

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

**IN RE LITHIUM ION BATTERIES
ANTITRUST LITIGATION**

Case No. 4:13-md-02420 YGR

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

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS
ACTION SETTLEMENTS WITH
HITACHI, LG CHEM AND NEC**

Date: May 20, 2020

Time: 2:00 p.m.

Judge: Hon. Yvonne Gonzalez Rogers

Court: Courtroom 1, 4th Floor

This matter comes before the Court on Indirect Purchaser Plaintiffs' ("IPPs") Motion for Final Approval of Class Action Settlements with Defendants Hitachi Maxell, Ltd., and Maxell Corporation of America (collectively "Hitachi"), LG Chem, Ltd. and LG Chem America, Inc. ("collectively "LG Chem"), and NEC Corporation ("NEC") (collectively, "Settling Defendants"), filed May 5, 2020.

Having carefully reviewed this motion, the proposed settlement agreements between IPPs and Hitachi, LG Chem, and NEC (collectively, "the Settlements"), the pleadings and other papers on file in this action, including the objections filed by Christopher Andrews, Michael Frank Bednarz, Gordon Morgan, and Edward W. Orr, IPPs' Omnibus Response to those objections, and the statements of counsel and the parties, the Court hereby **GRANTS** IPPs' Motion for Final Approval of the Settlements.

I. BACKGROUND

IPPs move for final approval of their Settlements, attached hereto as **Exhibits 1 through 3**, with the Settling Defendants. On January 10, 2020, this Court directed notice to the class regarding the Settlements. ECF 2571.

Epiq, the Court-appointed notice administrator, provided notice in accordance with this Court's order. A list of those persons or entities who validly requested exclusion from the Settlement Class is attached hereto as **Exhibit 4**. Such persons or entities are not entitled to any recovery of the settlement proceeds obtained in connection with the Settlements.

II. SUMMARY OF THE SETTLEMENTS

A. Settlement Terms

The proposed Settlements resolve all claims against the Settling Defendants stemming from the alleged conspiracy to restrain competition for lithium-ion batteries. The Settlement Class in each of the settlements is substantially similar and is defined as follows:

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 coconspirators: (i) a portable computer; (ii) a power tool; (iii) a camcorder; or (iv) a replacement battery for any of these products.

B. The Settlement Consideration

Under the proposed Settlements, the Settling Defendants will pay a total of \$44.95 million in cash: LG Chem will pay \$39 million, Hitachi will pay \$3.45 million, and NEC will pay \$2.5 million. The settlement funds are non-reversionary to the defendants. Inclusive of the settlements previously approved between IPPs and other defendants in this case, IPPs have secured settlements of \$113.45 million for the indirect purchaser class.

C. Release of Claims

Each Settlement Agreement provides that upon final approval and entry of judgment, Class Members will release state and federal law claims against the Settling Defendants relating to purchases of lithium-ion batteries or products containing lithium-ion batteries up through May 31, 2011. The proposed Settlement Class includes only purchasers of portable computers, power tools, camcorders, and replacement batteries, consistent with the class for which IPPs originally sought certification. As to these settlement class members, the Settlements will release all antitrust claims based on all lithium-ion battery types (*i.e.*, cylindrical, prismatic, and polymer batteries) and additional products (*e.g.*, mobile phones, smart phones, cameras, digital video cameras, and digital audio players), consistent with the scope of claims originally pleaded.

D. Plan of Allocation

IPPs propose to distribute the settlement funds in two steps. *First*, 90 percent of the settlement funds will be allocated toward Class Member who made purchases in so-called *Illinois Brick* repealer jurisdictions, and the remaining 10 percent will be allocated toward Class Members who made purchases in non-repealer states. *Second*, within each allocation, the funds will be distributed *pro rata* to claimants based on the total number of covered products purchased from January 1, 2000 through May 31, 2011. Should a balance remain after distribution to the class (whether by reason of tax refunds, uncashed checks, or otherwise), Class Counsel¹ propose to allow the money to escheat to federal or state governments. Accordingly, no settlement funds will revert to the Settling Defendants.

¹ Class Counsel refers to the firms of Cotchett, Pitre & McCarthy, LLP, Hagens Berman Sobol Shapiro LLP, and Lieff Cabraser Heimann & Bernstein, LLP.

III. THE SETTLEMENTS ARE FAIR, REASONABLE, AND ADEQUATE.

The Court must conduct a multiple-step inquiry to determine whether to approve a class action settlement. *First*, the Court must certify the proposed settlement class. *Second*, it must determine that the settlement agreement is “fair, reasonable, and adequate.” *See* Fed. R. Civ. P. 23(e)(2). *Third*, it must assess whether appropriate notice has been provided. Each of these requirements is met here.

A. **The Court Approves the 90/10 Plan of Allocation.**

The Court approves the plan of allocation, distributing 90% of the settlement funds to Class Members that made purchases in repealer states and the remaining 10% of settlement funds to Class Members that made purchases in non-repealer states. In ordering this plan of allocation, the Court has carefully evaluated the record and background in this case.

On March 20, 2017, the Court preliminarily approved the Round 2 Settlements, directing notice of a proposed pro rata allocation of the settlement funds to the class. ECF No. 1714. On October 27, 2017, the Court granted final approval of the Round 2 Settlements. ECF No. 2003. At the time, the Court’s decision to certify a single nationwide settlement class without performing a full choice-of-law analysis found support in the only circuit-level authority directly on point: *Sullivan v. DB Investments, Inc.*² and *Hanlon v. Chrysler Corp.*³ It also followed precedent in this district certifying a nationwide settlement class under the Cartwright Act.⁴

Michael Frank Bednarz filed an appeal in the Ninth Circuit concerning IPPs’ proposed *pro rata* allocation method. ECF 2034. On January 23, 2018, in a separate action, the Ninth Circuit

² 667 F.3d 273, 302 (3d Cir. 2011) (“[S]tatutory variations do not defeat predominance in the presence of other exceedingly common issues.”), affirming *Sullivan v. DB Invs., Inc.*, No. CIV.A. 04-2819 SRC, 2008 WL 8747721 (D.N.J. May 22, 2008); *id.* at *11 (“Although variations exist between the antitrust and consumer protection laws of different states, those variations do not defeat commonality and predominance. Weighing claims, particularly Consumer claims, by different state laws would not be appropriate in this case for the following reasons . . .”).

³ 150 F.3d 1011, 1023 (9th Cir. 1998) (finding that “independent of any variations in state law, there were still sufficient common issues to warrant a class action”).

⁴ *See, e.g., In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, No. C 06-4333 PJH, 2013 WL 12333442, at *34, *80 (N.D. Cal. Jan. 8, 2013), report and recommendation adopted sub nom. *In re Dynamic Random Access Memory Antitrust Litig.*, No. C 06-4333 PJH, 2014 WL 12879520, at *2 (N.D. Cal. June 27, 2014) (certifying nationwide settlement class of indirect purchasers); Order Granting Final Approval, *In re Static Random Access Memory (SRAM) Antitrust Litig.*, No. 4:07-md-1819 CW (N.D. Cal. Oct. 14, 2011), ECF No. 1408 (same).

1 vacated the certification of a nationwide settlement class, holding that a district court must
 2 consider whether potential variations in state law defeated predominance for purposes of Rule
 3 23(b)(3).⁵ And nearly one year later, on June 6, 2019, the Ninth Circuit issued an *en banc* opinion
 4 holding that a district court need not necessarily consider choice-of-law issues in certifying a
 5 nationwide settlement class under one state's law. *In re Hyundai & Kia Fuel Econ. Litig.*, 926
 6 F.3d 539, 561 (9th Cir. 2019).

7 On September 16, 2019, the Ninth Circuit vacated this Court's final approval order of the
 8 Round 2 Settlements, remanded the case for further proceedings, but "express[ed] no opinion on
 9 whether the representation, settlement class, and settlement agreements satisfy Rule 23." Instead,
 10 [it] 'vacate[d] and remand[ed] to allow the district court to properly exercise its discretion'
 11 consistent with Rule 23's rigorous procedural requirements," requesting "[a] more fulsome
 12 analysis" of 23's requirements given the proposed pro rata allocation of settlement proceeds to
 13 residents of repealer and non-repealer states alike.⁶

14 Based on a finding and recommendation by the Honorable Rebecca J. Westerfield (Ret.)
 15 after an adversarial process and extensive analysis of other states' laws, IPPs proposed an
 16 allocation plan for the Round 3 Settlements distributing 90% of the settlement fund to residents of
 17 repealer states and the remaining 10% of settlement funds to residents of non-repealer states. This
 18 Court carefully reviewed the Westerfield opinion and Class Counsel's subsequent
 19 recommendation relating to that opinion, and granted final approval of the Round 3 Settlements
 20 with this allocation plan on August 16, 2019. ECF No. 2516.

