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13 *Lead Counsel for Indirect Purchaser Plaintiffs*

14  
15 **UNITED STATES DISTRICT COURT**  
16 **NORTHERN DISTRICT OF CALIFORNIA**  
17 **OAKLAND DIVISION**

18 **IN RE LITHIUM ION BATTERIES**  
19 **ANTITRUST LITIGATION**

**Case No. 4:13-md-02420 YGR**

20 **This Document Relates to:**  
21 **All Indirect Purchaser Actions**

**DECLARATION OF ADAM J. ZAPALA**  
**IN SUPPORT OF INDIRECT**  
**PURCHASER PLAINTIFFS' MOTION**  
**FOR FINAL APPROVAL OF**  
**SETTLEMENTS WITH HITACHI, LG**  
**CHEM AND NEC**

22 Date: May 20, 2020  
23 Time: 2:00pm  
24 Judge: Hon. Yvonne Gonzalez Rogers  
25 Court: Courtroom 1, 4<sup>th</sup> Floor

1 I, ADAM J. ZAPALA, declare as follows:

2 I am an attorney duly licensed to practice law in the State of California and  
3 admitted to practice in this Court. I am a partner with the law firm of Cotchett, Pitre & McCarthy,  
4 LLP (“CPM”) and Class Counsel for Indirect Purchaser Plaintiffs (“IPPs”) in this litigation. The  
5 matters described herein are based on my personal knowledge, and if called as a witness, I could  
6 and would testify competently thereto.

7 Cotchett, Pitre, & McCarthy, LLP (“CPM”), Hagens Berman Sobol Shapiro LLP  
8 (“HBSS”), and Lief Cabraser Heimann & Bernstein, LLP (“LCHB”), have previously been  
9 appointed Class Counsel for the Settlement Class of IPPs by the Court in this action.<sup>1</sup>

10 In this declaration, I provide information in support of (i) Indirect Purchaser  
11 Plaintiffs’ Notice of Motion and Motion for Final Approval of Settlements with Defendants  
12 Hitachi Maxell, Ltd., and Maxell Corporation of America (collectively “Hitachi”), LG Chem, Ltd.  
13 and LG Chem America, Inc. (“collectively “LG Chem”), and NEC Corporation (“NEC”)  
14 (collectively, “Settling Defendants”), and (ii) Indirect Purchaser Plaintiffs’ Omnibus Response to  
15 Objections to Settlements with Hitachi, LG Chem, and NEC. Both of these briefs are  
16 concurrently filed herewith.

17 Attached hereto are true and correct copy of the following documents:  
18 Exhibit A: IPP-Hitachi Settlement Agreement;  
19 Exhibit B: IPP-LG Chem Settlement Agreement; and  
20 Exhibit C: IPP-NEC Settlement Agreement.

21 I declare under penalty of perjury under the laws of the United States that the foregoing is  
22 true and correct. Executed this 5<sup>th</sup> day of May, 2020 at Burlingame, California.

23 /s/ Adam J. Zapala \_\_\_\_\_  
24 Adam J. Zapala

25  
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27 <sup>1</sup> See ECF 2715, Order Granting IPPs’ Motion to Direct Notice Regarding Settlements with LG  
28 Chem, Hitachi Maxell, and NEC Defendants, at ¶ 6.

# **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           This Settlement Agreement (hereinafter, **"Agreement"**) is made and entered into as of the  
2     \_\_ day of December, 2016, by and between Defendants Hitachi Maxell, Ltd. and Maxell  
3     Corporation of America (collectively, **"Hitachi Maxell"**), and Indirect Purchaser Plaintiffs, both  
4     individually and on behalf of Classes in the above-captioned class action. This Agreement is  
5     intended by the Settling Parties to fully, finally and forever resolve, discharge and settle the  
6     Released Claims, upon and subject to the terms and conditions hereof.

7                                   **RECITALS**

8           WHEREAS, Indirect Purchaser Plaintiffs are prosecuting the above-captioned litigation on  
9     their own behalf and on behalf of Classes against, among others, Hitachi Maxell;

10           WHEREAS, Indirect Purchaser Plaintiffs allege, among other things, that Hitachi Maxell  
11     violated the antitrust laws by conspiring to fix, raise, maintain or stabilize the prices of Lithium Ion  
12     Batteries, and these acts caused the Classes to incur significant damages;

13           WHEREAS, Hitachi Maxell has denied and continues to deny each and all of the claims  
14     and allegations of wrongdoing made by the Indirect Purchaser Plaintiffs in the Actions; all charges  
15     of wrongdoing or liability against it arising out of any of the conduct, statements, acts or omissions  
16     alleged, or that could have been alleged, in the Actions; and the allegations that the Indirect  
17     Purchaser Plaintiffs or any member of Classes were harmed by any conduct by Hitachi Maxell  
18     alleged in the Actions or otherwise;

19           WHEREAS, Indirect Purchaser Plaintiffs and Hitachi Maxell agree that neither this  
20     Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an  
21     admission or evidence of any violation of any statute or law or of any liability or wrongdoing by  
22     Hitachi Maxell or of the truth of any of the claims or allegations alleged in the Actions;

23           WHEREAS, arm's length settlement negotiations have taken place between Hitachi Maxell  
24     and Indirect Purchaser Plaintiffs' Class Counsel, and this Agreement, which embodies all of the  
25     terms and conditions of the Settlement between the Settling Parties, has been reached (subject to  
26     the approval of the Court) as provided herein and is intended to supersede any prior agreements  
27     between the Settling Parties;

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 Lieff 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;

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

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

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

**22. Balance Remaining in Net Settlement Fund.** If there is any balance remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), Class Counsel may reallocate such balance among Authorized Claimants in an equitable and economic fashion, distribute remaining funds through *cy pres*, or allow the money to escheat to federal or

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

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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@hbsslw.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

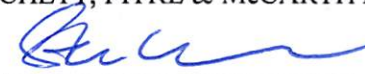
HAGENS BERMAN SOBOL SHAPIRO LLP

By:   
JEFF D. FRIEDMAN

Steve W. Berman (*pro hac vice*)  
Shana E. Scarlett (217895)  
Jeff D. Friedman (173886)  
715 Hearst Avenue, Suite 202  
Berkeley, CA 94710  
Telephone: (510) 725-3000  
Facsimile: (510) 725-3001  
steve@hbsslaw.com  
jefff@hbsslaw.com  
shanas@hbsslaw.com

*January 10*  
DATED: December 2, 2016

COTCHETT, PITRE & McCARTHY, LLP

By:   
STEVEN N. WILLIAMS

Joseph W. Cotchett (SBN 36324)  
Nancy L. Fineman (SBN 124870)  
Demetrius X. Lambrinos (SBN 246027)  
Joyce Chang (SBN 300780)  
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jcotchett@cpmlegal.com  
nfineman@cpmlegal.com  
swilliams@cpmlegal.com  
dlambrinos@cpmlegal.com  
jchang@cpmlegal.com

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DATED: December 21, 2016

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

By:   
BRENDA P. GLACKIN

Elizabeth J. Cabraser (SBN 083151)  
Richard M. Heimann (SBN 63607)  
Eric B. Fastiff (SBN 182260)  
Dean M. Harvey (SBN 250298)  
Lin Y. Chan (SBN 255027)  
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efastiff@lchb.com  
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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:   
CRAIG P. SEEBALD

Jason A Levine  
Lindsey R. Vaala  
VINSON & ELKINS LLP  
2200 Pennsylvania Ave.  
Suite 500 West  
Washington, DC 20037-1701  
Tel: 202-639-6500  
Fax: 202-879-8995  
cseebald@velaw.com  
jlevine@velaw.com  
lvaala@velaw.com

# **EXHIBIT B**



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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

LG CHEM SETTLEMENT  
AGREEMENT

DATE ACTION FILED: Oct. 3, 2012

1 This Settlement Agreement (hereinafter, “Agreement”) is made and entered into as of the  
2 \_\_\_\_ day of November, 2016, by and between Defendants LG Chem, Ltd. and LG Chem  
3 America, Inc. (collectively “LG Chem”), and Indirect Purchaser Plaintiffs, both individually and on  
4 behalf of Classes in the above-captioned class action. This Agreement is intended by the Settling  
5 Parties to fully, finally and forever resolve, discharge and settle the Released Claims, upon and  
6 subject to the terms and conditions hereof.

7 **RECITALS**

8 WHEREAS, Indirect Purchaser Plaintiffs are prosecuting the above-captioned litigation on  
9 their own behalf and on behalf of Classes against, among others, LG Chem;

10 WHEREAS, Indirect Purchaser Plaintiffs allege, among other things, that LG Chem  
11 violated the antitrust laws by conspiring to fix, raise, maintain or stabilize the prices of Lithium Ion  
12 Batteries, and these acts caused the Classes to incur significant damages;

13 WHEREAS, LG Chem has denied and continues to deny each and all of the claims and  
14 allegations of wrongdoing made by the Indirect Purchaser Plaintiffs in the Actions; all charges of  
15 wrongdoing or liability against it arising out of any of the conduct, statements, acts or omissions  
16 alleged, or that could have been alleged, in the Actions; and the allegations that the Indirect  
17 Purchaser Plaintiffs or any member of Classes were harmed by any conduct by LG Chem alleged  
18 in the Actions or otherwise;

19 WHEREAS, Indirect Purchaser Plaintiffs and LG Chem agree that neither this Agreement  
20 nor any statement made in the negotiation thereof shall be deemed or construed to be an admission  
21 or evidence of any violation of any statute or law or of any liability or wrongdoing by LG Chem or  
22 of the truth of any of the claims or allegations alleged in the Actions;

23 WHEREAS, arm’s length settlement negotiations have taken place between LG Chem and  
24 Indirect Purchaser Plaintiffs’ Class Counsel, and this Agreement, which embodies all of the terms  
25 and conditions of the Settlement between the Settling Parties, has been reached (subject to the  
26 approval of the Court) as provided herein and is intended to supersede any prior agreements  
27 between the Settling Parties;

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’ Third 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, LG Chem, despite its belief that it is not liable for the claims asserted against  
12 it in the Actions and that it has good defenses thereto, has nevertheless agreed to enter into this  
13 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 LG Chem 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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- 1 (b) “Affiliates” means entities controlling, controlled by or under common  
2 control with a Releasee or Releasor.
- 3 (c) “Authorized Claimant” means any Indirect Plaintiff Purchaser who, in  
4 accordance with the terms of this Agreement, is entitled to a distribution  
5 consistent with any Distribution Plan or order of the Court.
- 6 (d) “Class” or “Classes” are generally defined as all persons and entities who, as  
7 residents of the United States and during the period from January 1, 2000  
8 through May 31, 2011, indirectly purchased new for their own use and not  
9 for resale one of the following products which contained a lithium-ion  
10 cylindrical battery manufactured by one or more defendants or their co-  
11 conspirators: (i) a portable computer; (ii) a power tool; (iii) a camcorder; or  
12 (iv) a replacement battery for any of these products. Excluded from the class  
13 are any purchases of Panasonic-branded computers. Also excluded from the  
14 class are any federal, state, or local governmental entities, any judicial  
15 officers presiding over this action, members of their immediate families and  
16 judicial staffs, and any juror assigned to this action, but includes all non-  
17 federal and non-state governmental entities in California.
- 18 (e) “Class Counsel” means the law firms of Cotchett, Pitre & McCarthy, LLP;  
19 Hagens Berman Sobol Shapiro LLP; and Lieff Cabraser Heimann &  
20 Bernstein, LLP.
- 21 (f) “Class Member” means a Person who or California government entity that  
22 falls within the definition of the Classes and does not timely and validly  
23 elect to be excluded from the Classes in accordance with the procedure to be  
24 established by the Court.
- 25 (g) “Court” means the United States District Court for the Northern District of  
26 California.
- 27 (h) “Distribution Plan” means any plan or formula of allocation of the Gross  
28 Settlement Fund, to be approved by the Court, whereby the Net Settlement

1 Fund shall in the future be distributed to Authorized Claimants. Any  
2 Distribution Plan is not part of this Agreement.

