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Interim Co-Lead Counsel for Indirect Purchaser Plaintiffs

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 Document Relates to: **ALL INDIRECT PURCHASER ACTIONS**	**INDIRECT PURCHASER PLAINTIFFS' OMNIBUS RESPONSE TO OBJECTIONS TO SETTLEMENT WITH SONY DEFENDANTS**

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DEFINITIONS

A.B. Data	A.B. Data, Ltd.
Dell	Dell 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)
HP	Hewlett Packard Company
Interim Co-Lead Counsel	Cotchett, Pitre & McCarthy, LLP, Hagens Berman Sobol Shapiro LLP, and Lieff Cabraser Heimann & Bernstein, LLP
IPPs	Indirect Purchaser Plaintiffs
DPPs	Direct Purchaser Plaintiffs
PACER	Public Access to Court Electronic Records
Preliminary Approval Order	The Court's Order Granting Settlement Class Certification And Preliminary Approval of Class Action Settlements With Sony Defendants (ECF No. 1292)
Schachter Declaration	Declaration of Eric Schachter re Dissemination of Notice of Sony Settlement and Requests for Exclusion (ECF No. 1492-1)
Settlement Classes	The classes certified for settlement purposes in this Court's order granting preliminary approval (ECF 1292 at ¶4)
Sony or Sony Defendants	Collective term, which includes Sony Corporation, Sony Energy Devices Corporation, and Sony Electronics, Inc.
Sony Settlement or Settlement	IPPs' Proposed Settlement with Sony

I. INTRODUCTION

IPPs' Settlement with Sony is fair, reasonable, and adequate, and should be approved. Likewise, IPPs' Motion for Reimbursement of Certain Expenses incurred for the benefit of the class is appropriate and should be approved. The boilerplate objections made by serial objectors, such as Chris Andrews—who one court referred to as a "serial, extortionate objector" who engages in a "technique of harassment"—should be overruled. These serial objectors and their counsel have a track record of raising baseless objections to class settlements in order to hold up relief to the class and to extort payments for themselves. None of the objections raise any legitimate criticism of the Sony Settlement, and they should all be overruled.

The Sony Settlement is the first settlement entered into by IPPs in this case. This Settlement is a result of the painstaking and difficult work done by Interim Co-Lead Counsel. The Settlement resulted from extensive negotiations between experienced and informed counsel with the assistance of Hon. R. Vaughn Walker (ret.) as mediator, and represents a significant achievement for the Settlement Classes. It provides $19.5 million in cash for the benefit of the Settlement Classes as well as extensive cooperation to IPPs, which will assist them in prosecuting this litigation against the non-settling Defendants. IPPs have since filed a Motion for Reimbursement of Certain Expenses relating solely to costs incurred for experts, translations, and document retrieval, hosting, and review platforms. ECF No. 1446. Each expense was incurred for the benefit of the Settlement Classes and was necessary to prosecute this case effectively.

There have only been only eleven objections, filed by eight objectors. Notably, one of these objections is a duplicative filing.

Below is a list of the objections and the dates they were postmarked:

Objector	Counsel	ECF No.	Postmark Date
Timothy Madden	*pro se*	1391	August 17, 2016
Christopher Andrews	*pro se*	1392	August 19, 2016
Christopher Andrews	*pro se*	1451	September 9, 2016
Christopher Andrews	*pro se*	1455	September 12, 2016
Gordon Morgan	Timothy Hanigan	1472	September 21, 2016
Gordon Morgan	Timothy Hanigan	1482	September 21, 2016 [duplicate of ECF No. 1472]
Kenya Brading	Bradley Salter	1476	September 22, 2016
Sam A. Miorelli	*pro se*	1483	September 22, 2016
Vincent Lucas	*pro se*	1484	September 21, 2016
Glenn Greene	Charles Donegan	1485	September 20, 2016
Patrick Sweeney	*pro se*	1486	September 23, 2016

None of these objections provide a valid reason to deny final approval of the Sony Settlement, and Mr. Sweeney's objection was postmarked after the deadline of September 22, 2016, this Court previously set for objections. ECF No. 1292 at ¶12. The objection filed by Mr. Madden, who requests to be excluded from the class, fails to assert any specific or substantiated objection to the Settlement. Instead, Mr. Madden requests that the case be dismissed, and makes the unfounded suggestion that Interim Co-Lead Counsel have engaged in inappropriate behavior by bringing this lawsuit. *See* ECF No. 1391. IPPs respectfully suggest that Mr. Madden should be deemed to have excluded himself from the class. Should Mr. Madden's exclusion request be deemed not effective, his objections should be overruled. Similar non-substantive objections were made to the DPPs' settlement with Sony and were overruled by the Court. ECF No. 1473 (Sept. 6, 2016 Hearing Tr.) at p. 5: 2-8.

The objection filed by Mr. Gordon takes raises issues that relate solely to attorneys' fees, but IPPs are not seeking fees at this time. ECF No. 1472. Mr. Gordon's second set of objections is a duplicate of the first filing. *Compare* ECF No. 1482.

