¶ 35 of this Agreement have occurred and have been met.
- (j) **“Escrow Agent”** means the agent jointly designated by Class Counsel and Hitachi Maxell, and any successor agent.
- (k) **“Execution Date”** means the date of the last signature set forth on the signature pages below.
- (l) **“Final”** means, with respect to any order of court, including, without limitation, the Judgment, that such order represents a final and binding determination of all issues within its scope and is not subject to further review on appeal or otherwise. Without limitation, an order becomes “Final” when: (a) no appeal has been filed and the prescribed time for commencing any appeal has expired; or (b) an appeal has been filed and either (i) the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired, or (ii) the order has been affirmed in its entirety and the prescribed time, if any, for commencing any further appeal has expired. For purposes of this Agreement, an “appeal” includes appeals as of right, discretionary appeals, interlocutory appeals, proceedings involving writs of certiorari or mandamus, and any other proceedings of like kind. Any appeal or other proceeding pertaining solely to any order adopting or approving a Distribution Plan, and/or to any order issued with respect to an application for attorneys’ fees and expenses

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consistent with this Agreement, shall not in any way delay or preclude the Judgment from becoming Final.

- (m) **“Finished Product”** means any product and/or electronic device that contains a Lithium Ion Battery or Lithium Ion Battery Pack, including but not limited to laptop PCs, notebook PCs, netbook computers, tablet computers, mobile phones, smart phones, cameras, camcorders, digital video cameras, digital audio players and power tools.
- (n) **“Gross Settlement Fund”** means the Settlement Amount plus any interest that may accrue.
- (o) **“Indirect Purchaser Plaintiffs”** means Christopher Hunt, John Kopp, Drew Fennelly, Cindy Booze, Matthew Ence, Caleb Batey, Piya Robert Rojanasathit, Steve Bugge, Tom Pham, Bradley Seldin, Patrick McGuinness, Jason Ames, William Cabral, Donna Shawn, David Beson, Joseph O’Daniel, David Tolchin, Matt Bryant, Sheri Harmon, Christopher Bessette, Linda Lincoln, Bradley Van Patten, the City of Palo Alto and the City of Richmond, as well as any other Person added as an Indirect Purchaser Plaintiff in the Actions.
- (p) **“Judgment”** means the order of judgment and dismissal of the Actions with prejudice.
- (q) **“Lithium Ion Battery”** means a Lithium Ion Battery Cell or Lithium Ion Battery Pack.
- (r) **“Lithium Ion Battery Cell”** means cylindrical, prismatic or polymer cell used for the storage of power that is rechargeable and uses lithium ion technology.
- (s) **“Lithium Ion Battery Pack”** means Lithium Ion Cells that have been assembled into a pack, regardless of the number of Lithium Ion Cells contained in such packs.

- 1 (t) “**MDL Defendants**” means LG Chem, Ltd.; LG Chem America, Inc.;
2 Samsung SDI Co. Ltd.; Samsung SDI America, Inc.; Panasonic Corporation;
3 Panasonic Corporation of North America; Sanyo Electric Co., Ltd.; Sanyo
4 North America Corporation; Sanyo GS Soft Energy Co. Ltd.; Sony
5 Corporation; Sony Energy Devices Corporation; Sony Electronics Inc.;
6 Hitachi Maxell, Ltd.; Maxell Corporation of America; GS Yuasa
7 Corporation; NEC Corporation; NEC Tokin Corporation; Toshiba
8 Corporation; A&T Battery Corporation; and Toshiba America Electronic
9 Components Inc.
- 10 (u) “**Net Settlement Fund**” means the Gross Settlement Fund, less the
11 payments set forth in ¶ 19(a)-(e).
- 12 (v) “**Notice and Administrative Costs**” means the reasonable sum of money
13 not in excess of two hundred fifty thousand U.S. Dollars (\$250,000.00) to be
14 paid out of the Gross Settlement Fund to pay for notice to the Classes and
15 related administrative costs.
- 16 (w) “**Notice and Claims Administrator**” means the claims administrator(s) to
17 be selected by Class Counsel and approved by the Court.
- 18 (x) “**Person(s)**” means an individual, corporation, limited liability corporation,
19 professional corporation, limited liability partnership, partnership, limited
20 partnership, association, joint stock company, estate, legal representative,
21 trust, unincorporated association, government or any political subdivision or
22 agency thereof, and any business or legal entity and any spouses, heirs,
23 predecessors, successors, representatives or assignees of any of the
24 foregoing.
- 25 (y) “**Proof of Claim and Release**” means the form to be sent to the Classes,
26 upon further order(s) of the Court, by which any member of the Classes may
27 make claims against the Gross Settlement Fund.

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(z) **“Released Claims”** means any and all manner of claims, demands, rights, actions, suits, causes of action, whether class, individual or otherwise in nature, fees, costs, penalties, injuries, damages whenever incurred and liabilities of any nature whatsoever, known or unknown (including, but not limited to, **“Unknown Claims”**), foreseen or unforeseen, suspected or unsuspected, asserted or unasserted, contingent or non-contingent, in law or in equity, under the laws of any jurisdiction, which Releasors or any of them, whether directly, representatively, derivatively, or in any other capacity, ever had, now have or hereafter can, shall or may have, relating in any way to any conduct prior to the date of this Agreement and arising out of or related in any way in whole or in part to any facts, circumstances, acts or omissions arising out of or related to (1) any purchase or sale of Lithium Ion Batteries (including Lithium Ion Batteries contained in Finished Products) up through May 31, 2011; or (2) any agreement, combination or conspiracy to raise, fix, maintain or stabilize the prices of Lithium Ion Batteries (including Lithium Ion Batteries contained in Finished Products) or restrict, reduce, alter or allocate the supply, quantity or quality of Lithium Ion Batteries (including Lithium Ion Batteries contained in Finished Products) or concerning the development, manufacture, supply, distribution, transfer, marketing, sale or pricing of Lithium Ion Batteries (including Lithium Ion Batteries contained in Finished Products), or any other conduct alleged in the Actions or relating to restraint of competition that could have been or hereafter could be alleged against the Releasees relating to Lithium Ion Batteries; or (3) any other restraint of competition relating to Lithium Ion Batteries that could be asserted as a violation of the Sherman Act or any other antitrust, unjust enrichment, unfair competition, unfair practices, trade practices, price

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discrimination, unitary pricing, racketeering, contract, civil conspiracy or consumer protection law, whether under federal, state, local or foreign law.

(aa) **“Releasees”** means Hitachi Maxell and their former, present and future direct and indirect parents, subsidiaries and Affiliates, and their respective former, present and future officers, directors, employees, managers, members, partners, agents, shareholders (in their capacity as shareholders), attorneys and legal representatives, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing.

(bb) **“Releasers”** means the Indirect Purchaser Plaintiffs and each and every Class Member on their own behalf and on behalf of their respective direct and indirect parents, subsidiaries and Affiliates, their former, present or future officers, directors, employees, agents and legal representatives, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing.

