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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE: LITHIUM ION BATTERIES ANTITRUST LITIGATION This Document Relates to: INDIRECT PURCHASER ACTIONS	Case No. 13-MD-02420 YGR (DMR) MDL NO. 2420 **INDIRECT PURCHASER PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR (1) PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT WITH SONY; AND (2) CERTIFICATION OF SETTLEMENT CLASS.** **MEMORANDUM IN SUPPORT THEREOF** **Date:** May 24, 2016 **Time:** 2:00 P.M. **Judge:** Hon. Yvonne Gonzalez Rogers **Crtrm:** 1, 4th Floor

NOTICE OF MOTION

PLEASE TAKE NOTICE THAT on May 24, 2016 at 2:00 p.m., or as soon thereafter as the matter may be heard before the Honorable Yvonne Gonzalez Rogers in Courtroom 1, 4th Floor, located at 1301 Clay Street, Oakland, California, Indirect Purchaser Plaintiffs ("IPPs" and "Plaintiffs") will move this Court, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for entry of an order (1) granting preliminary approval of the settlement Plaintiffs have entered into with Defendants Sony Corporation, Sony Energy Devices Corporation, and Sony Electronics Inc. (collectively "Sony"), (2) certifying two settlement classes, (3) appointing Cotchett, Pitre & McCarthy, LLP, Lieff, Cabraser, Heimann & Bernstein, and Hagens, Berman, Sobol & Shapiro as Settlement Class Counsel, (4) approving the proposed plan of allocation of the settlement, (5) approving the manner and form of providing notice to class members, (6) establishing deadlines for objections to the settlement and requests to be excluded from the settlement classes, and (7) setting a date for a final approval hearing.

This Motion is based upon this Notice of Motion and Motion; the Memorandum of Points and Authorities, included herewith; the Declaration of Steven N. Williams submitted herewith; the papers and pleadings on file in this action; and upon such other evidence as the Court may be presented at the time of the hearing.

Dated: April 8, 2016

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In re Pac. Enter. Sec. Litig.,
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MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF ISSUES TO BE DECIDED

Whether the Court should (1) preliminarily approve the settlement that Plaintiffs have entered into with Sony, (2) certify two settlement classes, (3) appoint settlement class counsel, (4) approve the proposed plan of allocation, (5) approve the proposed notice program, (6) establish deadlines for objections to the settlement and requests to be excluded from the settlement classes, and (7) set a date for a final approval hearing.

I. INTRODUCTION

Indirect Purchaser Class Plaintiffs ("IPPs" or "Plaintiffs") have reached a settlement with Defendants Sony Corporation, Sony Energy Devices Corporation, and Sony Electronics Inc. ("Sony"). As consideration for the release to be provided by Plaintiffs upon final approval of the settlement agreement ("Settlement Agreement"), Sony will pay the sum of $19.5 million for the benefit of the two settlement classes, and Sony will cooperate with Plaintiffs in the prosecution of their claims against the remaining defendants. A true and correct copy of the Settlement Agreement is attached as Exhibit 1 to the Declaration of Steven N. Williams in Support of Motion for Preliminary Approval of Class Action Settlement with Sony ("Williams Decl.").

This settlement was the product of thorough and hard-fought negotiations between experienced and informed counsel with the assistance of the Hon. R. Vaughn Walker (ret.) as mediator, and represents an excellent recovery for the class. Plaintiffs now move the Court for an order preliminarily approving this settlement, provisionally certifying two settlement classes, approving the program to provide notice to the classes of the proposed settlement and the procedures by which final approval shall be sought, approving a plan of distribution, and appointing settlement class counsel.

At this time, this Court is not being asked to determine whether the settlement and the related plan of allocation are fair, reasonable, and adequate. Rather, the question is only whether the settlement and the plan of allocation are sufficiently within the range of possible approval to justify preliminary approval. Plaintiffs respectfully submit that the Court should grant this

motion because the payments to the classes and the cooperation to be provided are well within the range of possible final approval.

II. FACTUAL BACKGROUND

This action arises from an alleged conspiracy among several Japanese and Korean corporations and their U.S. subsidiaries to fix the prices of lithium ion battery cells ("LIBs"). LIBs are rechargeable battery cells that utilize lithium ion technology. Sometimes, LIBs are referred to as secondary batteries. LIBs power virtually every laptop computer, cellphone, smartphone, digital music player (*e.g.,* iPods), tablet device (*e.g.,* iPads), digital camera, camcorder, and cordless power tool used today. Plaintiffs allege that Defendants' price-fixing conspiracy began as early as January 2000 and continued until at least May 31, 2011 (the "Class Period").

Plaintiffs allege that Defendants' conspiracy was carried out through agreements to fix prices and restrict output and supply, and has been facilitated in a variety of ways, including agreeing on prices or price targets, and using common formulas tied to material costs to set industry prices and price-floors below which Defendants would not agree to sell LIBs. *See* Plaintiffs' 3d Consolidated Am. Compl. ("TAC") ¶ 6 (Oct. 22, 2014), ECF No. 519. Plaintiffs also allege that Defendants took affirmative steps to conceal their conduct. *Id*. ¶¶ 357-364.

III. PROCEDURAL HISTORY

A. Pleadings and Motions

In October of 2012, the first indirect purchaser plaintiff filed a class action complaint alleging violations of federal and state antitrust laws. Thereafter, additional actions were filed in this jurisdiction and others. The Judicial Panel on Multidistrict Litigation ("JPML") transferred all related actions to this Court on February 6, 2013. ECF No. 1. On May 17, 2013, Cotchett, Pitre & McCarthy, LLP, Hagens Berman Sobol Shapiro, LLP, and Lieff Cabraser, Heimann & Bernstein, LLP were appointed Interim Lead Class Counsel for the nationwide class of indirect purchasers. ECF No. 194.