The remaining objections filed by Mr. Andrews, Ms. Brading, Mr. Miorelli, Mr. Lucas,

Mr. Greene, and Mr. Sweeney do not raise valid concerns about the fairness of the Settlement.[1]

Finally, Mr. Andrews, Mr. Miorelli, and Mr. Sweeney are serial objectors, and Ms. Brading's attorney, Badley Salter, and Mr. Morgan's attorney, Timothy Hanigan, routinely represent objectors to class action settlements. These objections should, therefore, be viewed with skepticism.

II. BACKGROUND

The Court previously found the Sony Settlement "falls within the range of possible final approval and that there is sufficient basis for notifying the Settlement Classes and for setting a Fairness Hearing." ECF No. 1292 at ¶3. The Court scheduled a fairness hearing for November 8, 2016, and set a September 22, 2016 deadline for objections to the Settlement. *Id*. ¶12, 14.

The minute number of objections is telling in light of the extensive notice of the Settlement given to the classes in this litigation, as well as the large number of class members. Numerous courts have observed that "the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members." *Larsen v. Trader Joe's*, No. 11-cv-05188-WHO, 2014 U.S. Dist. LEXIS 95538, at *16 (N.D. Cal. July 21, 2014) (internal quotes omitted) (citing *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.,* 221 F.R.D. 523, 529 (C.D. Cal. 2004)); *see also Create-A-Card, Inc. v. INTUIT, Inc*., No. CV-07-6452 WHA, 2009 U.S. Dist. LEXIS 93989, at *15 (N.D. Cal. Sep. 22, 2009).

A.B. Data, a nationally preeminent class action administration company, implemented the notice plan approved by the Court. *See* ECF No. 1209 at 8-9 and ECF No. 1292 at ¶¶8-9. Specifically, A.B. Data did the following: (1) sent the long form notice directly to over 15.8 million class members via email; (2) published the short form notice in *Better Homes and*

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[1] To the extent any objection raises issues relating to IPPs' Motion for Reimbursement of Certain Expenses, they are dealt with in IPPs' reply in support of that motion. ECF No. 1492.

Gardens, *Parade* and *People*; (3) caused a copy of the notices to be posted on the internet website www.batteriesconsumerlitigation.com; (4) used banner and text ads to achieve over 273 million digital impressions; and (5) disseminated a news release via PR Newswire. *See* Schachter Decl. ¶¶3-10. To date, 32,528 people have registered on the website. *Id*. ¶7.

III. ARGUMENT

A. The Court Should Overrule the Objections Filed by Mr. Madden.

The objection filed by Mr. Madden is invalid because it does not raise issues with the Sony Settlement, but instead challenges the merits of the litigation itself. *See Larsen*, 2014 U.S. Dist. LEXIS 95538, *15. Mr. Madden claims, for example, that he "cannot rationalize how he was harmed" by the conduct alleged, and states that he "want[s] the lawsuit dropped." *See* ECF No. 1971. Judge Orrick, in *Larsen*, reasoned that objections directed to the merits of the underlying claim are not relevant to determining whether the settlement is fair to the class:

> My duty is to determine whether the settlement is fundamentally fair to the class, not to re-examine the underlying merits of the litigation…. Objections directed to the merits of the claim are objections on behalf of [the defendant] and not the class. The objectors referenced above disagree with this lawsuit as a matter of principle. While I understand this perspective, in determining whether the settlement is fair, adequate and reasonable, I am not acting as a fiduciary to the defendant, which is represented by able counsel and capable of making decisions to protect its own interests.

Larsen, 2014 U.S. Dist. LEXIS 95538, *15. Mr. Madden's objections to the underlying merits of the lawsuit are facially invalid, entirely irrelevant to the issue before the Court, and should be overruled. This Court overruled similar non-substantive objections to the DPPs settlement with Sony. *See* ECF Nos. 1250, 1251, and 1473 (Sept. 6, 2016 Hearing Tr.) at p. 5 lines 2-8.

Mr. Madden also makes the outrageous and unsubstantiated claim that Interim Co-Lead Counsel are engaged in a "blackmail scheme . . . to collect payments from Defendants solely to avoid trial." ECF No. 1271. Mr. Madden provides no basis for this scurrilous accusation. This is also not a valid objection, and it should be overruled.

B. The Court Should Overrule the Objections Filed by Mr. Andrews, Mr. Morgan, Ms. Brading, Mr. Lucas, Mr. Sweeney, Mr. Greene, and Mr. Morielli.

Mr. Andrews asserts a litany of baseless objections. Mr. Morgan, Ms. Brading, Mr. Lucas, Mr. Sweeney, Mr. Greene, and Mr. Morielli also assert some of these same objections, as well as a handful of other equally frivolous objections. They are each addressed in turn below.

1. The Settlement Amount Is Fair.

Mr. Andrew's primary objection is that $19.5 million is small in relation to the "overall damages incurred by the class." ECF No. 1392 at 25. He provides no basis for this assertion, and instead argues that Interim Co-Lead Counsel failed to state what percentage of the total damages the Sony Settlement represents. *Id*. at 23. Mr. Gordon makes a variation of this argument, and asserts that class members have been provided with "inadequate information" to evaluate whether the Settlement is fair. ECF No. 1472 at 18-19. Mr. Gordon makes the misleading and inaccurate statement that Interim Co-Lead Counsel provided only a "conclusory declaration… that [the Settlement] amount is a reasonable percentage of the value of [the class members'] claims." *Id*. Mr. Miorelli makes essentially the same argument. ECF No. 1483 at 8.