(cc) **“Settlement”** means the settlement of the Released Claims set forth herein.

(dd) **“Settlement Amount”** means Three Million Four-Hundred and Fifty Thousand U.S. Dollars (\$3,450,000).

(ee) **“Settling Parties”** means, collectively, Hitachi Maxell and the Indirect Purchaser Plaintiffs (on behalf of themselves and the Classes).

(ff) **“Unknown Claims”** means any Released Claim that an Indirect Purchaser Plaintiff and/or Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Releasees that if known by him, her or it, might have affected his, her or its settlement with and release of the Releasees, or might have affected his, her or its decision not to object to or opt out of this Settlement. Such Unknown Claims include claims that are the subject of California Civil Code § 1542 and equivalent, similar or

1 comparable laws or principles of law. California Civil Code § 1542
2 provides:

3 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
4 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
5 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING
6 THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST
7 HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT
8 WITH THE DEBTOR.

9 **B. Preliminary Approval Order, Notice Order and Settlement Hearing**

10 **2. Reasonable Best Efforts to Effectuate This Settlement.** The Settling Parties: (a)
11 acknowledge that it is their intent to consummate this Agreement; and (b) agree to cooperate to the
12 extent reasonably necessary to effectuate and implement the terms and conditions of this
13 Agreement and to exercise their best efforts to accomplish the terms and conditions of this
14 Agreement.

15 **3. Motion for Preliminary Approval.** At a time to be determined by Class Counsel,
16 and subject to prior notice of ten (10) days to Hitachi Maxell, Class Counsel shall submit this
17 Agreement to the Court and shall apply for entry of a preliminary approval order (“**Preliminary**
18 **Approval Order**”), requesting, *inter alia*, preliminary approval (“**Preliminary Approval**”) of the
19 Settlement. The motion shall include (a) the proposed Preliminary Approval Order, and (b) a
20 definition of the proposed settlement classes pursuant to Federal Rule of Civil Procedure 23. The
21 text of the foregoing items (a)-(b) shall be agreed upon by the Settling Parties.

22 **4. Proposed Form of Notice.** At a time to be determined in their sole discretion but
23 no later than any other class settlement entered into by Class Counsel, Class Counsel shall submit
24 to the Court for approval a proposed form of, method for and schedule for dissemination of notice
25 to the Classes. To the extent practicable and to the extent consistent with this paragraph, Class
26 Counsel may seek to coordinate this notice program with other settlements that may be reached in
27 the Actions in order to reduce the expense of notice. This motion shall recite and ask the Court to
28 find that the proposed form of and method for dissemination of notice to the Classes constitutes
valid, due and sufficient notice to the Classes, constitutes the best notice practicable under the

1 circumstances, and complies fully with the requirements of Federal Rule of Civil Procedure 23.
2 Class Counsel shall provide Hitachi Maxell with seven days advance notice of the text of the
3 notice(s) to be provided to the Classes, and shall consider in good faith any concerns or suggestions
4 expressed by Hitachi Maxell. Hitachi Maxell shall be responsible for providing all notices required
5 by the Class Action Fairness Act of 2005 to be provided to state attorneys general or to the United
6 States of America.

7 **5. Motion for Final Approval and Entry of Final Judgment.** Not less than thirty-
8 five (35) days prior to the date set by the Court to consider whether this Settlement should be
9 finally approved, Class Counsel shall submit a motion for final approval (“**Final Approval**”) of the
10 Settlement by the Court. The Settling Parties shall jointly seek entry of the final approval order
11 (“**Final Approval Order**”) and Judgment:

- 12 (a) certifying the Classes, pursuant to Federal Rule of Civil Procedure 23, solely
13 for purposes of this Settlement;
- 14 (b) fully and finally approving the Settlement contemplated by this Agreement
15 and its terms as being fair, reasonable and adequate within the meaning of
16 Federal Rule of Civil Procedure 23 and directing its consummation pursuant
17 to its terms and conditions;
- 18 (c) finding that the notice given to the Class Members constituted the best notice
19 practicable under the circumstances and complies in all respects with the
20 requirements of Federal Rule of Civil Procedure 23 and due process;
- 21 (d) directing that the Actions be dismissed with prejudice as to Hitachi Maxell
22 and, except as provided for herein, without costs;
- 23 (e) discharging and releasing the Releasees from all Released Claims;
- 24 (f) permanently barring and enjoining the institution and prosecution, by
25 Indirect Purchaser Plaintiffs and Class Members, of any other action against
26 the Releasees in any court asserting any claims related in any way to the
27 Released Claims;

- 1 (g) reserving continuing and exclusive jurisdiction over the Settlement,
- 2 including all future proceedings concerning the administration,
- 3 consummation and enforcement of this Agreement;
- 4 (h) determining pursuant to Federal Rule of Civil Procedure 54(b) that there is
- 5 no just reason for delay and directing entry of a final judgment as to Hitachi
- 6 Maxell; and
- 7 (i) containing such other and further provisions consistent with the terms of this
- 8 Agreement to which the parties expressly consent in writing.

9 Class Counsel also will request that the Court approve the proposed Distribution Plan and
10 application for attorneys' fees and reimbursement of expenses (as described below).

11 **6. Stay Order.** Upon the date that the Court enters an order preliminarily approving
12 the Settlement, Indirect Purchaser Plaintiffs and members of the Classes shall be barred and
13 enjoined from commencing, instituting or continuing to prosecute any action or any proceeding in
14 any court of law or equity, arbitration tribunal, administrative forum or other forum of any kind
15 worldwide based on the Released Claims. Nothing in this provision shall prohibit the Indirect
16 Purchaser Plaintiffs or Class Counsel from continuing to participate in discovery in the Actions that
17 is initiated by other plaintiffs or that is subject to and consistent with the cooperation provisions set
18 forth in ¶¶ 28-34.

19 **C. Releases**

20 **7. Released Claims.** Upon the Effective Date, the Releasors (regardless of whether
21 any such Releasor ever seeks or obtains any recovery by any means, including, without limitation,
22 by submitting a Proof of Claim and Release, or by seeking any distribution from the Gross
23 Settlement Fund) shall be deemed to have, and by operation of the Judgment shall have fully,
24 finally and forever released, relinquished and discharged all Released Claims against the Releasees.

25 **8. No Future Actions Following Release.** The Releasors shall not, after the Effective
26 Date, seek (directly or indirectly) to commence, institute, maintain or prosecute any suit, action or
27 complaint or collect from or proceed against Hitachi Maxell or any other Releasee (including
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1 pursuant to the Actions) based on the Released Claims in any forum worldwide, whether on his,
2 her or its own behalf or as part of any putative, purported or certified class of purchasers or
3 consumers.