On July 2, 2013, the Plaintiffs filed their First Consolidated Amended Class Action Complaint ("FAC") alleging that Defendants engaged in a long-running conspiracy to unlawfully

fix, raise and stabilize prices for LIBs. The FAC alleged that Plaintiffs and the proposed classes consists of persons and entities who indirectly purchased (1) a stand-alone Lithium Ion Battery manufactured by a Defendant, or (2) a Lithium Ion Battery Product containing a Lithium Ion Battery manufactured by a Defendant, during the period from and including January 1, 2000 through May 31, 2011. The FAC further alleged that the products containing LIBs for which Plaintiffs and the classes seek damages are laptop, notebook, netbook, and tablet computers (such as iPads), mobile telephones, smartphones, digital audio players (such as iPods), power tools, digital cameras and camcorders/digital video cameras, as well as replacement batteries for each of the aforementioned products (collectively "Lithium Ion Battery Products"). The Court instituted a phased approach to pleadings challenges.

Defendants filed several motions to dismiss the FAC on September 16, 2013. *See* ECF Nos. 284, 288, 289, 291, 293 & 296. On January 21, 2014, the Court entered an Order granting Defendants' Motions to Dismiss, with leave to amend. ECF No. 361. On March 7, 2014, the Court entered another Order dismissing certain claims in Indirect Purchaser Plaintiffs' Consolidated Amended Complaint. ECF No. 400. On March 7, 2014, Defendants filed a Joint Supplemental Motion to Dismiss the FAC (Phase II). ECF No. 401.

On March 26, 2014, Plaintiffs filed a Consolidated Second Amended Class Action Complaint ("SAC"). ECF No. 408-2. Defendants filed several motions to dismiss on April 25, 2014. *See* ECF Nos. 424, 425,426, 427, 429, 430 & 431. On October 2, 2014, this Court issued an order granting in part and denying in part Defendants' motions. On October 22, 2014, IPPs filed their Third Consolidated Amended Class Action Complaint ("TAC"). ECF No. 519. Defendants answered the TAC on November 21, 2014. *See* ECF Nos. 560, 562, 565, 568, 569, 571, 573, 576, 578 & 583-586. On March 14, 2016 the Court granted in part IPPs' motion for leave to file a Fourth Consolidated Amended Class Action Complaint. ECF No. 1154. On March 18, 2016, Plaintiffs filed their Fourth Consolidated Amended Class Action Complaint. ECF No. 1168.

B. Discovery

A great deal of discovery between the parties has taken place, and is ongoing. Plaintiffs have served Defendants with multiple sets of requests for production and interrogatories as well as numerous deposition notices. Plaintiffs have conducted extensive negotiations with the Defendants over the production of documents and transactional data, the identification of document custodians, Defendants' proposed used of search terms, the completeness of Defendants' interrogatory responses, and deposition scheduling.

Defendants began producing documents and ESI in response to Class Plaintiffs' requests for production in May 2015, and Defendants continue to produce documents. Documents and ESI from approximately 40 additional custodians were produced in February 2016. Defendants have produced more than 1,400,000 documents from over 700 custodians, comprising more than 7,500,000 pages and 1.8 terabytes of data. Defendants' productions are in English, Japanese, Korean, and Chinese. Nearly 40 percent of the documents produced to date are, at least in part, in a foreign language. Plaintiffs have been reviewing documents in preparation for depositions and their motion for class certification. To date, Plaintiffs have taken twelve merits depositions and two 30(b)(6) deposition of Defendants.

Plaintiffs have filed eight discovery motions related to the discovery they have propounded, and have prevailed, at least in part, on each motion. *See* table below:

PLAINTIFFS' MOTION	DISPOSITION
Motion to Compel Defendants' Production of Worldwide Transaction-Level Sales and Cost Data, ECF No. 590 (Dec. 2, 2014)	Order granting in part and denying in part, ECF No. 624 (Dec. 23, 2014)
Motion for Resolution of Disputed Provision of Search Term Protocol, ECF No. 633 (Jan. 16, 2015)	Guidance provided by Court during hearing (Feb. 19, 2015)
Motion to Compel LG Chem Regarding the Sufficiency of its Interrogatory Response, ECF No. 644 (Feb. 6, 2015)	Order granting in part and denying in part, ECF No. 689 (Mar. 17, 2015)
Motion to Compel Toshiba's Response to Interrogatories, ECF No. 650 (Feb. 13, 2015)	Order granting, ECF No. 690 (Mar. 17, 2015)
Motion to Compel Toshiba to Produce Worldwide Transaction-Level Sales Data, ECF No. 677 (Mar. 11, 2015)	Order granting, ECF No. 710 (Apr. 1, 2015)

Motion to Compel LG Chem to Supplement its Interrogatory Response, ECF No. 745 (July 24, 2015)	Order granting, ECF No. 805 (Aug. 21, 2015)
Motion to Continue Deposition of Toshiba's Hiroshi Kubo, ECF No. 803 (Aug. 20, 2015)	Order granting, ECF No. 822 (Aug. 31, 2015)
Motion to Compel Deposition of LG Chem's Seok Hwan Kwak, ECF No. 764 (Aug. 7, 2015)	Order granting, ECF No. 836 (Sep. 15, 2015)
Joint Letter Brief re Plaintiffs' Emergency Motion to Compel for Deposition of Jae Jeong Joe, ECF No. 1122 (March 2, 2016)	Mr. Joe has agreed to appear for deposition, ECF No. 1200 (March 31, 2006).
Joint Letter Brief re Examination of Seok Hwan Kwak Pursuant to the Hague Convention, ECF No. 1130 (March 3, 2016)	Pending

Defendants also have propounded written discovery, to which Plaintiffs have responded and produced documents. To date, Defendants have taken 24 depositions of IPP class representatives, and the dates for others are currently being negotiated.

C. Class Certification

The Motion for Class Certification was filed on January 22, 2016. ECF No. 894. Defendants will file their opposition to the class certification motion and *Daubert* motions on May 24, 2016. Plaintiffs will file their reply in support of the class certification motion and oppositions to *Daubert* motions on August 23, 2016. Defendants will file replies to *Daubert* oppositions on September 30, 2016. The hearing has been scheduled for November 18, 2016.