These criticisms are misplaced. IPPs explained in their motion for preliminary approval that "[b]ased on work done in support of class certification, IPPs estimate that the settlement represents 11.2% of the single damages attributable to Sony sales, and 2.2% of total single damages that the proposed nationwide class would be entitled to if it prevailed on all claims." ECF No. 1209 at 12. This information is in the IPPs' Preliminary Approval Motion, which is available on PACER and on the Settlement website. As the Court is aware, Defendants vigorously dispute both IPPs' allegations concerning the scope and extent of the conspiracy and whether class certification is appropriate. When measured in light of these litigation risks, the Sony Settlement amount is fair, reasonable and adequate.

Consistent with the prevailing case law, this Court has previously determined that the Sony Settlement amount "falls within the range of possible final approval." ECF No. 1292 at ¶3; *compare Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1027 (9th Cir. 1998) (holding that the

possibility "that the settlement could have been better… does not mean the settlement presented was not fair, reasonable or adequate," because "[s]ettlement is the offspring of compromise; the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion."); *Gordon v. Dadante*, No. 1:05-cv-2726, 2008 WL 1805787, at *13 (N.D. Ohio Apr. 18, 2008) (holding a "reasoned settlement . . . may fall well short of" 100% of the actual damages figure and citing case law approving settlements representing between 1.6% and 5% of claimed damages).

Finally, Mr. Andrews argues that the IPPs' claim for injunctive relief was not included in the Settlement release. ECF 1392 at 16. This is incorrect. The release includes all claims in law or in equity," which includes these claims for injunctive relief. Ex. 2 at A. 1(z).

2. The Settlement Is Not "Collusive."

Mr. Andrews makes the repeated, baseless accusation that the Sony Settlement is the product of collusion. ECF Nos. 1392 at 18, 23; and 1451 at 3. At one point, Andrews states "[t]his deal smacks of collusion in this quid pro quo deal." ECF No. 1392 at 18. As set forth in the motion for preliminary approval, the Sony Settlement was the product of an arms-length negotiation that was overseen by retired district court judge Vaughn Walker. Mr. Andrews has no basis to suggest that counsel and Judge Walker engaged in improper collusion. Mr. Miorelli makes a similar, and equally baseless, assertion. *See* ECF No. 1483 at 9 (characterizing the Settlement as a "sellout . . . whose only purpose is the generation of a slush fund to pay litigation expenses and legal fees").[2]

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[2] Mr. Miorelli cites *Murray v. GMAC Mortg. Corp.*, 434 F.3d 948, 952 (7th Cir. 2006) in supposed support of his claim that the settlement is too small in relation to the anticipated recovery. ECF No. 1483 at 8. However, *Murray* is inapposite, because the issue raised in that case was that the settlement awarded disproportionately more funds to the lead plaintiff than to the rest of the class, which is a fact not present here.

This is not the first case where Mr. Andrews has made such an accusation. He was publicly reprimanded for making a remarkably similar statement in *In re Polyurethane Foam Antitrust Litigation*, No. 1:10 MD 2196, 2016 U.S. Dist. LEXIS 49592, at *10-11 (N.D. Oh. Apr. 13, 2016) ("*Poly Foam*"). In the order requiring Mr. Andrews to post an appeal bond, Judge Zouhary stated that among the professional objections in *Poly Foam*, "Andrews is the worst," noting that "Andrews' objections included scurrilous, unfounded accusations." *Id*. Judge Zouhary further explained that Andrews' appeal stated that "[t]his looks like a quid pro quo all around." *Id.* Judge Zouhary held that Andrews' accusation was made "without a shred of evidence," and "certainly qualifies as vexatious conduct." *Id*.

In an earlier opinion denying Andrew's motion to disqualify plaintiffs' counsel in *Poly Foam*, Judge Zouhary noted that Andrews has a "history as a serial, extortionate objector," and that his "unrestrained language and exorbitant claims reveal his motion is the type that appellate courts warn against: a 'technique of harassment.'" *In re Polyurethane Foam Antitrust Litig.*, No. 1:10 MD 2196, 2015 U.S. Dist. LEXIS 172911 at *10-12 (N.D. Ohio Dec. 30, 2015) (emphasis added). Other district court judges have made similar observations. *See In re Nutella Mktg. & Sales Practices Litig*., No. 3:11-CV-01086, 2012 U.S. Dist. LEXIS 172006 (D.N.J. 2012) (ECF No. 111, July 9, 2012 Tr. at 128–29) ("Mr. Andrews . . . [is] a professional objector who has extorted additional fees from counsel in other cases through his objections or threats to object…. He had an opportunity to opt out and pursue his own litigation, but he is not entitled to extort money")); *Shane Group, Inc. v Blue Cross Blue Shield of Mich.*, No. 10-CV-14360, 2015 U.S. Dist. LEXIS 41968, at *58 (E.D. Mich. Mar. 31, 2015) (stating that "[r]egarding Andrews' *pro se* submissions, the Court finds that many of the submissions are not warranted by the law and facts of the case, were not filed in good faith and were filed to harass class counsel"). This sort of serial harassment is not a valid objection.

