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23 **UNITED STATES DISTRICT COURT**
24 **NORTHERN DISTRICT OF CALIFORNIA**
25 **OAKLAND DIVISION**

26 **IN RE: LITHIUM ION BATTERIES**
27 **ANTITRUST LITIGATION**

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

MDL NO. 2420

**INDIRECT PURCHASER PLAINTIFFS’
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT WITH
SONY DEFENDANTS**

This Document Relates to:

**ALL INDIRECT PURCHASER
ACTIONS**

Date: November 8, 2016

Time: 2:00 p.m.

Location: Oakland Courthouse, Courtroom 1 -
4th Floor 1301 Clay Street, Oakland, CA 94612

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT, on November 8, 2016 at 2:00 p.m., or as soon thereafter as the matter may be heard, in the Courtroom of the Honorable Yvonne Gonzalez Rogers, United States District Judge for the Northern District of California, located at 1301 Clay Street, Oakland, California, the Indirect-Purchaser Plaintiffs (“IPPs”) will and hereby do move, under Rule 23(e) of the Federal Rules of Civil Procedure (“FRCP”), for entry of an Order:

1. Granting final approval of the proposed settlement with Sony Corporation, Sony Energy Devices Corporation, and Sony Electronics, Inc. (collectively, “Sony” or “Sony Defendants”);
2. Dismissing, with prejudice, claims against Sony from the IPPs’ actions; and
3. Approving IPPs’ plan of distribution.

The grounds for the motion are as follows: (a) the proposed settlement with Sony (the “Settlement” or “Sony Settlement”) is fair, reasonable, and adequate and satisfies FRCP 23(e); (b) the Settlement is the product of arm’s-length negotiations; (c) the plan of distribution is fair, adequate, and reasonable; and (d) the Court-approved notice plan satisfies due process.

IPPs’ Motion is based upon this Notice; the following Memorandum of Points and Authorities; the accompanying Declarations of Steven N. Williams and Eric Schachter; IPPs’ concurrently-filed Omnibus Response to Objections to the Sony Settlement along with its supporting declaration; IPPs’ Motion for Reimbursement of Certain Expenses (ECF No. 1446) along with its supporting declaration (ECF No. 1441-1); IPPs’ Reply in Support of Their Motion for Reimbursement of Certain Expenses (ECF No. 1492); as well as arguments of counsel and all records on file in this matter.

1 Dated: October 4, 2016

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DEFINITIONS

A.B. Data	A.B. Data, Ltd.
applEcon	applEcon LLC
Catalyst	Catalyst Repository Systems Inc.
CCAC	Consolidated Class Action Complaint (ECF No. 221)
Dell	Dell Inc.
DPPs	Direct Purchaser Plaintiffs
EconOne	EconOne Research, LLC
Everlaw	Everlaw Inc.
Ex. or Exhibit	Unless otherwise noted, this refers to exhibits to the Williams Declaration in Support of IPPs' Motion for Final Approval of the Sony Settlement (filed herewith)
FCAC	Fourth Consolidated Amended Complaint (ECF No. 1168)
FRCP	Federal Rules of Civil Procedure
HP	Hewlett Packard Company
IDS	iDiscovery Solutions, Inc.
IPPs	Indirect Purchaser Plaintiffs
IPPs' Response to Objections	IPPs' Omnibus Response to Objections to Sony Settlement (filed herewith)
IPPs' Preliminary Approval Motion	Indirect Purchaser Plaintiffs' Notice of Motion and Motion for (1) Preliminary Approval of Class Action Settlement With Sony; and (2) Certification of Settlement Class (ECF No. 1209)
IPPs' Motion for Reimbursement	IPPs' Motion for Reimbursement of Certain Expenses (ECF No. 1446)
Interim Co-Lead Counsel	Cotchett, Pitre & McCarthy, LLP, Hagens Berman Sobol Shapiro LLP, and Lief Cabraser Heimann & Bernstein, LLP
JPML	Judicial Panel on Multidistrict Litigation
LG Chem	LG Chem, Ltd. and LG Chem America, Inc.
LIBs	Lithium Ion Batteries
Omega	Omega Discovery Solutions, LLC
Preliminary Approval Order	The Court's Order Granting Settlement Class

1		Certification and Preliminary Approval of Class Action Settlements with Sony Defendants (ECF No. 1292)
2		
3	Schachter Declaration	Declaration of Eric Schachter re Dissemination of the Sony Settlement Notice and Requests for Exclusion (ECF No. 1492-1 and filed herewith)
4		
5	Sanyo	Sanyo Electric Co., Ltd., Sanyo North America Corporation, and Sanyo GS Soft Energy Co. Ltd.
6	SCAC	Second Consolidated Amended Complaint (ECF No. 419)
7		
8	Sony	Sony Corporation, Sony Energy Devices Corporation, and Sony Electronics, Inc.
9	Sony Settlement or Settlement	IPPs' Proposed Settlement with Sony
10	Supporting Counsel	The attorneys and law firms that assisted Interim Co-Lead Class Counsel in the prosecution of this litigation.
11		
12	TCAC	IPPs' Third Consolidated Amended Complaint (ECF No. 519)
13		
14	Toshiba	Toshiba Corporation and A&T Battery Corporation
15	Settlement Classes	The classes certified for settlement purposes in this Court's order granting preliminary approval (ECF 1292 at ¶4)
16		
17	Williams Declaration	Declaration of Steven N. Williams in Support of IPPs' Motion for Final Approval of the Sony Settlement (filed herewith)
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. STATEMENT OF ISSUES TO BE DECIDED**

3 The issues before the Court are as follows:

- 4 1. Whether to grant final approval of the Sony Settlement;
- 5 2. Whether to dismiss with prejudice IPPs' claims against Sony; and
- 6 3. Whether to approve IPPs' plan of distribution.

