UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

IN RE LITHIUM ION BATTERIES ANTITRUST LITIGATION	Case No. 4:13-md-02420 YGR (DMR) MDL No. 2420
This Document Relates to: ALL INDIRECT PURCHASER ACTIONS	**DECLARATION OF BRENDAN P. GLACKIN IN SUPPORT OF INDIRECT PURCHASER PLAINTIFFS' MOTION TO DIRECT NOTICE TO THE CLASS REGARDING THE SDI, TOKIN, TOSHIBA & PANASONIC SETTLEMENTS**

I, Brendan P. Glackin, hereby declare and state as follows:

1. I am an attorney duly licensed to practice law in the State of California and admitted to practice in this Court and the other federal courts of the State of California (and other courts). I am a partner at the law firm Lieff Cabraser Heimann & Bernstein, LLP ("Lieff Cabraser"), which, along with the law firms Cotchett, Pitre & McCarthy, LLP ("Cotchett, Pitre & McCarthy") and Hagens Berman Sobol & Shapiro, LLP ("Hagens Berman") serve as Interim Co-Lead Counsel for Indirect Purchaser Plaintiffs ("Plaintiffs") in this action. I make this Declaration in support of Plaintiffs' Motion to Direct Notice to the Class Regarding the SDI, TOKIN, Toshiba and Panasonic Settlements. The matters described are based on my personal knowledge, and if called as a witness, I could and would testify competently thereto.

Settlement Agreements

2. Plaintiffs and defendants Samsung SDI Co., Ltd. and Samsung SDI America, Inc. (collectively, "SDI") reached an agreement in principle to settle this action on or about January 11, 2018, following multiple mediation sessions involving retired Judge Vaughn R. Walker. Attached hereto as Exhibit A is a true and correct copy of the settlement agreement between Plaintiffs and SDI (the "SDI Settlement").

3. Plaintiffs and defendant TOKIN Corporation ("TOKIN") reached an agreement in principle to settle this action by December 2017, following iterative negotiations between counsel. Attached hereto as Exhibit B is a true and correct copy of the settlement agreement between Plaintiffs and TOKIN (the "TOKIN Settlement").

4. Plaintiffs and defendant Toshiba Corporation ("Toshiba") reached an agreement in principle to settle this action by December 2017, following iterative negotiations between counsel. Attached hereto as Exhibit C is a true and correct copy of the Settlement Agreement between Plaintiffs and Toshiba (the "Toshiba Settlement").

5. Plaintiffs and defendants Panasonic Corporation, Panasonic Corporation of North America, SANYO Electric Co., Ltd., and SANYO North America Corporation (collectively, "Panasonic," and together with SDI, TOKIN, and Toshiba, the "Settling Defendants") reached an agreement to settle this action on or about November 7, 2018. Attached hereto as Exhibit D is a true and correct copy of the Settlement Agreement between Plaintiffs and Panasonic (the "Panasonic Settlement," and together with the SDI Settlement, the Tokin Settlement, and the Toshiba Settlement, the "Settlement Agreements").

6. The Settlement Agreements were the products of arm's-length negotiations among experienced and well-informed counsel. The negotiations were contested and conducted in the utmost good faith.

7. The Settlement Agreements each provide for certification of a nationwide class, which, apart from a couple minor cosmetic differences, is identical to the class asserted in Plaintiffs' Fourth Consolidated Amended Complaint (the "Amended Complaint"). This

nationwide settlement class was an absolute requirement for each Settling Defendant's agreement to settle.

8. The Settlement Agreements each provide that class members will release claims relating to purchases of more battery types and more product types than those identified as the basis of claims in the operative complaint. Specifically, whereas the Amended Complaint sought damages only for cylindrical batteries, the Settlement Agreements release claims based on all three battery types (*i.e.*, cylindrical, prismatic, and polymer batteries). Whereas the Amended Complaint sought damages only on behalf of purchasers of four products (portable computers, power tools, camcorders, and replacement batteries), the Settlement Agreements release claims for additional products, including mobile phones, smart phones, cameras, digital video cameras, and digital audio players. As consideration for payment of the settlement amounts, these broad release provisions were absolute requirements for the Settling Defendants, who sought a definitive end to the litigation and potential litigation arising from the same nucleus of facts alleged in the operative complaint.

Recommended Plan of Distribution

9. Under the terms of the Settlement Agreements, the plan of distribution is left for the determination of the Court. To recommend a plan of distribution for the Settlement Agreements and to assist the Court in determining the most fair and efficient distribution of settlement funds, Interim Co-Lead Counsel retained two advocate law firms and one neutral mediator. Counsel undertook this adversarial process in order to address the significantly changed circumstances of settlements that occurred after the choice-of-law analysis contained in this Court's first order provisionally denying class certification. Neither Interim Co-Lead Counsel nor the class representatives had any input in or influence on this process—including on the advocates' arguments or the mediator's analysis—after it was set in motion, except as to scheduling deadlines and the like.

10. Laura Alexander, of Cohen Milstein Sellers & Toll PLLC ("Cohen Milstein"), advocated on behalf of residents of states that have passed laws allowing recovery by indirect purchasers (so-called "*Illinois Brick* repealer states"). Marc M. Seltzer and Krysta Kauble

Pachman, of Susman Godfrey LLP ("Susman Godfrey"), advocated on behalf of residents of states that have not passed such laws ("non-repealer states"). The advocates are leading antitrust litigators who have served as lead counsel in major antitrust litigation.