IV. THE TERMS OF THE SETTLEMENT AGREEMENT

A. The Settlement Class

Unless otherwise stated, all defined terms herein have the same meaning as the defined terms in the Settlement Agreement. This Settlement Agreement between Plaintiffs and Defendants provides that the parties will seek certification of:

1. A nationwide class of non-governmental indirect purchasers of standalone Lithium Ion Batteries ("LIBs") or Finished Products containing Lithium Ion Batteries or Lithium Ion Battery Packs ("Finished Products") manufactured by Defendants from January 1, 2000 until at least May 31, 2011 ("Settlement Class")[1]; and

[1] This nationwide class under California law (for damages and injunctive relief) and federal law (for injunctive relief only) includes the claims of all of the statewide non-governmental classes alleged in the TAC.

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2. The California governmental damages class alleged in the TAC.

The proposed nationwide settlement class and the proposed California governmental damages class are consistent with the proposed classes set forth in the TAC. The Fourth Consolidated Amended Class Action complaint is narrower than the proposed nationwide settlement class in that it does not include polymer and prismatic LIBs, while the proposed nationwide settlement class does include those products. The release to be provided upon final approval is limited to the subject matter of this lawsuit. *Procedural Guidelines for Class Action Settlements,* U.S.D.C., N.D. Cal. (Feb. 20, 2016), http://www.cand.uscourts.gov/ClassActionSettlementGuidance ("*Guidelines"*), ¶ 1(c).

B. Definitions

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

"Lithium Ion Battery" means a Lithium Ion Battery Cell or Lithium Ion Battery Pack.

"Lithium Ion Battery Cell" means a cylindrical, prismatic, or polymer cell used for the storage of power that is rechargeable and uses lithium ion technology.

"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. Settlement Agreement ¶¶ A(1)(q)-(s).

"Finished Product" means any product and/or electronic device containing 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. Settlement Agreement ¶ A(1)(m).

C. Release of Claims

Upon the settlement becoming final, Class Members will relinquish any claims they have against Sony based, in whole or in part, on matters alleged or that might have been alleged in this litigation concerning price-fixing of LIBs. Settlement Agreement ¶¶ A(1)(z), 7. The releases exclude claims for product liability, breach of contract, breach of warranty or personal injury, or any other claim unrelated to the allegations in this litigation. *Id.* at ¶ 11. The Agreement does not release claims arising from restraints of competition directed at goods other than (a) Lithium

Ion Batteries or (b) Lithium Ion Batteries contained in Finished Products. *Id.* The releases to be provided are consistent with the claims in the lawsuit. *Guidelines,* ¶ 1(a)-(b). While the settlement class definition is different from the class definition in the Fourth Consolidated Amended Complaint, in that the settlement class includes polymer and prismatic LIBs while the Fourth Consolidated Amended Complaint does not, the settlement class is consistent with the class definition in the TAC. The differences between the settlement class and the proposed class in the Fourth Consolidated Amended Complaint are not an impediment to preliminary approval of the proposed settlement. *In re Zynga Sec. Litig.,* case no. 12-cv-4250-JSC, 2015 U.S. Dist. LEXIS 145728 (N.D. Cal. Oct. 27, 2015); *In re Initial Public Offering Sec. Litig.,* 226 F.R.D. 186 (S.D.N.Y. 2005); *In re Domestic Air Transp. Antitrust Litig.,* 141 F.R.D. 534 (N.D. Ga. 1992).

D. Gross Settlement Fund

The settlement becomes final upon the Court's approval of the settlement ("Final Approval Order") pursuant to Rule 23(e) and the entry of final judgment of dismissal with prejudice as to Sony. *Id.* ¶ 5. Subject to the approval and direction of the Court, the Gross Settlement Fund, consisting of $19.5 million plus accrued interest thereon, will be used to:

(i) pay all costs and expenses reasonably and actually incurred in connection with providing notice to the Class in connection with administering and distributing the Net Settlement Fund to Authorized Claimants, and in connection with paying escrow fees and costs, if any (*see* Settlement Agreement ¶ 19(a));

(ii) pay all costs and expenses, if any, reasonably and actually incurred in soliciting claims and assisting with the filing and processing of such claims (*id.* at ¶ 19(b));

(iii) pay Taxes and Tax Expenses (*id.* at ¶ 19(c));

(iv) pay any Fee and Expense Award that is allowed by the Court, subject to and in accordance with the Agreement (*id.* at ¶ 19(d)); and

(v) distribute the balance of the Net Settlement Fund to authorized claimants as allowed by the Agreement, any Distribution Plan or order of the Court (*id.* at ¶ 19(e)).

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Subject to the approval and direction of the Court, the Gross Settlement Fund will also be used for:

(i) Notice and Administrative Costs as they become due, which may not exceed seven-hundred fifty thousand U.S. Dollars ($750,000) (*id.* ¶ 13);

(ii) Taxes and Tax Expenses as they become due (*id.*); and

(iii) attorneys' fees and reimbursement of litigation costs as may be ordered by the Court (*id.*).

E. Net Settlement Fund

Subject to the approval and direction of the Court, the Net Settlement Fund, plus accrued interest thereon, will be used to make a distribution to Class Members. As set forth below, Plaintiffs propose a *pro rata* distribution to Class Members based upon the number of approved purchases per class member of LIBs during the settlement class period. Unused funds allocated to settlement administration fees will be distributed to the class pro rata. In no event shall any settlement consideration revert to Sony. *Id.* ¶ 12.

F. Proposed Settlement Administrator and Notice Program

At this time, Plaintiffs propose a comprehensive notice program designed by experienced notice administrator A.B. Data Ltd. Plaintiffs are not at this time proposing a settlement claims administrator. Plaintiffs intend to propose a settlement claims administrator at a later time in the case if and when there are additional recoveries on behalf of the class through settlement or judgment.

The notice program to be implemented by A.B. Data Ltd. is anticipated to cost no more than $750,000.00. Upon court approval, this sum would be paid out of the settlement consideration to be paid by Sony, and will not be returned to Sony in the event that the settlement is not approved or is otherwise terminated by the parties. *Id.* at ¶ 41(a)). The selection of the notice program administrator was done through competitive bidding by qualified service providers, and was the deemed to be the most suitable notice program at the most competitive price. Based upon their experiences in other class action cases and the competitive

bidding process used here, counsel for Plaintiffs believe this sum to be reasonable in relation to the value of the settlement.