7

8 **II. INTRODUCTION AND STATEMENT OF RELEVANT FACTS**

9 IPPs move for final approval of the Sony Settlement as it is fair, reasonable, and adequate,
10 and provides substantial benefits to the Settlement Classes. This is the first settlement in this
11 litigation, and is a reflection of the painstaking and difficult work Interim Co-Lead Counsel has
12 completed to date. It was the result of extensive arm's-length negotiations between experienced
13 and informed counsel from both sides, and was mediated by Hon. R. Vaughn Walker (ret.).

14 The Settlement is a significant achievement for the Settlement Classes. Under its terms,
15 Sony will make a cash payment of USD \$19,500,000, and will cooperate with IPPs in prosecuting
16 the case against the remaining Defendants. Williams Decl. at ¶26; Ex. 2 (Sony Settlement) ¶¶ A.
17 1(dd) and G. In exchange, Sony will receive a complete release of the Settlement Classes' claims
18 involving anticompetitive conduct relating to the sales of lithium ion batteries. *Id.* ¶ B. 5(e).

19 The Settlement Classes have received adequate notice of the Settlement. A.B. Data, a
20 nationally preeminent class action administration company, implemented the notice plan ordered
21 by the Court. *See* ECF No. 1292 at ¶¶8-9. Specifically, A.B. Data: (1) directly emailed the long
22 form notice to more than 15.8 million potential class members; (2) published the short form
23 notice in *Better Homes and Gardens*, *Parade* and *People* magazines; (3) caused a copy of the
24 notices to be posted on the internet website www.batteriesconsumerlitigation.com; (4) used
25 banner and text ads to achieve more than 273 million digital impressions; and (5) disseminated a
26 news release via PR Newswire. *See* Schachter Decl. ¶¶3-10. A.D. Data also set up a toll-free
27 helpline. *Id.* ¶8. To date, 41,208 people have registered on the Settlement website. *Id.* ¶7. After
28 this extensive notice program, there were only eleven objections (filed by eight objectors) and

1 eight requests for exclusion. None of the objections provides a valid reason to deny final
2 approval. *See* IPPs' Response to Objections.

3 IPPs therefore move that the Court grant final approval of the Settlement, enter final
4 judgment dismissing IPPs' claims against Sony, and approve the plan of distribution.

5 **III. PROCEDURAL HISTORY**

6 IPPs alleged that Defendants, including Sony, conspired to fix the prices of LIBs, which
7 are widely used in consumer electronics, and that the conspiracy began at least as early as January
8 1, 2000 and continued until at least May 31, 2011. TCAC ¶4. IPPs alleged a textbook price-
9 fixing cartel carried out through agreements to fix prices, restrict output, and allocate markets. *Id.*
10 ¶6. IPPs alleged that Defendants' collusive activities were carried out through various means,
11 including direct communication between competitors, face-to-face meetings, and the use of trade
12 associations. *Id.* ¶6, 7, 277-293, and 503. IPPs also alleged that Defendants went through
13 extensive efforts to conceal their activities by meeting in private rooms at restaurants and hotels,
14 and instructing subordinates to delete suspicious emails. *Id.* ¶7 and 18. Two Defendants—LG
15 Chem and Sanyo—pled guilty to criminal charges for fixing the prices of LIBs, and Sanyo named
16 a third Defendant, Panasonic, as a co-conspirator. *Id.* ¶294 and 302.

17 **A. Litigation History**

18 **1. IPPs' Early Complaints and Proceedings Before the JPML**

19 The first IPP complaint was filed on October 4, 2012 in the Northern District of
20 California. *See Hanlon v. LG Chem. et al.*, No. 12-12419 (N.D. Cal.) (ECF No. 1). Thereafter,
21 additional complaints making substantially similar legal and factual allegations were filed in
22 several district courts. In total, forty-seven such actions were filed. *See* ECF No. 1 (Transfer
23 Order). Interim Co-Lead Counsel participated in proceedings before the JPML, where
24 Defendants and numerous Plaintiffs in the tag-along actions argued that that the related actions
25 should be transferred and centralized in the Northern District of California. On February 6, 2013,
26 the JPML transferred all cases to this Court and found centralization appropriate under 28 U.S.C.
27 §1407. *Id.*

28

1 **2. Appointment of Leadership**

2 On May 17, 2013, this Court appointed Cotchett, Pitre & McCarthy, LLP, Hagens Berman
3 Sobol Shapiro LLP, and Lief Cabraser Heimann & Bernstein, LLP as Interim Co-Lead Counsel
4 for the IPPs. ECF No. 194. Jennie Anderson of Andrus Anderson LLP was appointed Liaison
5 Counsel for the IPPs. *Id.*