11. The mediator, the Honorable Rebecca J. Westerfield (ret.), reviewed the advocates' written statements and submitted written findings and recommendations regarding a fair, reasonable, and adequate plan of distribution. Judge Westerfield is a former Circuit Court Judge of Jefferson County, Kentucky, who is widely regarded as a respected neutral in multi-party complex civil and class cases. Judge Westerfield has been a full-time JAMS panelist since 1992.

12. Attached hereto as Exhibit E is a true and correct copy of the submission, dated October 31, 2018, made by Cohen Milstein on behalf of residents of repealer states.

13. Attached hereto as Exhibit F is a true and correct copy of the submission, dated November 1, 2018, made by Susman Godfrey on behalf of residents of non-repealer states.

14. Attached hereto as Exhibit G is a true and correct copy of the responsive submission, dated November 9, 2018, made by Susman Godfrey on behalf of residents of non-repealer states.

15. Attached hereto as Exhibit H is a true and correct copy of the responsive submission, dated November 20, 2018, made by Cohen Milstein on behalf of residents of repealer states.

16. Attached hereto as Exhibit I is a true and correct copy of the Neutral Analysis, dated December 6, 2018, submitted by Judge Westerfield.

Class Representatives' and Counsel's Vigorous Advocacy on Behalf of the Class

17. A great deal of discovery between the parties has taken place. Working closely with counsel for the direct purchaser plaintiffs, Plaintiffs served defendants with 24 interrogatories (some of which were jointly served on all defendants), 78 document requests, and 1,534 requests for admissions. In addition, Plaintiffs issued at least 141 subpoenas to non-parties.

18. Plaintiffs conducted extensive negotiations with defendants and non-parties regarding the production of documents and transactional data, the identification of document

custodians, the use of search terms, the completeness of discovery responses, and deposition scheduling. In total, Plaintiffs reviewed more than 2.7 million documents and voluminous electronic transactional data. This included translating more than 1,500 documents written in Japanese, Korean, and Chinese.

19. Plaintiffs took nearly 40 fact depositions and seven expert depositions (involving at least 769 exhibits), and defended 32 class representative depositions and five expert depositions.

20. Plaintiffs brought and prevailed on, at least in part, fourteen motions to compel. This work included successfully compelling packer Simplo USA to produce data from its overseas parent Simplo Taiwan, the world's largest third-party packer. Securing Simplo Taiwan's data required (i) opposing a motion to quash a deposition subpoena in Wyoming, (ii) winning a contested motion to transfer the Simplo discovery to this MDL Court, (iii) filing multiple motions to compel, (iv) taking a Rule 30(b)(6) deposition of Simplo USA to support those motions, (v) opposing Simplo USA's motion for a stay of proceedings pending appeal, and (vi) bringing a motion for discovery sanctions.

Notice and Claims Administration

21. To select a settlement administrator, Plaintiffs conducted a competitive bidding process with five administrators. In their solicitation for bids, Plaintiffs required that any proposal employ contemporary and diverse methods of notice to ensure the broadest reach possible.

22. Every administrator proposed a program that included direct notice to class members for whom Plaintiffs have contact information (*e.g.*, via email), online digital internet banner advertising across different advertising networks, outreach through social media channels, and a press release. Some proposals included additional print publication, and the proposal from GCG included television advertisements and additional digital video notice on YouTube, Facebook, Instagram, and Twitter.

23. Having considered the competing bids, Plaintiffs selected Garden City Group ("GCG"), whose proposal represented the most cost-effective, efficient, and comprehensive plan, which Plaintiffs believe provides the best value for the class.

24. After the selection process was completed, GCG was acquired by Epiq Class Action & Claims Solutions ("Epiq").

25. Over the past two years, Lieff Cabraser has had engagements with GCG or Epiq involving settlement administration in the following cases:

- *Markos v. Wells Fargo Bank, N.A.*, No. 1:15-cv-01156-LMM (N.D. Ga.);
- *Cross vs. Wells Fargo*, No. 1:15-cv-01270-RWS (N.D. Ga.);
- *In re Takata Airbag Products Liab. Litig.*, No. 1:15-md-02599-FAM (S.D. Fla.), OEM Settlements (BMW, Mazda, Subaru, Toyota, Honda, Ford, and Nissan); and
- *In re Volkswagen "Clean Diesel" Mktg., Sales Practices & Prod. Liab. Litig.*, No. 3:15-md-02672-CRB, MDL No. 2672 (N.D. Cal.), Bosch Settlement.

26. Over the past two years, Hagens Berman has had engagements with GCG or Epiq involving settlement administration in the following cases:

- *Ciuffitelli v. Deloitte & Touche LLP (Aequitas)*, No. 3:16-cv-00580-AC (D. Or.);
- *Dean Rollolazo v. BMW of N. Am., LLC*, No. 8:16-cv-00966-TJH-SS (C.D. Cal.);
- *Corvello v Wells Fargo N.A.*, No. 10-cv-05072 VC (N.D. Cal.);
- *Rajagopalan v. Fidelity & Deposit Co. of Maryland*, No. 3:16-cv-05147-BHS (W.D. Wash.);
- *Canada v. Meracord, LLC*, No. 3:12-cv-05657-BHS (W.D. Wash.);
- *Free Range Content, Inc. v. Google LLC*, No. 5:14-cv-02329-BLF (N.D. Cal.);
- *In re Stericycle, Inc., Steri-Safe Contract Litig.*, No. 1:13-cv-05795, MDL No. 2455 (N.D. Ill.);
- *In re Optical Disk Drive Products Antitrust Litig.*, No. 3:10-md-02143-RS

MDL No. 2143 (N.D. Cal.);

- *Nallagonda v. Osiris Therapeutics, Inc.*, No. 1:15-cv-03562-PX (D. Md.); and
- *Celebrex* (*Celecoxib*) *Antitrust Litig.*, No. 2:17-mc-00092-MRH (W.D. Pa.).