4 **9. Covenant Not to Sue.** Releasors hereby covenant not to sue the Releasees with
5 respect to any such Released Claims. Releasors shall be permanently barred and enjoined from
6 instituting, commencing or prosecuting against the Releasees any claims based in whole or in part
7 on the Released Claims. The parties contemplate and agree that this Agreement may be pleaded as
8 a bar to a lawsuit, and an injunction may be obtained, preventing any action from being initiated or
9 maintained in any case sought to be prosecuted on behalf of any Releasors with respect to the
10 Released Claims.

11 **10. Waiver of California Civil Code § 1542 and Similar Laws.** The Releasors
12 acknowledge that, by executing this Agreement, and for the consideration received hereunder, it is
13 their intention to release, and they are releasing, all Released Claims, even Unknown Claims. In
14 furtherance of this intention, the Releasors expressly waive and relinquish, to the fullest extent
15 permitted by law, any rights or benefits conferred by the provisions of California Civil Code §
16 1542, as set forth in ¶ 1(ff), or equivalent, similar or comparable laws or principles of law. The
17 Releasors acknowledge that they have been advised by Class Counsel of the contents and effects of
18 California Civil Code § 1542, and hereby expressly waive and release with respect to the Released
19 Claims any and all provisions, rights and benefits conferred by California Civil Code § 1542 or by
20 any equivalent, similar or comparable law or principle of law in any jurisdiction. The Releasors
21 may hereafter discover facts other than or different from those which they know or believe to be
22 true with respect to the subject matter of the Released Claims, but the Releasors hereby expressly
23 waive and fully, finally and forever settle and release any known or unknown, suspected or
24 unsuspected, foreseen or unforeseen, asserted or unasserted, contingent or non-contingent, and
25 accrued or unaccrued claim, loss or damage with respect to the Released Claims, whether or not
26 concealed or hidden, without regard to the subsequent discovery or existence of such additional or
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1 different facts. The release of unknown, unanticipated, unsuspected, unforeseen, and unaccrued
2 losses or claims in this paragraph is not a mere recital.

3 **11. Claims Excluded from Release.** Notwithstanding the foregoing, the releases
4 provided herein shall not release claims against Hitachi Maxell for product liability, breach of
5 contract, breach of warranty or personal injury, or any other claim unrelated to the allegations in
6 the Actions. For avoidance of doubt, this Agreement does not release claims arising from restraints
7 of competition directed at goods other than (a) Lithium Ion Batteries, or (b) Lithium Ion Batteries
8 contained in Finished Products. Additionally, the releases provided herein shall not release any
9 claims to enforce the terms of this Agreement.

10 **D. Settlement Fund**

11 **12. Settlement Payment.** Hitachi Maxell shall pay by wire transfer the Settlement
12 Amount to the Escrow Agent pursuant to mutually agreeable escrow instructions within twenty-one
13 (21) days after issuance of a Preliminary Approval Order. This amount constitutes the total amount
14 of payment that Hitachi Maxell is required to make in connection with this Settlement Agreement.
15 This amount shall not be subject to reduction, and upon the occurrence of the Effective Date, no
16 funds may be returned to Hitachi Maxell. The Escrow Agent shall only act in accordance with the
17 mutually agreed escrow instructions.

18 **13. Disbursements Prior to Effective Date.** No amount may be disbursed from the
19 Gross Settlement Fund unless and until the Effective Date, except that: (a) Notice and
20 Administrative Costs, which may not exceed two hundred fifty thousand U.S. Dollars
21 (\$250,000.00), may be paid from the Gross Settlement Fund as they become due; (b) Taxes and
22 Tax Expenses (as defined in ¶ 17(b) below) may be paid from the Gross Settlement Fund as they
23 become due; and (c) attorneys' fees and reimbursement of litigation costs and expenses, as may be
24 ordered by the Court, may be disbursed during the pendency of any appeals which may be taken
25 from the judgment to be entered by the Court finally approving this Settlement. Class Counsel will
26 attempt in good faith to minimize the amount of Notice and Administrative Costs and may seek to
27 coordinate the notice described herein with other settlements in these Actions.

1 **14. Refund by Escrow Agent.** If the Settlement as described herein is finally
2 disapproved by any court, or it is terminated as provided herein, or the Judgment is overturned on
3 appeal or by writ, the Gross Settlement Fund, including the Settlement Amount and all interest
4 earned on the Settlement Amount while held in escrow, excluding only Notice and Administrative
5 Costs, Taxes and Tax Expenses (as defined herein), shall be refunded, reimbursed and repaid by
6 the Escrow Agent to Hitachi Maxell within five (5) business days after receiving notice pursuant to
7 ¶ 42 below.

8 **15. Refund by Class Counsel.** If the Settlement as described herein is finally
9 disapproved by any court, or it is terminated as provided herein, or the Judgment is overturned on
10 appeal or by writ, any attorneys' fees and costs previously paid pursuant to this Agreement (as well
11 as interest on such amounts) shall be refunded, reimbursed and repaid by Class Counsel to Hitachi
12 Maxell within thirty (30) business days after receiving notice pursuant to ¶ 42 below.

13 **16. No Additional Payments by Hitachi Maxell.** Under no circumstances will Hitachi
14 Maxell be required to pay more or less than the Settlement Amount pursuant to this Agreement and
15 the Settlement set forth herein. For purposes of clarification, the payment of any Fee and Expense
16 Award (as defined in ¶ 25 below), the Notice and Administrative Costs, and any other costs
17 associated with the implementation of this Settlement Agreement shall be exclusively paid from
18 the Settlement Amount.

19 **17. Taxes.** The Settling Parties and the Escrow Agent agree to treat the Gross
20 Settlement Fund as being at all times a "qualified settlement fund" within the meaning of Treas.
21 Reg. §1.468B-1. The Escrow Agent shall timely make such elections as necessary or advisable to
22 carry out the provisions of this paragraph, including the "relation-back election" (as defined in
23 Treas. Reg. §1.468B-1) back to the earliest permitted date. Such elections shall be made in
24 compliance with the procedures and requirements contained in such regulations. It shall be the
25 responsibility of the Escrow Agent to prepare and deliver timely and properly the necessary
26 documentation for signature by all necessary parties, and thereafter to cause the appropriate filing
27 to occur.