3 (i) “Effective Date” means the first date by which all of the events and  
4 conditions specified in ¶ 35 of this Agreement have occurred and have been  
5 met.

6 (j) “Escrow Agent” means the agent jointly designated by Class Counsel and  
7 LG Chem, and any successor agent.

8 (k) “Execution Date” means the date of the last signature set forth on the  
9 signature pages below.

10 (l) “Final” means, with respect to any order of court, including, without  
11 limitation, the Judgment, that such order represents a final and binding  
12 determination of all issues within its scope and is not subject to further  
13 review on appeal or otherwise. Without limitation, an order becomes  
14 “Final” when: (a) no appeal has been filed and the prescribed time for  
15 commencing any appeal has expired; or (b) an appeal has been filed and  
16 either (i) the appeal has been dismissed and the prescribed time, if any, for  
17 commencing any further appeal has expired, or (ii) the order has been  
18 affirmed in its entirety and the prescribed time, if any, for commencing any  
19 further appeal has expired. For purposes of this Agreement, an “appeal”  
20 includes appeals as of right, discretionary appeals, interlocutory appeals,  
21 proceedings involving writs of certiorari or mandamus, and any other  
22 proceedings of like kind. Any appeal or other proceeding pertaining solely  
23 to any order adopting or approving a Distribution Plan, and/or to any order  
24 issued with respect to an application for attorneys’ fees and expenses  
25 consistent with this Agreement, shall not in any way delay or preclude the  
26 Judgment from becoming Final.

27 (m) “Finished Product” means any product and/or electronic device that contains  
28 a Lithium Ion Battery or Lithium Ion Battery Pack, including but not limited

1 to laptop PCs, notebook PCs, netbook computers, tablet computers, mobile  
2 phones, smart phones, cameras, camcorders, digital video cameras, digital  
3 audio players and power tools.

4 (n) “Gross Settlement Fund” means the Settlement Amount plus any interest  
5 that may accrue.

6 (o) “Indirect Purchaser Plaintiffs” means Christopher Hunt, Piya Robert  
7 Rojanasathit, Steve Bugge, Tom Pham, Bradley Seldin, Patrick McGuiness,  
8 John Kopp, Drew Fennelly, Jason Ames, William Cabral, Donna Shawn,  
9 David Beson, Maury “Kim” Billingsley, Joseph O’Daniel, Cindy Booze,  
10 Matthew Ence, David Tolchin, Matt Bryant, Sheri Harmon, Christopher  
11 Bessette, Caleb Batey, Linda Lincoln, Bradley Van Patten, the City of Palo  
12 Alto, and the City of Richmond, as well as any other Person added as an  
13 Indirect Purchaser Plaintiff in the Actions.

14 (p) “Judgment” means the order of judgment and dismissal of the Actions with  
15 prejudice.

16 (q) “Lithium Ion Battery” means a Lithium Ion Battery Cell or Lithium Ion  
17 Battery Pack.

18 (r) “Lithium Ion Battery Cell” means cylindrical, prismatic or polymer cell used  
19 for the storage of power that is rechargeable and uses lithium ion  
20 technology.

21 (s) “Lithium Ion Battery Pack” means Lithium Ion Cells that have been  
22 assembled into a pack, regardless of the number of Lithium Ion Cells  
23 contained in such packs.

24 (t) “MDL Defendants” means LG Chem, Ltd.; LG Chem America, Inc.;;  
25 Samsung SDI Co. Ltd.; Samsung SDI America, Inc.; Panasonic Corporation;  
26 Panasonic Corporation of North America; Sanyo Electric Co., Ltd.; Sanyo  
27 North America Corporation; Sanyo GS Soft Energy Co. Ltd.; Sony  
28 Corporation; Sony Energy Devices Corporation; Sony Electronics Inc.;

1 Hitachi Maxell, Ltd.; Maxell Corporation of America; GS Yuasa  
2 Corporation; NEC Corporation; NEC Tokin Corporation; Toshiba  
3 Corporation; A&T Battery Corporation; and Toshiba America Electronic  
4 Components Inc.

5 (u) “Net Settlement Fund” means the Gross Settlement Fund, less the payments  
6 set forth in ¶ 19(a)-(e).

7 (v) “Notice and Administrative Costs” means the reasonable sum of money not  
8 in excess of seven hundred fifty thousand U.S. Dollars (\$750,000.00) to be  
9 paid out of the Gross Settlement Fund to pay for notice to the Classes and  
10 related administrative costs.

11 (w) “Notice and Claims Administrator” means the claims administrator(s) to be  
12 selected by Class Counsel and approved by the Court.

13 (x) “Person(s)” means an individual, corporation, limited liability corporation,  
14 professional corporation, limited liability partnership, partnership, limited  
15 partnership, association, joint stock company, estate, legal representative,  
16 trust, unincorporated association, government or any political subdivision or  
17 agency thereof, and any business or legal entity and any spouses, heirs,  
18 predecessors, successors, representatives or assignees of any of the  
19 foregoing.

20 (y) “Proof of Claim and Release” means the form to be sent to the Classes, upon  
21 further order(s) of the Court, by which any member of the Classes may make  
22 claims against the Gross Settlement Fund.

23 (z) “Released Claims” means any and all manner of claims, demands, rights,  
24 actions, suits, causes of action, whether class, individual or otherwise in  
25 nature, fees, costs, penalties, injuries, damages whenever incurred and  
26 liabilities of any nature whatsoever, known or unknown (including, but not  
27 limited to, “Unknown Claims”), foreseen or unforeseen, suspected or  
28 unsuspected, asserted or unasserted, contingent or non-contingent, in law or

1 in equity, under the laws of any jurisdiction, which Releasors or any of them,  
2 whether directly, representatively, derivatively, or in any other capacity, ever  
3 had, now have or hereafter can, shall or may have, relating in any way to any  
4 conduct prior to the date of this Agreement and arising out of or related in  
5 any way in whole or in part to any facts, circumstances, acts or omissions  
6 arising out of or related to (1) any purchase or sale of Lithium Ion Batteries  
7 (including Lithium Ion Batteries contained in Finished Products) up through  
8 May 31, 2011; or (2) any agreement, combination or conspiracy to raise, fix,  
9 maintain or stabilize the prices of Lithium Ion Batteries (including Lithium  
10 Ion Batteries contained in Finished Products) or restrict, reduce, alter or  
11 allocate the supply, quantity or quality of Lithium Ion Batteries (including  
12 Lithium Ion Batteries contained in Finished Products) or concerning the  
13 development, manufacture, supply, distribution, transfer, marketing, sale or  
14 pricing of Lithium Ion Batteries (including Lithium Ion Batteries contained  
15 in Finished Products), or any other conduct alleged in the Actions or relating  
16 to restraint of competition that could have been or hereafter could be alleged  
17 against the Releasees relating to Lithium Ion Batteries; or (3) any other  
18 restraint of competition relating to Lithium Ion Batteries that could be  
19 asserted as a violation of the Sherman Act or any other antitrust, unjust  
20 enrichment, unfair competition, unfair practices, trade practices, price  
21 discrimination, unitary pricing, racketeering, contract, civil conspiracy or  
22 consumer protection law, whether under federal, state, local or foreign law.

23 (aa) "Releasees" means LG Chem and their former, present and future direct and  
24 indirect parents, subsidiaries and Affiliates, and their respective former,  
25 present and future officers, directors, employees, managers, members,  
26 partners, agents, shareholders (in their capacity as shareholders), attorneys  
27 and legal representatives, and the predecessors, successors, heirs, executors,  
28 administrators and assigns of each of the foregoing.



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

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

8 (dd) “Settlement Amount” means Thirty-Nine Million U.S. Dollars  
9 (\$39,000,000).

10 (ee) “Settling Parties” means, collectively, LG Chem and the Indirect Purchaser  
11 Plaintiffs (on behalf of themselves and the Classes).

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

21 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
22 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO  
23 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING  
24 THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST  
HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT  
WITH THE DEBTOR.

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

26 **2. Reasonable Best Efforts to Effectuate This Settlement.** The Settling Parties: (a)  
27 acknowledge that it is their intent to consummate this Agreement; and (b) agree to cooperate to the  
28 extent reasonably necessary to effectuate and implement the terms and conditions of this

1 Agreement and to exercise their best efforts to accomplish the terms and conditions of this  
2 Agreement.

3 **3. Motion for Preliminary Approval.** At a time to be determined by Class Counsel,  
4 and subject to prior notice of ten (10) days to LG Chem, Class Counsel shall submit this  
5 Agreement to the Court and shall apply for entry of a preliminary approval order (“Preliminary  
6 Approval Order”), requesting, *inter alia*, preliminary approval (“Preliminary Approval”) of the  
7 Settlement. The motion shall include (a) the proposed Preliminary Approval Order, and (b) a  
8 definition of the proposed settlement classes pursuant to Federal Rule of Civil Procedure 23. The  
9 text of the foregoing items (a)-(b) shall be agreed upon by the Settling Parties.

10 **4. Proposed Form of Notice.** At a time to be determined in their sole discretion but  
11 no later than any other class settlement entered into by Class Counsel, Class Counsel shall submit  
12 to the Court for approval a proposed form of, method for and schedule for dissemination of notice  
13 to the Classes. To the extent practicable and to the extent consistent with this paragraph, Class  
14 Counsel may seek to coordinate this notice program with other settlements that may be reached in  
15 the Actions in order to reduce the expense of notice. This motion shall recite and ask the Court to  
16 find that the proposed form of and method for dissemination of notice to the Classes constitutes  
17 valid, due and sufficient notice to the Classes, constitutes the best notice practicable under the  
18 circumstances, and complies fully with the requirements of Federal Rule of Civil Procedure 23.  
19 Class counsel shall provide LG Chem with seven days advance notice of the text of the notice(s) to  
20 be provided to the Classes, and shall consider in good faith any concerns or suggestions expressed  
21 by LG Chem. LG Chem shall be responsible for providing all notices required by the Class Action  
22 Fairness Act of 2005 to be provided to state attorneys general or to the United States of America.

23 **5. Motion for Final Approval and Entry of Final Judgment.** Not less than thirty-  
24 five (35) days prior to the date set by the Court to consider whether this Settlement should be  
25 finally approved, Class Counsel shall submit a motion for final approval (“Final Approval”) of the  
26 Settlement by the Court. The Settling Parties shall jointly seek entry of the final approval order  
27 (“Final Approval Order”) and Judgment:  
28

- 1 (a) certifying the Classes, pursuant to Federal Rule of Civil Procedure 23, solely  
2 for purposes of this Settlement;
- 3 (b) fully and finally approving the Settlement contemplated by this Agreement  
4 and its terms as being fair, reasonable and adequate within the meaning of  
5 Federal Rule of Civil Procedure 23 and directing its consummation pursuant  
6 to its terms and conditions;
- 7 (c) finding that the notice given to the Class Members constituted the best notice  
8 practicable under the circumstances and complies in all respects with the  
9 requirements of Federal Rule of Civil Procedure 23 and due process;
- 10 (d) directing that the Actions be dismissed with prejudice as to LG Chem and,  
11 except as provided for herein, without costs;
- 12 (e) discharging and releasing the Releasees from all Released Claims;
- 13 (f) permanently barring and enjoining the institution and prosecution, by  
14 Indirect Purchaser Plaintiffs and Class Members, of any other action against  
15 the Releasees in any court asserting any claims related in any way to the  
16 Released Claims;
- 17 (g) reserving continuing and exclusive jurisdiction over the Settlement,  
18 including all future proceedings concerning the administration,  
19 consummation and enforcement of this Agreement;
- 20 (h) determining pursuant to Federal Rule of Civil Procedure 54(b) that there is  
21 no just reason for delay and directing entry of a final judgment as to LG  
22 Chem; and
- 23 (i) containing such other and further provisions consistent with the terms of this  
24 Agreement to which the parties expressly consent in writing.