27. Over the past two years, Cotchett, Pitre & McCarthy has had engagements with GCG or Epiq involving settlement administration in the following cases:

- *City of San Juan Capistrano*, No. 30-2016-829167 (Cal. Super. Ct., Orange Cty.);
- *Cozzitorto v. AAA*, No. C13-02656 (Cal. Super. Ct., Contra Costa Cty.);
- *In re Sunrun Inc. Sec. Litig.*, 3:17-cv-02537-VC (N.D. Cal.); and
- *Duflock v. Chevron*, No. CV130147 (Cal. Super. Ct., San Luis Obispo Cty.).

28. Following the close of the claims period, settlement administrators will make payment to class members with valid claims through either (i) direct payment by check, direct deposit, or bank-based EFT; or (ii) digital payment through services such as PayPal, Amazon, or Google Wallet.

29. Digital payments will be used for all small-dollar payments (*e.g.*, recoveries of less than $5.00), in order to minimize the administrative costs associated with distributing those payments.

30. Based on preliminary data, Plaintiffs estimate that class members who purchased portable computers, power tools, camcorders, or replacement batteries, may be eligible to receive an aggregate sum of between $1.00 and $2.00 per device claimed, subject to a Court-approved distribution plan.

Active Involvement of Class Representatives

31. The class representatives have no interests in conflict with those of the class, have been actively involved in the litigation of this case, and have each reviewed and approved the terms of the proposed Settlement Agreements.[1]

[1] The class representatives include plaintiffs Jason Ames, Caleb Batey, Christopher Bessette, Cindy Booze, Matt Bryant, Steve Bugge, William Cabral, Matthew Ence, Drew Fennelly, Sheri Harmon, Christopher Hunt, John Kopp, Linda Lincoln, Patrick McGuiness, Joseph O'Daniel, Tom Pham, Piya Robert Rojanasathit, Bradley Seldin, Donna Shawn, David Tolchin, Bradley Van Patten, the City of Palo Alto, and the City of Richmond.

32. The class representatives were deposed and also responded to more than 22 interrogatories and 37 document requests.

33. The class representatives also declined settlement offers that would have been less advantageous to the class as a whole or that otherwise would have enriched them personally to the detriment of the class.

Attorney's Fees, Costs, and Expenses

34. Through September 30, 2018, counsel has incurred a total lodestar of $40,122,129.20, covering 98,898.07 hours of work. These numbers are subject to a final audit.

35. To date, Plaintiffs have incurred approximately $6.74 million in costs and expenses. This figure includes at least the following estimated expenses: approximately $4,812,656.51 for expert and consultant costs; $950,360.76 for document review platform hosting costs; $221,435.93 for document translation costs; $141,754.77 for court reporter and other deposition-related costs; $18,701.51 for court costs; $180,119.66 for mail and photocopy costs; $161,660.45 for travel costs; $76,060.00 for mediation costs; and $174,566.83 for other costs.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 24th day of January, 2019, at San Francisco, California.

By: */s/ Brendan P. Glackin*
BRENDAN P. GLACKIN

EXHIBIT A

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Indirect Purchaser Plaintiffs
Interim Co-Lead Class Counsel

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	**SDI SETTLEMENT AGREEMENT** DATE ACTION FILED: Oct. 3, 2012

This Settlement Agreement (hereinafter, "Agreement") is made and entered into as of the 30th day of March, 2018, by and between Defendants Samsung SDI Co., Ltd. and Samsung SDI America, Inc. (collectively, "SDI"), and Indirect Purchaser Plaintiffs, both individually and on behalf of the Classes in the above-captioned class action. This Agreement is intended by the Settling Parties to fully, finally and forever resolve, discharge and settle the Released Claims, upon and subject to the terms and conditions hereof.

RECITALS

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

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

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

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

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

WHEREAS, Indirect Purchaser Plaintiffs' Class Counsel have concluded, after due

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

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

AGREEMENT

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

A. Definitions

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

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

b. "Affiliates" means entities controlling, controlled by or under common control with a Releasee or Releasor.

c. "Authorized Claimant" means any Indirect Plaintiff Purchaser who, in accordance with the terms of this Agreement, is entitled to a distribution consistent with any Distribution Plan or order of the Court.

d. "Class" or "Classes" are generally defined as all persons and entities who, as residents of the United States and during the period from January 1, 2000 through May 31, 2011, indirectly purchased new for their own use and not for resale one of the following products which contained a lithium-ion cylindrical battery manufactured by one or more defendants or their coconspirators: (i) a portable computer; (ii) a power tool; (iii) a camcorder; or (iv) a replacement battery for any of these products. Excluded from the class are any purchases of Panasonic-branded computers. Also excluded from the class are any federal, state, or local governmental entities, any judicial officers presiding over this action, members of their immediate families and judicial staffs, and any juror assigned to this action, but included in the class are all nonfederal and non-state governmental entities in California.