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- (a) For the purpose of §468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the Escrow Agent. The Escrow Agent shall satisfy the administrative requirements imposed by Treas. Reg. §1.468B-2 by, *e.g.*, (i) obtaining a taxpayer identification number, (ii) satisfying any information reporting or withholding requirements imposed on distributions from the Gross Settlement Fund, and (iii) timely and properly filing applicable federal, state and local tax returns necessary or advisable with respect to the Gross Settlement Fund (including, without limitation, the returns described in Treas. Reg. §1.468B-2(k)) and paying any taxes reported thereon. Such returns (as well as the election described in this paragraph) shall be consistent with the provisions of this paragraph and in all events shall reflect that all Taxes as defined in ¶ 17(b) below on the income earned by the Gross Settlement Fund shall be paid out of the Gross Settlement Fund as provided in ¶ 19 hereof;

- (b) The following shall be paid out of the Gross Settlement Fund: (i) all taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Gross Settlement Fund, including, without limitation, any taxes or tax detriments that may be imposed upon Hitachi Maxell or its counsel with respect to any income earned by the Gross Settlement Fund for any period during which the Gross Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes (collectively, “Taxes”); and (ii) all expenses and costs incurred in connection with the operation and implementation of this paragraph, including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this paragraph (collectively, “Tax

1 **Expenses**”). In all events neither Hitachi Maxell nor its counsel shall have
2 any liability or responsibility for the Taxes or the Tax Expenses. With funds
3 from the Gross Settlement Fund, the Escrow Agent shall indemnify and hold
4 harmless Hitachi Maxell and its counsel for Taxes and Tax Expenses
5 (including, without limitation, Taxes payable by reason of any such
6 indemnification). Further, Taxes and Tax Expenses shall be treated as, and
7 considered to be, a cost of administration of the Gross Settlement Fund and
8 shall timely be paid by the Escrow Agent out of the Gross Settlement Fund
9 without prior order from the Court, and the Escrow Agent shall be obligated
10 (notwithstanding anything herein to the contrary) to withhold from
11 distribution to Authorized Claimants any funds necessary to pay such
12 amounts, including the establishment of adequate reserves for any Taxes and
13 Tax Expenses (as well as any amounts that may be required to be withheld
14 under Treas. Reg. §1.468B-2(1)(2)); neither Hitachi Maxell nor its counsel is
15 responsible therefor, nor shall they have any liability therefor. The Settling
16 Parties agree to cooperate with the Escrow Agent, each other, their tax
17 attorneys and their accountants to the extent reasonably necessary to carry
18 out the provisions of this paragraph.

19 **E. Administration and Distribution of Gross Settlement Fund**

20 **18. Time to Appeal.** The time to appeal from an approval of the Settlement shall
21 commence upon the Court’s entry of the Judgment regardless of whether or not either the
22 Distribution Plan or an application for attorneys’ fees and expenses has been submitted to the Court
23 or resolved.

24 **19. Distribution of Gross Settlement Fund.** Upon further orders of the Court, the
25 Notice and Claims Administrator, subject to such supervision and direction of the Court and/or
26 Class Counsel as may be necessary or as circumstances may require, shall administer the claims
27 submitted by members of the Classes and shall oversee distribution of the Gross Settlement Fund
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1 to Authorized Claimants pursuant to the Distribution Plan. Subject to the terms of this Agreement
2 and any order(s) of the Court, the Gross Settlement Fund shall be applied as follows:

- 3 (a) To pay all costs and expenses reasonably and actually incurred in connection
4 with providing notice to the Classes in connection with administering and
5 distributing the Net Settlement Fund to Authorized Claimants, and in
6 connection with paying escrow fees and costs, if any;
- 7 (b) To pay all costs and expenses, if any, reasonably and actually incurred in
8 soliciting claims and assisting with the filing and processing of such claims;
- 9 (c) To pay the Taxes and Tax Expenses as defined herein;
- 10 (d) To pay any Fee and Expense Award that is allowed by the Court, subject to
11 and in accordance with the Agreement; and
- 12 (e) To distribute the balance of the Net Settlement Fund to Authorized
13 Claimants as allowed by the Agreement, any Distribution Plan or order of
14 the Court.

15 **20. Distribution of Net Settlement Fund.** Upon the Effective Date and thereafter, and
16 in accordance with the terms of this Agreement, the Distribution Plan and such further approval
17 and further order(s) of the Court as may be necessary or as circumstances may require, the Net
18 Settlement Fund shall be distributed to Authorized Claimants, subject to and in accordance with the
19 following:

- 20 (a) Each member of the Classes who claims to be an Authorized Claimant shall
21 be required to submit to the Notice and Claims Administrator a completed
22 Proof of Claim and Release in such form as shall be approved by the Court;
- 23 (b) Except as otherwise ordered by the Court, each member of the Classes who
24 fails to submit a Proof of Claim and Release within such period as may be
25 ordered by the Court, or otherwise allowed, shall be forever barred from
26 receiving any payments pursuant to this Agreement and the Settlement set
27 forth herein;

1 (c) The Net Settlement Fund shall be distributed to Authorized Claimants
2 substantially in accordance with a Distribution Plan to be approved by the
3 Court. Any such Distribution Plan is not a part of this Agreement. No funds
4 from the Net Settlement Fund shall be distributed to Authorized Claimants
5 until after the Effective Date; and

6 (d) All Persons who fall within the definition of the Classes who do not timely
7 and validly request to be excluded from the Classes shall be subject to and
8 bound by the provisions of this Agreement, the releases contained herein,
9 and the Judgment with respect to all Released Claims, regardless of whether
10 such Persons seek or obtain by any means, including, without limitation, by
11 submitting a Proof of Claim and Release or any similar document, any
12 distribution from the Gross Settlement Fund or the Net Settlement Fund.

13 **21. No Liability for Distribution of Settlement Funds.** Neither the Releasees nor
14 their counsel shall have any responsibility for, interest in or liability whatsoever with respect to the
15 distribution of the Gross Settlement Fund; the Distribution Plan; the determination, administration
16 or calculation of claims; the Settlement Fund's qualification as a "qualified settlement fund"; the
17 payment or withholding of Taxes or Tax Expenses; the distribution of the Net Settlement Fund; or
18 any losses incurred in connection with any such matters. The Releasers hereby fully, finally and
19 forever release, relinquish and discharge the Releasees and their counsel from any and all such
20 liability. No Person shall have any claim against Class Counsel or the Notice and Claims
21 Administrator based on the distributions made substantially in accordance with the Agreement and
22 the Settlement contained herein, the Distribution Plan or further orders of the Court.

23 **22. Balance Remaining in Net Settlement Fund.** If there is any balance remaining in
24 the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), Class
25 Counsel may reallocate such balance among Authorized Claimants in an equitable and economic
26 fashion, distribute remaining funds through *cy pres*, or allow the money to escheat to federal or
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1 state governments, subject to Court approval. In no event shall the Net Settlement Fund revert to
2 Hitachi Maxell.

3 **23. Distribution Plan Not Part of Settlement.** It is understood and agreed by the
4 Settling Parties that any Distribution Plan, including any adjustments to any Authorized Claimant's
5 claim, is not a part of this Agreement and is to be considered by the Court separately from the
6 Court's consideration of the fairness, reasonableness and adequacy of the Settlement set forth in
7 this Agreement, and any order or proceedings relating to the Distribution Plan shall not operate to
8 terminate or cancel this Agreement or affect the finality of the Judgment, the Final Approval Order,
9 or any other orders entered pursuant to this Agreement. The time to appeal from an approval of the
10 Settlement shall commence upon the Court's entry of the Judgment regardless of whether either the
11 Distribution Plan or an application for attorneys' fees and expenses has been submitted to the Court
12 or approved.