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

27 **6. Stay Order.** Upon the date that the Court enters an order preliminarily approving  
28 the Settlement, Indirect Purchaser Plaintiffs and members of the Classes shall be barred and

1 enjoined from commencing, instituting or continuing to prosecute any action or any proceeding in  
2 any court of law or equity, arbitration tribunal, administrative forum or other forum of any kind  
3 worldwide based on the Released Claims. Nothing in this provision shall prohibit the Indirect  
4 Purchaser Plaintiffs or Class Counsel from continuing to participate in discovery in the Actions that  
5 is initiated by other plaintiffs or that is subject to and consistent with the cooperation provisions set  
6 forth in ¶¶28-34.

7  
8 **C. Releases**

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

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

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

26 **10. Waiver of California Civil Code § 1542 and Similar Laws.** The Releasors  
27 acknowledge that, by executing this Agreement, and for the consideration received hereunder, it is  
28 their intention to release, and they are releasing, all Released Claims, even Unknown Claims. In

1 furtherance of this intention, the Releasors expressly waive and relinquish, to the fullest extent  
2 permitted by law, any rights or benefits conferred by the provisions of California Civil Code §  
3 1542, as set forth in ¶ 1(ff), or equivalent, similar or comparable laws or principles of law. The  
4 Releasors acknowledge that they have been advised by Class Counsel of the contents and effects of  
5 California Civil Code § 1542, and hereby expressly waive and release with respect to the Released  
6 Claims any and all provisions, rights and benefits conferred by California Civil Code § 1542 or by  
7 any equivalent, similar or comparable law or principle of law in any jurisdiction. The Releasors  
8 may hereafter discover facts other than or different from those which they know or believe to be  
9 true with respect to the subject matter of the Released Claims, but the Releasors hereby expressly  
10 waive and fully, finally and forever settle and release any known or unknown, suspected or  
11 unsuspected, foreseen or unforeseen, asserted or unasserted, contingent or non-contingent, and  
12 accrued or unaccrued claim, loss or damage with respect to the Released Claims, whether or not  
13 concealed or hidden, without regard to the subsequent discovery or existence of such additional or  
14 different facts. The release of unknown, unanticipated, unsuspected, unforeseen, and unaccrued  
15 losses or claims in this paragraph is not a mere recital.

16 **11. Claims Excluded from Release.** Notwithstanding the foregoing, the releases  
17 provided herein shall not release claims against LG Chem for product liability, breach of contract,  
18 breach of warranty or personal injury, or any other claim unrelated to the allegations in the Actions.  
19 For avoidance of doubt, this Agreement does not release claims arising from restraints of  
20 competition directed at goods other than (a) Lithium Ion Batteries, or (b) Lithium Ion Batteries  
21 contained in Finished Products. Additionally, the releases provided herein shall not release any  
22 claims to enforce the terms of this Agreement.

23 **D. Settlement Fund**

24 **12. Settlement Payment.** LG Chem shall pay by wire transfer the Settlement Amount  
25 to the Escrow Agent pursuant to mutually agreeable escrow instructions within thirty (30)  
26 business days after the Execution Date. This amount constitutes the total amount of payment that  
27 LG Chem is required to make in connection with this Settlement Agreement. This amount shall  
28

1 not be subject to reduction, and upon the occurrence of the Effective Date, no funds may be  
2 returned to LG Chem. The Escrow Agent shall only act in accordance with the mutually agreed  
3 escrow instructions.

4 **13. Disbursements Prior to Effective Date.** No amount may be disbursed from the  
5 Gross Settlement Fund unless and until the Effective Date, except that: (a) Notice and  
6 Administrative Costs, which may not exceed seven hundred fifty thousand U.S. Dollars  
7 (\$750,000.00), may be paid from the Gross Settlement Fund as they become due; (b) Taxes and  
8 Tax Expenses (as defined in ¶ 17(b) below) may be paid from the Gross Settlement Fund as they  
9 become due; and (c) attorneys' fees and reimbursement of litigation costs and expenses, as may be  
10 ordered by the Court, may be disbursed during the pendency of any appeals which may be taken  
11 from the judgment to be entered by the Court finally approving this Settlement. Class Counsel will  
12 attempt in good faith to minimize the amount of Notice and Administrative Costs and may seek to  
13 coordinate the notice described herein with other settlements in these Actions.

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

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

26 **16. No Additional Payments by LG Chem.** Under no circumstances will LG Chem be  
27 required to pay more or less than the Settlement Amount pursuant to this Agreement and the  
28

1 Settlement set forth herein. For purposes of clarification, the payment of any Fee and Expense  
2 Award (as defined in ¶ 25 below), the Notice and Administrative Costs, and any other costs  
3 associated with the implementation of this Settlement Agreement shall be exclusively paid from  
4 the Settlement Amount.

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

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

1 (b) The following shall be paid out of the Gross Settlement Fund: (i) all taxes  
2 (including any estimated taxes, interest or penalties) arising with respect to  
3 the income earned by the Gross Settlement Fund, including, without  
4 limitation, any taxes or tax detriments that may be imposed upon LG Chem  
5 or its counsel with respect to any income earned by the Gross Settlement  
6 Fund for any period during which the Gross Settlement Fund does not  
7 qualify as a “qualified settlement fund” for federal or state income tax  
8 purposes (collectively, “Taxes”); and (ii) all expenses and costs incurred in  
9 connection with the operation and implementation of this paragraph,  
10 including, without limitation, expenses of tax attorneys and/or accountants  
11 and mailing and distribution costs and expenses relating to filing (or failing  
12 to file) the returns described in this paragraph (collectively, “Tax  
13 Expenses”). In all events neither LG Chem nor its counsel shall have any  
14 liability or responsibility for the Taxes or the Tax Expenses. With funds  
15 from the Gross Settlement Fund, the Escrow Agent shall indemnify and hold  
16 harmless LG Chem and its counsel for Taxes and Tax Expenses (including,  
17 without limitation, Taxes payable by reason of any such indemnification).  
18 Further, Taxes and Tax Expenses shall be treated as, and considered to be, a  
19 cost of administration of the Gross Settlement Fund and shall timely be paid  
20 by the Escrow Agent out of the Gross Settlement Fund without prior order  
21 from the Court, and the Escrow Agent shall be obligated (notwithstanding  
22 anything herein to the contrary) to withhold from distribution to Authorized  
23 Claimants any funds necessary to pay such amounts, including the  
24 establishment of adequate reserves for any Taxes and Tax Expenses (as well  
25 as any amounts that may be required to be withheld under Treas. Reg.  
26 §1.468B-2(1)(2)); neither LG Chem nor its counsel is responsible therefor,  
27 nor shall they have any liability therefor. The Settling Parties agree to  
28 cooperate with the Escrow Agent, each other, their tax attorneys and their



1                    accountants to the extent reasonably necessary to carry out the provisions of  
2                    this paragraph.

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

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

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

- 14                    (a)     To pay all costs and expenses reasonably and actually incurred in connection  
15                    with providing notice to the Classes in connection with administering and  
16                    distributing the Net Settlement Fund to Authorized Claimants, and in  
17                    connection with paying escrow fees and costs, if any;
- 18                    (b)     To pay all costs and expenses, if any, reasonably and actually incurred in  
19                    soliciting claims and assisting with the filing and processing of such claims;
- 20                    (c)     To pay the Taxes and Tax Expenses as defined herein;
- 21                    (d)     To pay any Fee and Expense Award that is allowed by the Court, subject to  
22                    and in accordance with the Agreement; and
- 23                    (e)     To distribute the balance of the Net Settlement Fund to Authorized  
24                    Claimants as allowed by the Agreement, any Distribution Plan or order of  
25                    the Court.
- 26  
27  
28

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

- 6           (a) Each member of the Classes who claims to be an Authorized Claimant shall  
7 be required to submit to the Notice and Claims Administrator a completed  
8 Proof of Claim and Release in such form as shall be approved by the Court;
- 9           (b) Except as otherwise ordered by the Court, each member of the Classes who  
10 fails to submit a Proof of Claim and Release within such period as may be  
11 ordered by the Court, or otherwise allowed, shall be forever barred from  
12 receiving any payments pursuant to this Agreement and the Settlement set  
13 forth herein;
- 14           (c) The Net Settlement Fund shall be distributed to Authorized Claimants  
15 substantially in accordance with a Distribution Plan to be approved by the  
16 Court. Any such Distribution Plan is not a part of this Agreement. No funds  
17 from the Net Settlement Fund shall be distributed to Authorized Claimants  
18 until after the Effective Date; and
- 19           (d) All Persons who fall within the definition of the Classes who do not timely  
20 and validly request to be excluded from the Classes shall be subject to and  
21 bound by the provisions of this Agreement, the releases contained herein,  
22 and the Judgment with respect to all Released Claims, regardless of whether  
23 such Persons seek or obtain by any means, including, without limitation, by  
24 submitting a Proof of Claim and Release or any similar document, any  
25 distribution from the Gross Settlement Fund or the Net Settlement Fund.

26           **21. No Liability for Distribution of Settlement Funds.** Neither the Releasees nor  
27 their counsel shall have any responsibility for, interest in or liability whatsoever with respect to the  
28 distribution of the Gross Settlement Fund; the Distribution Plan; the determination, administration

1 or calculation of claims; the Gross Settlement Fund’s qualification as a “qualified settlement fund”;  
2 the payment or withholding of Taxes or Tax Expenses; the distribution of the Net Settlement Fund;  
3 or any losses incurred in connection with any such matters. The Releasers hereby fully, finally and  
4 forever release, relinquish and discharge the Releasees and their counsel from any and all such  
5 liability. No Person shall have any claim against Class Counsel or the Notice and Claims  
6 Administrator based on the distributions made substantially in accordance with the Agreement and  
7 the Settlement contained herein, the Distribution Plan or further orders of the Court.

8 **22. Balance Remaining in Net Settlement Fund.** If there is any balance remaining in  
9 the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), Class  
10 Counsel may reallocate such balance among Authorized Claimants in an equitable and economic  
11 fashion, distribute remaining funds through *cy pres*, or allow the money to escheat to federal or  
12 state governments, subject to Court approval. In no event shall the Net Settlement Fund revert to  
13 LG Chem.

14 **23. Distribution Plan Not Part of Settlement.** It is understood and agreed by the  
15 Settling Parties that any Distribution Plan, including any adjustments to any Authorized Claimant’s  
16 claim, is not a part of this Agreement and is to be considered by the Court separately from the  
17 Court’s consideration of the fairness, reasonableness and adequacy of the Settlement set forth in  
18 this Agreement, and any order or proceedings relating to the Distribution Plan shall not operate to  
19 terminate or cancel this Agreement or affect the finality of the Judgment, the Final Approval Order,  
20 or any other orders entered pursuant to this Agreement. The time to appeal from an approval of the  
21 Settlement shall commence upon the Court’s entry of the Judgment regardless of whether either the  
22 Distribution Plan or an application for attorneys’ fees and expenses has been submitted to the Court  
23 or approved.

24 **F. Attorneys’ Fees and Reimbursement of Expenses**

25 **24. Fee and Expense Application.** Class Counsel may submit an application or  
26 applications (the “Fee and Expense Application”) for distributions from the Gross Settlement Fund  
27 for: (a) an award of attorneys’ fees; plus (b) reimbursement of expenses incurred in connection  
28

1 with prosecuting the Actions; plus (c) any interest on such attorneys' fees and expenses (until paid)  
2 at the same rate and for the same periods as earned by the Gross Settlement Fund, as appropriate,  
3 and as may be awarded by the Court.