3. The Notice Satisfies Due Process.

Mr. Andrews asserts, citing no legal authority, that granting final approval will violate "the entire classes' due process rights," because there is currently no claim form on the website. ECF

No. 1392 at 8-9. Mr. Andrews asserts that he cannot file an appeal unless he proves he is a class member, and that he cannot do so unless he is able to submit a claim form for the Settlement. *Id*. There is no legal requirement that a claim form be provided at this time. It is not unusual for claim forms to be approved after a settlement has been finally approved. Regardless, it is not necessary for Mr. Andrews to file a claim form to demonstrate that he has standing, and there is nothing about granting final approval that will prevent him from doing so.

Mr. Sweeney states, without any supporting arguments, that "[t]he Notice is not adequate for inform a potential Class Member of the nature of the case." ECF No. 1486 ¶2. As explained above, IPPs' Court-approved notice program was robust. Schachter Decl. ¶¶1-12. Moreover, a class settlement notice satisfies due process if it contains a summary sufficient "to apprise interested parties of the pendency of the settlement proposed and to afford them an opportunity to present their objections." *UAW v. GMC,* 497 F.3d 615, 629 (6th Cir. 2007) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.,* 339 U.S. 306, 314 (1950)). The notice must clearly and concisely state: (1) the nature of the action; (2) the class definition; (3) the class claims, issues, or defenses; (4) that a class member may enter an appearance through counsel; (5) that the court will exclude from the class any member who requests exclusion; (6) the time and manner for requesting exclusion; and (7) the binding effect of a class judgment on class members. *See* Fed. R. Civ. P. 23(c)(2)(B). The Sony Settlement Notice satisfies these requirements.

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

left to the discretion of the court subject only to the broad 'reasonableness' standard imposed by due-process." *Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 121 (8th Cir. 1975). Each class member need not receive actual notice for the due process standard to be met, "so long as class counsel acted reasonably in selecting means likely to inform persons affected." *In re Prudential Sec. Inc. Ltd. Pships Litig.*, 164 F.R.D. 362, 368 (S.D.N.Y. 1996). There is also no requirement that the notice be printed in Spanish as Mr. Andrews suggests. ECF No. 1451.

The notice program in this case was developed and implemented by a nationally recognized class action notice firm. The class notice program was extensive and specifically structured to reach most potential class members and did, in fact, reach over 15.8 million class members. Schachter Decl. ¶9. Mr. Andrews asks whether Sony has "provided a list of customers email and physical addresses" for consumers. ECF No. 1392 at 32. Mr. Andrews ignores the fact that Sony's LIBs were sold to computer manufacturers such as Dell and HP, and consumers purchased Sony's LIBs indirectly by purchasing computers from these other manufacturers or from retailers. IPPs obtained 15.8 million email addresses from Dell, HP, and other sources. Having sent notice to the class via email, it is not required that IPPs also send notice to consumers' physical addresses, and Mr. Andrews cites no case law for his position to the contrary.

To reach the identified targets directly and efficiently, the notice program utilized a multi-layered approach, which included sending emails directly to class members, publication in national magazines, the dissemination of a press release, banner and text ads to achieve over 273 million digital impressions and the creation and maintenance of a website. A.B. Data also set up a toll free number for individuals that need assistance with the website. Schachter Decl. ¶8. Mr. Andrews complains that there is no live operator answering the calls (ECF No. 1451 at 1), but ignores the fact that callers requiring further assistance can have their calls transferred to a live operator. Schachter Decl. ¶8.

Regardless, any claim that notice was insufficient is contradicted by the record. In fact, the objectors' knowledge of the settlements and their submission of objections according to the terms of the notice illustrate the effectiveness of the notice program used in this case. *See In re*

Kendavis Holding Co., 249 F.3d 383, 387 (5th Cir. 2001); and *Walsh v. Great Atl. & Pac. Tea Co.,* 726 F.2d 956, 964 (3d Cir. 1983). The notice program satisfies due process.

4. The Settlement Classes Are Defined by Objective Criteria.

Andrews states that the long notice form "fails to define who is eligible to be a class member." ECF No. 1392 at 14. Ms. Brading makes a similar claim. ECF No. 1476 at 2-3. These claims are incorrect. The long form notice contains a heading on page 3 which reads "How Do I Know If I May Be Included In The Class," which is immediately followed by this description:

> The Class includes persons and entities that, from January 1, 2000, through May 31, 2011, indirectly purchased a Li-Ion Battery or Li-Ion Product in the United States for their own use and not for resale from one or more of the Defendants in this lawsuit. "Indirectly" means the product was purchased from someone other than the manufacturer, such as a retail store.[3]

The long form notice also includes the following definitions at Section 5:

- "Lithium Ion Battery Cell(s)" or "Li-Ion Cells" means cylindrical, prismatic, or polymer cell used for the storage of power that is rechargeable and uses lithium ion technology.
- "Lithium Ion Battery" or "Li-Ion Battery" means Lithium Ion Battery Cell or Lithium Ion Battery Pack.
- "Lithium Ion Battery Pack" means Lithium Ion Battery Cells that have been assembled into a pack, regardless of the number of Lithium Ion Cells contained in such packs.
- "Lithium Ion Battery Products" or "Li-Ion Products" means products manufactured, marketed, and/or sold by Defendants, their divisions, subsidiaries, or Affiliates, or their alleged co-conspirators that contain one or more Lithium Ion Battery Cells manufactured by Defendants or their alleged co-conspirators. Lithium Ion Battery Products include, but are not limited to, laptop computers, notebook computers, netbook computers, tablet computers, mobile phones, smart phones, cameras, camcorders, digital video cameras, digital audio players, and power tools.