6 **3. The Consolidated Complaints and Two Rounds of Motions to Dismiss**

7 On July 2, 2013, IPPs filed a detailed 162-page Consolidated Class Action Complaint.
8 ECF No. 221. The CCAC named twenty-seven Defendants from nine corporate families that
9 manufactured LIBs. *Id.* This complaint outlined IPPs' allegations that these companies
10 conspired to fix the prices of LIBs used in consumer electronics in the U.S. *Id.*

11 Defendants filed one joint and five individual motions to dismiss. *See* ECF Nos. 288
12 (Joint Motion); 284 (Hitachi and Maxell); 289 (Panasonic and Sanyo); 291 (LG Chem America);
13 293 (Toshiba); and 296 (Sony). Defendants made the following arguments: (1) that Plaintiffs had
14 failed to allege a plausible "overarching" conspiracy involving each Defendant; (2) that IPPs'
15 claims were barred by the statute of limitations; (3) that Defendants' U.S.-based subsidiaries were
16 not properly named as Defendants; and (4) various state law claims should be dismissed. *Id.* On
17 July 21, 2014, this Court issued a 29-page Order dismissing IPPs' CCAC with leave to amend.
18 ECF No. 361. The Court rejected Defendants' first two arguments, holding that IPPs had alleged
19 a plausible conspiracy as to the Defendants' Korean and Japanese parent companies, but found
20 that IPPs needed to make more detailed allegations as to the Defendant subsidiaries. *Id.* at 3.

21 On April 11, 2014, IPPs filed their SCAC. ECF No. 419. The SCAC expanded to 196-
22 pages and added significant detail regarding Defendants' domestic subsidiaries. *Id.* On April 25,
23 2015, Defendants filed a joint motion to dismiss the SCAC on multiple grounds. ECF 428. With
24 the exception of the Court's dismissal of two state law claims (Montana and New Hampshire),
25 and the dismissal of the State Governmental Damages Subclass (except California), Defendants'
26 motion was denied. *See* ECF No. 512 at 36 and 44. On October 22, 2014, IPPs filed their TCAC
27 to conform to this order. ECF No. 519.

28

1 On December 2, 2015, IPPs filed a Motion to Amend the TCAC to add, substitute, and
2 dismiss certain class representatives. ECF No. 984. On March 14, 2016, with the exception of
3 five proposed substitute class representatives who only purchased Apple products, the Court
4 granted IPPs' motion. ECF No. 1154. IPPs filed the FCAC on March 18, 2016. ECF No. 1168.

5 **4. Toshiba's Summary Judgment Motion**

6 On June 30, 2015, Toshiba filed a motion for summary judgment, and argued that
7 Plaintiffs' claims were barred by the statute of limitations, because Toshiba allegedly withdrew
8 from the conspiracy by 2004. ECF No. 735. On November 13, 2015, IPPs and DPPs collectively
9 opposed the motion. ECF No. 957. On March 16, 2016, after oral argument, the Court denied
10 Toshiba's motion. ECF No. 1106.

11 **5. The Discovery Process**

12 IPPs have propounded and responded to multiple sets of discovery, conducted numerous
13 (lengthy) meet and confers, and engaged in multiple rounds of motion practice in front of
14 Magistrate Judge Ryu on various discovery issues. *See* ECF Nos. 805, 822, 836, 938, 1143, and
15 1177. Defendants produced more than eight million pages of documents from 273 document
16 custodians and centralized files, and produced voluminous electronic transactional data. Williams
17 Decl. ¶6.

18 IPPs contracted with three vendors—Catalyst, Everlaw, and Omega—to provide a
19 platform to host and review these documents. *Id.* ¶8. IPPs engaged IDS to retrieve documents
20 from the class representatives in response to requests from Defendants. *Id.* To date, IPPs have
21 incurred a total of \$429,604 in costs for these services. *Id.* ¶9. Having reviewed these
22 documents, and identified relevant witnesses, IPPs have taken twenty-one depositions of
23 Defendants' witnesses (merits and 30(b)(6) combined). *Id.* at ¶5. IPPs have also conducted
24 extensive expert discovery. *Infra* at 8.

25 Many of the documents produced in discovery are written in Japanese and Korean and
26 IPPs had to obtain certified translations of the documents before they could be used in depositions
27 and court filings. *See id.* ¶10; ECF Nos. 665 at 1. To date, IPPs have incurred a total of
28 \$157,362.92 in charges for certified translations for nearly two thousand documents. Williams

1 Decl. ¶11. IPPs have used hundreds of certified translations at depositions and in court filings in
2 this case. *Id.* Every class representative identified in the FCAC has been deposed. *Id.* at ¶5.
3 Interim Co-Lead Counsel and Supporting Counsel prepared the class representatives for, and
4 defended them in, these depositions. *Id.*

5 6. Class Certification

6 On January 22, 2016, IPPs filed their motion for class certification. ECF No. 1036. IPPs
7 filed the expert reports of economists Dr. Edward Leamer and Dr. Rosa Abrantes-Metz in support
8 of this motion. ECF Nos. 1036-1 and 1036-2. Drs. Leamer and Abrantes-Metz have done
9 substantial work on this case over a long period of time, and in the course of preparing their
10 reports, they conducted a significant amount of work analyzing the impact of Defendants'
11 conspiracy and the damages to the IPP class.