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

7 **26. Award of Fees and Expenses Not Part of Settlement.** The procedure for, and the  
8 allowance or disallowance by the Court of, the Fee and Expense Application are not part of the  
9 Settlement set forth in this Agreement, and are to be considered by the Court separately from the  
10 Court's consideration of the fairness, reasonableness and adequacy of the Settlement set forth in  
11 this Agreement. Any order or proceeding relating to the Fee and Expense Application, or any  
12 appeal from any Fee and Expense Award or any other order relating thereto or reversal or  
13 modification thereof, shall not operate to terminate or cancel this Agreement, or affect or delay the  
14 finality of the Judgment and the Settlement of the Actions as set forth herein. No order of the  
15 Court or modification or reversal on appeal of any order of the Court concerning any Fee and  
16 Expense Award or Distribution Plan shall constitute grounds for cancellation or termination of this  
17 Agreement.

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

23 **G. Cooperation**

24 **28. Cooperation as Consideration.** In return for the Release and Discharge provided  
25 herein, LG Chem agrees to pay the Settlement Amount and agrees to provide cooperation to  
26 Indirect Purchaser Plaintiffs as set forth specifically below. Except as otherwise specified herein,  
27

1 all cooperation shall commence within ten (10) business days after Preliminary Approval by the  
2 Court of this Agreement.

3 **29. Cooperation Subject to and Consistent with Prior Obligations.** LG Chem and  
4 the Indirect Purchaser Plaintiffs shall not be obligated to provide cooperation that would violate an  
5 applicable court order or LG Chem's commitments to the United States Department of Justice or  
6 any other governmental entity. Additionally, Indirect Purchaser Plaintiffs and LG Chem will take  
7 reasonable efforts to accommodate the other's efforts to minimize duplication in the providing of  
8 any cooperation.

9 **30. Cooperation.**

- 10 (a) Within a reasonable period of time (but no more than thirty (30) days) after  
11 submission by Class Counsel to the Court of a proposed form of notice to the  
12 Classes, LG Chem's counsel shall meet with Class Counsel for the purpose  
13 of identifying any LG Chem documents that have been produced as of that  
14 time that relate to and/or support the allegations in the Third Consolidated  
15 Amended Class Action Complaint or that show LG Chem Lithium Ion  
16 Battery sales, pricing, capacity or production; provided, however, that such  
17 obligation shall not require LG Chem to provide information protected by  
18 the attorney-client privilege, attorney work-product doctrine and/or other  
19 similar privileges and shall not waive any such protections or privileges.  
20 Further, such communications shall be considered privileged settlement  
21 discussions pursuant to Federal Rule of Evidence 408 and similar provisions.
- 22 (b) LG Chem will produce all English translations of any documents that it  
23 provided to the United States Department of Justice in connection with its  
24 investigation of potential collusion concerning Lithium Ion Batteries, to the  
25 extent they exist, within fifteen (15) business days after Preliminary  
26 Approval by the Court of this Agreement.
- 27 (c) LG Chem agrees that Class Counsel may notice up to three depositions and  
28 also may ask questions at depositions of LG Chem witnesses noticed by

1 other plaintiffs in the Actions.

2 (d) If LG Chem produces any declarations, documents, data or other responses  
3 to discovery to any other plaintiff in the Actions, LG Chem will produce the  
4 same to Class Counsel.

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

11 (f) LG Chem will respond to reasonable requests (including, if necessary, by  
12 providing reasonable telephonic access to appropriate employees) for  
13 clarification of the transactional, production and cost data that LG Chem  
14 produced in the Actions prior to the Execution Date.

15 (g) LG Chem will continue to comply with the terms of paragraph I(C) in the  
16 Court's Order re Deposition Protocol (ECF No. 593) ("Deposition  
17 Protocol") relating to employee "watchlists" for as long as these terms are in  
18 effect. LG Chem will inform Class Counsel under the terms of that  
19 paragraph if LG Chem becomes aware that a person on Plaintiffs' (as  
20 defined in the Deposition Protocol) watchlist intends to leave, or does leave,  
21 his or her employment at LG Chem, to the extent reasonably possible.

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

28 Unless mutually agreed to by the Parties, any such interviews shall not

1 exceed one six-hour day. Except as specifically provided for herein, any  
2 such depositions shall be conducted in accordance with the procedures set  
3 forth in the Deposition Protocol and shall count toward the maximum of  
4 twelve (12) depositions for LG Chem as a defendant group as set forth in the  
5 Deposition Protocol.

6 **31. Confidentiality.** Indirect Purchaser Plaintiffs and Class Counsel agree that they  
7 will not use the information provided by LG Chem or its representatives for any purpose other than  
8 pursuit of the Actions, and will not publicize the information beyond what is reasonably necessary  
9 for the prosecution of the Actions. Any information provided pursuant to this Agreement shall be  
10 subject to the Stipulated Protective Order entered in the Actions on May 17, 2013 (ECF No. 193)  
11 (“Protective Order”) as if produced in response to discovery requests and so designated.

12 **32. Other Discovery.** Upon the Execution Date, LG Chem and Releasees need not  
13 respond to formal discovery from Indirect Purchaser Plaintiffs or otherwise participate in the  
14 Actions. Further, neither LG Chem nor the Indirect Purchaser Plaintiffs shall file motions against  
15 the other or initiate or participate in any discovery, motion or proceeding directly adverse to the  
16 other in connection with the Actions, except as specifically provided for herein, and LG Chem and  
17 the Indirect Purchaser Plaintiffs shall not be obligated to respond to or supplement prior responses  
18 to formal discovery that has been previously propounded by the other in the Actions or otherwise  
19 participate in the Actions. Indirect Purchaser Plaintiffs and LG Chem agree to withdraw all  
20 outstanding discovery served on the other.

21 **33. Resolution of Disputes.** To the extent the Settling Parties disagree about the  
22 interpretation or enforcement of any terms of this Agreement relating to future cooperation by LG  
23 Chem, they agree to submit such disputes for binding resolution by Judge Vaughn R. Walker (ret.)  
24 or another mutually agreed neutral.

25 **34. Final Approval.** In the event that this Agreement fails to receive Final Approval by  
26 the Court as contemplated herein or in the event that it is terminated by either of the Settling Parties  
27 under any provision herein, the parties agree that neither Indirect Purchaser Plaintiffs nor Class  
28 Counsel shall be permitted to introduce in evidence, at any hearing, or in support of any motion,

1 opposition or other pleading in the Actions or in any other federal or state or foreign action alleging  
2 a violation of any law relating to the subject matter of the Actions, any information provided by LG  
3 Chem or its counsel pursuant to ¶ 30(a) or ¶ 30(f) or any information obtained during interviews  
4 provided pursuant to ¶ 30(h). Further, in such event, LG Chem and Indirect Purchaser Plaintiffs  
5 will each be bound by and have the benefit of any rulings made in the Actions to the extent they  
6 would have been applicable to LG Chem or Indirect Purchaser Plaintiffs had LG Chem been  
7 participating in the Actions.

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

9 **35. Effective Date.** The Effective Date of this Agreement shall be conditioned on the  
10 occurrence of all of the following events:

- 11 (a) LG Chem no longer has any right under ¶¶40-42 to terminate this Agreement  
12 or, if LG Chem does have such right, they have given written notice to Class  
13 Counsel that they will not exercise such right;
- 14 (b) Indirect Purchaser Plaintiffs no longer have any right under ¶¶40-42 to  
15 terminate this Agreement or, if Indirect Purchaser Plaintiffs do have such  
16 right, they have given written notice to LG Chem that they will not exercise  
17 such right;
- 18 (c) the Court has finally approved the Settlement as described herein, following  
19 notice to the Classes and a hearing, as prescribed by Rule 23 of the Federal  
20 Rules of Civil Procedure, and has entered the Judgment; and
- 21 (d) the Judgment has become Final.

22 **36. Occurrence of Effective Date.** Upon the occurrence of all of the events referenced  
23 in the above paragraph, any and all remaining interest or right of LG Chem in or to the Gross  
24 Settlement Fund, if any, shall be absolutely and forever extinguished, and the Gross Settlement  
25 Fund (less any Notice and Administrative Costs, Taxes, Tax Expenses or Fee and Expense Award  
26 paid) shall be transferred from the Escrow Agent to the Notice and Claims Administrator as  
27 successor Escrow Agent within ten (10) days after the Effective Date.



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

4           **38. Exclusions and Rights to Terminate.**

5           (a) Class Counsel shall cause copies of requests for exclusion from the Classes  
6 to be provided to LG Chem's counsel. No later than fourteen (14) days after  
7 the final date for mailing requests for exclusion, Class Counsel shall provide  
8 LG Chem's counsel with a complete and final list of opt-outs. With the  
9 motion for final approval of the Settlement, Class Counsel will file with the  
10 Court a complete list of requests for exclusion from the Classes, including  
11 only the name, city and state of the person or entity requesting exclusion.  
12 With respect to any member of the Class who requests exclusion from the  
13 Classes, LG Chem reserves all of its legal rights and defenses, including, but  
14 not limited to, any defenses relating to whether the member of the Class is  
15 an indirect purchaser of the allegedly price-fixed product and/or has standing  
16 to bring any claim. LG Chem shall have the option to terminate this  
17 Agreement if the purchases of Lithium Ion Batteries, Lithium Ion Packs  
18 and/or Finished Products made by members of the Classes who timely and  
19 validly request exclusion from the Classes equal or exceed five percent (5%)  
20 of the total volume of purchases made by the Classes. After meeting and  
21 conferring with Class Counsel, LG Chem may elect to terminate this  
22 Agreement by serving written notice on Class Counsel by email and  
23 overnight courier and by filing a copy of such notice with the Court no later  
24 than thirty (30) days before the date for the final approval hearing of this  
25 Agreement, except that LG Chem shall have a minimum of ten (10) days in  
26 which to decide whether to terminate this Agreement after receiving the final  
27 opt-out list.

1 (b) LG Chem believes it has made its best effort to reasonably comply with its  
2 discovery obligations to date, and Indirect Purchaser Plaintiffs possess all  
3 non-privileged, documents of LG Chem's responsive to their discovery  
4 requests through that effort. In the event non-privileged, responsive  
5 documents that had been in LG Chem's possession, custody, or control are  
6 produced to or identified by Indirect Purchaser Plaintiffs that were not  
7 previously produced in the Actions to Indirect Purchaser Plaintiffs at the  
8 time of the execution of this Agreement, Indirect Purchaser Plaintiffs will  
9 have thirty days to terminate this Agreement, so long as such documents  
10 contain evidence of the conspiracy alleged by Indirect Purchaser Plaintiffs  
11 that is materially different than the evidence previously disclosed in the  
12 Actions and which materially changes Indirect Purchaser Plaintiffs' claims  
13 against LG Chem. If there is a dispute as to the materiality of such  
14 documents, the parties agree to submit the dispute to a mutually agreed  
15 neutral for determination. Indirect Purchaser Plaintiffs' termination rights  
16 under this paragraph expire upon final approval of the settlement in this  
17 matter by the Court prior to any appeals.

18 (c) In the event that this Agreement is terminated by either of the Settling  
19 Parties: (i) this Agreement shall be null and void, and shall have no force or  
20 effect and shall be without prejudice to the rights and contentions of  
21 Releasees and Releasers in this or any other litigation; and (ii) the Settlement  
22 Amount paid by LG Chem, plus interest thereon, shall be refunded promptly  
23 to LG Chem, minus such payment (as set forth in this Agreement) of Notice  
24 and Administrative Costs and Taxes and Tax Expenses, consistent with the  
25 provisions of ¶42.