The proposed notice program would provide direct notice to those class members whose email addresses may be reasonably obtained once preliminary approval of this settlement is granted, print publication notice in multiple publications including *Parade, People,* and *Better Homes & Gardens*, and online publication on a settlement website and through internet banner advertisements on a variety of websites purchased through Conversant Ad Network and the Yahoo! Ad Network. Banners would also be purchased on Facebook. The print publication notice is designed to reach an audience of approximately 6.5 million. The internet program is designed to create approximately 315 million impressions.

G. Proposed Plan of Distribution

Plaintiffs propose to distribute the funds *pro rata* to class members based upon the number of qualifying purchases that they submit through their claim forms. A plan of allocation is subject to the same "fair, reasonable and adequate" standard that otherwise applies to approval of class settlements. *In re Omnivision Techs, Inc.,* 559 F. Supp.2d 1036, 1045 (N.D. Cal. 2008); *In re Citric Acid Antitrust Litig.,* 145 F. Supp. 2d 1152, 1154 (N.D. Cal. 2001). The proposed *pro rata* distribution to class members will treat all class members equally, and this type of distribution of class settlement proceeds has often been held to be fair, adequate, and reasonable. *See, e.g., In re Cathode Ray Tube (CRT) Antitrust Litig.,* No. 07-5944-JST, 2016 U.S. Dist. LEXIS 5561, at * 65 (N.D. Cal. Jan. 13, 2016); *In re Dynamic Random Access Memory (DRAM) Litig.,* No. M-02-1486 PJH, ECF No. 2093, at 2 (Oct. 27, 2010) (Order Approving *Pro Rata* Distribution)

H. Class Action Fairness Act ("CAFA")

The Settlement Agreement provides that Sony will provide the notices required by CAFA. Settlement Agreement ¶ 4.

I. Sony's Option to Terminate

Sony retains the option to terminate this settlement agreement only if the purchases of LIBs, Lithium Ion Battery Packs, and/or Finished Products made by the members of the Class

who timely and validly request exclusion from the Class equal or exceed five percent (5%) of the total volume of purchases made by the Class. After meeting and conferring with Class Counsel, Sony may elect to terminate this Agreement by serving written notice on Class Counsel by email and overnight courier and by filing a copy of such notice with the Court no later than thirty (30) days before the date for the final approval hearing of this Agreement, except that Sony shall have a minimum of ten (10) days in which to decide whether to terminate this Agreement after receiving the final opt-out list. Settlement Agreement ¶ 38.

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

A. Class Action Settlement Procedure

A class action may not be dismissed, compromised, or settled without the approval of the Court. Fed. R. Civ. P. 23(e). Settlement approval is a three step process:

1. Preliminary approval of the proposed settlement;
2. Dissemination of notice of the settlement to class members; and
3. A formal fairness hearing, also called the final approval hearing, at which class members may be heard regarding the settlement, and at which counsel may introduce evidence and present argument concerning the fairness, adequacy, and reasonableness of the settlement.

See Alba Conte & Herbert B. Newberg, 4 Newberg on Class Actions §§ 11.22, *et seq.* (4th ed. 2002) ("Newberg").

By this motion, Plaintiffs respectfully request that the Court preliminarily approve the proposed settlement, certify the settlement classes, approve the notice program and plan of allocation, appoint settlement class counsel, and set a date for final approval

B. The Standard for Settlement Approval

"[T]here is an overriding public interest in settling and quieting litigation . . . particularly . . . in class action suits." *Van Bronkhorst v. Safeco Corp.,* 529 F.2d 943, 950 (9th Cir. 1976). *See also Churchill Vill., L.L.C. v. Gen. Elec.,* 361 F.3d 566, 576 (9th Cir. 2004); *In re Pac. Enter. Sec. Litig.,* 47 F.3d 373, 378 (9th Cir. 1995); *Class Plaintiffs v. City of Seattle,* 955 F.2d 1268, 1276 (9th Cir. 1992). It is well-recognized that "[v]oluntary out of court settlement of disputes is

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'highly favored in the law' and approval of class action settlements will be generally left to the sound discretion of the trial judge." *Wellman v. Dickinson,* 497 F. Supp. 824, 830 (S.D.N.Y. 1980) (citation omitted). Compromise is particularly favored in antitrust litigation, which is notoriously difficult and unpredictable. *See In re Shopping Carts Antitrust Litig.,* MDL No. 451-CLB, M-21-29, 1983 U.S. Dist. LEXIS 11555 (S.D.N.Y. Nov. 18, 1983) (*"Shopping Carts*"); *West Virginia v. Chas. Pfizer & Co.,* 314 F. Supp. 710, 743–44 (S.D.N.Y. 1970), *aff'd*, 440 F.2d 1079 (2d Cir. 1971). "Preliminary approval of a settlement and notice to the class is appropriate if: (1) the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, (2) has no obvious deficiencies, (3) does not improperly grant preferential treatment to class representatives or segments of the class, and (4) falls with[in] the range of possible approval." *Civil Rights Educ. & Enforcement Ctr. v. RLJ Lodging Trust,* No. 15-cv-0224-YGR, 2016 U.S. Dist. LEXIS 10277, at * 29 (N.D. Cal. Jan. 25, 2016).

The purpose of the Court's preliminary evaluation of the proposed settlement is to determine whether it is within "the range of reasonableness." Manual for Complex Litigation (Fourth) (2004) ("Manual") § 13.14, at 173. Preliminary approval should be granted where "the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval." *In re NASDAQ Mkt.-Makers Antitrust Litig.,* 176 F.R.D. 99, 102 (S.D.N.Y. 1997). These factors all support granting preliminary approval here. Similarly, while consideration of the requirements for final approval is unnecessary at this stage, all of the relevant factors also weigh in favor of approval of the settlement proposed here. As shown below, the proposed settlement is fair, adequate, and reasonable.