e. "Class Counsel" means the law firms of Cotchett, Pitre & McCarthy, LLP; Hagens Berman Sobol Shapiro LLP; and Lieff Cabraser Heimann & Bernstein, LLP.

f. "Class Member" means a Person who or California government entity that falls within the definition of the Classes and does not timely and validly elect to be excluded from the Classes in accordance with the procedure to be established by the Court.

g. "Court" means the United States District Court for the Northern District of California.

h. "Distribution Plan" means any plan or formula of allocation of the Gross Settlement Fund, to be approved by the Court, whereby the Net Settlement Fund shall in the future be distributed to Authorized Claimants. Any Distribution Plan is not part of this Agreement.

i. "Effective Date" means the first date by which all of the events and conditions specified in ¶ 35 of this Agreement have occurred and have been met.

j. "Escrow Agent" means the agent jointly designated by Class Counsel and SDI, and any successor agent.

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

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

m. "Finished Product" means any product and/or electronic device that contains a Lithium Ion Battery or Lithium Ion Battery Pack, including but not limited to laptop PCs, notebook PCs, netbook computers, tablet computers, mobile phones, smart phones, cameras, camcorders, digital video cameras, digital audio players and power tools.

n. "Gross Settlement Fund" means the Settlement Amount plus any interest that may accrue.

o. "Indirect Purchaser Plaintiffs" means Christopher Hunt, Piya Robert Rojanasathit, Steve Bugge, Tom Pham, Bradley Seldin, Patrick McGuiness, John Kopp, Drew Fennelly, Jason Ames, William Cabral, Donna Shawn, Joseph O'Daniel, Cindy Booze, Matthew Ence, David Tolchin, Matt Bryant, Sheri Harmon, Christopher Bessette, Caleb Batey, Linda Lincoln, Bradley Van Patten, the City of Palo Alto, and the City of Richmond, as well as any other Person added as an Indirect Purchaser Plaintiff in the Actions.

p. "Judgment" means the order of judgment and dismissal of the Actions with prejudice.

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

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

s. "Lithium Ion Battery Pack" means Lithium Ion Cells that have been assembled into a pack, regardless of the number of Lithium Ion Cells contained in such packs.

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

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

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

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

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

y. "Released Claims" means any and all manner of claims, demands, rights, actions, suits, causes of action, whether class, individual or otherwise in nature, fees, costs, penalties, injuries, damages whenever incurred and liabilities of any nature whatsoever, known or unknown (including, but not limited to, "Unknown Claims"), foreseen or unforeseen, suspected or unsuspected, asserted or unasserted, contingent or non-contingent, in law or in equity, under

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

z. "Releasees" means SDI and their former, present and future direct and indirect parents, subsidiaries and Affiliates, and their respective former, present and future officers, directors, employees, managers, members, partners, agents, shareholders (in their capacity as shareholders), attorneys and legal representatives, and shall explicitly include all Samsung entities and their former and successor entities that sold Lithium Ion Batteries and Lithium Ion Battery Products and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing.

aa. "Releasors" means the Indirect Purchaser Plaintiffs and each and every Class Member on their own behalf and on behalf of their respective direct and indirect parents, subsidiaries and Affiliates, their former, present or future officers, directors, employees, agents

and legal representatives, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing.

bb. "Settlement" means the settlement of the Released Claims set forth herein.

cc. "Settlement Amount" means Thirty-Nine and one-half Million U.S. Dollars ($39,500,000).

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

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

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

B. Preliminary Approval Order, Notice Order and Settlement Hearing

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

3. Motion for Preliminary Approval. At a time to be determined by Class Counsel, and subject to prior notice of ten (10) days to SDI, Class Counsel shall submit this Agreement to the Court and shall apply for entry of a preliminary approval order ("Preliminary Approval Order"), requesting, inter alia, preliminary approval ("Preliminary Approval") of the Settlement.

The motion shall include (a) the proposed Preliminary Approval Order, and (b) a definition of the proposed settlement classes pursuant to Federal Rule of Civil Procedure 23. The text of the foregoing items (a)-(b) shall be agreed upon by the Settling Parties.

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

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

a. certifying the Classes, pursuant to Federal Rule of Civil Procedure 23, solely for purposes of this Settlement;

b. fully and finally approving the Settlement contemplated by this Agreement and its terms as being fair, reasonable and adequate within the meaning of Federal Rule of Civil Procedure 23 and directing its consummation pursuant to its terms and conditions;

c. finding that the notice given to the Class Members constituted the best notice practicable under the circumstances and complies in all respects with the requirements of Federal Rule of Civil Procedure 23 and due process;

d. directing that the Actions be dismissed with prejudice as to SDI and, except as provided for herein, without costs;

e. discharging and releasing the Releasees from all Released Claims;

f. permanently barring and enjoining the institution and prosecution, by Indirect Purchaser Plaintiffs and Class Members, of any other action against the Releasees in any court asserting any claims related in any way to the Released Claims;

g. reserving continuing and exclusive jurisdiction over the Settlement, including all future proceedings concerning the administration, consummation and enforcement of this Agreement;

h. determining pursuant to Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing entry of a final judgment as to SDI; and

i. containing such other and further provisions consistent with the terms of this Agreement to which the parties expressly consent in writing.