26 **39. Objections.** Settlement Class members who wish to object to any aspect of the  
27 Settlement must file with the Court a written statement containing their objection by the end of the  
28 period to object to the Settlement. Any award or payment of attorneys' fees made to the counsel of

1 an objector to the Settlement shall only be made by Court order and upon a showing of the benefit  
2 conferred to the Classes. In determining any such award of attorneys' fees to an objectors'  
3 counsel, the Court will consider the incremental value to the Classes caused by any such objection.  
4 Any award of attorneys' fees by the Court will be conditioned on the objector and his or her  
5 attorney stating under penalty of perjury that no payments shall be made to the objector based on  
6 the objector's participation in the matter other than as ordered by the Court. LG Chem shall have  
7 no responsibility for any such payments.

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

16 **41.** No Settling Party shall have any obligation whatsoever to proceed under any terms  
17 other than substantially in the form provided and agreed to herein; provided, however, that no order  
18 of the Court concerning any Fee and Expense Application or Distribution Plan, or any modification  
19 or reversal on appeal of such order, shall constitute grounds for cancellation or termination of this  
20 Agreement by any Settling Party. Without limiting the foregoing, LG Chem shall have, in its sole  
21 and absolute discretion, the option to terminate the Settlement in its entirety in the event that the  
22 Judgment, upon becoming Final, does not provide for the dismissal with prejudice of all of the  
23 Actions against it.

24 **42. Termination.** Unless otherwise ordered by the Court, in the event that the Effective  
25 Date does not occur or this Agreement should terminate, or be cancelled or otherwise fail to  
26 become effective for any reason, including, without limitation, in the event that this Agreement is  
27 terminated by either of the Settling Parties pursuant to ¶38, the Settlement as described herein is  
28

1 not finally approved by the Court or the Judgment is reversed or vacated following any appeal  
2 taken therefrom, then:

- 3 (a) within five (5) business days after written notification of such event is sent  
4 by counsel for LG Chem to the Escrow Agent, the Gross Settlement Fund—  
5 including the Settlement Amount and all interest earned on the Settlement  
6 Amount while held in escrow excluding only Notice and Administrative  
7 Costs that have either been properly disbursed or are due and owing, Taxes  
8 and Tax Expenses that have been paid or that have accrued and will be  
9 payable at some later date, and attorneys' fees and costs that have been  
10 disbursed pursuant to Court order—will be refunded, reimbursed and repaid  
11 by the Escrow Agent to LG Chem; if said amount or any portion thereof is  
12 not returned within such five (5) day period, then interest shall accrue  
13 thereon at the rate of ten percent (10%) per annum until the date that said  
14 amount is returned;
- 15 (b) within thirty (30) business days after written notification of such event is  
16 sent by counsel for LG Chem to Class Counsel, all attorneys' fees and costs  
17 which have been disbursed to Class Counsel pursuant to Court order shall be  
18 refunded, reimbursed and repaid by Class Counsel to LG Chem;
- 19 (c) the Escrow Agent or its designee shall apply for any tax refund owed to the  
20 Gross Settlement Fund and pay the proceeds to LG Chem, after deduction of  
21 any fees or expenses reasonably incurred in connection with such  
22 application(s) for refund, pursuant to such written request;
- 23 (d) the Settling Parties shall be restored to their respective positions in the  
24 Actions as of the Execution Date, with all of their respective claims and  
25 defenses preserved as they existed on that date;
- 26 (e) the terms and provisions of this Agreement, with the exception of ¶¶13-15,  
27 17, 27, 31, 33-35, 37, 40-42, 44-45, 47-48, 50-57 (which shall continue in  
28 full force and effect), shall be null and void and shall have no further force

1 or effect with respect to the Settling Parties, and neither the existence nor the  
2 terms of this Agreement (nor any negotiations preceding this Agreement nor  
3 any acts performed pursuant to, or in furtherance of, this Agreement) shall  
4 be used in the Actions or in any other action or proceeding for any purpose  
5 (other than to enforce the terms remaining in effect); and

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

8  
9 **I. No Admission of Liability**

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

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

21 **45. Use of Agreement as Evidence.** Neither this Agreement nor the Settlement, nor  
22 any act performed or document executed pursuant to or in furtherance of this Agreement or the  
23 Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the  
24 validity of any Released Claims, any allegation made in the Actions, or any wrongdoing or liability  
25 of LG Chem; or (b) is or may be deemed to be or may be used as an admission of, or evidence of,  
26 any liability, fault or omission of the Releasees in any civil, criminal or administrative proceeding  
27 in any court, administrative agency or other tribunal. Neither this Agreement nor the Settlement,  
28 nor any act performed or document executed pursuant to or in furtherance of this Agreement or the

1 Settlement, shall be admissible in any proceeding for any purpose, except to enforce the terms of  
2 the Settlement, and except that the Releasees may file this Agreement and/or the Judgment in any  
3 action for any purpose, including, but not limited to, in order to support a defense or counterclaim  
4 based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar  
5 or reduction or any other theory of claim preclusion or issue preclusion or similar defense or  
6 counterclaim. The limitations described in this paragraph apply whether or not the Court enters the  
7 Preliminary Approval Order, the Final Approval Order or the Judgment.

8 **J. Miscellaneous Provisions**

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

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

5 **48. Resolution of Disputes; Retention of Exclusive Jurisdiction.** Any disputes  
6 between or among LG Chem and any Class Members concerning matters contained in this  
7 Agreement shall, if they cannot be resolved by negotiation and agreement, be submitted to the  
8 Court. The Court shall retain exclusive jurisdiction over the implementation and enforcement of  
9 this Agreement.

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

14 **50. Authorization to Enter Settlement Agreement.** The undersigned representatives  
15 of LG Chem represent that they are fully authorized to enter into and to execute this Agreement on  
16 behalf of LG Chem. Class Counsel, on behalf of Indirect Purchaser Plaintiffs and the Classes,  
17 represent that they are, subject to Court approval, expressly authorized to take all action required or  
18 permitted to be taken by or on behalf of the Classes pursuant to this Agreement to effectuate its  
19 terms and to enter into and execute this Agreement and any modifications or amendments to the  
20 Agreement on behalf of the Classes that they deem appropriate.

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

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

1 COTCHETT, PITRE & MCCARTHY, LLP  
2 Steven N. Williams (swilliams@coplegal.com)  
3 San Francisco Airport Office Center  
4 840 Malcolm Road, Suite 200  
5 Burlingame, CA 94010  
6 Telephone: 650-697-6000  
7 Facsimile: 650-697-0577

8 HAGENS BERMAN SOBOL SHAPIRO LLP  
9 Jeff Friedman (jefff@hbsslaw.com)  
10 715 Hearst Avenue, Suite 202  
11 Berkley, CA 94710  
12 Telephone: 510-725-3000  
13 Facsimile: 510-725-3001

14 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP  
15 Brendan P. Glackin (bglackin@lchb.com)  
16 275 Battery Street, 29th Floor  
17 San Francisco, CA 94111-3339  
18 Telephone: 415-956-1000  
19 Facsimile: 415-956-1008

20 If directed to LG Chem, address notice to:

21 EIMER STAHL LLP  
22 Nathan P. Eimer (neimer@eimerstahl.com)  
23 224 South Michigan Avenue, Suite 1100  
24 Chicago, IL 60604  
25 neimer@eimerstahl.com  
26 Telephone: 312-660-7600  
27 Facsimile: 312-692-1718  
28 aaragona@eimerstahl.com  
vjacobsen@eimerstahl.com

**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



1 obligations of the parties to this Agreement shall be construed and enforced in accordance with,  
2 and governed by, the internal, substantive laws of the State of California without giving effect to  
3 that state's choice of law principles.

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

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

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

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

27 IN WITNESS WHEREOF, the parties hereto, through their fully authorized  
28 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: November 14, 2016

HAGENS BERMAN SOBOL SHAPIRO LLP

By:   
JEFF D. FRIEDMAN

Steve W. Berman (*pro hac vice*)  
Shana E. Scarlett (217895)  
Jeff D. Friedman (173886)  
715 Hearst Avenue, Suite 202  
Berkeley, CA 94710  
Telephone: (510) 725-3000  
Facsimile: (510) 725-3001  
steve@hbsslaw.com  
jefff@hbsslaw.com  
shanas@hbsslaw.com

DATED: November 14, 2016

COTCHETT, PITRE & McCARTHY, LLP

By:   
STEVEN N. WILLIAMS

Joseph W. Cotchett (SBN 36324)  
Nancy L. Fineman (SBN 124870)  
Demetrius X. Lambrinos (SBN 246027)  
Joyce Chang (SBN 300780)  
840 Malcolm Road  
Burlingame, CA 94010  
Telephone: (650) 697-6000  
Facsimile: (650) 697-0577  
jcotchett@cpmlegal.com  
nfineman@cpmlegal.com  
swilliams@cpmlegal.com  
dlambrinos@cpmlegal.com  
jchang@cpmlegal.com

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DATED: November 14, 2016

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

By:   
BRENDAN P. GLACKIN

Elizabeth J. Cabraser (SBN 083151)  
Richard M. Heimann (SBN 63607)  
Eric B. Fastiff (SBN 182260)  
Dean M. Harvey (SBN 250298)  
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275 Battery Street, 29th Floor  
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ecabraser@lchb.com  
rheimann@lchb.com  
efastiff@lchb.com  
bglackin@lchb.com  
dharvey@lchb.com  
lchan@lchb.com

LG CHEM, LTD.

DATED: November 14, 2016

By: \_\_\_\_\_  
Geon Jang  
Its Vice President and General Counsel

LG CHEM AMERICA, INC.

DATED: November 14, 2016

By: \_\_\_\_\_  
Soo Jung Hahm  
Its Vice President and Head

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DATED: November 14, 2016

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By: BRENDAN P. GLACKIN

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bglackin@lchb.com  
dharvey@lchb.com  
lchan@lchb.com

LG CHEM, LTD.

DATED: November 14, 2016

By: Geon Jang  
Geon Jang  
Its Vice President and General Counsel

LG CHEM AMERICA, INC.

DATED: November 14, 2016

By: Soo Jung Hahn  
Soo Jung Hahn  
Its Vice President and Head

# **EXHIBIT C**

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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

NEC SETTLEMENT AGREEMENT

DATE ACTION FILED: Oct. 3, 2012

1 This Settlement Agreement (hereinafter, "Agreement") is made and entered into as of the  
2 31st day of December, 2016 by and between Defendant NEC Corporation ("NEC"), and Indirect  
3 Purchaser Plaintiffs, both individually and on behalf of Classes in the above-captioned class action.  
4 This Agreement is intended by the Settling Parties to fully, finally and forever resolve, discharge and  
5 settle the Released Claims, upon and subject to the terms and conditions hereof.

6 **RECITALS**

7 WHEREAS, Indirect Purchaser Plaintiffs are prosecuting the above-captioned litigation on  
8 their own behalf and on behalf of Classes against, among others, NEC;

9 WHEREAS, Indirect Purchaser Plaintiffs allege, among other things, that NEC violated the  
10 antitrust laws by conspiring to fix, raise, maintain or stabilize the prices of Lithium Ion Batteries, and  
11 these acts caused the Classes to incur significant damages;

12 WHEREAS, NEC has denied and continues to deny each and all of the claims and allegations  
13 of wrongdoing made by the Indirect Purchaser Plaintiffs in the Actions; all charges of wrongdoing or  
14 liability against it arising out of any of the conduct, statements, acts or omissions alleged, or that  
15 could have been alleged, in the Actions; and the allegations that the Indirect Purchaser Plaintiffs or  
16 any member of Classes were harmed by any conduct by NEC alleged in the Actions or otherwise;

17 WHEREAS, Indirect Purchaser Plaintiffs and NEC agree that neither this Agreement nor any  
18 statement made in the negotiation thereof shall be deemed or construed to be an admission or  
19 evidence of any violation of any statute or law or of any liability or wrongdoing by NEC or of the  
20 truth of any of the claims or allegations alleged in the Actions;

21 WHEREAS, arm's length settlement negotiations have taken place between NEC and  
22 Indirect Purchaser Plaintiffs' Class Counsel, and this Agreement, which embodies all of the terms  
23 and conditions of the Settlement between the Settling Parties, has been reached (subject to the  
24 approval of the Court) as provided herein and is intended to supersede any prior agreements between  
25 the Settling Parties;

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

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

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

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

20 **A. Definitions**

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

- 22 (a) "Actions" means *In re Lithium Ion Batteries Antitrust Litigation – All Indirect*  
23 *Purchaser Actions*, Case No. 13-MD-02420 YGR (DMR), and each of the  
24 cases brought on behalf of indirect purchasers previously consolidated and/or  
25 included as part of MDL Docket No. 2420.  
26 (b) "Affiliates" means entities controlling, controlled by or under common  
27 control with a Releasee or Releasor.