C. The Proposed Settlement Is Within the Range of Reasonableness

The settlement was the product of arm's-length negotiations among experienced and well-informed counsel. Negotiations with Sony occurred with the assistance of the Hon. Vaughn Walker (ret.), an extremely capable and highly experienced jurist and mediator. The negotiations were contested and conducted in the utmost good faith. Williams Decl., ¶ 8. The settlement is

therefore entitled to "an initial presumption of fairness." Newberg § 11.4. Courts commonly grant preliminary approval where, as here, the proposed settlement lacks "obvious deficiencies" raising doubts about the fairness of the settlement. *See, e.g., In re Vitamins Antitrust Litig.,* Nos. MISC. 99–197(TFH), 2001 WL 856292, at *4 (D.D.C. July 25, 2001). Counsel's judgment that the settlement is fair and reasonable (Williams Decl. ¶ 15) is entitled to great weight in this context. *See Nat'l Rural Telcoms. Coop. v. DIRECTV, Inc.,* 221 F.R.D. 523, 528 (C.D. Cal. 2004) ("'Great weight' is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation."); *accord Bellows v. NCO Fin. Sys.,* No. 3:07-cv-01413-W-AJB, 2008 U.S. Dist. LEXIS 103525, at *17 (S.D. Cal. Dec. 10, 2008); *Rutter & Wilbanks Corp. v. Shell Oil Co.,* 314 F.3d 1180, 1188 (10th Cir. 2002); *Wilkerson v. Martin Marietta Corp.,* 171 F.R.D. 273, 288-89 (D. Colo. 1997); *Officers for Justice v. Civil Service Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982). Indeed, "the trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel." *Nat'l Rural Telcoms.*, 221 F.R.D. at 528 (quoting *Cotton v. Hinton,* 559 F.2d 1326, 1330 (5th Cir. 1977)).

The settlement payment totaling $19,500,000 confers a substantial benefit to the class because class members will receive meaningful cash payments and will avoid the uncertainty, delay and risk of continued litigation. Based on the 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 (and a proportionally larger percentage of the potential damages if based solely on claims arising in the *Illinois Brick*[2]-repealer states). These figures reflect the fact that, as courts have recognized in approving settlements, litigation, and in particular antitrust class litigation, is notoriously risky. *Shopping Carts, supra.* They also reflect the well-recognized benefits to both sides when a defendant agrees to settle before the class certification motion.[3] Further, this settlement preserves IPPs' right to litigate against the non-released

[2] *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977).

[3] For example, in *LCD* the Court approved a $10 million settlement between Chunghwa Picture Tubes and the indirect purchaser class that the parties signed approximately five months before

defendants for the entire amount of IPPs' damages based on joint and several liability to the extent permitted under the law. For these reasons, Plaintiffs respectfully submit that the settlement is well within the range of possible final approval and, therefore, worthy of preliminary approval.

VI. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASSES

The Court should provisionally certify the settlement classes required by the settlement. Settlement Agreement ¶ 3. It is well-established that price-fixing actions like this one are appropriate for class certification and many courts have so held. *See, e.g., In re TFT-LCD (Flat Panel) Antitrust Litig.,* 267 F.R.D. 291 (N.D. Cal. 2010) (Illston J.) ("*LCD*"); *In re Static Random Access Memory (SRAM) Antitrust Litig.,* 264 F.R.D. 603, 611-612 (N.D. Cal. 2009) (Wilken J.); *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.,* No. M 02-1486 PJH, 2006 U.S. Dist. LEXIS 39841 (N.D. Cal. June 5, 2006) (Hamilton J.) ("*DRAM*"); *In re Rubber Chems. Antitrust Litig.,* 232 F.R.D. 346, 350 (N.D. Cal. 2005) (Jenkins J.) ("*Rubber Chems*."); *In re Citric Acid Antitrust Litig.,* No. 95-1092, C-95-2963 FMS, 1996 U.S. Dist. LEXIS 16409 (N.D. Cal. Oct. 2, 1996) (Smith J.) ("*Citric Acid*"); *In re Sorbates Direct Purchaser Antitrust Litig.,* No. C 98-4886 MMC (N.D. Cal. Mar. 11, 2002) (Order Granting Plaintiffs' Motion for Class Certification; Vacating Hearing (Chesney, J.)); *In re Methionine Antitrust Litig.*, Master File No. C-99-3491-CRB (N.D. Cal. Dec. 21, 2000) (Order Granting Motion for Class Certification (Breyer, J.)); *In Re: Sodium Gluconate Antitrust Litig.,* Master File No. C 97-4142 CW (N.D. Cal. Sept. 24, 1998) (Order Granting Class Certification) (Wilken, J.)).

A. The Requirements of Rule 23 in the Context of a Settlement Class

Rule 23 provides that a court must certify a class where, as here, Plaintiffs satisfy the four prerequisites of Rule 23(a) (numerosity, commonality, typicality and adequacy), and one of the three criteria set forth in Rule 23(b). Rule 23(b)(3) provides that "an action may be maintained

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filing of the class certification motion. Chunghwa Picture Tubes was a central figure in the case that pled guilty and saw three of its executives incarcerated. *See In re TFT-LCD Antitr. Litig.*, No. M:07-cv-1827-SI (N.D. Cal.), Docket Nos. 1662 and 1728.

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as a class action" if "the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Fed. R. Civ. P. 23(b)(3).

The "predominance" requirement, however, is relaxed in the settlement context: "Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, . . . for the proposal is that there be no trial." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). *See also In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 68 (D. Mass. 2005). As Judge Posner has explained, manageability concerns that might preclude certification of a litigated class may be disregarded with a settlement class "because the settlement might eliminate all the thorny issues that the court would have to resolve if the parties fought out the case." *Carnegie v. Household Int'l, Inc.,* 376 F.3d 656, 660 (7th Cir. 2004); *see also In re Initial Public Offering Sec. Litig.,* 226 F.R.D. 186, 190, 195 (S.D.N.Y. 2005) (settlement class may be broader than litigated class because settlement resolves manageability/predominance concerns).

A Rule 23 determination is procedural and does not concern whether plaintiffs will ultimately prevail on the substantive merits of their claims. *Eisen v. Carlisle and Jacquelin*, 417 U.S. 156, 177–78 (1974); *Tchoboian v. Parking Concepts*, No. SACV 09-422 JVS (ANx), 2009 U.S. Dist. LEXIS 62122, at *10-11 (C.D. Cal. July 16, 2009); *Gabriella v. Wells Fargo Fin., Inc.,* No. C 06-4347 SI, 2008 U.S. Dist. LEXIS 63118, at *7 (N.D. Cal. Aug. 4, 2008).