21 After remand from the Ninth Circuit of the Round 2 Settlements, IPPs moved to direct
 22 notice to the class regarding the Round 2 Settlements and a new proposed 90/10 plan of
 23 allocation. ECF No. 2566. Based on the Ninth Circuit's holding that a district court is not
 24 obligated to perform a choice of law analysis for the settlement class in these circumstances,
 25 *Hyundai*, 926 F.3d at 563, carefully considering the Westerfield opinion and the structural

26 ⁵ *In re Hyundai & Kia Fuel Econ. Litig.*, 881 F.3d 679, 701-02 (9th Cir. 2018).

27 ⁶ See ECF No. 2531 at 3-4. The appellate court's request for "[a] more fulsome analysis" did not
 28 necessitate a contrary outcome. *Allen v. Bedolla*, 787 F.3d 1218, 1225 (9th Cir. 2015) ("On
 remand, the district court, after appropriately supplementing the record, may exercise its
 discretion to reapprove the settlement . . .").

1 assurances of fairness related to that adversarial proceeding, and finding that the distribution of
 2 different amounts to subgroups of the Settlement Class does not affect predominance because it is
 3 yet another common question, this Court provisionally approved that plan of allocation for the
 4 purposes of the Round 2 Settlements on January 10, 2020. ECF 2571.

5 Consistent with this prior reasoning, the Court approves the proposed 90/10 Distribution
 6 Plan. As the Court has already found, it is appropriate for class members from non-repealer states
 7 to receive some recovery through these settlements because they were reached at a time when the
 8 IPPs were seeking to certify a nationwide litigation class under choice of law principles which
 9 would have included residents from non-repealer states. Residents from non-repealer states are,
 10 therefore, still active litigants with live claims in this case. The Court has reviewed the process
 11 utilized in connection with the Round 3 Settlements undertaken by the IPPs to arrive at this
 12 recommendation, and finds that it was appropriate and provided structural assurances of fairness
 13 to the class for this round of settlements.

14 **B. The Court Certifies the Settlement Class.**

15 At final approval, this Court must decide whether the proposed Settlement Class meets
 16 Rule 23's requirements. To certify this proposed settlement class, IPPs must show that the
 17 requirements of Rule 23(a) and 23(b)(3) are met. The Ninth Circuit Court recently confirmed that
 18 "[t]he criteria for class certification are applied differently in litigation and settlement classes." *In*
 19 *re Hyundai & Kia Fuel Economy Litig.*, No. 15-56014, 2019 WL 2376831, at *5 (9th Cir. June 6,
 20 2019) (*en banc*). In *Hyundai*, the Ninth Circuit clarified the application of the Rule 23 criteria in
 21 the settlement class action context, which informs the analysis here. As discussed below, the
 22 Court certifies the class for settlement purposes under Rule 23(e).

23 **1. The Settlement Class meets the requirements of Rule 23(a).**

24 This Court previously determined that identical nationwide litigation and settlement
 25 classes met the requirements of Rule 23(a). *See* Order Denying Without Prejudice Mots. for
 26 Class Cert., ECF No. 1735; Order Granting IPPs' Motion for Final Approval of Settlements With
 27 SDI, TOKIN, Toshiba, and Panasonic Defendants, ECF No. 2516. This Court now confirms its
 28 prior ruling.

In short, under Rule 23(a), the proponent of class certification must show that the proposed class meets the requirements of (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy. Those requirements are met here, where, respectively:

- the class numbers in the million, which would make joinder impracticable, if not impossible (numerosity);⁷
- A central, common question underlying each of IPPs' claims in this case is whether defendants participated in a conspiracy to raise, fix, stabilize or maintain the prices of lithium ion batteries sold in the United States (commonality);⁸
- "it is alleged that the defendants alleged in a common [price-fixing] scheme relative to all members of the class" (typicality);⁹
- the Class Representatives have no interests that conflict with the Settlement Class; and
- the Class Representatives have been actively involved in the litigation of this case, as has Class Counsel, whose experienced firms have vigorously prosecuted the action since their appointment in 2013 (adequacy).¹⁰

2. Common issues predominate under Rule 23(b)(3).

The Settlement Class satisfies Rule 23(b)(3) because common questions predominate over questions affecting individual class members. "The predominance inquiry under Rule 23(b)(3) 'tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.'" *Hyundai*, 2019 WL 2376831, at *6 (quoting *Amchen Prods., Inc. v. Windsor*, 521 U.S. 591, 623 (1997)). The Ninth Circuit in *Hyundai* emphasized that Rule 23(b)(3) does not require that all elements of a claim be susceptible to class-wide proof; rather, "even if just one

⁷ See *In re Rubber Chems. Antitrust Litig.*, 232 F.R.D. 346, 350-51 (N.D. Cal. 2005); *In re TFT-LCD (Flat Panel) Antitrust Litig.* ("TFT-LCD II"), 267 F.R.D. 291, 300 (N.D. Cal. 2010).

⁸ See *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, No. M 02-1486 PJH, 2006 WL 1530166, at *3 (N.D. Cal. June 5, 2006) ("[T]he very nature of a conspiracy antitrust action compels a finding that common questions of law and fact exist." (quoting *Rubber Chems.*, 232 F.R.D. at 351)); *TFT-LCD II*, 267 F.R.D. at 300.

⁹ *In re Cathode Ray Tube (CRT) Antitrust Litig.*, 308 F.R.D. 606, 613 (N.D. Cal. 2015) (quoting *In re Catfish Antitrust Litig.*, 826 F. Supp. 1019, 1035 (N.D. Miss. 1993)); see also *Facciola v. Greenberg Traurig LLP*, 281 F.R.D. 363, 369 (D. Ariz. 2012) ("[T]he claims of all investors in the proposed classes turn on a common scheme premised on the same alleged course of conduct by defendants.").

¹⁰ *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998); *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978).

1 common question predominates, ‘the action may be considered proper under Rule 23(b)(3) even
 2 though other important matters will have to be tried separately.’” *Id.* (quoting *Tyson Foods, Inc. v.*
 3 *Bouaphakeo*, _U.S._, 136 S. Ct. 1036, 1045 (2016)). This Court already found that the
 4 predominance requirement of Rule 23(b)(3) was met for an identical settlement class. *See* Final
 5 Approval Order, ECF 2516.

6 **a. Predominance is readily shown in antitrust cases.**

7 In horizontal price-fixing cases, questions as to the existence of the alleged conspiracy and
 8 as to the occurrence of price-fixing are readily found to predominate. *See, e.g., Sullivan v. DB*
 9 *Invs., Inc.*, 667 F.3d 273, 300 (3d Cir. 2011); *see also Amchem*, 521 U.S. at 625 (Predominance
 10 under Rule 23(b)(3), “is a test readily met in certain cases alleging consumer or securities fraud or
 11 violations of the antitrust laws.”). The court in *In re TFT-LCD (Flat Panel) Antitrust Litigation*,
 12 267 F.R.D. 291, 310 (N.D. Cal. 2010), collected cases and explained: “Courts have frequently
 13 found that whether a price-fixing conspiracy exists is a common question that predominates over
 14 other issues because proof of an alleged conspiracy will focus on defendants’ conduct and not on
 15 the conduct of individual class members.”

16 This case is no different. Here, resolution of IPPs’ claims depends principally on whether
 17 defendants participated in a price-fixing conspiracy, and whether the conspiracy caused an
 18 artificial increase to the market price of lithium ion batteries. Thus, if IPPs were able to prove
 19 these elements based on common evidence, a jury could reasonably infer that every class member
 20 suffered some injury as a result. Antitrust cases, like consumer fraud cases, are ones in which
 21 predominance is “readily met” because the class is comprised a “cohesive group of individuals
 22 [who] suffered the same harm in the same way because of the [defendants’] alleged conduct.”
 23 *Hyundai*, 2019 WL 2376831, at *7; *see also id.* at *8 (“We have held that these types of common
 24 issues, which turn on a common course of conduct by the defendant, can establish predominance
 25 in nationwide class actions.”); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997)
 26 (“Predominance is a test readily met in certain cases alleging consumer . . . fraud or violations of
 27 the antitrust laws.”).

On the other hand, if, for example, class members brought their claims individually, each would have to rely on the same evidence of cartel behavior, and prove damages using the same economic modeling on which IPPs rely. Although this Court denied IPPs’ renewed motion for class certification, courts “will certify settlement classes although they had previously denied certification of the same class for litigation purposes.” 3 Newberg on Class Actions § 7:35 (5th ed.). *See also In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, No. M-02-1486-PJH, 2013 WL 12333442, at *56 (N.D. Cal. Jan. 8, 2013); *In re New Motor Vehicles Canadian Export Antitrust Litig.*, 269 F.R.D. 80, 81-82 (D. Me. 2010).

b. Predominance is met despite variations in state law.