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[3] The Court certified two "Settlement Classes." ECF No. 1292 at ¶4. While one class includes individual consumers and the other includes non-federal and non-state governmental entities in California, the requirements for inclusion in each class is otherwise identical. *Id*.

This information comports with the legal requirements for such a notice. A class is ascertainable if class members can be identified by reference to "objective criteria," and the class definition is "definite enough so that it is administratively feasible for the court to ascertain whether an individual is a member." *Kumar v. Salov N. Am. Corp.*, No. 14-CV-2411, 2016 U.S. Dist. LEXIS 92374, at *14 (N.D. Cal. July 15, 2016).

The objective criteria of this class are obvious: Class members must (a) be from the United States, (b) not be a direct purchaser, (c) not be a reseller, (d) have made a purchase within the relevant time period, and (e) have purchased a product containing a cylindrical LIB made by a Defendant. A class settlement notice need only describe the basic terms of the settlement generally, so as to alert members "with adverse viewpoints to investigate and come forward and be heard." *In re Cement & Concrete Antitrust Litigation*, 817 F.2d 1435, 1440 (9th Cir. 1987). The notice in this case does precisely that.

Ms. Brading argues that "Plaintiffs have not proposed an adequate means for identifying class members in order to weed-out fraudulent claims." ECF No. 1476 at 2. This objection also fails, because, as shown above, the class definition in this case is based on objective criteria.

5. The Class Definition Is Not Overbroad.

Ms. Brading argues that the class definition is overbroad because it includes individuals that purchased "used" products, and that this creates a risk of "duplicative recovery" (*see* ECF No. 1476 at 4, 6, and 7). She also argues that this will "result in the overall dilution of benefits to legitimate claimants." ECF No. 1476 at 3-4.

However, there is no such risk, because the class definition states that consumers must have purchased the LIB or LIB product for their "own use and not for resale." *See* Long Form Notice at Section 5. This means that a consumer who purchases an LIB or LIB product and later sells that product to another consumer does not have standing to assert a claim. Ms. Brading's argument completely ignores this fact, and relies on the incorrect premise that "individuals that purchased and resold their smartphones are Class Members in this Settlement." ECF No. 1476 at 7. Indeed, they are not. Interim Co-Lead Counsel propose to use a box on the claim form asking

potential class members to state whether they resold any of the products they submit claims for. If they have resold these items, they will not have legitimate claims for those items.

Ms. Branding asserts that there is a "secondary market" for used LIBs, and that due to the existence of this market "damages cannot be apportioned without undue complexity." ECF No. 1476 at 6. Ms. Brading has not introduced any evidence that the existence of this so-called "secondary market," and has not shown how it might effect IPPs' plan of distribution.

Finally, Ms. Brading cites *Associated Gen. Contractors v. Cal. State Council of Carpenters,* 459 U.S. 519, 103 S. Ct. 897, 911 (1983) to support his claim that purchases of used LIBs and LIB products are "too speculative." ECF No. 1476 at 4-5. This Court has evaluated and rejected this identical argument in its orders on Defendants' Motions to Dismiss the SCAC. ECF No. 512 at 5. A product that is purchased indirectly does not become more remote, and associated injuries do not become more speculative, based on whether it is purchased new or used. This objection is invalid and should be rejected.

6. Rule 23 Is Satisfied.

Mr. Andrews claims—with no supporting evidence, reasoning, or case law—that the Settlement "does not fit approval guidelines under Rule 23 of the Federal Rules of Civil Procedure." ECF No. 1392 at 13. However, this Court has already held that the "prerequisites to certifying Settlement Classes under Rule 23(a) are satisfied." ECF No. 1292 at ¶5. In so doing, the Court expressly found that there are predominating, common issues such as whether Defendants engaged in combinations or conspiracies among themselves to fix, raise, maintain, or stabilize the prices of LIBs, and whether unlawful overcharges for those LIBs were passed through to the indirect purchasers. Andrews' objections are based on pure assertion and provide no substantive reason for the Court to reverse its prior ruling on this issue.

7. The Objectors' Arguments Relating to Attorneys' Fees Are Misplaced.

Mr. Andrews, Mr. Morgan, and Mr. Sweeney devote numerous pages to contesting Interim Co-Lead Counsel's non-existent request for attorneys' fees. ECF Nos. 1392 at 19, 25; 1455 at 6-13; 1472 at 14-18; and No. 1486 at ¶1. However, IPPs are not seeking attorneys' fees at this time,

and are only seeking reimbursement for certain expenses specifically related to experts, translations, and document retrieval, hosting and review platforms. *See* ECF No. 1446 at 1. The issue of attorneys' fees is not before the Court at this time.