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

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

C. **Releases**

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

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

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

10. **Waiver of California Civil Code § 1542 and Similar Laws**. The Releasors acknowledge that, by executing this Agreement, and for the consideration received hereunder, it is their intention to release, and they are releasing, all Released Claims, even Unknown Claims. In furtherance of this intention, the Releasors expressly waive and relinquish, to the fullest extent permitted by law, any rights or benefits conferred by the provisions of California Civil Code § 1542, as set forth in ¶ 1(ee), or equivalent, similar or comparable laws or principles of law. The Releasors acknowledge that they have been advised by Class Counsel of the contents and effects of California Civil Code § 1542, and hereby expressly waive and release with respect to the

Released Claims any and all provisions, rights and benefits conferred by California Civil Code § 1542 or by any equivalent, similar or comparable law or principle of law in any jurisdiction. The Releasors may hereafter discover facts other than or different from those which they know or believe to be true with respect to the subject matter of the Released Claims, but the Releasors hereby expressly waive and fully, finally and forever settle and release any known or unknown, suspected or unsuspected, foreseen or unforeseen, asserted or unasserted, contingent or non-contingent, and accrued or unaccrued claim, loss or damage with respect to the Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such additional or different facts. The release of unknown, unanticipated, unsuspected, unforeseen, and unaccrued losses or claims in this paragraph is not a mere recital.

11. Claims Excluded from Release. Notwithstanding the foregoing, the releases provided herein shall not release claims against SDI for product liability, breach of contract, breach of warranty or personal injury, or any other claim unrelated to the allegations in the Actions. For avoidance of doubt, this 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. Additionally, the releases provided herein shall not release any claims to enforce the terms of this Agreement.

D. Settlement Fund

12. Settlement Payment. SDI shall pay the Settlement Amount in consideration of the covenants, agreements and releases set forth herein, and SDI and Class Counsel agree that the Settlement Amount does not exceed that portion of the actual damages claimed by Indirect Purchaser Plaintiffs. SDI shall pay by wire transfer the Settlement Amount to the Escrow Agent pursuant to mutually agreeable escrow instructions within forty five (45) business days after the Execution Date. This amount constitutes the total amount of payment that SDI is required to make in connection with this Settlement Agreement. This amount shall not be subject to reduction, and upon the occurrence of the Effective Date, no funds may be returned to SDI. The Escrow Agent shall only act in accordance with the mutually agreed escrow instructions.

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

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

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

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

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

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

b. The following shall be paid out of the Gross Settlement Fund: (i) all taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Gross Settlement Fund, including, without limitation, any taxes or tax detriments that may be imposed upon SDI or their counsel with respect to any income earned by the Gross Settlement Fund for any period during which the Gross Settlement Fund does not qualify as a "qualified settlement fund" for federal or state income tax purposes (collectively, "Taxes"); and (ii) all expenses and costs incurred in connection with the operation and implementation of this

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

E. Administration and Distribution of Gross Settlement Fund

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

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

a. To pay all costs and expenses reasonably and actually incurred in connection with providing notice to the Classes in connection with administering and distributing the Net Settlement Fund to Authorized Claimants, and in connection with paying escrow fees and costs, if any;

b. To pay all costs and expenses, if any, reasonably and actually incurred in soliciting claims and assisting with the filing and processing of such claims;

c. To pay the Taxes and Tax Expenses as defined herein;

d. To pay any Fee and Expense Award that is allowed by the Court, subject to and in accordance with the Agreement; and

e. To distribute the balance of the Net Settlement Fund to Authorized Claimants as allowed by the Agreement, any Distribution Plan or order of the Court.

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

a. Each member of the Classes who claims to be an Authorized Claimant shall be required to submit to the Notice and Claims Administrator a completed Proof of Claim and Release in such form as shall be approved by the Court;

b. Except as otherwise ordered by the Court, each member of the Classes who fails to submit a Proof of Claim and Release within such period as may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any payments pursuant to this Agreement and the Settlement set forth herein;

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

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

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

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

23. Distribution Plan Not Part of Settlement. It is understood and agreed by the Settling Parties that any Distribution Plan, including any adjustments to any Authorized Claimant's claim, is not a part of this Agreement and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement set forth in this Agreement, and any order or proceedings relating to the Distribution Plan shall not

operate to terminate or cancel this Agreement or affect the finality of the Judgment, the Final Approval Order, or any other orders entered pursuant to this Agreement. The time to appeal from an approval of the Settlement shall commence upon the Court's entry of the Judgment regardless of whether either the Distribution Plan or an application for attorneys' fees and expenses has been submitted to the Court or approved.

F. Attorneys' Fees and Reimbursement of Expenses

24. Fee and Expense Application. Class Counsel may submit an application or applications (the "Fee and Expense Application") for distributions from the Gross Settlement Fund for: (a) an award of attorneys' fees; plus (b) reimbursement of expenses incurred in connection with prosecuting the Actions; plus (c) any interest on such attorneys' fees and expenses (until paid) at the same rate and for the same periods as earned by the Gross Settlement Fund, as appropriate, and as may be awarded by the Court.

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

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

27. No Liability for Fees and Expenses of Class Counsel. Neither the Releasees nor their counsel shall have any responsibility for or liability whatsoever with respect to any

payment(s) to Class Counsel pursuant to this Agreement and/or to any other Person who may assert some claim thereto or any Fee and Expense Award that the Court may make in the Actions, other than as set forth in this Agreement.