IPP move to certify a nationwide Settlement Class of consumers—including residents of both repealer states and non-repealer states. While this Court previously performed a choice of law analysis with respect to the litigation class, it is not obligated to do so here. *Hyundai*, 2019 WL 2376831, at *9. The question of which jurisdiction’s laws apply to the claims of settling class members from different states is a common one; it does not change from class-member to class-member.¹¹ Indeed, the Ninth Circuit recently eschewed the need to perform a choice-of-law analysis in the settlement context, holding, “[t]he prospect of having to apply the separate laws of dozens of jurisdictions present[s] a significant issue for *trial manageability*[.]” *Id.* at *10 (emphasis added).

At the settlement stage, this Court has considered choice-of-law issues by incorporating and relying on the work of Judge Westerfield in addressing the issue of how to allocate settlement proceeds on a formulaic, class-wide basis. This is the extent to which such an analysis is appropriate in the context of these settlements. Furthermore, even if choice-of-law were an “individual” issue, it would only be one such issue among a host of obviously common ones, and

¹¹ Objector Christopher Andrews argues in conclusory fashion that the Settlement Class should not be certified for the same reasons expressed by defendants in the *Qualcomm* litigation. Objections to the Settlement by Christopher Andrews at 14-15 (“Andrews Obj.”), May 30, 2019, ECF No. 2497. But his objection is merely a verbatim copy of an article about the *Qualcomm* defendants’ objections, without any explanation about how those objections apply to the facts of this case. That is grounds alone to reject the objections. *See* Fed. R. Civ. P. 23(e)(5)(A). The 2018 Advisory Committee Notes on the Rule 23 amendment provides that “[t]he objection must state . . . with specificity the grounds for the objection,” “clarif[ying] that objections must provide sufficient specifics to enable the parties to respond to them and the court to evaluate them.”

1 would not obviate the required analysis of whether common issues nevertheless predominate.¹²
 2 *Hyundai*, 2019 WL 2376831, at *6. No objector has identified in any way how a further choice-
 3 of-law analysis might cause individual issues to predominate over common questions.

4 **c. Differing allocation of funds does not affect predominance.**

5 Allocating different amounts to subgroups of the class does not defeat predominance.
 6 Courts have recognized that individualized damages determinations, particularly when they are
 7 largely formulaic, do not defeat predominance. *See, e.g., Comcast Corp. v. Behrend*, 569 U.S. 27,
 8 42 (2013) (Ginsburg & Breyer, JJ., dissenting) (“Recognition that individual damages
 9 calculations do not preclude class certification under Rule 23(b)(3) is well nigh universal.”);
 10 *Pulaski & Middleman, LLC v. Google, Inc.*, 802 F.3d 979, 988 (9th Cir. 2015) (reaffirming “the
 11 proposition that differences in damage calculations do not defeat class certification”). Here, the
 12 Court is not even making individualized damage determinations: it is considering the class-wide
 13 question of how to formulaically allocate settlement proceeds.

14 IPPs recommend that the Court allocate 10 percent of the settlement funds for distribution
 15 to Class Members making purchases in non-repealer state, based on considerations of the risk-
 16 discounted value of the claims those class members release under the terms of the Settlement
 17 Agreements. This Court held in its Order Directing Notice to the Class that it is “likely to grant
 18 final approval of IPPs’ proposed Distribution Plan as fair, reasonable, and adequate.” Order
 19 Directing Notice, ¶ 2, ECF No. 2571. The Court now confirms its provisional conclusion.

20 **3. The Settlement Class satisfies superiority under Rule 23(b)(3).**

21 Resolution of IPPs’ claims through a class action is superior to alternative methods. For
 22 example, litigating every class member’s claims separately would waste both judicial and party
 23 resources, given that the vast majority of evidence of liability would be identical. *See Hanlon*, 150
 24 F.3d at 1023. Following the foregoing reasons, this Court certifies the proposed settlement class.

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 26
 27 ¹² The Ninth Circuit elaborated that “[p]redominance is not, however, a matter of nose-counting.
 28 Rather, more important questions apt to drive the resolution of the litigation are given more
 weight in the predominance analysis over individualized questions which are of considerably less
 significance to the claims of the class.” *Id.* (internal quotation marks and citation omitted).

1 **4. Appointment of class counsel under Rule 23(g).**

2 Pursuant to Rule 23(g), this Court appoints Cotchett, Pitre & McCarthy, LLP, Hagens
3 Berman Sobol Shapiro LLP, and Lieff Cabraser Heimann & Bernstein, LLP, as Class Counsel to
4 represent the certified Settlement Class. At the outset of this action, the Court appointed these
5 firms as Interim Co-Lead Counsel for IPPs after a competitive application process. Order
6 Appointing Interim Co-Lead Counsel & Liaison Counsel for Indirect Purchaser Pls., May 17,
7 2013, ECF No. 194. Considering counsel’s work in this action, their collective expertise and
8 experience in handling similar actions, and the resources they have committed to representing the
9 class, they are appointed as class counsel for the settlement class under Rule 23(g)(1).

10 **C. The Proposed Settlements Are Fair, Adequate, and Reasonable.**

11 This Court may exercise its “sound discretion” when deciding whether to grant final
12 approval. *See Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff’d*, 661
13 F.2d 939 (9th Cir. 1981) (“Dismissal or compromise of a class action is left to the sound
14 discretion of the trial judge.”). In doing so, the Ninth Circuit advises:

15 [T]he court’s intrusion upon what is otherwise a private consensual
16 agreement negotiated between the parties to a lawsuit must be
17 limited to the extent necessary to reach a reasoned judgment that the
18 agreement is not the product of fraud or overreaching by, or
collusion between, the negotiating parties, and that the settlement,
taken as a whole, is fair, reasonable, and adequate[.]¹³

19 In the Ninth Circuit, there is a “strong judicial policy that favors settlements, particularly
20 where complex class action litigation is involved” *Hyundai*, 2019 WL 2376831, at *4
21 (quoting *Allen v. Bedolla*, 787 F.3d 1218, 1223 (9th Cir. 2015), and *In re Syncor ERISA Litig.*,
22 516 F.3d 1095, 1101 (9th Cir. 2008)). “This presumption [in favor of voluntary settlements] is
23 especially strong in class actions and other complex cases . . . because they promote the amicable
24 resolution of disputes and lighten the increasing load of litigation faced by the federal courts.”
25 *Sullivan*, 667 F.3d at 311 (internal quotation marks omitted; ellipsis in original). The new

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27
28 ¹³ *Officers for Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d 615, 625
(9th Cir. 1982).

1 amendments to Rule 23 provide that in determining whether a proposed settlement is fair,
2 reasonable, and adequate, the Court must consider whether:

3 (A) the class representatives and class counsel have adequately
4 represented the class;

5 (B) the proposal was negotiated at arm's length;

6 (C) the relief provided for the class is adequate, taking into account:

7 (i) the costs, risks, and delay of trial and appeal;

8 (ii) the effectiveness of any proposed method of distributing
9 relief to the class, including the method of processing class-
member claims;

10 (iii) the terms of any proposed award of attorney's fees,
including timing of payment; and

11 (iv) any agreement required to be identified under Rule
12 23(e)(3); and

13 (D) the proposal treats class members equitably relative to each
other.¹⁴

14 Recognizing that "[c]ourts have generated lists of factors," the Advisory Committee
15 emphasizes that these new provisions are intended to "focus" the inquiry on "the primary
16 considerations that should always matter to the decision whether to approve the proposal." Fed. R.
17 Civ. P. 23(e)(2) 2018 Advisory Committee Notes. The proposed Settlement Agreements are fair,
18 reasonable, and adequate under the above-referenced factors and other relevant considerations
19 identified by the Ninth Circuit.¹⁵

20 **1. Rule 23(e)(2)(A): The class representatives and class counsel have vigorously**
21 **represented the Class.**

22 The Court finds that the class representatives and class counsel have more than adequately
23 represented the Class. The Advisory Committee Notes explain that this subsection, in conjunction
24

25 ¹⁴ Fed. R. Civ. P. 23(e)(2).

26 ¹⁵ Prior to the recent Rule 23 amendments, the Ninth Circuit instructed courts to weigh some or
27 all of the following factors: "(1) the strength of the plaintiffs' case; (2) the risk, expense,
28 complexity, and likely duration of further litigation; (3) the risk of maintaining class action status
throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed
and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a
governmental participant; and (8) the reaction of the class members of the proposed settlement."
In re Bluetooth Headset Prod. Liab. Litig., 654 F.3d 935, 946 (9th Cir. 2011).

1 with subsection (B), “identify matters that might be described as ‘procedural’ concerns, looking to
 2 the conduct of the litigation and of the negotiations leading up to the proposed settlement.” *See*
 3 Fed. R. Civ. P. 23, Notes of Advisory Comm., Subdivision (e)(2), Paragraphs (A) and (B) (2018).