Relatedly, Mr. Morgan makes the convoluted assertion that "the timing of the deadlines for Class members' objections *before* the motion for attorneys' fees and *before* the motion for final approval of the settlement should give immediate pause" because class members cannot "possibly evaluate the fairness of the settlement or the fairness of the fee request without the benefit of these motions." ECF No. 1472 at 11 (emphasis in original).

The website for the Northern District on the page titled "Procedural Guidance for Class Action Settlements" states that any request for attorneys' fees from the Sony Settlement must have been filed "fourteen days before the deadline for objecting to the settlement." *See* http://www.cand.uscourts.gov/ClassActionSettlementGuidance (Preliminary Approval, Item 9-Timeline). As IPPs stated in their Motion for Reimbursement of Certain Expenses, they are not seeking attorneys' fees at this time. ECF No. 1146 at 1. Had IPPs made such a request, the class members would have had the opportunity to object. IPPs may make future requests for fees based on future settlements or recoveries at trial, and class members will have the opportunity to object to those requests at that time. Mr. Morgan's misinformed objection is not a basis to deny final approval, and it should be overruled.

Pursuing a similar line of attack, Mr. Andrews asks for a three week extension to file objections based on his assertion that the long form notice gives Interim Co-Lead Counsel the ability to file a motion for attorneys' fees "at least 35 days before the Court holds the fairness hearing on November 8, 2016, which is October 3, 2016 or eleven days after the objection deadline." ECF No. 1392 at 14. Mr. Andrews misstates what is written in the notice.

Here is the full quote:

> When Class Counsel's motion for fees, costs, and expenses is filed, it will be available at www.batteriesconsumerlitigation.com. The motion will be posted on the website at least 35 days before the Court holds a hearing to consider the request, and you will have an opportunity to comment on the motion.

Ex. 3 (Long Form Notice) Section 16 (second para).

Mr. Andrews ignores the words "at least," and misinterprets this paragraph. This provision simply provides the default deadline that exists under Civil Local Rule 7-2, which requires that motions be filed 35 days before hearings where they are to be discussed. There is nothing in this provision or in Local Rule 7-2 that overrides the deadline to submit a motion for attorneys' fees that is listed on the Court's website.

8. The Miscellaneous Objections Should Be Rejected.

Mr. Andrews makes several other meritless arguments. Each is discussed below.

So-called "Missing Documents": Mr. Andrews argues that final approval should not be granted, because the notice plan, plan of allocation, and claims process plan are "missing." ECF 1392 at 18. However, the notice plan and plan of distribution are detailed in IPPs' Motion for Preliminary Approval (ECF No. 1209 at 8-9), which is available to Mr. Andrews and the general public *via* PACER and on the website www.batteriesconsumerlitigation.com. Relatedly, Mr. Lucas claims that "[t]he details of the distribution plan are *specifically excluded* from the Proposed Settlement Agreement," and Mr. Greene asserts that he has "yet to receive information on the gross settlement allocation and or [sic] the final judgment." ECF Nos. 1484 at 1 (emphasis in original) and 1485. Similarly, Mr. Andrews argues that the notice is not sufficient, because it does not provide a "ballpark range of how much each claimant can receive." ECF No. 1392 at 16. However, as explained in IPPs' preliminary approval motion, "Plaintiffs propose to distribute the funds *pro rata* to the class members based upon the number of qualifying purchases that they submit through their claim forms." ECF No. 1209 at 8-9.

Mr. Andrews also claims that IPPs must submit a "proposed final order and judgment" (ECF No. 1392 at 18), but there is no requirement that IPPs do so prior to the hearing on final approval. Mr. Andrews requests' are unnecessary and do not provide grounds for rejecting the Sony Settlement. Finally, Mr. Andrews complains that the claims process has not yet started and there is no claim form. This is not relevant to whether the Sony Settlement should be approved.

Issues with the Settlement Website: Andrews claims that he registered on the Batteries Settlement Website, but did not receive an update when the "Order of Certification appeared." ECF 1392 at 15. First, it is not clear what document Mr. Andrews is referencing. If it is the order preliminarily approving the Sony Settlement and certifying the Sony Settlement class, that order has been on the website since the website was launched. Second, each registrant to the website will receive an update email when there is new information or substantive updates to the litigation, such as when the claims process starts, or if other Defendants settle. The text on top of the registration page reads as follows:

> This will register you to receive additional notices and updates about the Settlement and any future settlements relating to the In re Lithium Ion Batteries Antitrust Litigation Indirect Purchaser Actions. Please be sure to keep your address information current with the Settlement Administrator.

Interim Co-Lead Counsel is not required to send update emails to each registrant upon every new filing. It is sufficient that class members are appraised of significant developments as they occur, which is precisely what the website does.

Mr. Andrews also asserts that the FCAC should be posted on the Settlement website. ECF 1392 at 14. However, the TCAC, not the FCAC, provides the scope of the release in the Settlement. Ex. 2 at 2. Moreover, the FCAC is available on PACER. *See* ECF No. 1168.

Finally, Mr. Andrews argues that the "thirty states in the class" are not listed on the website. ECF No. 1392 at 14. Mr. Andrews' premise is incorrect. The scope of the consumer Settlement Class is nationwide. ECF No. 1292 ¶4(a).