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- (c) “Authorized Claimant” means any Indirect Plaintiff Purchaser 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 included are 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 Lieff 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.
- (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

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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 NEC, 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 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

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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, Piya Robert Rojanasathit, Steve Bugge, Tom Pham, Bradley Seldin, Patrick McGuinness, John Kopp, Drew Fennelly, Jason Ames, William Cabral, Donna Shawn, Joseph O’Daniel, Cindy Booze, Matthew Ence, David Tolchin, Matt Bryant, Sheri Harmon, Christopher Bessette, Caleb Batey, 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 as to NEC.

(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.

(t) “MDL Defendants” means LG Chem, Ltd.; LG Chem America, Inc.; Samsung SDI Co. Ltd.; Samsung SDI America, Inc.; Panasonic Corporation; Panasonic Corporation of North America; Sanyo Electric Co., Ltd.; Sanyo North America Corporation; Sanyo GS Soft Energy Co. Ltd.; LG Chem Corporation; LG Chem Energy Devices Corporation; LG Chem Electronics Inc.; Hitachi Maxell, Ltd.; Maxell Corporation of America; GS Yuasa Corporation; NEC Corporation; NEC Tokin Corporation; Toshiba

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Corporation; A&T Battery Corporation; and Toshiba America Electronic Components Inc.

(u) “Net Settlement Fund” means the Gross Settlement Fund, less the payments set forth in ¶ 19(a)-(e).

(v) “Notice and Administrative Costs” means the reasonable sum of money not in excess of seven hundred fifty thousand U.S. Dollars (\$750,000.00) to be paid out of the Gross Settlement Fund to pay for notice to the Classes and related administrative costs.

(w) “Notice and Claims Administrator” means the claims administrator(s) to be selected by Class Counsel and approved by the Court.

(x) “Person(s)” means an individual, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and any spouses, heirs, predecessors, successors, representatives or assignees of any of the foregoing.

(y) “Proof of Claim and Release” means the form to be sent to the Classes, upon further order(s) of the Court, by which any member of the Classes may make claims against the Gross Settlement Fund.

(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 Releasers or any of them, whether directly, representatively, derivatively, or in any other capacity, ever

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had, now have or hereafter can, shall or may have, relating in any way to any conduct prior to the Execution 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 discrimination, unitary pricing, racketeering, contract, civil conspiracy or consumer protection law, whether under federal, state, local or foreign law.

(aa) "Releasees" means NEC 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. "Releasees" does not include any defendant in the Actions other than NEC.

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

7 (cc) "Settlement" means the settlement of the Released Claims set forth herein.

8 (dd) "Settlement Amount" means Two Million Five Hundred Thousand U.S.  
9 Dollars (\$2,500,000).

10 (ee) "Settling Parties" means, collectively, NEC and the Indirect Purchaser  
11 Plaintiffs (on behalf of themselves and the Classes).

12 (ff) "Unknown Claims" means any Released Claim that an Indirect Purchaser  
13 Plaintiff and/or Class Member does not know or suspect to exist in his, her or  
14 its favor at the time of the release of the Releasees that if known by him, her or  
15 it, might have affected his, her or its settlement with and release of the  
16 Releasees, or might have affected his, her or its decision not to object to or opt  
17 out of this Settlement. Such Unknown Claims include claims that are the  
18 subject of California Civil Code § 1542 and equivalent, similar or comparable  
19 laws or principles of law. California Civil Code § 1542 provides:

20 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
21 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO  
22 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING  
23 THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST  
24 HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT  
25 WITH THE DEBTOR.

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

25 **2. Reasonable Best Efforts to Effectuate This Settlement.** The Settling Parties: (a)  
26 acknowledge that it is their intent to consummate this Agreement; and (b) agree to cooperate to the

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1 extent reasonably necessary to effectuate and implement the terms and conditions of this Agreement  
2 and to exercise their best efforts to accomplish the terms and conditions of this Agreement.

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

10 **4. Proposed Form of Notice.** At a time to be determined in their sole discretion but no  
11 later than any other class settlement entered into by Class Counsel, Class Counsel shall submit to the  
12 Court for approval a proposed form of, method for and schedule for dissemination of notice to the  
13 Classes. To the extent practicable and to the extent consistent with this paragraph, Class Counsel  
14 may seek to coordinate this notice program with other settlements that may be reached in the Actions  
15 in order to reduce the expense of notice. This motion shall recite and ask the Court to find that the  
16 proposed form of and method for dissemination of notice to the Classes constitutes valid, due and  
17 sufficient notice to the Classes, constitutes the best notice practicable under the circumstances, and  
18 complies fully with the requirements of Federal Rule of Civil Procedure 23. Class Counsel shall  
19 provide NEC with seven days advance notice of the text of the notice(s) to be provided to the  
20 Classes, and shall consider in good faith any concerns or suggestions expressed by NEC. NEC shall  
21 be responsible for providing all notices required by the Class Action Fairness Act of 2005 to be  
22 provided to state attorneys general or to the United States of America.

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

- 1 (a) certifying the Classes, pursuant to Federal Rule of Civil Procedure 23, solely  
2 for purposes of this Settlement;
- 3 (b) fully and finally approving the Settlement contemplated by this Agreement  
4 and its terms as being fair, reasonable and adequate within the meaning of  
5 Federal Rule of Civil Procedure 23 and directing its consummation pursuant  
6 to its terms and conditions;
- 7 (c) finding that the notice given to the Class Members constituted the best notice  
8 practicable under the circumstances and complies in all respects with the  
9 requirements of Federal Rule of Civil Procedure 23 and due process;
- 10 (d) directing that the Actions be dismissed with prejudice as to NEC and, except  
11 as provided for herein, without costs;
- 12 (e) discharging and releasing the Releasees from all Released Claims;
- 13 (f) permanently barring and enjoining the institution and prosecution, by Indirect  
14 Purchaser Plaintiffs and Class Members, of any other action against the  
15 Releasees in any court asserting any claims related in any way to the Released  
16 Claims;
- 17 (g) reserving continuing and exclusive jurisdiction over the Settlement, including  
18 all future proceedings concerning the administration, consummation and  
19 enforcement of this Agreement;
- 20 (h) determining pursuant to Federal Rule of Civil Procedure 54(b) that there is no  
21 just reason for delay and directing entry of a final judgment as to NEC; and
- 22 (i) containing such other and further provisions consistent with the terms of this  
23 Agreement to which the parties expressly consent in writing.

24 Class Counsel also will request that the Court approve the proposed Distribution Plan,  
25 application for attorneys' fees and reimbursement of expenses, and application for service awards (as  
26 described below).

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

8           **C. Releases**

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

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

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

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

17 **11. Claims Excluded from Release.** Notwithstanding the foregoing, the releases  
18 provided herein shall not release claims against NEC for product liability, breach of contract, breach  
19 of warranty or personal injury, or any other claim unrelated to the allegations in the Actions. For  
20 avoidance of doubt, this Agreement does not release claims arising from restraints of competition  
21 directed at goods other than (a) Lithium Ion Batteries, or (b) Lithium Ion Batteries contained in  
22 Finished Products. Additionally, the releases provided herein shall not release any claims to enforce  
23 the terms of this Agreement.

24 **D. Settlement Fund**

25 **12. Settlement Payment.** NEC shall pay by wire transfer the Settlement Amount to the  
26 Escrow Agent pursuant to mutually agreeable escrow instructions within no more than thirty (30)  
27 business days after having received the appropriate instructions for making payment to the Escrow  
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1 Agent. This amount constitutes the total amount of payment that NEC is required to make in  
2 connection with this Settlement Agreement. This amount shall not be subject to reduction, and upon  
3 the occurrence of the Effective Date, no funds may be returned to NEC. The Escrow Agent shall  
4 only act in accordance with the mutually agreed escrow instructions.

5 **13. Disbursements Prior to Effective Date.** No amount may be disbursed from the  
6 Gross Settlement Fund unless and until the Effective Date, except that: (a) Notice and  
7 Administrative Costs, which may not exceed seven hundred fifty thousand U.S. Dollars  
8 (\$750,000.00), may be paid from the Gross Settlement Fund as they become due; (b) Taxes and Tax  
9 Expenses (as defined in ¶ 17(b) below) may be paid from the Gross Settlement Fund as they become  
10 due; and (c) attorneys' fees and reimbursement of litigation costs and expenses, as may be ordered by  
11 the Court, may be disbursed during the pendency of any appeals which may be taken from the  
12 judgment to be entered by the Court finally approving this Settlement. Class Counsel will attempt in  
13 good faith to minimize the amount of Notice and Administrative Costs and may seek to coordinate  
14 the notice described herein with other settlements in these Actions.

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

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

26 **16. No Additional Payments by NEC.** Under no circumstances will NEC be required to  
27 pay more or less than the Settlement Amount pursuant to this Agreement and the Settlement set forth  
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1 herein. For purposes of clarification, the payment of any Fee, Expense, and Service Awards (as  
2 defined in ¶ 25 below), the Notice and Administrative Costs, and any other costs associated with the  
3 implementation of this Settlement Agreement shall be exclusively paid from the Settlement Amount.

4 **17. Taxes.** The Settling Parties and the Escrow Agent agree to treat the Gross Settlement  
5 Fund as being at all times a “qualified settlement fund” within the meaning of Treas. Reg.  
6 §1.468B-1. The Escrow Agent shall timely make such elections as necessary or advisable to carry  
7 out the provisions of this paragraph, including the “relation-back election” (as defined in Treas. Reg.  
8 §1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the  
9 procedures and requirements contained in such regulations. It shall be the responsibility of the  
10 Escrow Agent to prepare and deliver timely and properly the necessary documentation for signature  
11 by all necessary parties, and thereafter to cause the appropriate filing to occur.