B. The Requirements of Rule 23(a) Are Satisfied in This Case

1. The Classes Are So Numerous That Joinder of All Members Is Impracticable

The first requirement for class certification is that the class be so numerous that joinder of all members would be "impracticable." Fed. R. Civ. P. 23(a)(1). "Plaintiffs do not need to state the exact number of potential class members, nor is a specific number of class members required for numerosity." *Rubber Chems.,* 232 F.R.D. at 350; *In re Sugar Indus. Antitrust Litig.,* MDL Dkt. No. 201, 1976 U.S. Dist. LEXIS 14955, at *28 (N.D. Cal. May 21, 1976) (same). A

finding of numerosity may be supported by common sense assumptions. *Rubber Chems.,* 232 F.R.D. at 350; *Citric Acid*, 1996 U.S. Dist. LEXIS 16409, at *7-8. No minimum number has been established, but courts generally find numerosity where class membership exceeds forty. Newberg § 18:4. Geographic dispersal of plaintiffs also supports a finding that joinder is "impracticable." *Rubber Chems.,* 232 F.R.D. at 350-51; *LCD*, 267 F.R.D. at 300. In this case, the class of end-users of LIBs in many different states is vast and geographically dispersed, and certainly satisfies the numerosity requirement, as do the many local government entities that comprise the California local government damages class.

2. This Case Involves Common Questions of Law and Fact

The second requirement for class certification under Rule 23 is that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). The Ninth Circuit has ruled that the commonality requirement is to be "construed permissively." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir.1998). A court must assess if "the class is united by a common interest in determining whether a defendant's course of conduct is in its broad outlines actionable." *Blackie v. Barrack*, 524 F.2d 891, 902 (9th Cir. 1975). This requirement, however, is satisfied by the existence of a single common issue. *In re Flat Glass Antitrust Litig.,* 191 F.R.D. 472, 478 (W.D. Pa. 1999) ("*Flat Glass*").

Plaintiffs respectfully submit that the commonality requirement is satisfied here. "Courts consistently have held that the very nature of an antitrust cartel action compels a finding that common questions of law and fact exist." *Rubber Chems*., 232 F.R.D. at 351 (*citing Sugar*, 1976 U.S. Dist. LEXIS 14955, at *31) (internal quotations omitted). Here, numerous questions of law and fact common to the class are at the heart of this case. These common questions of law and fact include the overriding issue of whether the defendants engaged in a price-fixing agreement that injured the class. Common questions of law and fact include:

(1) whether defendants and their co-conspirators conspired to raise, fix, stabilize or maintain the prices of LIBs sold in the United States;

(2) whether the alleged conspiracy violated Section 1 of the Sherman Act and the unfair competition and consumer protection laws of California;

(3) the duration and extent of the conspiracy;

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(4) whether defendants' conduct caused prices of LIBs to be set at artificially high and non-competitive levels; and

(5) whether defendants' conduct injured Plaintiffs and other members of the class and, if so, the appropriate class-wide measure of damages.

These issues constitute a common core of questions focusing on the central issue of the existence and effect of the alleged conspiracy and plainly satisfy the commonality requirement of Rule 23(a)(2). *Estate of Jim Garrison v. Warner Bros., Inc.,* Civ. No. CV 95–8328 RMT, 1996 WL 407849, at *2 (C.D. Cal. June 25, 2006) (plaintiffs' allegations "which constitute the classic hallmark of antitrust class actions under Rule 23 . . . are more than sufficient to satisfy the commonality requirement"); *Flat Glass*, 191 F.R.D. at 479 ("[g]iven plaintiffs' allegation of a § 1 conspiracy, the existence, scope and efficacy of the alleged conspiracy are certainly questions that are common to all class members."). Similar common questions have been found to satisfy the commonality requirement in other antitrust class actions in the Northern District of California. *DRAM*, 2006 U.S. Dist. LEXIS 39841, at *29 ("the very nature of a conspiracy antitrust action compels a finding that common questions of law and fact exist."); *Rubber Chems*., 232 F.R.D. at 351 (same); *LCD*, 267 F.R.D. at 300 (same).

3. The Claims of the Representative Plaintiffs Are Typical

The third requirement for maintaining a class action under Rule 23(a) is that "the claims or defenses of the representative parties [be] typical of the claims or defenses of the class." "[R]epresentative claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." *Hanlon*, 150 F.3d at 1020. "Generally, the class representatives 'must be part of the class and possess the same interest and suffer the same injury as the class members.'" *LCD*, 267 F.R.D. at 300. "The overarching scheme is the linchpin of plaintiffs' . . . complaint, regardless of the product purchased, the market involved or the price ultimately paid. Furthermore, the various products purchased and the different amount of damage sustained by individual plaintiffs do not negate a finding of typicality, provided the cause of those injuries arises from a common wrong." *Flat Glass*, 191 F.R.D. at 480.

Courts have generally found the typicality requirement to be satisfied in horizontal price-fixing cases. As explained in *In re Chlorine & Caustic Soda Antitrust Litig*.:

> Plaintiffs seek to recover treble damages from defendants measured by the alleged overcharge resulting from defendants' conspiracy to fix prices. In order to prevail on the merits in this case the plaintiffs will have to prove the same major elements that the absent members of the class would have to prove. Those elements are a conspiracy, its effectuation and resulting damages. As such, the claims of the plaintiffs are not antagonistic to and are typical of the claims of the other putative class members.

116 F.R.D. 622, 626 (E.D. Pa. 1987); *see also Rubber Chems*., 232 F.R.D. at 351; *Citric Acid*, 1996 U.S. Dist. LEXIS 16409, at *9 ("The alleged underlying course of conduct in this case is defendants' conspiracy to fix the price of citric acid and to allocate customers among themselves . . . . The legal theory that plaintiffs rely on is antitrust liability. Because plaintiffs and all class members share these claims and this theory, the representatives' claims are typical of all.").

Plaintiffs here allege a conspiracy to fix, raise, maintain and stabilize the price of LIBs. Class members' claims are based on the same legal theories and Plaintiffs would have to prove the same elements that absent members would have to prove: the existence, scope, and efficacy of the alleged conspiracy. Plaintiffs respectfully submit that the typicality requirement of Rule 23(a)(3) is satisfied here.