No Identification of a *Cy Pres* Recipient: Ms. Brading argues that the notice and settlement are "inadequate because they do not provide for how unclaimed and/or remaining funds will be distributed." ECF No. 1476 at 7. Mr. Sweeney makes the same argument. ECF No. 1486 at 7. There is no requirement that IPPs identify a *cy pres* recipient at this time. IPPs anticipate that there will be additional settlements in this case, and it is premature to identify a recipient at this time. Indeed, it is possible that there never will be a *cy pres* recipient in this case.

Incentive Awards: Ms. Brading argues that the court should "deny any incentive awards under the settlement." ECF No. 1476 at 11. IPPs have not yet proposed class representatives incentive awards, and this issue is not before the Court at this time.

Mr. Miorelli's false claim that there is a "pattern of over-sealing documents": Mr. Miorelli claims that members of the Settlement Classes cannot fairly assess the value of the Settlement because Interim Class Counsel has sought "maximum secrecy" in this litigation. ECF No. 1483 at 6. This is false. IPPs have followed this Court's sealing rules, but their complaints were filed publicly, as was the Motion for Preliminary Approval of the Sony Settlement, the Motion for Reimbursement of Certain Expenses, the reply in support of the reimbursement motion, all of the accompanying declarations, and the Sony Settlement itself. *See* ECF Nos. 221, 419, 519, 1168, 1209, 1209-1, 1446, 1492, 1492-1, and 1444-1. Each of these items was also posted on the Settlement website. Schachter Decl. at ¶6. Mr. Miorelli complains that the parties' expert reports not publicly filed (ECF No. 1483 at 4), but does not explain why he needs access to this information to assess the fairness of the Settlement. Further, Mr. Morielli has never asked to see these reports. This failure strongly suggests that Mr. Morielli does not legitimately wish to see these documents, but is merely making boilerplate objections to serve his own interests.

Mr. Andrew's false claim that the term "parties" is not defined in the Settlement: Mr. Andrews claims that the settlement agreement is "invalid" because it does not define the term "parties." ECF No. 1392 at 34. There is no legal basis for Mr. Andrews' argument. Regardless, the Settlement (p. 10) includes the following definition:

> "Settling Parties" means, collectively, Sony and the Indirect Purchaser Plaintiffs (on behalf of themselves and the Classes).

9. The Court Should be Skeptical of the Arguments Made by Professional Objectors Such as Mr. Andrews.

Mr. Andrews is a professional objector who has objected to at least the following seven class action settlements in the last ten years:

1. *In re Tyco Int'l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 262 (D.N.H. 2007), ECF No. 1146-17 (Exs. A and B);

2. *In re Nutella Mktg. & Sales Practices Litig*., No. 3:11-cv-01086 (D.N.J. 2012), ECF No. 78 (Ex. 18);

3. *In re Lehman Bros. Equity/Debt Secs. Litig.,* No. 08-CV-5523 (S.D.N.Y. 2012), ECF Nos. 353 (Ex. 20) and 391-9 (Ex. 21);

4. *In re Lehman Bros. Sec. and ERISA Litig*., No. 1:09-md-02017 ("E&Y Settlement") (S.D.N.Y. 2014), ECF Nos. 1388 (Ex. 22) and 1404 (Ex. 23);

5. *Shane Grp., Inc. v. Blue Cross Blue Shield of Michigan*, No. 2:10-cv-14360 (E.D. Mich. 2014), ECF Nos. 159 (Ex. 24) and 216 (Ex. 25); and

6. *Careathers v. Red Bull GMBH*, No. 1:13-cv-00369 (S.D.N.Y. 2015), ECF Nos. 72 and No. 1:13-cv-08008 (S.D.N.Y. 2015), ECF No. 55 (Ex. 8).

7. *In re Polyurethane Foam Antitrust Litigation*, No. 1:10 MD 2196, at *10-12 (N.D. Ohio Dec. 30, 2015), ECF No. 1920.

At times, Andrews has succeeded in coercing counsel to pay him in exchange for withdrawing his objection. *See, e.g., In re Tyco Int'l, Ltd. Multidistrict Sec. Litig.*, No. 02-md-01335 (D.N.H. 2007), EFC No. 1146-17 (Ex. 31) (Andrews agreed to withdraw his objection in exchange for a $25,000 payment); *Lehman,* No. 09-md-02017, ECF No. 889-9 (Ex. 32) (Andrews agreed to withdraw his objection in exchange for a $25,000 payment).

Although allowing class members to object provides an important safeguard against collusive or unfair settlements, the objection process has also become an abusive tool through which meritless objections are raised in order to delay recovery to class members so that objectors can extort payments for themselves and their attorneys. Rather than serve a useful purpose, this practice has needlessly added years of delay to the conclusion of litigation and class members' receipt of the settlement proceeds

Many courts have voiced genuine concern about serial objectors (including Mr. Andrews), their counsel, and the tactics they use to extract payments from parties through unmeritorious settlement objections by using the threat that they will delay final resolution of the case:

> Repeat objectors to class action settlements can make a living simply by filing frivolous appeals and thereby slowing down the execution of settlements. The larger the settlement, the more cost-effective it is to pay the objectors rather than suffer the delay of waiting for an appeal to be resolved (even an expedited

> appeal). **Because of these economic realities, professional objectors can levy what is effectively a tax on class action settlements, a tax that has no benefit to anyone other than to the objectors**. Literally nothing is gained from the cost: Settlements are not restructured and the class, on whose behalf the appeal is purportedly raised, gains nothing.