4 As an “example, the nature and amount of discovery in this or other cases, or the actual
 5 outcomes of other cases, may indicate whether counsel negotiating on behalf of the class had an
 6 adequate information base.” *Id.* Ninth Circuit law, too, instructs court to consider the “extent of
 7 discovery completed and the stage of the proceedings.” *See Bluetooth*, 654 F.3d at 946 (factor
 8 five). The extent of the discovery conducted to date and the stage of the litigation are both
 9 indicators of counsel’s familiarity with the case and of IPPs having enough information to make
 10 informed decisions. *See, e.g., In re Mego Fin. Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir.
 11 2000). “A settlement following sufficient discovery and genuine arms-length negotiation is
 12 presumed fair.” *See Knight v. Red Door Salons, Inc.*, No. 08-01520 SC, 2009 U.S. Dist. LEXIS
 13 11149, at *10 (N.D. Cal. Feb. 2, 2009).

14 IPPs here—during *nearly seven years of hard-fought litigation*—survived at least four
 15 rounds of dispositive motions and conducted extensive discovery, thoroughly testing the claims
 16 and defenses in this case. During fact discovery, IPPs took and defended over eighty depositions,
 17 served voluminous discovery, reviewed millions of pages of documents (mostly in Japanese,
 18 Korean, and Chinese), and analyzed enormous electronic data files produced by defendants and
 19 third parties. To obtain this discovery, IPPs brought and prevailed on, at least in part, fourteen
 20 fiercely contested motions to compel. That included obtaining orders compelling defendants to
 21 produce worldwide transactional sales and cost data for battery cells and packs (ECF Nos. 624,
 22 710); orders compelling defendants to produce detailed interrogatory responses (ECF Nos. 690,
 23 805); and an order after hotly disputed briefing compelling recalcitrant LG Chem witness Seok
 24 Hwan Kwak to appear for deposition (ECF No. 836). IPPs also engaged in extensive expert
 25 discovery and motion practice, and with the help of expert analyses, synthesized large amounts of
 26 evidence to show the conspiracy’s substantial and universal impact on consumers. As a result of
 27 their work, IPPs obtained substantial recoveries for the Settlement Class from all but one of the
 28 Defendant families prior to the Court’s final denial of class certification.

1 These facts make clear that the Class Representatives and Class Counsel had the
 2 information they needed to negotiate intelligently on behalf of the class. In such circumstances in
 3 particular, it is important to defer to “the experience and views of counsel.” *See Bluetooth*, 654
 4 F.3d at 946 (factor six). Indeed, courts have explained that “[t]he recommendations of plaintiffs’
 5 counsel should be given a presumption of reasonableness.” *See In re Omnivision Techs., Inc.*, 559
 6 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008). The experienced views of counsel and their intimate
 7 knowledge of the strengths and weaknesses of the case weigh in favor of final approval.

8 **2. Rule 23(e)(2)(B): Class counsel negotiated these settlements at arm’s length.**

9 Rule 23(e)(2)(B) instructs courts to consider whether “the proposal was negotiated at
 10 arm’s length.” The Settlements were negotiated at arm’s length among experienced and
 11 sophisticated counsel. The Advisory Committee Notes state that “the involvement of a neutral or
 12 court-affiliated mediator or facilitator in those negotiations may bear on whether they were
 13 conducted in a manner that would protect and further the class interests.” Here, the Settlements
 14 resulted from iterative negotiations directly between counsel.

15 As a final procedural consideration, the Advisory Committee Notes to the federal rules
 16 directs courts to consider the “treatment of any award of attorney’s fees, with respect to both the
 17 manner of negotiating the fee award and its terms.” The Ninth Circuit has identified three related
 18 signs as troubling and potentially indicative that a proposed settlement is not in the class’s
 19 interests: (a) when class counsel receive a disproportionate distribution of the settlement; (b)
 20 when the parties negotiate a “clear sailing” arrangement that provides for the payment of
 21 attorneys’ fees separate and apart from class funds; or (c) when the parties arrange for fees not
 22 awarded to plaintiffs’ counsel to revert to the defendants rather than the class. *Hyundai*, 2019 WL
 23 2376831, at *14; *Bluetooth*, 654 F.3d at 946. Here, none of these typical signs of collusive
 24 behavior are present. These potentially troubling signs are not present in this case. Specifically,
 25 (a) the funds will be used to cover costs and fees and compensate the class based on a *pro rata*
 26 formula, (b) there is no “clear sailing” provision, no payment of fees separate and apart from the
 27 class funds, and (c) the proposed settlement is a common fund, all-in settlement with no
 28 possibility of reversion, and no “kicker” provision which would allow unawarded fees to revert to

the defendants. The class notice informed class members that class counsel would make a request for attorneys' fees up to 30 percent of the settlement fund.

In sum, all procedural considerations support a conclusion that negotiations occurred at arm's length.

3. Rule 23(e)(2)(C): The relief provided by the settlement represents a strong recovery, taking into account the costs, risks, and delay of trial and appeal.

Rule 23(e)(2)(C) asks the court to consider whether "the relief provided for the class is adequate," taking into account four enumerated factors.

Costs, Risks, and Delay of Trial and Appeal. The first factor – "the costs, risks, and delay of trial and appeal"¹⁶ – is analogous to the Ninth Circuit's consideration of the risk, expense, complexity, and likely duration of further litigation, while also examining the strength of plaintiffs' case, the risk of maintaining class action status throughout the trial, and the amount offered in settlement. *Bluetooth*, 654 F.3d at 947-48 (identifying these factors).

Recovery of \$44.95 million in settlements for the indirect purchaser class from the Settling Defendants is a strong result given the tremendous risks, challenges, and costs faced. These Settlements, while compromises, represent a strong result for the Class.

This is especially true given that there are undeniably great risks (and related potential costs and delay) in this case. *First and foremost*, the Court is aware of the risk of nominal or no recovery by the Class. Subsequent to IPPs and the Settling Defendants reaching these agreements, this Court denied IPPs' initial and renewed motions for class certification, greatly limiting IPPs' potential recovery to only the damages of the Class Representatives. Recovery of \$44.95 million is outstanding given the real risk that the class faced.

Second, antitrust cases are particularly risky and challenging, with courts recognizing that the "antitrust class action is arguably the most complex action to prosecute." *In re Linerboard Antitrust Litig.*, MDL No. 1261, 2004 WL 1221350, at *10 (E.D. Pa. June 2, 2004) (quoting *In re Motorsports Merch. Antitrust Litig.*, 112 F. Supp. 2d 1329, 1337 (N.D. Ga. 2000)) (internal quotation marks omitted); *see also In re Auto. Refinishing Paint Antitrust Litig.*, 617 F. Supp. 2d

¹⁶ Fed. R. Civ. P. 23(e)(2)(C)(i).

336, 341 (E.D. Pa. 2007) (the “antitrust class action is arguably the most complex action to prosecute[;] [t]he legal and factual issues involved are always numerous and uncertain in outcome”) (internal quotation marks and citation omitted). Even where liability is proven, there is the very real risk that plaintiffs will “recover[] no damages, or only negligible damages, at trial, or on appeal.” *See Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 118 (2d Cir. 2005) (“Indeed, the history of antitrust litigation is replete with cases in which antitrust plaintiffs succeeded at trial on liability, but recovered no damages, or only negligible damages, at trial, or on appeal.”) (quoting *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 475 (S.D.N.Y. 1998))); *see also In re Super. Beverage/Glass Container Consol. Pretrial*, 133 F.R.D. 119, 127 (N.D. Ill. 1990) (“The ‘best’ case can be lost and the ‘worst’ case can be won, and juries may find liability but no damages. None of these risks should be underestimated.”).

Third, this case has always had unique risks and challenges. The sheer scale of this litigation required extensive coordination among Class Counsel and the supporting firms in developing pleadings, engaging in motion practice, and conducting discovery. At every turn, defendants had the opportunity to significantly narrow the scope of or altogether end the litigation. For example, as discussed, IPPs survived at least four rounds of dispositive motions. This is also an intrinsically difficult case due to the scope and length of the conspiracy alleged – a more than decade-long conspiracy centered in Asia with the evidence mostly in foreign language documents and obtained via translated depositions – and the complexity associated with proving the existence of overcharges. Moreover, in addition to measuring the overcharge as to battery cells, IPPs had to measure the pass-through of the overcharge to the end-consumer of a finished product, a data-intensive task. All of these challenges support final approval of the settlements.

Effectiveness of Distribution. Rule 23(e)(2)(C) also instructs the Court to take into account the “effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims.” IPPs’ proposed distribution plan will maximize the effectiveness of the distribution of the settlement proceeds.

After any outreach requested by the parties to review the validity of claims is complete, and the Court approves the Settlements and enters final judgment (which may take several

months, pending appeals and Court availability), settlement administrators will send an email to all valid claimants. The email will provide instructions on how to receive payments electronically via PayPal, Google Wallet, Amazon Balance, and other popular methods. Epiq also will mail physical checks to Settlement Class Members who have requested to receive compensation in that manner.