G. Cooperation

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

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

30. Cooperation. In addition to its obligations under Antitrust Criminal Penalty Enhancement and Reform Act of 2004, Pub. L. No. 108-237, 118 Stat. 666 ("ACPERA"), which shall continue until this Action is finally dismissed against all Defendants, SDI shall make its best effort to cooperate as follows (to the extent that this has not already been completed through voluntary cooperation or in formal discovery):

a. Within a reasonable period of time (but no more than thirty (30) days) after submission by Class Counsel to the Court of a proposed form of notice to the Classes, SDI's counsel shall meet with Class Counsel for the purpose of identifying any SDI documents that have been produced as of that time that relate to and/or support the allegations in the Fourth Consolidated Amended Class Action Complaint or that show SDI Lithium Ion Battery sales, pricing, capacity or production; provided, however, that such obligation shall not require SDI to provide information protected by the attorney-client privilege, attorney work-product doctrine and/or other similar privileges and shall not waive any such protections or privileges. Further,

such communications shall be considered privileged settlement discussions pursuant to Federal Rule of Evidence 408 and similar provisions.

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

c. SDI agrees that Class Counsel may ask questions at depositions of SDI witnesses noticed by other plaintiffs in the Actions.

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

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

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

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

h. Upon reasonable notice after Preliminary Approval of this Agreement, SDI shall use their best efforts to make available up to three (3) of their employees identified by Indirect Purchaser Plaintiffs for interviews, depositions and/or testimony at trial, via

videoconference or at a mutually agreed upon location or locations (except for testimony at trial, which shall be at the United States District Court for the Northern District of California). Unless mutually agreed to by the Parties, any such interviews shall not exceed one six-hour day. Except as specifically provided for herein, any such depositions shall be conducted in accordance with the procedures set forth in the Deposition Protocol and shall count toward the maximum of twelve (12) depositions for SDI as a defendant group as set forth in the Deposition Protocol. Any depositions taken pursuant to this subparagraph 30.h. shall be taken only in the event that an SDI employee listed on SDI's watchlist consistent with subparagraph 30.g. intends to leave, or does leave, his or her employment at SDI or SDI otherwise consents.

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

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

33. Resolution of Disputes. To the extent the Settling Parties disagree about the interpretation or enforcement of any terms of this Agreement relating to future cooperation by

SDI, they agree to submit such disputes for binding resolution by Judge Vaughn R. Walker (ret.) or another mutually agreed neutral.

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

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

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

a. SDI no longer has any right under ¶¶ 40-42 to terminate this Agreement or, if SDI does have such right, they have given written notice to Class Counsel that they will not exercise such right;

b. Indirect Purchaser Plaintiffs no longer have any right under ¶¶ 40-42 to terminate this Agreement or, if Indirect Purchaser Plaintiffs do have such right, they have given written notice to SDI that they will not exercise such right;

c. the Court has finally approved the Settlement as described herein, following notice to the Classes and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure, and has entered the Judgment; and

d. the Judgment has become Final.

36. Occurrence of Effective Date. Upon the occurrence of all of the events referenced in the above paragraph, any and all remaining interest or right of SDI in or to the

Gross Settlement Fund, if any, shall be absolutely and forever extinguished, and the Gross Settlement Fund (less any Notice and Administrative Costs, Taxes, Tax Expenses or Fee and Expense Award paid) shall be transferred from the Escrow Agent to the Notice and Claims Administrator as successor Escrow Agent within ten (10) days after the Effective Date.

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

38. Exclusions and Rights to Terminate.

a. Class Counsel shall cause copies of requests for exclusion from the Classes to be provided to SDI's counsel. No later than fourteen (14) days after the final date for mailing requests for exclusion, Class Counsel shall provide SDI's counsel with a complete and final list of opt-outs. With the motion for final approval of the Settlement, Class Counsel will file with the Court a complete list of requests for exclusion from the Classes, including only the name, city and state of the person or entity requesting exclusion. With respect to any member of the Class who requests exclusion from the Classes, SDI reserves all of their legal rights and defenses, including, but not limited to, any defenses relating to whether the member of the Class is an indirect purchaser of the allegedly price-fixed product and/or has standing to bring any claim. SDI shall have the option to terminate this Agreement if the purchases of Lithium Ion Batteries, Lithium Ion Packs and/or Finished Products made by members of the Classes who timely and validly request exclusion from the Classes equal or exceed five percent (5%) of the total volume of purchases made by the Classes. After meeting and conferring with Class Counsel, SDI 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 SDI shall have a minimum of ten (10) days in which to decide whether to terminate this Agreement after receiving the final opt-out list.

b. SDI believes it has made their best efforts to reasonably comply with their discovery obligations to date, and Indirect Purchaser Plaintiffs possess all non-privileged,

documents of SDI's responsive to their discovery requests through that effort. Indirect Purchaser Plaintiffs' termination rights under this paragraph expire upon final approval of the settlement in this matter by the Court prior to any appeals.