Barnes v. Fleetboston Fin. Corp., No. CA 01-10395-NG, 2006 WL 6916834, at *1 (D. Mass. Aug. 22, 2006) (emphasis added).

> [C]lass actions also attract those in the legal profession who subsist primarily off of the skill and labor of, to say nothing of the risk borne by, more capable attorneys. These are the opportunistic objectors. Although they contribute nothing to the class, they object to the settlement, thereby obstructing payment to lead counsel or the class in the hope that lead plaintiff will pay them to go away. Unfortunately, the class-action kingdom has seen a Malthusian explosion of these opportunistic objectors, which now seem to accompany every securities litigation

In re Cardinal Health, Inc. Sec. Litig., 550F F. Supp. 2d 751, 754 (S.D. Ohio 2008).

The serial and harassing nature of Mr. Andrews' objections casts serious doubt on the *bona fides* of the positions he has advanced. Numerous courts have overruled similar objections on this basis. *See, e.g., In re Polyurethane Foam Antitrust Litig.*, No. 1:10 MD 2196, 2015 WL 1639269, at *6 (N.D. Ohio Feb. 26, 2015) (finding that district courts frequently overrule "carbon-copy objections" filed by serial objectors"); *Gemelas v. Dannon Co.*, No. 1:08-cv-00236, 2010 WL 3703811, at *3 (N.D. Ohio Aug. 31, 2010) ("Serial objectors . . . should not be encouraged to continue holding up valuable settlements for class members"); *In re Initial Pub. Offering Sec. Litig.*, 728 F. Supp. 2d 289, 295 (S.D.N.Y. 2010) (stating that "professional objectors undermine the administration of justice by disrupting settlement in the hopes of extorting a greater share of the settlement for themselves"); *O'Keefe v. Mercedes-Benz USA, LLC*, 214 F.R.D. 266, 295 n.26 (E.D. Pa. 2003) (noting "Federal courts are increasingly weary of professional objectors").

Mr. Miorelli, and Mr. Sweeney are also serial objectors, and courts routinely overrule their objections as baseless. *See, e.g., In re Carrier iQ, Inc., Consumer Privacy Litig.*, No. 12-md-02330-EMC, 2016 U.S. Dist. LEXIS 114235, at *32 (N.D. Cal. Aug. 25, 2016) (overruling objections filed Mr. Miorelli); *Legg v. Lab. Corp. of Am. Holdings*, No. 14-61543-CIV, 2016 U.S. Dist. LEXIS 122695, at *9 n.2 (S.D. Fla. Feb. 18, 2016) (same); *Larsen v. Trader Joe's Co.*, No.

11-cv-05188-WHO, 2014 U.S. Dist. LEXIS 95538, at *22 (N.D. Cal. July 11, 2014) (overruling objections filed by Mr. Sweeney); *Roberts v. Electrolux Home Prods.*, No. SACV12-1644-CAS (VBKx), 2014 U.S. Dist. LEXIS 130163, at *42 (C.D. Cal. Sept. 11, 2014) (same).

The Court should be skeptical of the arguments made by professional objector counsel such as Mr. Salter, who represents Ms. Brading, and Mr. Hanigan, who represents Mr. Morgan, for the same reasons. *See, e.g., Brown v. Hain Celestial Grp., Inc*., No. 3:11-cv-03082-LB, 2016 U.S. Dist. LEXIS 20118, at *28 (N.D. Cal. Feb. 18, 2016) (overruling objections filed by Mr. Salter) (objection at ECF No. 363); and *Howerton v. Cargill, Inc.,* No. CIVIL 13-00336 LEK-BMK, 2014 U.S. Dist. LEXIS 165967, at *6 (D. Haw. Nov. 26, 2014) (same) (objection at ECF No. 107); *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Prods. Liab. Litig*., No. 8:10ML 02151 JVS (FMOx), 2013 U.S. Dist. LEXIS 123298, at *220 (C.D. Cal. July 24, 2013) (overruling objections filed by Mr. Hanigan); *Ebarle v. Lifelock, Inc*., No. 15-cv-00258-HSG, 2016 U.S. Dist. LEXIS 128279, at *35 (N.D. Cal. Sep. 20, 2016) (same).

IV. CONCLUSION

The settlements are fair, adequate, and reasonable. Indeed, given the risks of ongoing litigation and other factors addressed in EPPs' prior submission regarding these settlements, the settlements represent an excellent result for the Settlement Classes and were only achieved after years of hard-fought litigation in a very complex antitrust case. Only eight individuals have objected to the Settlement (filing eleven objections in total, including one duplicative filing), and none of them have presented objections with any merit. The Court should overrule these objections and grant IPPs' Motion for Final Approval of the Sony Settlement and IPPs' Motion for Reimbursement of Certain Expenses.

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