Terms of Proposed Attorney's Fees. A third factor to be considered under Rule 23(e)(2)(C) is “the terms of any proposed award of attorney’s fees, including timing of payment.” Here, while Settlement Agreements do not contemplate a specific award of attorney’s fees, they do provide that any Court-awarded fees will be paid from the Gross Settlement Fund. IPPs requested a total award of \$33,829,176 in attorneys’ fees plus interest, which represents just under 30% percent of the total recovery in this case. There are no troubling terms about fees in the Settlements, and each are subject to this Court’s approval.

Other Agreements. The last factor of Rule 23(e)(2)(C) instructs courts to consider “any agreement required to be identified under Rule 23(e)(3).” This provision is aimed at “related undertakings that, although seemingly separate, may have influenced the terms of the settlement by trading away possible advantages for the class in return for advantages for others.” Fed. R. Civ. P. 23(e) 2003 Advisory Committee Notes. IPPs have entered into no such agreements.

4. Rule 23(e)(2)(D): The settlements treats class members equitably relative to each other.

This Court finds that the Settlements treat Class Members equitably relative to each other. The proposed Settlements do not contemplate any unwarranted preferential treatment of class representatives or segments of the class, a consideration identified by Rule 23(e)(2)(D). Matters of concern for the Court may include “whether apportionment of relief among class member takes appropriate account of differences among their claims.” Fed. R. Civ. P. 23(e)(2) 2018 Advisory Committee Notes. Under the terms of the Settlements, the plan of allocation is, appropriately, left for the determination of the Court. As noted extensively in the briefing, IPPs have recommended allocating ninety percent of the settlement funds to Class Members making purchases in repealer states, and the remaining ten percent to Class Members making purchases in non-repealer states.

1 The Court agrees with this recommendation and orders distribution using this method. It is
 2 appropriate for class members from non-repealer states to receive a limited recovery because they
 3 are still active litigants in the case, and their claims have been neither dismissed from nor
 4 amended out of the pleadings. Thus, in recognition of the fact that such releases themselves have
 5 some value, even if nominal, the Court will allocate 90 percent of the settlement funds to
 6 purchases made by Class Members in repealer states and ten percent of the settlement funds to
 7 purchases made by Class Members in non-repealer state.

8 **D. IPPs Have Complied with All Additional Approval Factors.**

9 **1. IPPs have provided adequate notice under Rule 23(b)(3).**

10 Class actions brought under Rule 23(b)(3) must satisfy the notice provisions of Rule
 11 23(c)(2), and upon settlement, “[t]he court must direct notice in a reasonable manner to all class
 12 members who would be bound by the proposal[.]” Fed. R. Civ. P. 23(e)(1)(B). Rule 23(c)(2)
 13 prescribes the “best notice that is practicable under the circumstances, including individual notice
 14 [of particular information] to all members who can be identified through reasonable effort[.]” Fed.
 15 R. Civ. P. 23(c)(2)(B) (enumerating notice requirements for classes certified under Rule
 16 23(b)(3)). “[N]otice may be by one or more of the following: United States mail, electronic
 17 means, or other appropriate means.” *Id.* “To satisfy Rule 23(e)(1), settlement notices must
 18 ‘present information about a proposed settlement neutrally, simply, and understandably.’”
 19 *Hyundai*, 2019 WL 2376831, at *14 (quoting *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 962
 20 (9th Cir. 2009)). “Notice is satisfactory if it ‘generally describes the terms of the settlement in
 21 sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be
 22 heard.’” *Id.*

23 The proposed notice plan was undertaken and carried out pursuant to this Court’s prior
 24 order. The class received direct and indirect notice through a number of ways – email notice,
 25 mailed notice upon request, an informative settlement website, a telephone support line, and a
 26 vigorous online campaign. Digital banner advertisements were targeted specifically to settlement
 27 class members, including on Google and Yahoo’s ad networks, as well as Facebook and
 28 Instagram, with over 396 million impressions delivered. Sponsored search listings were

1 employed on Google, Yahoo and Bing, resulting in 216,477 results, with 1,845 clicks through to
 2 the settlement website. An informational released was distributed to 495 media contacts in the
 3 consumer electronics industry. The case website (www.ReverseTheCharge.com) has continued to
 4 be maintained as a channel for communications with class members. Between February 11, 2020
 5 and April 23, 2020, there were 207,205 unique visitors to the website. In the same period, the
 6 toll-free telephone number available to class members received 515 calls.

7 **2. The reaction of class members to the proposed settlement favors final**
 8 **approval.**

9 The Northern District Procedural Guidance and the Ninth Circuit in *Bluetooth* held that
 10 the reaction of the class members to the proposed settlement is also a relevant consideration.
 11 IPPs' notice program reached millions of consumers who purchased the consumer products
 12 involved in this case. Over one million class members have taken action to file claims. ***Yet, only***
 13 ***four objections*** were received out of millions of class members. The reaction of the class strongly
 14 favors approval of the settlement. *See, e.g., Churchill Village L.L.C. v. Gen. Elec.*, 361 F.3d 566,
 15 577 (9th Cir. 2004) (affirming settlement with 45 objections out of 90,000 notices sent); *In re*
 16 *Linkedin User Privacy Litig.*, 309 F.R.D. 573, 589 (N.D. Cal. 2015) (finding "an overall positive
 17 reaction" by the class where only 57 class members opted out and six objected out of a class of
 18 798,000).

19 The Court has carefully reviewed the objections received. Out of the millions of class
 20 members, only twenty-one class members requested exclusion from the class, and a total of four
 21 objections were filed. The objections are directed primarily to the amount of attorneys' fees
 22 sought, including whether an award amounting to thirty percent of the common fund is warranted,
 23 and whether fees should be reduced on the grounds that the settlement is a megafund and such a
 24 large percentage would amount to a windfall for counsel. They argue that the attorneys' fees here
 25 are not reasonable given the market rate for antitrust cases and the result obtained, particularly in
 26 light of the allegedly superior result obtained by DPPs' counsel. The Court has considered the
 27 results obtained here, as well as the particular legal defenses and challenges in the IPPs' case,
 28 along with the other factors set forth by the Ninth Circuit in *In re Online DVD-Rental Antitrust*

1 *Litigation*, 779 F.3d 934 (9th Cir. 2015). Those factors, as well as the cross-check against IPPs’
 2 counsel’s lodestar, support the Court’s award made concurrently with this Order. Moreover,
 3 contrary to the objector’s beliefs, the Court maintains its belief that the rejected leadership bid
 4 submitted by Hagens Berman nearly seven years ago is not relevant to the Court’s analysis of
 5 attorneys’ fees. Thus, the objections to the amount of attorneys’ fees sought by IPPs are
 6 **OVERRULED.**

7 Mr. Andrews and Mr. Orr’s objections to the fairness, adequacy or reasonableness of the
 8 Settlements are **OVERRULED.** The record here does not support Andrews’ factual
 9 representations, nor does the Court find the Settlement Agreements or Class Notices deficient for
 10 their failure to include the details Andrews suggests. Moreover, for the reasons set forth above,
 11 the Court disagrees with Mr. Andrews’ and Mr. Orr’s objections to the 90/10 allocation plan as
 12 being unfair to Class Members in non-repealer states. These additional objections are
 13 **OVERRULED.**

14 **IV. LATE-FILED CLAIMS**

15 The Court notes that the Claims Administrator has received 1,289 late paper Claim Forms,
 16 reflecting approximately 1.7 million devices. These claim forms were filed after the claims
 17 deadline, which was clearly stated both in the notice and on the settlement website. This Court
 18 finds that allowing the late claims would dramatically dilute the existing timely claims. The late-
 19 filed claim forms, as well as any other claims filed in the future that are by definition late, are
 20 therefore rejected.

21 * * *

22 In summary, the Court finds that the proposed settlements are fair, reasonable, and
 23 adequate and hereby **GRANTS** final approval of the Settlements. The Court shall enter the final
 24 proposed judgment provided by the settling parties.

25
 26 Dated: _____, 2020
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 28 _____

Hon. Yvonne Gonzalez Rogers
United States District Judge

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EXHIBIT 1

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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

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

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

A G R E E M E N T

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

A. Definitions

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

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

- 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 Purchaser Plaintiff 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.

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

3 (m) **“Finished Product”** means any product and/or electronic device that
4 contains a Lithium Ion Battery or Lithium Ion Battery Pack, including but
5 not limited to laptop PCs, notebook PCs, netbook computers, tablet
6 computers, mobile phones, smart phones, cameras, camcorders, digital video
7 cameras, digital audio players and power tools.

8 (n) **“Gross Settlement Fund”** means the Settlement Amount plus any interest
9 that may accrue.