4. The Representative Plaintiffs Will Fairly and Adequately Protect the Interests of the Classes

The fourth requirement of Rule 23 mandates that the representative plaintiffs fairly and adequately represent the class. Fed. R. Civ. P. 23(a)(4). The adequacy requirement consists of two separate inquiries. First, the representative plaintiffs must not possess interests which are antagonistic to the interests of the class. Second, plaintiffs must be represented by counsel of sufficient diligence and competence to fully litigate the claim. *Hanlon*, 150 F.3d at 1020; *Lerwill v. Inflight Motion Pictures, Inc.,* 582 F.2d 507, 512 (9th Cir. 1978).

The representative plaintiffs here meet both aspects of the adequacy test. There are no actual or potential conflicts of interest between the representative plaintiffs and the members of the class. Plaintiffs, as well as each member of the class, are alleged to have been overcharged for LIBs and have a mutual interest in establishing liability and recovering damages. The basis of the claims against defendants is an alleged price-fixing conspiracy that artificially raised the prices charged to every class member, each of whom indirectly purchased LIBs from Defendants

during the class period. Defendants, therefore, allegedly injured plaintiffs and the class members in the same manner. Plaintiffs seek relief substantially identical to that sought by every other class member. Accordingly, the interests of the representative plaintiffs and the putative class members in recovering the overcharges are the same.

Plaintiffs have retained highly capable and well-recognized counsel with extensive experience in antitrust cases. Plaintiffs' interim co-lead counsel, Cotchett, Pitre & McCarthy, LLP, Hagens Berman Sobol & Shapiro, LLP and Lieff, Cabraser, Heimann & Bernstein, LLP were appointed by the Court as Indirect Purchaser Plaintiffs' Class Counsel on May 17, 2013. They have undertaken the responsibilities assigned to them by the Court and have directed the efforts of other Plaintiffs' counsel in vigorously prosecuting this action. Plaintiffs' counsel has successfully prosecuted numerous antitrust class actions on behalf of injured purchasers throughout the United States. Plaintiffs' counsel is capable of, and committed to, prosecuting this action vigorously on behalf of the class. Plaintiffs' counsel's prosecution of this case, and, indeed, the settlement, amply demonstrates their diligence and competence. Therefore, the named plaintiffs satisfy the requirements of Rule 23(a)(4).

C. The Proposed Classes Satisfy the Requirements of Rule 23(b)(3)

Once it is determined that the proposed class satisfies the requirements of Rule 23(a), the settlement class may be certified under Rule 23(b)(3) if "the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Fed. R. Civ. P. 23(b)(3). "Judicial economy and fairness are the focus of the predominance and superiority requirements." *Oregon Laborers-Emp's. Health & Welfare Trust Fund v. Philip Morris, Inc.*, 188 F.R.D. 365, 375 (D. Or. 1998). Plaintiffs' claims meet these requirements.

1. Common Questions of Law and Fact Predominate Over Individual Questions

The focus of the predominance requirement is on whether the proposed class is "'sufficiently cohesive to warrant adjudication by representation.'" *Amgen Inc. v. Connecticut*

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Retirement Plans and Trust Funds, 133 S.Ct. 1184, 1196 (2013); *Wolin v. Jaguar Land Rover N. Am., LLC,* 617 F.3d 1168, 1172 (9th Cir. 2010). "'When common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than an individual basis.'" *Hanlon*, 150 F.3d at 1022 (quoting 7A Wright & Miller, *Federal Practice & Procedure* § 1778 (2d ed. 1986)). As the Supreme Court held in *Amgen*,

> Rule 23(b)(3) requires a showing that questions common to the class predominate, not that those questions will be answered, on the merits, in favor of the class . . . . In other words, [plaintiffs] need not . . . prove that the predominating question will be answered in their favor.

133 S. Ct. at 1191.

The United States Supreme Court has noted that predominance is a test that is "readily met" in antitrust cases. *Amchem Prods*., 521 U.S. at 625; *see also In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 528 (3d Cir. 2004). The overwhelming weight of authority holds that in horizontal price-fixing cases, the predominance requirement is readily satisfied. *LCD*, 267 F.R.D. at 310 ("Courts have frequently found that whether a price-fixing conspiracy exists is a common question that predominates over other issues because proof of an alleged conspiracy will focus on defendants' conduct and not on the conduct of individual class members.").

In determining whether common questions predominate in a price fixing case, "the focus of this court should be principally on issues of liability." *Sugar*, 1976 U.S. Dist. LEXIS 14955, at *59; *Citric Acid,* 1996 U.S. Dist. LEXIS 16409, at *17; *see also Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas,* 244 F.3d 1152, 1163 (9th Cir. 2001) ("*Culinary/Bartender*"); *Hanlon*, 150 F.3d at 1022 ("common nucleus of facts and potential legal remedies dominates this litigation").

Common questions need only predominate; they do not need to be dispositive of the litigation as a whole. *In re Lorazepam & Clorazeopate Antitrust Litig.,* 202 F.R.D. 12, 29 (D.D.C. 2001); *In re Cardizem CD Antitrust Litig.,* 200 F.R.D. 326, 339 (E.D. Mich. 2001); *In re Potash Antitrust Litig.,* 159 F.R.D. 682, 693 (D. Minn. 1995). The predominance standard is met "unless it is clear that individual issues will overwhelm the common questions and render the

class action valueless." *In re NASDAQ Mkt.-Makers Antitrust Litig.,* 169 F.R.D. 493, 517 (S.D.N.Y. 1996) ("*NASDAQ*").

In Section 1 Sherman Act class cases, the existence of a conspiracy has been recognized as the overriding issue common to all plaintiffs. As the Court acknowledged in *Rubber Chemicals*: "the great weight of authority suggests that the dominant issues in cases like this are whether the charged conspiracy existed and whether price-fixing occurred." 232 F.R.D. at 353; *see also In re Cement & Concrete Antitrust Litig.,* MDL Dkt. No. 296, 1979 WL 1595, at *2 (D. Ariz. Mar. 9, 1979) ("the asserted nationwide price fixing conspiracy presents questions of law and fact common to the class members which predominate over any questions affecting only individual members"); *Sugar*, 1976 U.S. Dist. LEXIS 14955, at *59-60 ("It is the allegedly unlawful horizontal price-fixing arrangement among defendants that, in its broad outlines, comprises the predominating, unifying common interest as to these purported Plaintiff representatives and all potential class members"); *Mularkey v. Holsum Bakery, Inc.,* 120 F.R.D. 118, 122 (D. Ariz. 1988). Courts in this district and elsewhere have held that this issue alone is sufficient to satisfy the Rule 23(b)(3) predominance requirement. *See, e.g., Rubber Chems.,* 232 F.R.D. at 353; *Citric Acid*, 1996 U.S. Dist. LEXIS 16409, at *17-19.