12 (a) For the purpose of §468B of the Internal Revenue Code of 1986, as amended,  
13 and the regulations promulgated thereunder, the “administrator” shall be the  
14 Escrow Agent. The Escrow Agent shall satisfy the administrative  
15 requirements imposed by Treas. Reg. §1.468B-2 by, *e.g.*, (i) obtaining a  
16 taxpayer identification number, (ii) satisfying any information reporting or  
17 withholding requirements imposed on distributions from the Gross Settlement  
18 Fund, and (iii) timely and properly filing applicable federal, state and local tax  
19 returns necessary or advisable with respect to the Gross Settlement Fund  
20 (including, without limitation, the returns described in Treas. Reg.  
21 §1.468B-2(k)) and paying any taxes reported thereon. Such returns (as well as  
22 the election described in this paragraph) shall be consistent with the  
23 provisions of this paragraph and in all events shall reflect that all Taxes as  
24 defined in ¶ 17(b) below on the income earned by the Gross Settlement Fund  
25 shall be paid out of the Gross Settlement Fund as provided in ¶ 19 hereof;

26 (b) The following shall be paid out of the Gross Settlement Fund: (i) all taxes  
27 (including any estimated taxes, interest or penalties) arising with respect to the  
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1 income earned by the Gross Settlement Fund, including, without limitation,  
2 any taxes or tax detriments that may be imposed upon NEC or its counsel with  
3 respect to any income earned by the Gross Settlement Fund for any period  
4 during which the Gross Settlement Fund does not qualify as a “qualified  
5 settlement fund” for federal or state income tax purposes (collectively,  
6 “Taxes”); and (ii) all expenses and costs incurred in connection with the  
7 operation and implementation of this paragraph, including, without limitation,  
8 expenses of tax attorneys and/or accountants and mailing and distribution  
9 costs and expenses relating to filing (or failing to file) the returns described in  
10 this paragraph (collectively, “Tax Expenses”). In all events neither NEC nor  
11 its counsel shall have any liability or responsibility for the Taxes or the Tax  
12 Expenses. With funds from the Gross Settlement Fund, the Escrow Agent  
13 shall indemnify and hold harmless NEC and its counsel for Taxes and Tax  
14 Expenses (including, without limitation, Taxes payable by reason of any such  
15 indemnification). Further, Taxes and Tax Expenses shall be treated as, and  
16 considered to be, a cost of administration of the Gross Settlement Fund and  
17 shall timely be paid by the Escrow Agent out of the Gross Settlement Fund  
18 without prior order from the Court, and the Escrow Agent shall be obligated  
19 (notwithstanding anything herein to the contrary) to withhold from  
20 distribution to Authorized Claimants any funds necessary to pay such  
21 amounts, including the establishment of adequate reserves for any Taxes and  
22 Tax Expenses (as well as any amounts that may be required to be withheld  
23 under Treas. Reg. §1.468B-2(1)(2)); neither NEC nor its counsel is  
24 responsible therefor, nor shall they have any liability therefor. The Settling  
25 Parties agree to cooperate with the Escrow Agent, each other, their tax  
26 attorneys and their accountants to the extent reasonably necessary to carry out  
27 the provisions of this paragraph.  
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1           **E. Administration and Distribution of Gross Settlement Fund**

2           **18. Time to Appeal.** The time to appeal from an approval of the Settlement shall  
3 commence upon the Court's entry of the Judgment regardless of whether or not either the  
4 Distribution Plan or an application for attorneys' fees and expenses has been submitted to the Court  
5 or resolved.

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

- 12                   (a) To pay all costs and expenses reasonably and actually incurred in connection  
13 with providing notice to the Classes in connection with administering and  
14 distributing the Net Settlement Fund to Authorized Claimants, and in  
15 connection with paying escrow fees and costs, if any;
- 16                   (b) To pay all costs and expenses, if any, reasonably and actually incurred in  
17 soliciting claims and assisting with the filing and processing of such claims;
- 18                   (c) To pay the Taxes and Tax Expenses as defined herein;
- 19                   (d) To pay any Fee, Expense, and Service Awards that are allowed by the Court,  
20 subject to and in accordance with the Agreement; and
- 21                   (e) To distribute the balance of the Net Settlement Fund to Authorized Claimants  
22 as allowed by the Agreement, any Distribution Plan or order of the Court.
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1           **20. Distribution of Net Settlement Fund.** Upon the Effective Date and thereafter, and  
2 in accordance with the terms of this Agreement, the Distribution Plan and such further approval and  
3 further order(s) of the Court as may be necessary or as circumstances may require, the Net Settlement  
4 Fund shall be distributed to Authorized Claimants, subject to and in accordance with the following:

- 5           (a) Each member of the Classes who claims to be an Authorized Claimant shall  
6 be required to submit to the Notice and Claims Administrator a completed  
7 Proof of Claim and Release in such form as shall be approved by the Court;
- 8           (b) Except as otherwise ordered by the Court, each member of the Classes who  
9 fails to submit a Proof of Claim and Release within such period as may be  
10 ordered by the Court, or otherwise allowed, shall be forever barred from  
11 receiving any payments pursuant to this Agreement and the Settlement set  
12 forth herein;
- 13           (c) The Net Settlement Fund shall be distributed to Authorized Claimants  
14 substantially in accordance with a Distribution Plan to be approved by the  
15 Court. Any such Distribution Plan is not a part of this Agreement. No funds  
16 from the Net Settlement Fund shall be distributed to Authorized Claimants  
17 until after the Effective Date; and
- 18           (d) All Persons who fall within the definition of the Classes who do not timely  
19 and validly request to be excluded from the Classes shall be subject to and  
20 bound by the provisions of this Agreement, the releases contained herein, and  
21 the Judgment with respect to all Released Claims, regardless of whether such  
22 Persons seek or obtain by any means, including, without limitation, by  
23 submitting a Proof of Claim and Release or any similar document, any  
24 distribution from the Gross Settlement Fund or the Net Settlement Fund.

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

8 **22. Balance Remaining in Net Settlement Fund.** If there is any balance remaining in  
9 the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), Class  
10 Counsel may reallocate such balance among Authorized Claimants in an equitable and economic  
11 fashion, distribute remaining funds through *cy pres*, or allow the money to escheat to federal or state  
12 governments, subject to Court approval. Except as provided in Paragraphs 41-42, in no event shall  
13 any unclaimed funds remaining in the Net Settlement Fund revert to NEC.

14 **23. Distribution Plan Not Part of Settlement.** It is understood and agreed by the  
15 Settling Parties that any Distribution Plan, including any adjustments to any Authorized Claimant's  
16 claim, is not a part of this Agreement and is to be considered by the Court separately from the Court's  
17 consideration of the fairness, reasonableness and adequacy of the Settlement set forth in this  
18 Agreement, and any order or proceedings relating to the Distribution Plan shall not operate to  
19 terminate or cancel this Agreement or affect the finality of the Judgment, the Final Approval Order,  
20 or any other orders entered pursuant to this Agreement. The time to appeal from an approval of the  
21 Settlement shall commence upon the Court's entry of the Judgment regardless of whether the  
22 Distribution Plan, an application for attorneys' fees and expenses, or an application for service  
23 awards has been submitted to the Court or approved.

24 **F. Attorneys' Fees, Reimbursement of Expenses, Service Awards**

25 **24. Fee and Expense Application, and Service Award Application.** Class Counsel  
26 may submit an application or applications (the "Fee and Expense Application") for distributions  
27 from the Gross Settlement Fund for: (a) an award of attorneys' fees; plus (b) reimbursement of  
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1 expenses incurred in connection with prosecuting the Actions; plus (c) any interest on such  
2 attorneys' fees and expenses (until paid) at the same rate and for the same periods as earned by the  
3 Settlement Fund, as appropriate, and as may be awarded by the Court. Class Counsel also may  
4 submit an application or applications (the "Service Award Application") for distributions from the  
5 Gross Settlement Fund for service awards for the Indirect Purchaser Plaintiffs in an amount up to  
6 \$1,500 each.

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

10 **26. Award of Fees, Expenses, and Service Awards Not Part of Settlement.** The  
11 procedure for, and the allowance or disallowance by the Court of, the Fee and Expense Application  
12 and/or the Service Award Application are not part of the Settlement set forth in this Agreement, and  
13 are to be considered by the Court separately from the Court's consideration of the fairness,  
14 reasonableness and adequacy of the Settlement set forth in this Agreement. Any order or proceeding  
15 relating to the Fee and Expense Application and/or the Service Award Application, or any appeal  
16 from any Fee and Expense Award, any Service Award, or any other order relating thereto or reversal  
17 or modification thereof, shall not operate to terminate or cancel this Agreement, or affect or delay the  
18 finality of the Judgment and the Settlement of the Actions as set forth herein. No order of the Court  
19 or modification or reversal on appeal of any order of the Court concerning any Fee and Expense  
20 Award, Service Award, or Distribution Plan shall constitute grounds for cancellation or termination  
21 of this Agreement.

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

1           **G.     Cooperation**

2           **28.     Cooperation as Consideration.** In return for the Release and Discharge provided  
3 herein, NEC agrees to pay the Settlement Amount and agrees to provide cooperation to Indirect  
4 Purchaser Plaintiffs as set forth specifically below. Except as otherwise specified herein, all  
5 cooperation shall commence within ten (10) business days after Preliminary Approval by the Court  
6 of this Agreement.

7           **29.     Cooperation Subject to and Consistent with Prior Obligations.** NEC and the  
8 Indirect Purchaser Plaintiffs shall not be obligated to provide cooperation that would violate an  
9 applicable court order or NEC's commitments to the United States Department of Justice or any  
10 other governmental entity. Additionally, Indirect Purchaser Plaintiffs and NEC will take reasonable  
11 efforts to accommodate the other's efforts to minimize duplication in the providing of any  
12 cooperation.

13           **30.     Cooperation.**

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

26           (b)     NEC will produce all English translations of any documents that it provided to  
27 the United States Department of Justice in connection with its investigation of  
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potential collusion concerning Lithium Ion Batteries, to the extent they exist, within fifteen (15) business days after Preliminary Approval by the Court of this Agreement.

(c) NEC agrees that Class Counsel may notice up to three depositions and also may ask questions at depositions of NEC witnesses noticed by other plaintiffs in the Actions.

(d) If NEC produces any declarations, documents, data or other responses to discovery to any other plaintiff in the Actions, NEC will produce the same to Class Counsel.

(e) 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.

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

(g) NEC will continue to comply with the terms of paragraph I(C) in the Court's Order re Deposition Protocol (ECF No. 593) ("Deposition Protocol") relating to employee "watchlists" for as long as these terms are in effect. NEC will inform Class Counsel under the terms of that paragraph if NEC becomes aware that a person on Plaintiffs' (as defined in the Deposition Protocol) watchlist intends to leave, or does leave, his or her employment at NEC, to the extent reasonably possible.

(h) Upon reasonable notice after Preliminary Approval of this Agreement, NEC

1 shall use its best efforts to make available up to two (2) of its employees  
2 identified by Indirect Purchaser Plaintiffs for interviews, depositions and/or  
3 testimony at trial, via videoconference or at a mutually agreed upon location  
4 or locations (except for testimony at trial, which shall be at the United States  
5 District Court for the Northern District of California). Unless mutually agreed  
6 to by the parties, any such interviews shall not exceed one six-hour day.  
7 Except as specifically provided for herein, any such depositions shall be  
8 conducted in accordance with the procedures set forth in the Deposition  
9 Protocol and shall count toward the maximum of twelve (12) depositions for  
10 NEC as a defendant group as set forth in the Deposition Protocol.

11 **31. Confidentiality.** Indirect Purchaser Plaintiffs and Class Counsel agree that they will  
12 not use the information provided by NEC or its representatives for any purpose other than pursuit of  
13 the Actions, and will not publicize the information beyond what is reasonably necessary for the  
14 prosecution of the Actions. Any information provided pursuant to this Agreement shall be subject to  
15 the Stipulated Protective Order entered in the Actions on May 17, 2013 (ECF No. 193) (“Protective  
16 Order”) as if produced in response to discovery requests and so designated.

17 **32. Other Discovery.** Upon the Execution Date, NEC and Releasees need not respond to  
18 formal discovery from Indirect Purchaser Plaintiffs or otherwise participate in the Actions. Further,  
19 neither NEC nor the Indirect Purchaser Plaintiffs shall file motions against the other or initiate or  
20 participate in any discovery, motion or proceeding directly adverse to the other in connection with  
21 the Actions, except as specifically provided for herein, and NEC and the Indirect Purchaser Plaintiffs  
22 shall not be obligated to respond to or supplement prior responses to formal discovery that has been  
23 previously propounded by the other in the Actions or otherwise participate in the Actions. Indirect  
24 Purchaser Plaintiffs and NEC agree to withdraw all outstanding discovery served on the other.

25 **33. Resolution of Disputes.** To the extent the Settling Parties disagree about the  
26 interpretation or enforcement of any terms of this Agreement relating to future cooperation by NEC,  
27 they agree to submit such disputes for binding resolution by a mutually agreed neutral.