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

18 (p) **“Judgment”** means the order of judgment and dismissal of the Actions with
19 prejudice.

20 (q) **“Lithium Ion Battery”** means a Lithium Ion Battery Cell or Lithium Ion
21 Battery Pack.

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

25 (s) **“Lithium Ion Battery Pack”** means Lithium Ion Cells that have been
26 assembled into a pack, regardless of the number of Lithium Ion Cells
27 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.

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

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

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

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

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

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

20 (ff) **"Unknown Claims"** means any Released Claim that an Indirect Purchaser
21 Plaintiff and/or Class Member does not know or suspect to exist in his, her
22 or its favor at the time of the release of the Releasees that if known by him,
23 her or it, might have affected his, her or its settlement with and release of the
24 Releasees, or might have affected his, her or its decision not to object to or
25 opt out of this Settlement. Such Unknown Claims include claims that are the
26 subject of California Civil Code § 1542 and equivalent, similar or
27

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

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

B. Preliminary Approval Order, Notice Order and Settlement Hearing

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

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

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

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

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

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

C. Releases

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

8. No Future Actions Following Release. The Releasors shall not, after the Effective Date, seek (directly or indirectly) to commence, institute, maintain or prosecute any suit, action or complaint or collect from or proceed against Hitachi Maxell or any other Releasee (including

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
27

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.

- 1 (a) For the purpose of §468B of the Internal Revenue Code of 1986, as
2 amended, and the regulations promulgated thereunder, the “administrator”
3 shall be the Escrow Agent. The Escrow Agent shall satisfy the
4 administrative requirements imposed by Treas. Reg. §1.468B-2 by, *e.g.*, (i)
5 obtaining a taxpayer identification number, (ii) satisfying any information
6 reporting or withholding requirements imposed on distributions from the
7 Gross Settlement Fund, and (iii) timely and properly filing applicable
8 federal, state and local tax returns necessary or advisable with respect to the
9 Gross Settlement Fund (including, without limitation, the returns described
10 in Treas. Reg. §1.468B-2(k)) and paying any taxes reported thereon. Such
11 returns (as well as the election described in this paragraph) shall be
12 consistent with the provisions of this paragraph and in all events shall reflect
13 that all Taxes as defined in ¶ 17(b) below on the income earned by the Gross
14 Settlement Fund shall be paid out of the Gross Settlement Fund as provided
15 in ¶ 19 hereof;
- 16 (b) The following shall be paid out of the Gross Settlement Fund: (i) all taxes
17 (including any estimated taxes, interest or penalties) arising with respect to
18 the income earned by the Gross Settlement Fund, including, without
19 limitation, any taxes or tax detriments that may be imposed upon Hitachi
20 Maxell or its counsel with respect to any income earned by the Gross
21 Settlement Fund for any period during which the Gross Settlement Fund
22 does not qualify as a “qualified settlement fund” for federal or state income
23 tax purposes (collectively, “Taxes”); and (ii) all expenses and costs incurred
24 in connection with the operation and implementation of this paragraph,
25 including, without limitation, expenses of tax attorneys and/or accountants
26 and mailing and distribution costs and expenses relating to filing (or failing
27 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;

(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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1 submission by Class Counsel to the Court of a proposed form of notice to the
2 Classes, Hitachi Maxell's counsel shall meet with Class Counsel for the
3 purpose of identifying any Hitachi Maxell documents that have been
4 produced as of that time that relate to and/or support the allegations in the
5 Fourth Consolidated Amended Class Action Complaint or that show Hitachi
6 Maxell Lithium Ion Battery sales, pricing, capacity or production; provided,
7 however, that such obligation shall not require Hitachi Maxell to provide
8 information protected by the attorney-client privilege, attorney work-product
9 doctrine and/or other similar privileges and shall not waive any such
10 protections or privileges. Further, such communications shall be considered
11 privileged settlement discussions pursuant to Federal Rule of Evidence 408
12 and similar provisions.

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

19 (d) Hitachi Maxell agrees that Class Counsel may notice up to three depositions
20 and also may ask questions at depositions of Hitachi Maxell witnesses
21 noticed by other parties in the Actions. For the aforementioned employees
22 to be provided for deposition, Hitachi Maxell will provide proffers, upon
23 request, for each witness in advance of deposition testimony. Except as
24 specifically provided for herein, any such depositions shall be conducted in
25 accordance with the procedures set forth in the Deposition Protocol and shall
26 count toward the maximum of twelve (12) depositions for Hitachi Maxell as
27 a defendant group as set forth in the Deposition Protocol. Indirect Purchaser
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1 Plaintiffs agree that they will not notice the deposition of the President of
2 Hitachi Maxell, Ltd. as of the Execution Date.

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

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

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

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

22 (i) Upon reasonable notice after Preliminary Approval of this Agreement,
23 Hitachi Maxell shall use its best efforts to make available up to two (2) of its
24 employees identified by Indirect Purchaser Plaintiffs for interviews and/or
25 testimony at trial, via videoconference or at a mutually agreed upon location
26 or locations (except for testimony at trial, which shall be at the United States
27 District Court for the Northern District of California). For the
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1 aforementioned employees to be provided for trial, Hitachi Maxell will
2 provide proffers, upon request, for each witness in advance of trial
3 testimony. Indirect Purchaser Plaintiffs agree that they will not request an
4 interview, or call for trial testimony, the President of Hitachi Maxell, Ltd. as
5 of the Execution Date.

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

12 (k) Indirect Purchaser Plaintiffs and Class Counsel agree they will not use the
13 information provided by Hitachi Maxell or their representatives under this
14 Paragraph for any purpose other than the pursuit of the Action, and will not
15 publicize the information beyond what is reasonably necessary for the
16 prosecution of the Action or as otherwise required by law. Any documents
17 and other information provided will be deemed "Highly Confidential" and
18 subject to the Stipulated Protective Order entered in the Actions on May 17,
19 2013 (ECF No. 193) ("**Protective Order**") as if they had been produced in
20 response to discovery requests and so designated.

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

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

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

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

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

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

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

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

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

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

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

24 **40. Failure to Enter Proposed Preliminary Approval Order, Final Approval Order**
 25 **or Judgment.** If the Court does not enter the Preliminary Approval Order, the Final Approval
 26 Order or the Judgment, or if the Court enters the Final Approval Order and the Judgment and
 27 appellate review is sought and, on such review, the Final Approval Order or the Judgment is finally
 28

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

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

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

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

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

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

24 (f) any judgment or order entered by the Court in accordance with the terms of
25 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.

J. Miscellaneous Provisions

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

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

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

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
 840 Malcolm Road, Suite 200
 Burlingame, CA 94010
 Telephone: 650-697-6000
 27 Facsimile: 650-697-0577

HAGENS BERMAN SOBOL SHAPIRO LLP

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

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

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

If directed to Hitachi Maxell, address notice to:

VINSON & ELKINS LLP

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

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

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

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

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

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

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

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

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

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

3 DATED: December 29, 2016

HAGENS BERMAN SOBOL SHAPIRO LLP

4 By: 
5 JEFF D. FRIEDMAN

6 Steve W. Berman (*pro hac vice*)
7 Shana E. Scarlett (217895)
8 Jeff D. Friedman (173886)
9 715 Hearst Avenue, Suite 202
10 Berkeley, CA 94710
11 Telephone: (510) 725-3000
Facsimile: (510) 725-3001
steve@hbsslaw.com
jefff@hbsslaw.com
shanas@hbsslaw.com

12 ~~DATED: December~~ January 10, 2016

COTCHETT, PITRE & McCARTHY, LLP


14 By: 
15 STEVEN N. WILLIAMS

16 Joseph W. Cotchett (SBN 36324)
17 Nancy L. Fineman (SBN 124870)
18 Demetrius X. Lambrinos (SBN 246027)
19 Joyce Chang (SBN 300780)
20 840 Malcolm Road
21 Burlingame, CA 94010
22 Telephone: (650) 697-6000
Facsimile: (650) 697-0577
jcotchett@cpmlegal.com
nfineman@cpmlegal.com
swilliams@cpmlegal.com
dlambrinos@cpmlegal.com
jchang@cpmlegal.com

1 DATED: December 21, 2016

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

2
3 By:


BRENDAN P. GLACKIN

4
5 Elizabeth J. Cabraser (SBN 083151)
6 Richard M. Heimann (SBN 63607)
7 Eric B. Fastiff (SBN 182260)
8 Dean M. Harvey (SBN 250298)
9 Lin Y. Chan (SBN 255027)
10 275 Battery Street, 29th Floor
11 San Francisco, CA 94111-3339
12 Telephone: (415) 956-1000
13 Facsimile: (415) 956-1008
14 ecabraser@lchb.com
15 rheimann@lchb.com
16 efastiff@lchb.com
17 bglackin@lchb.com
18 dharvey@lchb.com
19 lchan@lchb.com

20 DEFENDANTS HITACHI MAXELL, LTD. &
21 MAXELL CORPORATION OF AMERICA

22 DATED: December 16, 2016

VINSON & ELKINS LLP

23 By:


CRAIG P. SEEBALD

24 Jason A Levine
25 Lindsey R. Vaala
26 VINSON & ELKINS LLP
27 2200 Pennsylvania Ave.
28 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 2

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

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

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

A G R E E M E N T

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

A. Definitions

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

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

- 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

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 LG Chem, 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 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, David Beson, Maury “Kim” Billingsley, 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.
- (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.; Sony Corporation; Sony Energy Devices Corporation; Sony Electronics Inc.;

Hitachi Maxell, Ltd.; Maxell Corporation of America; GS Yuasa Corporation; NEC Corporation; NEC Tokin Corporation; Toshiba 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

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.