13 **F. Attorneys' Fees and Reimbursement of Expenses**

14 **24. Fee and Expense Application.** Class Counsel may submit an application or
15 applications (the "**Fee and Expense Application**") for distributions from the Gross Settlement
16 Fund for: (a) an award of attorneys' fees; plus (b) reimbursement of expenses incurred in
17 connection with prosecuting the Actions; plus (c) any interest on such attorneys' fees and expenses
18 (until paid) at the same rate and for the same periods as earned by the Settlement Fund, as
19 appropriate, and as may be awarded by the Court.

20 **25. Payment of Fee and Expense Award.** Any amounts that are awarded by the Court
21 pursuant to the above paragraph (the "**Fee and Expense Award**") shall be paid from the Gross
22 Settlement Fund consistent with the provisions of this Agreement.

23 **26. Award of Fees and Expenses Not Part of Settlement.** The procedure for, and the
24 allowance or disallowance by the Court of, the Fee and Expense Application are not part of the
25 Settlement set forth in this Agreement, and are to be considered by the Court separately from the
26 Court's consideration of the fairness, reasonableness and adequacy of the Settlement set forth in
27 this Agreement. Any order or proceeding relating to the Fee and Expense Application, or any
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1 appeal from any Fee and Expense Award or any other order relating thereto or reversal or
2 modification thereof, shall not operate to terminate or cancel this Agreement, or affect or delay the
3 finality of the Judgment and the Settlement of the Actions as set forth herein. No order of the
4 Court or modification or reversal on appeal of any order of the Court concerning any Fee and
5 Expense Award or Distribution Plan shall constitute grounds for cancellation or termination of this
6 Agreement.

7 **27. No Liability for Fees and Expenses of Class Counsel.** Neither the Releasees nor
8 their counsel shall have any responsibility for or liability whatsoever with respect to any
9 payment(s) to Class Counsel pursuant to this Agreement and/or to any other Person who may assert
10 some claim thereto or any Fee and Expense Award that the Court may make in the Actions, other
11 than as set forth in this Agreement.

12 **G. Cooperation**

13 **28. Cooperation as Consideration.** In return for the release, relinquishment and
14 discharge provided herein, Hitachi Maxell agrees to pay the Settlement Amount and agrees to
15 provide cooperation to Indirect Purchaser Plaintiffs as set forth specifically below. Except as
16 otherwise specified herein, all cooperation shall commence within ten (10) business days after
17 Preliminary Approval by the Court of this Agreement.

18 **29. Cooperation Subject to and Consistent with Prior Obligations.** Hitachi Maxell
19 and the Indirect Purchaser Plaintiffs shall not be obligated to provide cooperation that would
20 violate an applicable court order or Hitachi Maxell's commitments to the United States Department
21 of Justice or any other governmental entity. Additionally, Indirect Purchaser Plaintiffs and Hitachi
22 Maxell will take reasonable efforts to accommodate the other's efforts to minimize duplication in
23 the providing of any cooperation.

24 **30. Cooperation.**

25 (a) Hitachi Maxell shall respond to all outstanding discovery that was served by
26 Indirect Purchaser Plaintiffs as of August 1, 2016.

27 (b) Within a reasonable period of time (but no more than thirty (30) days) after
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submission by Class Counsel to the Court of a proposed form of notice to the Classes, Hitachi Maxell's counsel shall meet with Class Counsel for the purpose of identifying any Hitachi Maxell documents that have been produced as of that time that relate to and/or support the allegations in the Fourth Consolidated Amended Class Action Complaint or that show Hitachi Maxell Lithium Ion Battery sales, pricing, capacity or production; provided, however, that such obligation shall not require Hitachi Maxell to provide information protected by the attorney-client privilege, attorney work-product doctrine and/or other similar privileges and shall not waive any such protections or privileges. Further, such communications shall be considered privileged settlement discussions pursuant to Federal Rule of Evidence 408 and similar provisions.

(c) Hitachi Maxell will produce all English translations of any documents that it provided to the United States Department of Justice in connection with its investigation of potential collusion concerning Lithium Ion Batteries, to the extent they exist, or certify its previous production of the same, within fifteen (15) business days after Preliminary Approval by the Court of this Agreement.

(d) Hitachi Maxell agrees that Class Counsel may notice up to three depositions and also may ask questions at depositions of Hitachi Maxell witnesses noticed by other parties in the Actions. For the aforementioned employees to be provided for deposition, Hitachi Maxell will provide proffers, upon request, for each witness in advance of deposition testimony. Except as specifically provided for herein, any such depositions shall be conducted in accordance with the procedures set forth in the Deposition Protocol and shall count toward the maximum of twelve (12) depositions for Hitachi Maxell as a defendant group as set forth in the Deposition Protocol. Indirect Purchaser

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Plaintiffs agree that they will not notice the deposition of the President of Hitachi Maxell, Ltd. as of the Execution Date.

(e) All discovery produced by Hitachi Maxell (including but not limited to declarations, documents, data or any other responses to discovery) to any other party in the Actions, Hitachi Maxell will produce the same to Class Counsel.

(f) Each of the Settling Parties shall cooperate in good faith to authenticate, to the extent possible, documents and/or things produced in the Actions, whether by declarations, affidavits, depositions, hearings and/or trials as may be necessary for the Actions, without the need for the other party to issue any subpoenas, letters rogatory, letters of request or formal discovery requests to the other.

(g) Hitachi Maxell will respond to reasonable requests (including, if necessary, by providing reasonable telephonic access to appropriate employees) for clarification of the transactional, production and cost data that Hitachi Maxell produced in the Actions prior to the Execution Date.

(h) Hitachi Maxell will inform Class Counsel if Hitachi Maxell becomes aware that a person identified by Indirect Purchaser Plaintiffs as a deponent pursuant to the foregoing paragraph 30(d) intends to leave, or does leave, his or her employment at Hitachi Maxell during the discovery period in the Actions, to the extent reasonably possible.

(i) Upon reasonable notice after Preliminary Approval of this Agreement, Hitachi Maxell shall use its best efforts to make available up to two (2) of its employees identified by Indirect Purchaser Plaintiffs for interviews and/or testimony at trial, via videoconference or at a mutually agreed upon location or locations (except for testimony at trial, which shall be at the United States District Court for the Northern District of California). For the

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aforementioned employees to be provided for trial, Hitachi Maxell will provide proffers, upon request, for each witness in advance of trial testimony. Indirect Purchaser Plaintiffs agree that they will not request an interview, or call for trial testimony, the President of Hitachi Maxell, Ltd. as of the Execution Date.

(j) If any document protected by the attorney-client privilege, attorney work-product protection, joint defense or any other protection, privilege, or immunity is accidentally or inadvertently produced under this Paragraph, the document shall promptly be destroyed and/or returned to Hitachi Maxell, and its production shall in no way be construed to have waived any privilege or protection attached to such document.

(k) Indirect Purchaser Plaintiffs and Class Counsel agree they will not use the information provided by Hitachi Maxell or their representatives under this Paragraph for any purpose other than the pursuit of the Action, and will not publicize the information beyond what is reasonably necessary for the prosecution of the Action or as otherwise required by law. Any documents and other information provided will be deemed "Highly Confidential" and subject to the Stipulated Protective Order entered in the Actions on May 17, 2013 (ECF No. 193) ("Protective Order") as if they had been produced in response to discovery requests and so designated.