12 Defendants filed their opposition to class certification on May 24, 2016. ECF No. 1283.
13 As part of that filing, Defendants submitted two *Daubert* motions and the expert reports of
14 Margaret Guerin-Calvert, Dr. Quinn Horn, and Daniel Moe to counter the opinions offered by Dr.
15 Leamer and Dr. Abrantes-Metz. ECF Nos. 128-3; 1280-5. On August 23, 2016, IPPs filed their
16 reply in support of class certification. ECF No. 1402-2. IPPs submitted reply reports by Drs.
17 Leamer and Abrantes-Metz that provided specific responses to criticisms of their work made by
18 Defendants' experts. *Id.* Each of the expert reports filed by IPPs was based on extensive
19 economic analyses of Defendants' documents, transactional data and opposing expert reports, and
20 took many hours to complete. Williams Decl. ¶¶12-16. Drs. Leamer and Abrantes-Metz were
21 deposed by defendants for a collective sixteen and a half hours. *Id.* ¶14.

22 Economic consulting firm EconOne performed work at the direction of Dr. Leamer, which
23 included analysis of Defendants' and non-parties' transactional data. *Id.* ¶13. EconOne analyzed
24 data from more than seventy-one non-parties, and from each Defendant. *Id.* This analysis
25 involved a systematic review of more than 381 gigabytes of data as well as detailed regressions
26 and sensitivity analyses. *Id.* Class Counsel have also engaged applEcon for additional data
27 collection. *Id.* ¶17. As a result of this extensive work, IPPs incurred a total of \$3,116,338.70 in
28 expert expenses. *See* Williams Decl. at ¶18.

1 **B. Settlement History**

2 On April 8, 2016, IPPs filed their Motion for Preliminary Approval of this Settlement.
3 ECF No. 1209. That motion describes the Settlement’s terms and explains why it is fair,
4 adequate, and reasonable. *Id.* This is the first settlement reached in this case, and was the result
5 of painstaking, arm’s-length negotiations among experienced counsel and was mediated by Hon.
6 R. Vaughn Walker (ret.). This Court found the Settlement “falls within the range of possible final
7 approval,” scheduled a fairness hearing for November 8, 2016, and set a September 22, 2016
8 deadline for objections to the Settlement. ECF No. 1292 at ¶¶3, 12, and 14.

9 **C. The Terms of the Sony Settlement**

10 The terms of the Settlement are detailed below and in IPPs’ motion for preliminary
11 approval. ECF 1209 at 5-9. The Settlement itself is available on the settlement website.
12 Schachter Decl. at ¶6.

13 **1. The Settlement Classes**

14 When the Court granted preliminary approval of the Sony Settlement, it certified the
15 following Settlement Classes:

- 16 a. All persons who, during the period from and including January 1, 2000
17 through May 31, 2011, purchased in the United States for their own use
18 and not for resale from an entity other than an MDL Defendant a Lithium
19 Ion Battery or Lithium Ion Battery Pack manufactured by an MDL
20 Defendant or alleged co-conspirator, or a Finished Product containing a
Lithium Ion Battery or Lithium Ion Battery Pack manufactured by an
MDL Defendant or alleged co-conspirator.

21 Excluded from the Class are the MDL Defendants, their parents,
22 subsidiaries and affiliates, and any judge, justice, or judicial officer
presiding over this matter and the members of her or his immediate
families and judicial staff.

- 23 b. All non-federal and non-state governmental entities in California that,
24 during the period from January 1, 2000 through May 31, 2011, indirectly
25 purchased for their own use and not for resale either a Lithium Ion Battery
26 manufactured by a Defendant and/or a Lithium Ion Battery Product
containing a Lithium Ion Battery manufactured by a Defendant or
coconspirator.

27 ECF No. 1292 at ¶4.
28

1 The certified nationwide settlement class and California governmental damages class are
 2 consistent with the proposed classes set forth in the TCAC. The FCAC proposes narrower classes
 3 in that they do not include polymer and prismatic LIBs, while the certified nationwide settlement
 4 class does include those products. The scope of the release to be provided upon final approval is
 5 appropriate, because it is limited to the subject matter of this lawsuit.

6 2. Definitions

7 The following definitions, among others, are set forth in the Sony Settlement:

- 8 • “Lithium Ion Battery” means a Lithium Ion Battery Cell or Lithium Ion
 9 Battery Pack.
- 10 • “Lithium Ion Battery Cell” means a cylindrical, prismatic, or polymer cell
 11 used for the storage of power that is rechargeable and uses lithium ion
 12 technology.
- 13 • “Lithium Ion Battery Pack” means Lithium Ion Cells that have been
 14 assembled into a pack, regardless of the number of Lithium Ion Cells
 15 contained in such packs.
- 16 • “Finished Product” means any product and/or electronic device containing a
 17 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.