(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 Thirty-Nine Million U.S. Dollars (\$39,000,000).

(ee) “Settling Parties” means, collectively, LG Chem 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 comparable laws or principles of law. California Civil Code § 1542 provides:

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

B. Preliminary Approval Order, Notice Order and Settlement Hearing

2. Reasonable Best Efforts to Effectuate This Settlement. The Settling Parties: (a) acknowledge that it is their intent to consummate this Agreement; and (b) agree to cooperate to the 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:
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- (a) certifying the Classes, pursuant to Federal Rule of Civil Procedure 23, solely for purposes of this Settlement;
- (b) fully and finally approving the Settlement contemplated by this Agreement and its terms as being fair, reasonable and adequate within the meaning of Federal Rule of Civil Procedure 23 and directing its consummation pursuant to its terms and conditions;
- (c) finding that the notice given to the Class Members constituted the best notice practicable under the circumstances and complies in all respects with the requirements of Federal Rule of Civil Procedure 23 and due process;
- (d) directing that the Actions be dismissed with prejudice as to LG Chem and, except as provided for herein, without costs;
- (e) discharging and releasing the Releasees from all Released Claims;
- (f) permanently barring and enjoining the institution and prosecution, by Indirect Purchaser Plaintiffs and Class Members, of any other action against the Releasees in any court asserting any claims related in any way to the Released Claims;
- (g) reserving continuing and exclusive jurisdiction over the Settlement, including all future proceedings concerning the administration, consummation and enforcement of this Agreement;
- (h) determining pursuant to Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing entry of a final judgment as to LG Chem; and
- (i) containing such other and further provisions consistent with the terms of this Agreement to which the parties expressly consent in writing.

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

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

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

C. Releases

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

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

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

10. Waiver of California Civil Code § 1542 and Similar Laws. The Releasors acknowledge that, by executing this Agreement, and for the consideration received hereunder, it is 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

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

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

(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 LG Chem 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 Expenses”). In all events neither LG Chem nor its counsel shall have any liability or responsibility for the Taxes or the Tax Expenses. With funds from the Gross Settlement Fund, the Escrow Agent shall indemnify and hold harmless LG Chem and its counsel for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Gross Settlement Fund and shall timely be paid by the Escrow Agent out of the Gross Settlement Fund without prior order from the Court, and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. §1.468B-2(1)(2)); neither LG Chem nor its counsel is responsible therefor, nor shall they have any liability therefor. The Settling Parties agree to cooperate with the Escrow Agent, each other, their tax attorneys and their

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

E. Administration and Distribution of Gross Settlement Fund

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

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

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

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

or calculation of claims; the Gross 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 state governments, subject to Court approval. In no event shall the Net Settlement Fund revert to LG Chem.

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

F. Attorneys' Fees and Reimbursement of Expenses

24. Fee and Expense Application. Class Counsel may submit an application or applications (the "Fee and Expense Application") for distributions from the Gross Settlement Fund for: (a) an award of attorneys' fees; plus (b) reimbursement of expenses incurred in connection

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

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

30. Cooperation.

- (a) Within a reasonable period of time (but no more than thirty (30) days) after submission by Class Counsel to the Court of a proposed form of notice to the Classes, LG Chem's counsel shall meet with Class Counsel for the purpose of identifying any LG Chem documents that have been produced as of that time that relate to and/or support the allegations in the Third Consolidated Amended Class Action Complaint or that show LG Chem Lithium Ion Battery sales, pricing, capacity or production; provided, however, that such obligation shall not require LG Chem 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.
- (b) LG Chem 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, within fifteen (15) business days after Preliminary Approval by the Court of this Agreement.
- (c) LG Chem agrees that Class Counsel may notice up to three depositions and also may ask questions at depositions of LG Chem witnesses noticed by

other plaintiffs in the Actions.

- (d) If LG Chem produces any declarations, documents, data or other responses to discovery to any other plaintiff in the Actions, LG Chem 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) LG Chem 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 LG Chem produced in the Actions prior to the Execution Date.
- (g) LG Chem 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. LG Chem will inform Class Counsel under the terms of that paragraph if LG Chem 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 LG Chem, to the extent reasonably possible.
- (h) Upon reasonable notice after Preliminary Approval of this Agreement, LG Chem shall use its best efforts to make available up to two (2) of its employees identified by Indirect Purchaser Plaintiffs for interviews, depositions 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). 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,

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

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

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

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

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

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

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

39. Objections. Settlement Class members who wish to object to any aspect of the Settlement must file with the Court a written statement containing their objection by the end of the 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
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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

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*.

I. No Admission of Liability

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

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

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

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

J. Miscellaneous Provisions

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

47. Consent to Jurisdiction. LG Chem and each Class Member hereby irrevocably submit to the exclusive jurisdiction of the Court only for the specific purpose of any suit, action, proceeding or dispute arising out of or relating to this Agreement or the applicability of this Agreement. Solely for purposes of such suit, action or proceeding, to the fullest extent that they may effectively do so under applicable law, LG Chem and the Class Members irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of the Court or that the Court is in any way an improper venue or an inconvenient forum. Without limiting the generality of the foregoing, it is hereby agreed that any dispute concerning the provisions of ¶¶ 7-11 hereof, including but not limited to any suit, action or proceeding in which the provisions of ¶¶ 7-11 hereof are asserted as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection, constitutes a suit, action or proceeding arising out of or relating to this Agreement. In the event that the provisions of ¶¶ 7-11 hereof are asserted by any Releasee as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection in any suit, action or proceeding, it is hereby agreed that such Releasee shall be entitled to a stay of that suit, action or proceeding until

the Court has entered a final judgment no longer subject to any appeal or review determining any issues relating to the defense or objection based on the provisions of ¶¶ 7-11. Nothing herein shall be construed as a submission to jurisdiction for any purpose other than any suit, action, proceeding or dispute arising out of or relating to this Agreement or the applicability of this Agreement.

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

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

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

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

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

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

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

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

If directed to LG Chem, address notice to:

EIMER STAHL LLP
Nathan P. Eimer (neimer@eimerstahl.com)
224 South Michigan Avenue, Suite 1100
Chicago, IL 60604
neimer@eimerstahl.com
Telephone: 312-660-7600
Facsimile: 312-692-1718
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

1
2 DATED: November 14, 2016

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

3
4 By: 

BRENDAN P. GLACKIN

5 Elizabeth J. Cabraser (SBN 083151)
6 Richard M. Heimann (SBN 63607)
7 Eric B. Fastiff (SBN 182260)
8 Dean M. Harvey (SBN 250298)
9 Lin Y. Chan (SBN 255027)
10 275 Battery Street, 29th Floor
11 San Francisco, CA 94111-3339
12 Telephone: (415) 956-1000
13 Facsimile: (415) 956-1008
14 ecabraser@lchb.com
15 rheimann@lchb.com
16 efastiff@lchb.com
17 bglackin@lchb.com
18 dharvey@lchb.com
19 lchan@lchb.com

LG CHEM, LTD.

14 DATED: November 14, 2016

15 By: _____

Geon Jang

16 Its Vice President and General Counsel

17 LG CHEM AMERICA, INC.

18 DATED: November 14, 2016

19 By: _____

Soo Jung Hahm

20 Its Vice President and Head
21
22
23
24
25
26
27
28

1 DATED: November 14, 2016

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

2
3 By:

4 BRENDAN P. GLACKIN

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6 Richard M. Heimann (SBN 63607)
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14 ecabraser@lchb.com
15 rheimann@lchb.com
16 efastiff@lchb.com
17 bglackin@lchb.com
18 dharvey@lchb.com
19 lchan@lchb.com

20 LG CHEM, LTD.

21 DATED: November 14, 2016

22 By:

23 

24 Geon Jang

25 Its Vice President and General Counsel

26 LG CHEM AMERICA, INC.

27 DATED: November 14, 2016

28 By:



Soo Jung Hahn

Its Vice President and Head

EXHIBIT 3

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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 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.