31. Confidentiality. Indirect Purchaser Plaintiffs and Class Counsel agree that they will not use the information provided by Hitachi Maxell or its representatives for any purpose other than pursuit of the Actions, and will not publicize the information beyond what is reasonably necessary for the prosecution of the Actions. Any information provided pursuant to this Agreement shall be subject to the Protective Order as if produced in response to discovery requests and so designated.

1 **32. Other Discovery.** Upon the Execution Date, Hitachi Maxell and Releasees need not
2 respond to formal discovery from Indirect Purchaser Plaintiffs or otherwise participate in the
3 Actions. Further, neither Hitachi Maxell nor the Indirect Purchaser Plaintiffs shall file motions
4 against the other or initiate or participate in any discovery, motion or proceeding directly adverse to
5 the other in connection with the Actions, except as specifically provided for herein, and Hitachi
6 Maxell and the Indirect Purchaser Plaintiffs shall not be obligated to respond to or supplement
7 prior responses to formal discovery that has been previously propounded by the other in the
8 Actions or otherwise participate in the Actions. Indirect Purchaser Plaintiffs and Hitachi Maxell
9 agree to withdraw all outstanding discovery served on the other.

10 **33. Resolution of Disputes.** To the extent the Settling Parties disagree about the
11 interpretation or enforcement of any terms of this Agreement relating to future cooperation by
12 Hitachi Maxell, they agree to submit such disputes for binding resolution by Judge Vaughn R.
13 Walker (ret.) or another mutually agreed neutral.

14 **34. Final Approval.** In the event that this Agreement fails to receive Final Approval by
15 the Court as contemplated herein or in the event that it is terminated by either of the Settling Parties
16 under any provision herein, the parties agree that neither Indirect Purchaser Plaintiffs nor Class
17 Counsel shall be permitted to introduce in evidence, at any hearing, or in support of any motion,
18 opposition or other pleading in the Actions or in any other federal or state or foreign action alleging
19 a violation of any law relating to the subject matter of the Actions, any information provided by
20 Hitachi Maxell or its counsel pursuant to ¶ 30(b) or ¶ 30(g) or any information obtained during
21 interviews provided pursuant to ¶ 30(i). Further, in such event, Hitachi Maxell and Indirect
22 Purchaser Plaintiffs will each be bound by and have the benefit of any rulings made in the Actions
23 to the extent they would have been applicable to Hitachi Maxell or Indirect Purchaser Plaintiffs had
24 Hitachi Maxell been participating in the Actions.

25 **H. Conditions of Settlement, Effect of Disapproval, Cancellation or Termination**

26 **35. Effective Date.** The Effective Date of this Agreement shall be conditioned on the
27 occurrence of all of the following events:
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- 1 (a) Hitachi Maxell no longer has any right under ¶¶ 40-41 to terminate this
- 2 Agreement or, if Hitachi Maxell does have such right, they have given
- 3 written notice to Class Counsel that they will not exercise such right;
- 4 (b) the Court has finally approved the Settlement as described herein, following
- 5 notice to the Classes and a hearing, as prescribed by Rule 23 of the Federal
- 6 Rules of Civil Procedure, and has entered the Judgment; and
- 7 (c) the Judgment has become Final.

8 **36. Occurrence of Effective Date.** Upon the occurrence of all of the events referenced
9 in the above paragraph, any and all remaining interest or right of Hitachi Maxell in or to the Gross
10 Settlement Fund, if any, shall be absolutely and forever extinguished, and the Gross Settlement
11 Fund (less any Notice and Administrative Costs, Taxes, Tax Expenses or-Fee and Expense Award
12 paid) shall be transferred from the Escrow Agent to the Notice and Claims Administrator as
13 successor Escrow Agent within ten (10) days after the Effective Date.

14 **37. Failure of Effective Date to Occur.** If all of the conditions specified in ¶ 35 are
15 not met, then this Agreement shall be cancelled and terminated, subject to and in accordance with ¶
16 42 unless the Settling Parties mutually agree in writing to proceed with this Agreement.

17 **38. Exclusions.** Class Counsel shall cause copies of requests for exclusion from the
18 Classes to be provided to Hitachi Maxell's counsel. No later than fourteen (14) days after the final
19 date for mailing requests for exclusion, Class Counsel shall provide Hitachi Maxell's counsel with
20 a complete and final list of opt-outs. With the motion for final approval of the Settlement, Class
21 Counsel will file with the Court a complete list of requests for exclusion from the Classes,
22 including only the name, city and state of the person or entity requesting exclusion. With respect
23 to any member of the Class who requests exclusion from the Classes, Hitachi Maxell reserves all of
24 its legal rights and defenses, including, but not limited to, any defenses relating to whether the
25 member of the Class is an indirect purchaser of the allegedly price-fixed product and/or has
26 standing to bring any claim. Hitachi Maxell shall have the option to terminate this Agreement if the
27 purchases of Lithium Ion Batteries, Lithium Ion Packs and/or Finished Products made by members

1 of the Classes who timely and validly request exclusion from the Classes equal or exceed five
2 percent (5%) of the total volume of purchases made by the Classes. After meeting and conferring
3 with Class Counsel, Hitachi Maxell may elect to terminate this Agreement by serving written
4 notice on Class Counsel by email and overnight courier and by filing a copy of such notice with the
5 Court no later than thirty (30) days before the date for the final approval hearing of this Agreement,
6 except that Hitachi Maxell shall have a minimum of ten (10) days in which to decide whether to
7 terminate this Agreement after receiving the final opt-out list. In the event that Hitachi Maxell
8 exercises its option to terminate this Agreement: (i) this Agreement shall be null and void as to
9 Hitachi Maxell, and shall have no force or effect and shall be without prejudice to the rights and
10 contentions of Releasees and Releasors in this or any other litigation; and (ii) the Settlement fund
11 paid by Hitachi Maxell, plus interest thereon, shall be refunded promptly to Hitachi Maxell, minus
12 such payment (as set forth in this Agreement) of Notice and Administrative Costs and Taxes and
13 Tax Expenses, consistent with the provisions of ¶ 42.

14 **39. Objections.** Settlement Class members who wish to object to any aspect of the
15 Settlement must file with the Court a written statement containing their objection by the end of the
16 period to object to the Settlement. Any award or payment of attorneys' fees made to the counsel of
17 an objector to the Settlement shall only be made by Court order and upon a showing of the benefit
18 conferred to the Classes. In determining any such award of attorneys' fees to an objectors'
19 counsel, the Court will consider the incremental value to the Classes caused by any such objection.
20 Any award of attorneys' fees by the Court will be conditioned on the objector and his or her
21 attorney stating under penalty of perjury that no payments shall be made to the objector based on
22 the objector's participation in the matter other than as ordered by the Court. Hitachi Maxell shall
23 have no responsibility for any such payments.