18 Ex. 2 (Sony Settlement) at ¶A(1)(m), (q)-(s).

19 3. Release of Claims

20 Once the Settlement becomes final, the Settlement Classes will relinquish any claims they
 21 have against Sony based, in whole or in part, on matters alleged in the TCAC. The releases
 22 exclude claims for product liability, breach of contract, breach of warranty, personal injury, or
 23 any other claim unrelated to the allegations in this litigation. *Id.* at ¶11. The Agreement does not
 24 release claims arising from restraints of competition directed at goods other than (a) Lithium Ion
 25 Batteries or (b) Lithium Ion Batteries contained in Finished Products. *Id.*

26 While the class definition in the Settlement is different from the class definition in the
 27 FCAC, these differences are not an impediment to approval of the proposed settlement. *See In re*
 28 *Zynga Sec. Litig.*, case no. 12-cv-4250-JSC, 2015 U.S. Dist. LEXIS 145728 (N.D. Cal. Oct. 27,

1 2015); *In re Initial Public Offering Sec. Litig.*, 226 F.R.D. 186 (S.D.N.Y. 2005); *In re Domestic*
2 *Air Transp. Antitrust Litig.*, 141 F.R.D. 534 (N.D. Ga. 1992).

3 **4. Gross Settlement Fund**

4 Once the settlement becomes final and the Court enters a final judgment of dismissal with
5 prejudice as to Sony, the Gross Settlement Fund, consisting of \$19.5 million plus accrued interest
6 thereon, will be used to do the following:

- 7 (a) To pay all costs and expenses reasonably and actually incurred in
8 connection with providing notice to the Classes in connection with
9 administering and distributing the Net Settlement Fund to Authorized
10 Claimants, and in connection with paying escrow fees and costs, if any;
- 11 (b) To pay all costs and expenses, if any, reasonably and actually incurred in
12 soliciting claims and assisting with the filing and processing of such
13 claims;
- 14 (c) To pay the Taxes and Tax Expenses as defined herein;
- 15 (d) To pay any Fee and Expense Award that is allowed by the Court, subject
16 to and in accordance with the Agreement;
- 17 (e) To distribute the balance of the Net Settlement Fund to Authorized
18 Claimants as allowed by the Agreement and/or any Distribution Plan or
19 order of the Court; and
- 20 (f) To pay Notice and Administrative Costs as they become due, which may
21 not exceed seven-hundred fifty thousand U.S. dollars (\$750,000).

22 Ex. 2 at ¶¶13 and 19 (a)-(e).

23 **5. Net Settlement Fund**

24 Subject to the approval and direction of the Court, the Net Settlement Fund, plus accrued
25 interest thereon, will be used to make a distribution to the Settlement Classes. As set forth below,
26 Plaintiffs propose a *pro rata* distribution to class members based upon the number of approved
27 purchases per class member of LIBs during the settlement class period. Unused funds allocated
28 to settlement administration fees will be distributed to the class *pro rata*. In no event shall any
Settlement consideration revert to Sony. *Id.* ¶E. 22.

1 **6. Sony's Option to Terminate**

2 Sony retained the option to terminate the Settlement only if the purchases of LIBs, LIB
3 Packs, and/or Finished Products made by the members of the Settlement Classes who timely and
4 validly requested exclusion equaled or exceeded five percent (5%) of the total volume of
5 purchases made by the Class. After meeting and conferring with Interim Co-Lead Counsel, Sony
6 may elect to terminate the Settlement by serving written notice by email and overnight courier,
7 and by filing a copy of such notice with the Court no later than thirty (30) days before the date for
8 the final approval hearing of this Settlement. Ex. 1 at ¶H. 38. Sony shall have a minimum of ten
9 (10) days in which to decide whether to terminate this Agreement after receiving the final opt-out
10 list. *Id.* Sony has not exercised this option.

11 **7. Provision Regarding Class Action Fairness Act ("CAFA") Notice**

12 The Settlement states that Sony will provide the notices required by CAFA. Ex. 2 at ¶ B.
13 4. Sony has provided such notice. *See* Williams Decl. ¶24 and Ex. 5.

14 **D. IPPs' Proposed Notice Program**

15 IPPs' Motion for Preliminary Approval proposed a comprehensive notice program to be
16 implemented by A.B. Data. ECF No. 1209 at 8-9. IPPs anticipated that the notice program
17 would cost no more than \$750,000.00. *Id.* at ¶¶A. 1(v) and D. 13. The actual cost of this notice
18 was \$691,799.97. Schachter Decl. at ¶12. This sum was paid to A.B. Data. *Id.* The selection of
19 A.B. Data as the notice program administrator was done through competitive bidding by qualified
20 service providers. A.B. Data's proposal was deemed to be the most suitable notice program at the
21 most competitive price. Based upon their experiences in other class action cases and the
22 competitive bidding process used here, Interim Co-Lead Counsel believe this sum to be
23 reasonable in relation to the value of the settlement.

24 The notice program provided the following: (1) direct notice to those potential class
25 members whose email addresses could be reasonably obtained once preliminary approval was
26 granted; (2) printed publication notice in *Parade*, *People*, and *Better Homes & Gardens*
27 magazines; and (3) online publication on a settlement website and through internet banner
28

1 advertisements. Schachter Decl. at ¶2. To date 41,208 people have registered on the Settlement
 2 website, and more than 15.8 million people have received email notice. *Id.* at ¶¶7, 9.

3 **E. IPPs' Proposed Plan of Distribution**

4 Plaintiffs propose to distribute the funds *pro rata* to class members based upon the
 5 number of qualifying purchases that they submit through their claim forms. Under this plan, each
 6 class member receives the same treatment regardless of what state that person or entity resides in.