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

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 conditions
4 specified in ¶ 35 of this Agreement have occurred and have been met.

5 (j) "Escrow Agent" means the agent jointly designated by Class Counsel and
6 NEC, and any successor agent.

7 (k) "Execution Date" means the date of the last signature set forth on the
8 signature pages below.

9 (l) "Final" means, with respect to any order of court, including, without
10 limitation, the Judgment, that such order represents a final and binding
11 determination of all issues within its scope and is not subject to further review
12 on appeal or otherwise. Without limitation, an order becomes "Final" when:

13 (a) no appeal has been filed and the prescribed time for commencing any
14 appeal has expired; or (b) an appeal has been filed and either (i) the appeal has
15 been dismissed and the prescribed time, if any, for commencing any further
16 appeal has expired, or (ii) the order has been affirmed in its entirety and the
17 prescribed time, if any, for commencing any further appeal has expired. For
18 purposes of this Agreement, an "appeal" includes appeals as of right,
19 discretionary appeals, interlocutory appeals, proceedings involving writs of
20 certiorari or mandamus, and any other proceedings of like kind. Any appeal
21 or other proceeding pertaining solely to any order adopting or approving a
22 Distribution Plan, and/or to any order issued with respect to an application for
23 attorneys' fees and expenses consistent with this Agreement, shall not in any
24 way delay or preclude the Judgment from becoming Final.

25 (m) "Finished Product" means any product and/or electronic device that contains a
26 Lithium Ion Battery or Lithium Ion Battery Pack, including but not limited to
27 laptop PCs, notebook PCs, netbook computers, tablet computers, mobile
28

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

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

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

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

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

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

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

20 (z) "Released Claims" means any and all manner of claims, demands, rights,
21 actions, suits, causes of action, whether class, individual or otherwise in
22 nature, fees, costs, penalties, injuries, damages whenever incurred and
23 liabilities of any nature whatsoever, known or unknown (including, but not
24 limited to, "Unknown Claims"), foreseen or unforeseen, suspected or
25 unsuspected, asserted or unasserted, contingent or non-contingent, in law or in
26 equity, under the laws of any jurisdiction, which Releasers or any of them,
27 whether directly, representatively, derivatively, or in any other capacity, ever
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1 had, now have or hereafter can, shall or may have, relating in any way to any
2 conduct prior to the Execution Date of this Agreement and arising out of or
3 related in any way in whole or in part to any facts, circumstances, acts or
4 omissions arising out of or related to (1) any purchase or sale of Lithium Ion
5 Batteries (including Lithium Ion Batteries contained in Finished Products) up
6 through May 31, 2011; or (2) any agreement, combination or conspiracy to
7 raise, fix, maintain or stabilize the prices of Lithium Ion Batteries (including
8 Lithium Ion Batteries contained in Finished Products) or restrict, reduce, alter
9 or allocate the supply, quantity or quality of Lithium Ion Batteries (including
10 Lithium Ion Batteries contained in Finished Products) or concerning the
11 development, manufacture, supply, distribution, transfer, marketing, sale or
12 pricing of Lithium Ion Batteries (including Lithium Ion Batteries contained in
13 Finished Products), or any other conduct alleged in the Actions or relating to
14 restraint of competition that could have been or hereafter could be alleged
15 against the Releasees relating to Lithium Ion Batteries; or (3) any other
16 restraint of competition relating to Lithium Ion Batteries that could be
17 asserted as a violation of the Sherman Act or any other antitrust, unjust
18 enrichment, unfair competition, unfair practices, trade practices, price
19 discrimination, unitary pricing, racketeering, contract, civil conspiracy or
20 consumer protection law, whether under federal, state, local or foreign law.

21 (aa) "Releasees" means NEC and their former, present and future direct and
22 indirect parents, subsidiaries and Affiliates, and their respective former,
23 present and future officers, directors, employees, managers, members,
24 partners, agents, shareholders (in their capacity as shareholders), attorneys
25 and legal representatives, and the predecessors, successors, heirs, executors,
26 administrators and assigns of each of the foregoing. "Releasees" does not
27 include any defendant in the Actions other than NEC.

(bb) "Releasors" 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 Two Million Five Hundred Thousand U.S. Dollars (\$2,500,000).

(ee) "Settling Parties" means, collectively, NEC 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 comparable laws or principles of law. California Civil Code § 1542 provides:

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

B. Preliminary Approval Order, Notice Order and Settlement Hearing

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

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

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

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
28

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

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

(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

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.

E. Administration and Distribution of Gross Settlement Fund

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

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

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

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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1 potential collusion concerning Lithium Ion Batteries, to the extent they exist,
2 within fifteen (15) business days after Preliminary Approval by the Court of
3 this Agreement.

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

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

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

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

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

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

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;
- 28

(e) the terms and provisions of this Agreement, with the exception of ¶¶ 13-15, 17, 27, 31, 33-35, 37, 40-41, 43-44, 46-47, 49-56 (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*.

I. No Admission of Liability

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

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

45. Use of Agreement as Evidence. Neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claims, any allegation made in the Actions, or any wrongdoing or liability of NEC; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any

liability, fault or omission of the Releasees in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement, shall be admissible in any proceeding for any purpose, except to enforce the terms of the Settlement, and except that the Releasees may file this Agreement and/or the Judgment in any action for any purpose, including, but not limited to, in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim. The limitations described in this paragraph apply whether or not the Court enters the Preliminary Approval Order, the Final Approval Order or the Judgment.

J. Miscellaneous Provisions

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

47. Consent to Jurisdiction. NEC and each Class Member hereby irrevocably submit to the exclusive jurisdiction of the Court only for the specific purpose of any suit, action, proceeding or dispute arising out of or relating to this Agreement or the applicability of this Agreement. Solely for purposes of such suit, action or proceeding, to the fullest extent that they may effectively do so under applicable law, NEC and the Class Members irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of the Court or that the Court is in any way an improper venue or an inconvenient forum. Without limiting the generality of the foregoing, it is hereby agreed that any dispute concerning the provisions of ¶¶ 7-11 hereof, including but not limited to any suit, action or proceeding in which the provisions of ¶¶ 7-11 hereof are asserted as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection, constitutes a suit, action or proceeding arising out of or relating to this Agreement. In the event that the provisions of ¶¶ 7-11 hereof are asserted by any Releasee as a

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
28

addresses set forth below or such other addresses as Class Counsel or NEC may designate, from time to time, by giving notice to all parties hereto in the manner described in this paragraph.

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

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

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

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

If directed to NEC, address notice to:

Robert B Pringle
Paul R. Griffin
Sean D. Meenan
Jeanifer E. Parsigian
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
28

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

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

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

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

DATED: January 18, 2017

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: January 18, 2017

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

1 DATED: January 18, 2017

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

2 By: 

BRENDAN P. GLACKIN

3 Elizabeth J. Cabraser (SBN 083151)

4 Richard M. Heimann (SBN 63607)

5 Eric B. Fastiff (SBN 182260)

6 Dean M. Harvey (SBN 250298)

7 Lin Y. Chan (SBN 255027)

275 Battery Street, 29th Floor

San Francisco, CA 94111-3339

Telephone: (415) 956-1000

Facsimile: (415) 956-1008

8 ecabraser@lchb.com

9 rheimann@lchb.com

efastiff@lchb.com

10 bglackin@lchb.com

dharvey@lchb.com

11 lchan@lchb.com

12 DEFENDANT NEC CORP.

13 DATED: January 20, 2017

WINSTON & STRAWN LLP

14 By: 

ROBERT B PRINGLE

16 Paul R. Griffin

17 Sean D. Meenan

Jeanifer E. Parsigian

18 Dana L. Cook-Milligan

WINSTON & STRAWN LLP

19 101 California Street

San Francisco, CA 94111-5802

20 Telephone: (415) 591-1000

21 Facsimile: (415) 591-1400

rpringle@winston.com

22 pgriffin@winston.com

smeen@winston.com

23 jparsigian@winston.com

24 dlcook@winston.com

EXHIBIT 4

EXHIBIT 2**Requests for Exclusion from LG Chem, Hitachi Maxell, and NEC Settlements**

<u>Name</u>	<u>Exclusion Request Timely</u>
Dianna Arens	Yes
Shelly Blaylock	Yes
Donald Clements	Yes
J Mcduffie (Parker)	Yes
Alex Plotkin	Yes
Juliette Strauss	Yes
Josue Villesca	Yes
Angel Rodriguez	Yes
Anita Turney	Yes
Sylvia Provencio	Yes
L Cash	Yes
Alan Taylor	Yes
Karen Lynch	Yes
ACER Inc.	Yes
HP Inc.	Yes
Blake McKinley	Yes
Home Depot USA Inc.	Yes
Cathy Kayrouz	Yes
Ralph Hoffman	Yes
Mohammad Qudeisat	Yes
Willis Johnson	Yes