24 **40. Failure to Enter Proposed Preliminary Approval Order, Final Approval Order**
25 **or Judgment.** If the Court does not enter the Preliminary Approval Order, the Final Approval
26 Order or the Judgment, or if the Court enters the Final Approval Order and the Judgment and
27 appellate review is sought and, on such review, the Final Approval Order or the Judgment is finally
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1 vacated, modified or reversed, then this Agreement and the Settlement incorporated therein shall be
2 cancelled and terminated; provided, however, the Settling Parties agree to act in good faith to
3 secure Final Approval of this Settlement and to attempt to address in good faith concerns regarding
4 the Settlement identified by the Court and any court of appeal.

5 **41.** No Settling Party shall have any obligation whatsoever to proceed under any terms
6 other than substantially in the form provided and agreed to herein; provided, however, that no order
7 of the Court concerning any Fee and Expense Application or Distribution Plan, or any modification
8 or reversal on appeal of such order, shall constitute grounds for cancellation or termination of this
9 Agreement by any Settling Party. Without limiting the foregoing, Hitachi Maxell shall have, in its
10 sole and absolute discretion, the option to terminate the Settlement in its entirety in the event that
11 the Judgment, upon becoming Final, does not provide for the dismissal with prejudice of all of the
12 Actions against it.

13 **42. Termination.** Unless otherwise ordered by the Court, in the event that the Effective
14 Date does not occur or this Agreement should terminate, or be cancelled or otherwise fail to
15 become effective for any reason, including, without limitation, in the event that Hitachi Maxell
16 elects to terminate this Agreement pursuant to ¶ 38, the Settlement as described herein is not finally
17 approved by the Court or the Judgment is reversed or vacated following any appeal taken
18 therefrom, then:

- 19 (a) within five (5) business days after written notification of such event is sent
20 by counsel for Hitachi Maxell to the Escrow Agent, the Gross Settlement
21 Fund—including the Settlement Amount and all interest earned on the
22 Settlement Fund while held in escrow excluding only Notice and
23 Administrative Costs that have either been properly disbursed or are due and
24 owing, Taxes and Tax Expenses that have been paid or that have accrued
25 and will be payable at some later date, and attorneys' fees and costs that
26 have been disbursed pursuant to Court order—will be refunded, reimbursed
27 and repaid by the Escrow Agent to Hitachi Maxell; if said amount or any

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portion thereof is not returned within such five (5) day period, then interest shall accrue thereon at the rate of ten percent (10%) per annum until the date that said amount is returned;

(b) within thirty (30) business days after written notification of such event is sent by counsel for Hitachi Maxell to Class Counsel, all attorneys' fees and costs which have been disbursed to Class Counsel pursuant to Court order shall be refunded, reimbursed and repaid by Class Counsel to Hitachi Maxell;

(c) the Escrow Agent or its designee shall apply for any tax refund owed to the Gross Settlement Fund and pay the proceeds to Hitachi Maxell, after deduction of any fees or expenses reasonably incurred in connection with such application(s) for refund, pursuant to such written request;

(d) the Settling Parties shall be restored to their respective positions in the Actions as of the Execution Date, with all of their respective claims and defenses preserved as they existed on that date;

(e) the terms and provisions of this Agreement, with the exception of ¶¶ 13-15, 17, 27, 31, 33-35, 37, 40-42, 44-45, 47-48, 50-57 (which shall continue in full force and effect), shall be null and void and shall have no further force or effect with respect to the Settling Parties, and neither the existence nor the terms of this Agreement (nor any negotiations preceding this Agreement nor any acts performed pursuant to, or in furtherance of, this Agreement) shall be used in the Actions or in any other action or proceeding for any purpose (other than to enforce the terms remaining in effect); and

(f) any judgment or order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

1 **I. No Admission of Liability**

2 **43. Final and Complete Resolution.** The Settling Parties intend the Settlement as
3 described herein to be a final and complete resolution of all disputes between them with respect to
4 the Actions and Released Claims and to compromise claims that are contested, and it shall not be
5 deemed an admission by any Settling Party as to the merits of any claim or defense or any
6 allegation made in the Actions.

7 **44. Federal Rule of Evidence 408.** The Settling Parties agree that this Agreement, its
8 terms and the negotiations surrounding this Agreement shall be governed by Federal Rule of
9 Evidence 408 and shall not be admissible or offered or received into evidence in any suit, action or
10 other proceeding, except upon the written agreement of the Settling Parties hereto, pursuant to an
11 order of a court of competent jurisdiction, or as shall be necessary to give effect to, declare or
12 enforce the rights of the Settling Parties with respect to any provision of this Agreement.

13 **45. Use of Agreement as Evidence.** Neither this Agreement nor the Settlement, nor
14 any act performed or document executed pursuant to or in furtherance of this Agreement or the
15 Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the
16 validity of any Released Claims, any allegation made in the Actions, or any wrongdoing or liability
17 of Hitachi Maxell; or (b) is or may be deemed to be or may be used as an admission of, or evidence
18 of, any liability, fault or omission of the Releasees in any civil, criminal or administrative
19 proceeding in any court, administrative agency or other tribunal. Neither this Agreement nor the
20 Settlement, nor any act performed or document executed pursuant to or in furtherance of this
21 Agreement or the Settlement, shall be admissible in any proceeding for any purpose, except to
22 enforce the terms of the Settlement, and except that the Releasees may file this Agreement and/or
23 the Judgment in any action for any purpose, including, but not limited to, in order to support a
24 defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith
25 settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or
26 similar defense or counterclaim. The limitations described in this paragraph apply whether or not
27 the Court enters the Preliminary Approval Order, the Final Approval Order or the Judgment.

1 **J. Miscellaneous Provisions**

2 **46. Voluntary Settlement.** The Settling Parties agree that the Settlement Amount and
3 the other terms of the Settlement as described herein were negotiated in good faith by the Settling
4 Parties, and reflect a settlement that was reached voluntarily and after consultation with competent
5 legal counsel.

6 **47. Consent to Jurisdiction.** Hitachi Maxell and each Class Member hereby
7 irrevocably submit to the exclusive jurisdiction of the Court only for the specific purpose of any
8 suit, action, proceeding or dispute arising out of or relating to this Agreement or the applicability of
9 this Agreement. Solely for purposes of such suit, action or proceeding, to the fullest extent that
10 they may effectively do so under applicable law, Hitachi Maxell and the Class Members
11 irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim
12 or objection that they are not subject to the jurisdiction of the Court or that the Court is in any way
13 an improper venue or an inconvenient forum. Without limiting the generality of the foregoing, it is
14 hereby agreed that any dispute concerning the provisions of ¶¶ 7-11 hereof, including but not
15 limited to any suit, action or proceeding in which the provisions of ¶¶ 7-11 hereof are asserted as a
16 defense in whole or in part to any claim or cause of action or otherwise raised as an objection,
17 constitutes a suit, action or proceeding arising out of or relating to this Agreement. In the event
18 that the provisions of ¶¶ 7-11 hereof are asserted by any Releasee as a defense in whole or in part
19 to any claim or cause of action or otherwise raised as an objection in any suit, action or proceeding,
20 it is hereby agreed that such Releasee shall be entitled to a stay of that suit, action or proceeding
21 until the Court has entered a final judgment no longer subject to any appeal or review determining
22 any issues relating to the defense or objection based on the provisions of ¶¶ 7-11. Nothing herein
23 shall be construed as a submission to jurisdiction for any purpose other than any suit, action,
24 proceeding or dispute arising out of or relating to this Agreement or the applicability of this
25 Agreement.