7 **IV. ARGUMENT**

8 **A. The Settlement is Fair, Adequate, and Reasonable.**

9 The law favors the settlement of class action suits. *See, e.g., Churchill Village*, 361 F.3d
 10 at 576; *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). “[T]he decision to
 11 approve or reject a settlement is committed to the sound discretion of the trial judge because he is
 12 exposed to the litigation and their strategies, positions and proof.” *Hanlon v. Chrysler Corp.*, 150
 13 F.3d 1011, 1026 (9th Cir. 1998) (quoting *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d
 14 615, 626 (9th Cir. 1982)). A proposed class action settlement reached after meaningful discovery
 15 and arm’s-length negotiation, when conducted by capable counsel, is presumed to be fair. *See M.*
 16 *Berenson Co. v. Faneuil Hall Marketplace, Inc.*, 671 F. Supp. 819, 822 (D. Mass. 1987).

17 Courts are empowered to exercise discretion when deciding whether to grant final
 18 approval. *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff’d*, 661 F.2d
 19 939 (9th Cir. 1981); *Torrise v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993). In
 20 doing so, however, courts are advised to defer to the “private consensual decision of the parties.”
 21 *Hanlon*, 150 F.3d at 1027 (citation omitted). In the Ninth Circuit, voluntary conciliation and
 22 settlement are the preferred means of dispute resolution. *See Officers for Justice*, 688 F.2d at
 23 625; *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976); *Utility Reform Project v.*
 24 *Bonneville Power Admin.*, 869 F.2d 437, 443 (9th Cir. 1989).

25 In determining whether a settlement is fair, reasonable, and adequate, district courts
 26 consider the following factors:

27 (1) the strength of the plaintiff’s case; (2) the risk, expense, complexity, and likely
 28 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

1 discovery completed and the stage of the proceedings; (6) the experience and
2 views of counsel; (7) the presence of a governmental participant; and (8) the
3 reaction of the class members of the proposed settlement.

4 *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011) (citing *Churchill*
5 *Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) and *Torrissi*, 8 F.3d at 1375).

6 Each of these factors supports final approval of the Settlement.

7 **1. While the Case Is Strong, the Settlement Alleviates Significant Risks.**

8 While IPPs' case is compelling, antitrust litigation of this magnitude and complexity is
9 notoriously difficult. The Sony Settlement alleviates certain risks inherent in litigation, while also
10 providing cash to the Settlement Classes, valuable cooperation to Class Counsel as they continue
11 to pursue claims against the other Defendants, and the potential for Class Counsel to recoup
12 certain out-of-pocket expenses incurred so far in this litigation. *See* Williams Declaration ¶7, 26,
13 and 34; IPP Reimbursement Motion (ECF No. 1446); *compare Larsen v. Trader Joe's*, No. 11-
14 cv-05188-WHO, 2014 U.S. Dist. LEXIS 95538, at *12 (N.D. Cal. July 21, 2014) (cites omitted)

15 **2. The Settlement Amount Provides Considerable Benefits to the Classes.**

16 The settlement payment of \$19,500,000 confers a substantial benefit to the Settlement
17 Classes, because beyond receiving these funds, the classes will avoid the uncertainty, delay, and
18 risk of continued litigation. Williams Decl. ¶7, 26, and 34. Based on the work done in support of
19 class certification, IPPs estimate that the settlement represents 11.2% of the single damages
20 attributable to Sony sales, and 2.2% of total single damages that the proposed nationwide class
21 would be entitled to if it prevailed on all claims (and a proportionally larger percentage of the
22 potential damages if based solely on claims arising in the *Illinois Brick*-repealer states). *See id.*
23 ¶34 and *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977). These figures reflect the fact that
24 antitrust class action litigation is notoriously risky. *See, e.g., In re Shopping Carts Antitrust*
25 *Litig.*, MDL No. 451-CLB, M-21-29, 1983 U.S. Dist. LEXIS 11555 (S.D.N.Y. Nov. 18, 1983).
26 They also reflect the well-recognized benefits to both sides of reaching a settlement before class
27 certification. Further, the Settlement preserves IPPs' right to litigate against the remaining
28 Defendants for the total damage amount based on joint and several liability. Williams Decl. ¶27;

1 *compare In re Corrugated Container Antitrust Litig.*, M.D.L. No. 310, 1981 U.S. Dist. LEXIS
2 9687, at *47-49 (S.D. Tex. June 4, 1981).

3 The Settlement amount is reasonable and well within the range of possible final approval.
4 *See In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. 14-CV-2058 JST, 2015 WL 9266493, at
5 *5 (N.D. Cal. Dec. 17, 2015) (citing *Fisher Bros. v. Mueller Brass Co.*, 630 F. Supp. 493, 499
6 (E.D. Pa. 1985)) (holding settlements equal to .1%, .2%, 2%, .3%, .65%, .88%, and 2.4% of
7 defendants' total sales to be reasonable); *Four in One Co. v. S.K. Foods, L.P.*, No. 2:08-cv-3017
8 KJM EFB, 2014 WL 28808, at *9 (E.D. Cal. Jan. 2, 2014) (holding settlement amounting to 1%
9 of defendants' sales to be reasonable). In line with this authority, this Court held at preliminary
10 approval that the Sony Settlement "falls within the range of possible final approval and that there
11 is sufficient basis for notifying the settlement classes and for setting a Fairness Hearing." ECF
12 No. 1292 at ¶3.