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

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

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

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

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

a. within five (5) business days after written notification of such event is sent by counsel for SDI to the Escrow Agent, the Gross Settlement Fund—including the Settlement Amount and all interest earned on the Settlement Amount while held in escrow excluding only Notice and Administrative Costs that have either been properly disbursed or are due and owing, Taxes and Tax Expenses that have been paid or that have accrued and will be payable at some later date, and attorneys' fees and costs that have been disbursed pursuant to Court order—will be refunded, reimbursed and repaid by the Escrow Agent to SDI; if said amount or any portion thereof is not returned within such five (5) day period, then interest shall accrue thereon at the rate of ten percent (10%) per annum until the date that said amount is returned;

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

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

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

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

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

I. No Admission of Liability

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

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

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

J. Miscellaneous Provisions

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

47. Consent to Jurisdiction. SDI and each Class Member hereby irrevocably submit to the exclusive jurisdiction of the Court only for the specific purpose of any suit, action, proceeding or dispute arising out of or relating to this Agreement or the applicability of this Agreement. Solely for purposes of such suit, action or proceeding, to the fullest extent that they may effectively do so under applicable law, SDI and the Class Members irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of the Court or that the Court is in any way an improper venue

or an inconvenient forum. Without limiting the generality of the foregoing, it is hereby agreed that any dispute concerning the provisions of ¶¶ 7-11 hereof, including but not limited to any suit, action or proceeding in which the provisions of ¶¶ 7-11 hereof are asserted as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection, constitutes a suit, action or proceeding arising out of or relating to this Agreement. In the event that the provisions of ¶¶ 7-11 hereof are asserted by any Releasee as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection in any suit, action or proceeding, it is hereby agreed that such Releasee shall be entitled to a stay of that suit, action or proceeding until the Court has entered a final judgment no longer subject to any appeal or review determining any issues relating to the defense or objection based on the provisions of ¶¶ 7-11. Nothing herein shall be construed as a submission to jurisdiction for any purpose other than any suit, action, proceeding or dispute arising out of or relating to this Agreement or the applicability of this Agreement.

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

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

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

terms and to enter into and execute this Agreement and any modifications or amendments to the Agreement on behalf of the Classes that they deem appropriate.

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

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

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

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

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

If directed to SDI, address notice to:

ALLEN & OVERY LLP
Michael S. Feldberg (michal.feldberg@allenovery.com)
1221 Avenue of the Americas
New York, NY 10020
Telephone: 212-610-6360

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

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

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

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

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

57. Integrated Agreement. This Agreement constitutes the entire agreement between the Settling Parties and no representations, warranties or inducements have been made to any party concerning this Agreement other than the representations, warranties and covenants contained and memorialized herein. It is understood by the Settling Parties that, except for the matters expressly represented herein, the facts or law with respect to which this Agreement is entered into may turn out to be other than or different from the facts now known to each party or believed by such party to be true. Each party therefore expressly assumes the risk of the facts or law turning out to be so different, and agrees that this Agreement shall be in all respects effective

and not subject to Termination by reason of any such different facts or law. Except as otherwise provided herein, each party shall bear its own costs and attorneys' fees.

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

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

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

Dated: March 7, 2018

HAGENS BERMAN SOBOL SHAPIRO LLP

By: _____
JEFF D. FRIEDMAN

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

Dated: March 7, 2018

COTCHETT, PITRE & McCARTHY , LLP

By: _____
ADAM J. ZAPALA

Joseph W. Cotchett (SBN 36324)
Adam J. Zapala (SBN 245748)
Adam M. Shapiro (SBN 267429)
Tamarah P. Prevost (SBN 313422)

840 Malcolm Road
Burlingame, CA 94010
Telephone: (650) 697-6000
Facsimile: (650) 697-0577
jcotchett@cpmlegal.com
azapala@cpmlegal.com
ashapiro@cpmlegal.com
tprevost@cpmlegal.com

Dated: March 7, 2018

LIEFF CABRASER HEIMANN & BERNSTEIN

By: _____
BRENDAN P. GLACKIN

Elizabeth J. Cabraser (SBN 083151)
Brendan P. Glackin (SBN 199643)
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275 Battery Street, 29th Floor
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Facsimile: (415) 956-1008
ecabraser@lchb.com
bglackin@lchb.com
lchan@lchb.com

Dated: March __, 2018

COTCHETT, PITRE & McCARTHY , LLP

By: _____
ADAM J. ZAPALA

Joseph W. Cotchett (SBN 36324)
Adam J. Zapala (SBN 245748)
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jcotchett@cpmlegal.com
azapala@cpmlegal.com
ashapiro@cpmlegal.com
tprevost@cpmlegal.com

Dated: March 7, 2018

LIEFF CABRASER HEIMANN & BERNSTEIN

By: Brendan Glackin
BRENDAN P. GLACKIN

Elizabeth J. Cabraser (SBN 083151)
Brendan P. Glackin (SBN 199643)
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275 Battery Street, 29th Floor
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Telephone: (41 5) 956-1000
Facsimile: (415) 956-1008
ecabraser@lchb.com
bglackin@lchb.com
lchan@lchb.com

Dated: March 30, 2018

ALLEN & OVERY LLP

By: _____

Michael S. Feldberg (*pro hac vice*)
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1221 Avenue of the Americas
New York, NY 10020
212-610-6360
michael.feldberg@allenovery.com

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1101 New York Avenue NW
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matthew.boucher@allenovery.com

Counsel for Samsung SDI Co., Ltd., and Samsung SDI America, Inc.

EXHIBIT B

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

IN RE LITHIUM ION BATTERIES ANTITRUST LITIGATION,	Case No. 13-MD-02420 YGR (DMR) MDL No. 2420
This Documents Relates to: ALL INDIRECT PURCHASER ACTIONS	TOKIN CORPORATION SETTLEMENT AGREEMENT DATE ACTION FILED: Oct. 3, 2012

This Settlement Agreement (hereinafter, "Agreement") is made and entered into as of the 2nd day of March, 2018 by and between Defendant TOKIN Corporation, formerly known as NEC TOKIN Corporation (hereinafter, "TOKIN"), and the Indirect Purchaser Plaintiffs (also referred to as, "IPPs"), both individually and on behalf of Classes in the above-captioned class action. This Agreement is intended by the Settling Parties to fully, finally and forever resolve, discharge and settle the Released Claims, upon and subject to the terms and conditions hereof.