Furthermore, courts have uniformly found predominant common questions of law or fact with respect to the existence, scope, and effect of the alleged conspiracy. *See Citric Acid*, 1996 U.S. Dist. LEXIS 16409, at *8 (common questions include whether there was a conspiracy, whether prices were fixed pursuant to the conspiracy, and whether the prices plaintiffs paid were higher than they should have been); *Estate of Jim Garrison v. Warner Brothers*,. No. 95-cv-8328, 1996 WL 407849, at *3 (C.D.Cal. June 25, 1996) ("Antitrust price fixing conspiracy cases by their nature deal with common legal and factual questions of the existence, scope and effect of the alleged conspiracy." (citation omitted)); *NASDAQ*, 169 F.R.D. at 518.

In this case, common issues relating to the existence of the alleged LIB conspiracy and Defendants' acts in furtherance of the alleged conspiracy predominate over any questions arguably affecting only individual class members because they are the central issue in the case and proof is identical for every member of the class. If separate actions were to be filed by each

class member in the instant case, each would have to establish the existence of the same alleged conspiracy and would depend on identical evidence, and each would prove damages using identical "textbook" economic models. The evidence needed to prove how the Defendants implemented and enforced their alleged conspiracy to set the prices of LIBs at supra-competitive levels will be common for all class members. These issues pose predominant common questions of law and fact.

Finally, as explained above, the Court need not concern itself with questions of the manageability of a trial because the settlement disposes of the need for a trial as to Sony, along with any "thorny issues" that might arise. *See Amchem*, 521 U.S. at 620; *Carnegie*, 376 F.3d at 660. Moreover, as noted above, the question of whether "individual issues will overwhelm the common questions"—which is essentially a question of manageability—need not be addressed with regard to the settlement class.

2. A Class Action Is Superior to Other Available Methods for the Fair and Efficient Adjudication of This Case

Rule 23(b)(3) also requires that class treatment be "superior to other available methods for the fair and efficient adjudication of the controversy." It sets forth four factors to be considered: (1) the interest of members of the class in individually controlling the prosecution of separate actions; (2) the extent and nature of any litigation concerning the controversy already commenced by members of the class; (3) the desirability of concentrating the litigation of the claims in a particular forum; and (4) the difficulties likely to be encountered in the management of a class action. Fed. R. Civ. P. 23(b)(3). Prosecuting this action as a class action is clearly superior to other methods of adjudicating this matter.

The alternative to a class action—many duplicative individual actions—would be inefficient and unfair. "Numerous individual actions would be expensive and time-consuming and would create the danger of conflicting decisions as to persons similarly situated." *Lerwill*, 582 F.2d at 512. Further, it would deprive many class members of any practical means of redress. Because prosecution of an antitrust conspiracy case against economically powerful defendants is difficult and expensive, class members with all but the largest claims would likely

choose not to pursue their claims. *See Culinary/Bartender*, 244 F.3d at 1163. Most class members would be effectively foreclosed from pursuing their claims absent class certification. *Hanlon*, 150 F.3d at 1023 ("[M]any claims [that] could not be successfully asserted individually . . . would not only unnecessarily burden the judiciary, but would prove uneconomic for potential plaintiffs."). The proposed class satisfies the requirements of Rule 23(b)(3).

D. The Court Should Appoint Cotchett, Pitre & McCarthy, LLP, Hagens Berman Sobol & Shapiro LLP and Lieff Cabraser Heimann & Bernstein, LLP as Settlement Class Counsel.

Federal Rule of Civil Procedure 23(c)(1)(B) states that "[a]n order certifying a class action . . . must appoint class counsel under Rule 23(g)." Rule 23(g)(1)(C) states that "[i]n appointing class counsel, the court (A) must consider: [i] the work counsel has done in identifying or investigating potential claims in the action, [ii] counsel's experience in handling class actions, other complex litigation, and claims of the type asserted in the action, [iii] counsel's knowledge of the applicable law, and [iv] the resources counsel will commit to representing the class."

This Court considered the submissions and arguments of all parties before appointing Cotchett, Pitre & McCarthy, LLP, Hagens Berman Sobol & Shapiro LLP and Lieff Cabraser Heimann & Bernstein, LLP as interim co-lead counsel for the indirect purchaser class. Since that time interim co-lead counsel has capably managed this complex antitrust class action, and the settlement with Sony is one product of that representation which will provide real and meaningful benefits to the class. The work they have done to date supports the conclusion that they should be appointed as Class Counsel for purposes of the settlement. *See, e.g., Harrington v. City of Albuquerque*, 222 F.R.D. 505, 520 (D.N.M. 2004). The firms meet the criteria of Rule 23(g)(1). *Cf. Farley v. Baird, Patrick & Co., Inc.*, No. 90 Civ. 2168 (MBM), 1992 WL 321632, at *5 (S.D.N.Y. Oct. 29, 1992) ("Class counsel's competency is presumed absent specific proof to the contrary by defendants.").

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully submit that the Court should enter an order granting the relief requested by this motion: (1) granting preliminary approval of the

settlement Plaintiffs have entered into with Sony, (2) certifying the settlement classes, (3) appointing Cotchett, Pitre & McCarthy, LLP, Lieff Cabraser Heimann & Bernstein, LLP, and Hagens Berman Sobol & Shapiro LLP as Settlement Class Counsel, (4) approving the proposed plan of allocation of the settlement, (5) approving the manner and form of providing notice to class members, (6) establishing deadlines for objections to the settlement and requests to be excluded from the settlement classes, and (7) setting a date for a final approval hearing.

Dated: April 8, 2016

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