13 Further, the Sony Settlement calls for Sony to cooperate with IPPs in the prosecution of
14 their claims against the remaining Defendants. Williams Decl. ¶28. This is a valuable benefit
15 because it will save time, reduce costs, and provide information, witnesses, and documents that
16 IPPs may not otherwise be able to access. *See In re Mid-Atlantic Toyota Antitrust Litig.*, 564 F.
17 Supp. 1379, 1386 (D. Md. 1983); *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 643
18 (E.D. Pa. 2003)); and *In re Corrugated Container*, 1981 U.S. Dist. LEXIS 9687, at *47-49.

19 Finally, as other courts have noted, an initial "icebreaker" settlement, such as this one, can
20 set the stage for future settlements:

21 The Court also notes that this settlement has significant value as an icebreaker
22 settlement—it is the first settlement in the litigation—and should increase the
23 likelihood of future settlements. An early settlement with one of many defendants
can break the ice and bring other defendants to the point of serious negotiations.

24 *In re Linerboard*, 292 F. Supp. 2d at 643.

25 3. The Extensive Discovery Conducted in This Case Favors Final 26 Approval.

27 As detailed above (*supra* at 3), there has been extensive discovery in this case.
28 Defendants have produced more than eight million pages of documents as well as voluminous

1 electronic transactional data. Williams Decl. ¶6. IPPs have taken twenty-one merits and 30(b)(6)
2 depositions, and conducted extensive expert discovery. *Id.* Moreover, IPPs have collected and
3 produced documents from the class representatives, and have prepared them for and defended
4 them in dispositions. *Id.*

5 **4. The Experience and Views of Counsel Favor Final Approval.**

6 Interim Co-Lead Counsel have extensive experience in antitrust and consumer class
7 actions, and have determined based on the progression of this case, that the Sony Settlement is in
8 the best interests of the Settling Classes. *Id.* ¶7, 26, and 34.

9 **5. The Class Members' Positive Reaction Favors Final Approval.**

10 One factor courts consider in determining the fairness and adequacy of a proposed
11 settlement, is the reaction of the class members. *See Churchill Village*, 361 F.3d at 575; *Hanlon*,
12 150 F.3d at 1026. Numerous courts have observed, for example, that “the absence of a large
13 number of objections to a proposed class action settlement raises a strong presumption that the
14 terms of a proposed class settlement action are favorable to the class members.” *Larsen*, 2014
15 U.S. Dist. LEXIS 95538 at *16 (internal quotes omitted) (citing *Nat'l Rural Telecomms. Coop. v.*
16 *DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004)); *see also Create-A-Card, Inc. v. INTUIT,*
17 *Inc.*, No. CV-07-6452 WHA, 2009 U.S. Dist. LEXIS 93989, at *15 (N.D. Cal. Sep. 22, 2009).

18 Pursuant to the Court's Preliminary Approval Order, more than 15.8 million class notices
19 were emailed to potential class members throughout the United States. *See Schachter Decl.* ¶9.
20 Notice was also published in national magazines and on the internet along with additional
21 information and documents. *Id.* ¶6. Despite this expansive notice program, there were only
22 eleven objections (including one duplicate) filed. None of those objections raise any valid reason
23 not to approve the Settlement. *See IPPs' Response to Objections* (filed herewith) and *IPPs' Reply*
24 *In Support of Their Motion for Reimbursement of Certain Expenses* (ECF No. 1492). In
25 addition, only eighteen individuals requested to be excluded from the class. *See Schachter Decl.*
26 at Ex. D.

27 The minute number of objections and exclusions is telling given the extensive notice
28 program, as well as the large number of class members. The positive reaction to the Settlement is

1 another factor which supports a finding that the Settlement is fair, adequate, and reasonable. *See,*
2 *e.g., Pallas v. Pac. Bell*, No. C-89-2373 DLJ, 1999 WL 1209495, at *8 (N.D. Cal. July 13, 1999);
3 *Arnold v. Arizona Dept. of Pub. Safety*, No. CV-01-1463-PHX-LOA, 2006 WL 2168637, at *10
4 (D. Ariz. July 31, 2006); and *In re Patriot Am. Hospitality Inc. Sec. Litig.*, No. MDL C-00-1300
5 VRW, 2005 WL 3801594, at *2 (N.D. Cal. Nov. 30, 2005).

6 **B. The Settlement Is the Product of Arm’s-Length Negotiations.**

7 The Settlement was the product of good faith, arm’s-length negotiations among
8 experienced and well-informed counsel. IPPs’ negotiations with Sony occurred over a span of
9 several months and involved face-to-face meetings, phone calls, and a mediation with Hon.
10 Vaughn R. Walker (ret.). Williams Decl. ¶25. Further, the parties were informed by extensive
11 documentary and other discovery, including expert analysis. Courts evaluating settlements
12 reached in similar circumstances have held them to be non-collusive. *See Zynga*, 2015 WL
13 6471171, at *9 (holding that the use of mediator, and the fact that some discovery had occurred,
14 indicated procedural fairness); *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009)
15 (stating that “[w]e put a good deal of stock in the product of an arms-length, non-collusive,
16 negotiated resolution”).