26 **48. Resolution of Disputes; Retention of Exclusive Jurisdiction.** Any disputes
27 between or among Hitachi Maxell and any Class Members concerning matters contained in this
28

1 Agreement shall, if they cannot be resolved by negotiation and agreement, be submitted to the
2 Court. The Court shall retain exclusive jurisdiction over the implementation and enforcement of
3 this Agreement.

4 **49. Binding Effect.** This Agreement shall be binding upon, and inure to the benefit of,
5 the successors and assigns of the parties hereto. Without limiting the generality of the foregoing,
6 each and every covenant and agreement herein by Indirect Purchaser Plaintiffs and Class Counsel
7 shall be binding upon all Class Members.

8 **50. Authorization to Enter Settlement Agreement.** The undersigned representatives
9 of Hitachi Maxell represent that they are fully authorized to enter into and to execute this
10 Agreement on behalf of Hitachi Maxell. Class Counsel, on behalf of Indirect Purchaser Plaintiffs
11 and the Classes, represent that they are, subject to Court approval, expressly authorized to take all
12 action required or permitted to be taken by or on behalf of the Classes pursuant to this Agreement
13 to effectuate its terms and to enter into and execute this Agreement and any modifications or
14 amendments to the Agreement on behalf of the Classes that they deem appropriate.

15 **51. Notices.** All notices under this Agreement shall be in writing. Each such notice
16 shall be given either by (a) e-mail; (b) hand delivery; (c) registered or certified mail, return receipt
17 requested, postage pre-paid; (d) FedEx or similar overnight courier; or (e) facsimile and first class
18 mail, postage pre-paid and, if directed to any Class Member, shall be addressed to Class Counsel at
19 their addresses set forth below, and if directed to Hitachi Maxell, shall be addressed to their
20 attorneys at the addresses set forth below or such other addresses as Class Counsel or Hitachi
21 Maxell may designate, from time to time, by giving notice to all parties hereto in the manner
22 described in this paragraph.

23 If directed to the Indirect Purchaser Plaintiffs, address notice to:

24 **COTCHETT, PITRE & MCCARTHY, LLP**
25 **Steven N. Williams** (swilliams@cmplegal.com)
26 San Francisco Airport Office Center
27 840 Malcolm Road, Suite 200
Burlingame, CA 94010
Telephone: 650-697-6000
Facsimile: 650-697-0577

HAGENS BERMAN SOBOL SHAPIRO LLP

Jeff Friedman (jefff@hbsslaw.com)
715 Hearst Avenue, Suite 202
Berkley, CA 94710
Telephone: 510-725-3000
Facsimile: 510-725-3001

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Brendan P. Glackin (bglackin@lchb.com)
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Telephone: 415-956-1000
Facsimile: 415-956-1008

If directed to Hitachi Maxell, address notice to:

VINSON & ELKINS LLP

Craig P. Seebald (cseebald@velaw.com)
Jason Levine (jlevine@velaw.com)
2200 Pennsylvania Ave.
Suite 500 West
Washington, DC 20037-1701
Telephone: 202-639-6500
Facsimile: 202-879-8995

52. Headings. The headings used in this Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Agreement.

53. No Party Deemed to Be the Drafter. None of the parties hereto shall be deemed to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

54. Choice of Law. This Agreement shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of California, and the rights and obligations of the parties to this Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of California without giving effect to that state's choice of law principles.

1 **55. Amendment; Waiver.** This Agreement shall not be modified in any respect except
2 by a writing executed by Hitachi Maxell and Class Counsel, and the waiver of any rights conferred
3 hereunder shall be effective only if made by written instrument of the waiving party. The waiver
4 by any party of any breach of this Agreement shall not be deemed or construed as a waiver of any
5 other breach, whether prior, subsequent or contemporaneous, of this Agreement.

6 **56. Execution in Counterparts.** This Agreement may be executed in one or more
7 counterparts. All executed counterparts and each of them shall be deemed to be one and the same
8 instrument. Counsel for the Settling Parties to this Agreement shall exchange among themselves
9 original signed counterparts and a complete set of executed counterparts shall be filed with the
10 Court.

11 **57. Integrated Agreement.** This Agreement constitutes the entire agreement between
12 the Settling Parties and no representations, warranties or inducements have been made to any party
13 concerning this Agreement other than the representations, warranties and covenants contained and
14 memorialized herein. It is understood by the Settling Parties that, except for the matters expressly
15 represented herein, the facts or law with respect to which this Agreement is entered into may turn
16 out to be other than or different from the facts now known to each party or believed by such party
17 to be true. Each party therefore expressly assumes the risk of the facts or law turning out to be so
18 different, and agrees that this Agreement shall be in all respects effective and not subject to
19 termination by reason of any such different facts or law. Except as otherwise provided herein, each
20 party shall bear its own costs and attorneys' fees.

21 **58. Return or Destruction of Confidential Materials.** The Settling Parties agree to
22 comply with ¶ 11 of the Protective Order entered in these Actions at the conclusion of these
23 Actions.

24 IN WITNESS WHEREOF, the parties hereto, through their fully authorized
25 representatives, have executed this Agreement as of the date first herein above written.

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INDIRECT PURCHASER PLAINTIFFS' CLASS
COUNSEL, on behalf of Indirect Purchaser Plaintiffs
individually and on behalf of the Classes

DATED: December 29, 2016

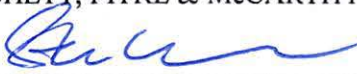
HAGENS BERMAN SOBOL SHAPIRO LLP

By: 
JEFF D. FRIEDMAN

Steve W. Berman (*pro hac vice*)
Shana E. Scarlett (217895)
Jeff D. Friedman (173886)
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steve@hbsslaw.com
jefff@hbsslaw.com
shanas@hbsslaw.com

~~DATED: December~~ ^{January 10}, 2016

COTCHETT, PITRE & McCARTHY, LLP

By: 
STEVEN N. WILLIAMS

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DATED: December 21, 2016

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

By: 
BRENDAN P. GLACKIN

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dharvey@lchb.com
lchan@lchb.com

DEFENDANTS HITACHI MAXELL, LTD. &
MAXELL CORPORATION OF AMERICA

DATED: December 16, 2016

VINSON & ELKINS LLP

By: 
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