1           **34. Final Approval.** In the event that this Agreement fails to receive Final Approval by  
2 the Court as contemplated herein or in the event that it is terminated by either of the Settling Parties  
3 under any provision herein, the parties agree that neither Indirect Purchaser Plaintiffs nor Class  
4 Counsel shall be permitted to introduce in evidence, at any hearing, or in support of any motion,  
5 opposition or other pleading in the Actions or in any other federal or state or foreign action alleging a  
6 violation of any law relating to the subject matter of the Actions, any information provided by NEC  
7 or its counsel pursuant to ¶ 30(a) or ¶ 30(f) or any information obtained during interviews provided  
8 pursuant to ¶ 30(h). Further, in such event, NEC and Indirect Purchaser Plaintiffs will each be bound  
9 by and have the benefit of any rulings made in the Actions to the extent they would have been  
10 applicable to NEC or Indirect Purchaser Plaintiffs had NEC been participating in the Actions.

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

12           **35. Effective Date.** The Effective Date of this Agreement shall be conditioned on the  
13 occurrence of all of the following events:

- 14                   (a) NEC no longer has any right under ¶¶ 40-41 to terminate this Agreement or, if  
15 NEC does have such right, they have given written notice to Class Counsel  
16 that they will not exercise such right;
- 17                   (b) the Court has finally approved the Settlement as described herein, following  
18 notice to the Classes and a hearing, as prescribed by Rule 23 of the Federal  
19 Rules of Civil Procedure, and has entered the Judgment; and
- 20                   (c) the Judgment has become Final.

21           **36. Occurrence of Effective Date.** Upon the occurrence of all of the events referenced  
22 in the above paragraph, any and all remaining interest or right of NEC in or to the Gross Settlement  
23 Fund, if any, shall be absolutely and forever extinguished, and the Gross Settlement Fund (less any  
24 Notice and Administrative Costs, Taxes, Tax Expenses, Fee and Expense Award paid, or Service  
25 Awards paid) shall be transferred from the Escrow Agent to the Notice and Claims Administrator as  
26 successor Escrow Agent within ten (10) days after the Effective Date.

1           **37. Failure of Effective Date to Occur.** If all of the conditions specified in ¶ 35 are not  
2 met, then this Agreement shall be cancelled and terminated, subject to and in accordance with ¶¶  
3 41-42 unless the Settling Parties mutually agree in writing to proceed with this Agreement.

4           **38. Exclusions.** Class Counsel shall cause copies of requests for exclusion from the  
5 Classes to be provided to NEC's counsel. No later than fourteen (14) days after the final date for  
6 mailing requests for exclusion, Class Counsel shall provide NEC's counsel with a complete and final  
7 list of opt-outs. With the motion for final approval of the Settlement, Class Counsel will file with the  
8 Court a complete list of requests for exclusion from the Classes, including only the name, city and  
9 state of the person or entity requesting exclusion. With respect to any member of the Class who  
10 requests exclusion from the Classes, NEC reserves all of its legal rights and defenses, including, but  
11 not limited to, any defenses relating to whether the member of the Class is an indirect purchaser of  
12 the allegedly price-fixed product and/or has standing to bring any claim. NEC shall have the option  
13 to terminate this Agreement if the purchases of Lithium Ion Batteries, Lithium Ion Packs and/or  
14 Finished Products made by members of the Classes who timely and validly request exclusion from  
15 the Classes equal or exceed five percent (5%) of the total volume of purchases made by the Classes.  
16 After meeting and conferring with Class Counsel, NEC may elect to terminate this Agreement by  
17 serving written notice on Class Counsel by email and overnight courier and by filing a copy of such  
18 notice with the Court no later than thirty (30) days before the date for the final approval hearing of  
19 this Agreement, except that NEC shall have a minimum of ten (10) days in which to decide whether  
20 to terminate this Agreement after receiving the final opt-out list. In the event that NEC exercises its  
21 option to terminate this Agreement: (i) this Agreement shall be null and void as to NEC, and shall  
22 have no force or effect and shall be without prejudice to the rights and contentions of Releasees and  
23 Releasors in this or any other litigation; and (ii) the Settlement fund paid by NEC, plus interest  
24 thereon, shall be refunded promptly to NEC, minus such payment (as set forth in this Agreement) of  
25 Notice and Administrative Costs and Taxes and Tax Expenses, consistent with the provisions of ¶¶  
26 41-42.

1           **39. Objections.** Settlement Class members who wish to object to any aspect of the  
2 Settlement must file with the Court a written statement containing their objection by the end of the  
3 period to object to the Settlement. Any award or payment of attorneys' fees made to the counsel of  
4 an objector to the Settlement shall only be made by Court order and upon a showing of the benefit  
5 conferred to the Classes. In determining any such award of attorneys' fees to an objectors' counsel,  
6 the Court will consider the incremental value to the Classes caused by any such objection. Any  
7 award of attorneys' fees by the Court will be conditioned on the objector and his or her attorney  
8 stating under penalty of perjury that no payments shall be made to the objector based on the  
9 objector's participation in the matter other than as ordered by the Court. NEC shall have no  
10 responsibility for any such payments.

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

19           **41.** No Settling Party shall have any obligation whatsoever to proceed under any terms  
20 other than substantially in the form provided and agreed to herein; provided, however, that no order  
21 of the Court concerning any Fee and Expense Application, Service Award Application, or  
22 Distribution Plan, or any modification or reversal on appeal of such order, shall constitute grounds  
23 for cancellation or termination of this Agreement by any Settling Party. Without limiting the  
24 foregoing, NEC shall have, in its sole and absolute discretion, the option to terminate the Settlement  
25 in its entirety in the event that the Judgment, upon becoming Final, does not provide for the dismissal  
26 with prejudice of all of the Actions against it.

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

- 6           (a) within five (5) business days after written notification of such event is sent by  
7 counsel for NEC to the Escrow Agent, the Gross Settlement Fund—including  
8 the Settlement Amount and all interest earned on the Settlement Fund while  
9 held in escrow excluding only Notice and Administrative Costs that have  
10 either been properly disbursed or are due and owing, Taxes and Tax Expenses  
11 that have been paid or that have accrued and will be payable at some later  
12 date, and attorneys' fees and costs that have been disbursed pursuant to Court  
13 order—will be refunded, reimbursed and repaid by the Escrow Agent to NEC;  
14 if said amount or any portion thereof is not returned within such five (5) day  
15 period, then interest shall accrue thereon at the rate of ten percent (10%) per  
16 annum until the date that said amount is returned;
- 17           (b) within thirty (30) business days after written notification of such event is sent  
18 by counsel for NEC to Class Counsel, all attorneys' fees and costs which have  
19 been disbursed to Class Counsel pursuant to Court order shall be refunded,  
20 reimbursed and repaid by Class Counsel to NEC;
- 21           (c) the Escrow Agent or its designee shall apply for any tax refund owed to the  
22 Gross Settlement Fund and pay the proceeds to NEC, after deduction of any  
23 fees or expenses reasonably incurred in connection with such application(s)  
24 for refund, pursuant to such written request;
- 25           (d) the Settling Parties shall be restored to their respective positions in the Actions  
26 as of the Execution Date, with all of their respective claims and defenses  
27 preserved as they existed on that date;
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- 1 (e) the terms and provisions of this Agreement, with the exception of ¶¶ 13-15,  
2 17, 27, 31, 33-35, 37, 40-41, 43-44, 46-47, 49-56 (which shall continue in full  
3 force and effect), shall be null and void and shall have no further force or  
4 effect with respect to the Settling Parties, and neither the existence nor the  
5 terms of this Agreement (nor any negotiations preceding this Agreement nor  
6 any acts performed pursuant to, or in furtherance of, this Agreement) shall be  
7 used in the Actions or in any other action or proceeding for any purpose (other  
8 than to enforce the terms remaining in effect); and  
9 (f) any judgment or order entered by the Court in accordance with the terms of  
10 this Agreement shall be treated as vacated, *nunc pro tunc*.

11 **I. No Admission of Liability**

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

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

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

11 **J. Miscellaneous Provisions**

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

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

8 **48. Resolution of Disputes; Retention of Exclusive Jurisdiction.** Any disputes  
9 between or among NEC and any Class Members concerning matters contained in this Agreement  
10 shall, if they cannot be resolved by negotiation and agreement, be submitted to the Court. The Court  
11 shall retain exclusive jurisdiction over the implementation and enforcement of this Agreement.

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

16 **50. Authorization to Enter Settlement Agreement.** The undersigned representatives  
17 of NEC represent that they are fully authorized to enter into and to execute this Agreement on behalf  
18 of NEC. Class Counsel, on behalf of Indirect Purchaser Plaintiffs and the Classes, represent that they  
19 are, subject to Court approval, expressly authorized to take all action required or permitted to be  
20 taken by or on behalf of the Classes pursuant to this Agreement to effectuate its terms and to enter  
21 into and execute this Agreement and any modifications or amendments to the Agreement on behalf  
22 of the Classes that they deem appropriate.

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

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

4 COTCHETT, PITRE & MCCARTHY, LLP  
5 Steven N. Williams (swilliams@cmplegal.com)  
6 San Francisco Airport Office Center  
7 840 Malcolm Road, Suite 200  
8 Burlingame, CA 94010  
9 Telephone: 650-697-6000  
10 Facsimile: 650-697-0577

11 HAGENS BERMAN SOBOL SHAPIRO LLP  
12 Jeff Friedman (jefff@hbsslaw.com)  
13 715 Hearst Avenue, Suite 202  
14 Berkley, CA 94710  
15 Telephone: 510-725-3000  
16 Facsimile: 510-725-3001

17 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP  
18 Brendan P. Glackin (bglackin@lchb.com)  
19 275 Battery Street, 29th Floor  
20 San Francisco, CA 94111-3339  
21 Telephone: 415-956-1000  
22 Facsimile: 415-956-1008

23 If directed to NEC, address notice to:

24 Robert B Pringle  
25 Paul R. Griffin  
26 Sean D. Meenan  
27 Jeanifer E. Parsigian  
28 Dana L. Cook-Milligan  
WINSTON & STRAWN LLP  
101 California Street  
San Francisco, CA 94111-5802  
Telephone: (415) 591-1000  
Facsimile: (415) 591-1400  
rpringle@winston.com  
pgriffin@winston.com  
smeen@winston.com  
jparsigian@winston.com  
dlcook@winston.com

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.

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

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

10           **55. Amendment; Waiver.** This Agreement shall not be modified in any respect except  
11 by a writing executed by NEC and Class Counsel, and the waiver of any rights conferred hereunder  
12 shall be effective only if made by written instrument of the waiving party. The waiver by any party  
13 of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach,  
14 whether prior, subsequent or contemporaneous, of this Agreement.

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

19           **57. Integrated Agreement.** This Agreement constitutes the entire agreement between  
20 the Settling Parties and no representations, warranties or inducements have been made to any party  
21 concerning this Agreement other than the representations, warranties and covenants contained and  
22 memorialized herein. It is understood by the Settling Parties that, except for the matters expressly  
23 represented herein, the facts or law with respect to which this Agreement is entered into may turn out  
24 to be other than or different from the facts now known to each party or believed by such party to be  
25 true. Each party therefore expressly assumes the risk of the facts or law turning out to be so different,  
26 and agrees that this Agreement shall be in all respects effective and not subject to termination by  
27

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1 reason of any such different facts or law. Except as otherwise provided herein, each party shall bear  
2 its own costs and attorneys' fees.

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

5 IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives,  
6 have executed this Agreement as of the Execution Date.

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

9 DATED: January 18, 2017

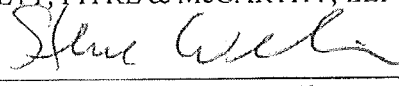
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19 DATED: January 18, 2017

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DATED: January 18, 2017

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DATED: January 20, 2017

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