17 **C. The Plan of Distribution Is Fair, Adequate, and Reasonable.**

18 The plan of distribution is subject to the same “fair, reasonable and adequate” standard
19 that otherwise applies to approval of class settlements. *See In re Omnivision Techs, Inc.*, 559 F.
20 Supp. 2d 1036, 1045 (N.D. Cal. 2008); *In re Citric Acid Antitrust Litig.*, 145 F. Supp. 2d 1152,
21 1154 (N.D. Cal. 2001). As explained above, IPPs propose to distribute the funds *pro rata* to class
22 members based upon the number of qualifying purchases that they submit through their claim
23 forms. The proposed *pro rata* distribution treats all class members equally. This type of
24 distribution has often been held to be fair, adequate, and reasonable. *See, e.g., In re Cathode Ray*
25 *Tube (CRT) Antitrust Litig.*, No. 07-5944-JST, 2016 U.S. Dist. LEXIS 5561, at *65 (N.D. Cal.
26 Jan. 13, 2016); and *In re Dynamic Random Access Memory (DRAM) Litig.*, No. M-02-1486 PJH,
27 2014 U.S. Dist. LEXIS 89622, at *77 (N.D. Cal. June 27, 2014).

28

1 **D. The Court-Approved Notice Program Satisfies Due Process.**

2 When a proposed class action settlement is presented for court approval, the Federal Rules
3 require “the best notice that is practicable under the circumstances.” Fed. R. Civ. P. 23(c)(2)(B).
4 A class settlement notice satisfies due process if it contains a summary sufficient “to apprise
5 interested parties of the pendency of the settlement proposed and to afford them an opportunity to
6 present their objections.” *UAW v. GMC*, 497 F.3d 615, 629 (6th Cir. 2007) (quoting *Mullane v.*
7 *Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). The notice must clearly and
8 concisely state: (1) the nature of the action; (2) the class definition; (3) the class claims, issues, or
9 defenses; (4) that a class member may enter an appearance through counsel; (5) that the court will
10 exclude from the class any member who requests exclusion; (6) the time and manner for
11 requesting exclusion; and (7) the binding effect of a class judgment on class members. *See* Fed.
12 R. Civ. P. 23(c)(2)(B). The Sony Settlement Notice satisfies these requirements.

13 Furthermore, a settlement notice need only be a summary, not a complete source, of
14 information. *See, e.g., Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1153 (8th Cir. 1999); *In re*
15 *“Agent Orange” Prod. Liability Litig.*, 818 F.2d 145, 170 (2d Cir. 1987); *Mangone v. First USA*
16 *Bank*, 206 F.R.D. 222, 233 (S.D. Ill. 2001). The Ninth Circuit requires a general description of the
17 proposed settlement in such a notice. *Churchill Vill. L.L.C. v. Gen. Elec. Co.*, 361 F.3d 566, 575
18 (9th Cir. 2004); *Torrise v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1374–75 (9th Cir. 1993);
19 *Mendoza v. United States*, 623 F.2d 1338, 1351 (9th Cir. 1980).

20 Similarly, due process requires that absent class members be provided the best notice
21 practicable, reasonably calculated to apprise them of the pendency of the action, and affording
22 them the opportunity to opt out or object. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812
23 (1985); *see also UAW*, 497 F.3d at 629 (quoting *Mullane*, 339 U.S. at 314). The “best notice
24 practicable” does not mean actual notice, nor does it require individual, mailed notice where there
25 are no readily available records of class members’ individual addresses or where it is otherwise
26 impracticable to send notice by mail. *Fidel v. Farley*, 534 F.3d 508, 514 (6th Cir. 2008); *In re*
27 *Domestic Air Transp. Antitrust Litig.*, 141 F.R.D. 534, 548-53 (N.D. Ga. 1992); Manual For
28 Complex Litigation (Fourth) §21.311, at 288 (2004). The mechanics of the notice process “are

1 left to the discretion of the court subject only to the broad ‘reasonableness’ standard imposed by
2 due-process.” *Grunin v. Int’l House of Pancakes*, 513 F.2d 114, 121 (8th Cir. 1975). Each class
3 member need not receive actual notice for the due process standard to be met, “so long as class
4 counsel acted reasonably in selecting means likely to inform persons affected.” *In re Prudential*
5 *Sec. Inc. Ltd. P’ships Litig.*, 164 F.R.D. 362, 368 (S.D.N.Y. 1996).

6 The notice program in this case was developed and implemented by A.B. Data, a
7 nationally recognized class action notice firm. To reach potential members of the Settlement
8 Classes directly and efficiently, the notice program utilized a multi-layered approach, which
9 included sending emails directly to over 15.8 million class members, publication in national
10 magazines, the dissemination of a press release, banner and text ads to achieve over 273 million
11 digital impressions and the creation and maintenance of a website. Schachter Decl. at ¶¶1-9. The
12 notice program clearly satisfies the requirements of due process.

13 **V. CONCLUSION**

14 For the foregoing reasons, the Court should grant final approval of the Sony Settlement,
15 enter final judgment dismissing IPPs’ claims against Sony with prejudice, and approve IPPs’ plan
16 of distribution.

17
18 Dated: October 4, 2016

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