RECITALS

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

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

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

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

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

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

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

AGREEMENT

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

A. Definitions

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

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

(b) "Affiliates" means entities controlling, controlled by or under common control with a Releasee or Releasor.

(c) "Authorized Claimant" means any Indirect Plaintiff Purchaser who, in accordance with the terms of this Agreement, is entitled to a distribution consistent with any Distribution Plan or order of the Court.

(d) "Class" or "Classes" are generally defined as all persons and entities who as residents of the United States and during the period from January 1, 2000 through May 31, 2011, indirectly purchased new for their own use and not for resale one of the following products which contained a lithium-ion cylindrical battery manufactured by one or more defendants or their co-conspirators: (i) a portable computer; (ii) a power tool; (iii) a camcorder; or (iv) a replacement battery for any of these products. Excluded from the class are any purchases of Panasonic-branded computers. Also excluded from the class are any federal, state, or local governmental entities, any judicial officers presiding over this action, members of their immediate families and judicial staffs, and any juror assigned to this action, but included in the class are all non-federal and non-state governmental entities in California.

(e) "Class Counsel" means the law firms of Cotchett, Pitre & McCarthy, LLP; Hagens Berman Sobol Shapiro LLP; and Lieff Cabraser Heimann & Bernstein, LLP.

(f) "Class Member" means a Person that falls within the definition of the Classes and does not timely and validly elect to be excluded from the Classes in accordance with the procedure to be established by the Court.

(g) "Court" means the United States District Court for the Northern District of California.

(h) "Distribution Plan" means any plan or formula of allocation of the Gross Settlement Fund, to be approved by the Court, whereby the Net Settlement

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

(i) "Effective Date" means the first date by which all of the events and conditions specified in ¶ 28 of this Agreement have occurred and have been met.

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

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

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

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

(n) "Gross Settlement Fund" means the Settlement Amount plus any interest that may accrue.

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

(p) "Judgment" means the order of judgment and dismissal of the Actions with prejudice as to TOKIN.

(q) "Lithium Ion Battery" means a Lithium Ion Battery Cell or Lithium Ion Battery Pack.

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

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

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

(u) "Notice and Administrative Costs" means the reasonable sum of money not in excess of three hundred fifty thousand U.S. Dollars ($300,000.00) to be paid out of the Gross Settlement Fund to pay for notice to the Classes and related administrative costs.

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

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

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

(y) "Released Claims" means any and all manner of claims, demands, rights, actions, suits, causes of action, whether class, individual or otherwise in nature, fees, costs, penalties, injuries, damages whenever incurred and liabilities of any nature whatsoever, known or unknown (including, but not limited to, "Unknown Claims"), foreseen or unforeseen, suspected or unsuspected, asserted or unasserted, contingent or non-contingent, in law or in equity, under the laws of any jurisdiction, which Releasors or any of them, whether directly, representatively, derivatively, or in any other capacity, ever had, now have or hereafter can, shall or may have, relating in any way to any conduct prior to the Execution Date of this Agreement and arising out of or related in any way in whole or in part to any facts, circumstances, acts or

omissions arising out of or related to (1) any purchase or sale of Lithium Ion Batteries (including Lithium Ion Batteries contained in Finished Products) up through May 31, 2011; or (2) any agreement, combination or conspiracy to raise, fix, maintain or stabilize the prices of Lithium Ion Batteries (including Lithium Ion Batteries contained in Finished Products) or restrict, reduce, alter or allocate the supply, quantity or quality of Lithium Ion Batteries (including Lithium Ion Batteries contained in Finished Products) or concerning the development, manufacture, supply, distribution, transfer, marketing, sale or pricing of Lithium Ion Batteries (including Lithium Ion Batteries contained in Finished Products), or any other conduct alleged in the Actions or relating to restraint of competition that could have been or hereafter could be alleged against the Releasees relating to Lithium Ion Batteries; or (3) any other restraint of competition relating to Lithium Ion Batteries that could be asserted as a violation of the Sherman Act or any other antitrust, unjust enrichment, unfair competition, unfair practices, trade practices, price discrimination, unitary pricing, racketeering, contract, civil conspiracy or consumer protection law, whether under federal, state, local or foreign law.

(z) "Releasees" means TOKIN and their former, present and future direct and indirect parents, subsidiaries and Affiliates, and their respective former, present and future officers, directors, employees, managers, members, partners, agents, shareholders (in their capacity as shareholders), attorneys and legal representatives, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing.

(aa) "Releasors" means the Indirect Purchaser Plaintiffs and each and every Class Member on their own behalf and on behalf of their respective direct and indirect parents, subsidiaries and Affiliates, their former, present or future

officers, directors, employees, agents and legal representatives, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing.

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

(cc) "Settlement Amount" means Two Million U.S. Dollars ($2,000,000).

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

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

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

B. Preliminary Approval Order, Notice Order and Settlement Hearing

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

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

4. Proposed Form of Notice. At a time to be determined in their sole discretion but no later than Class Counsel proposes a notice program for any other class settlement entered into by Class Counsel that has not (as of the Execution Date) already had a notice program approved by the Court, Class Counsel shall submit to the Court for approval a proposed form of, method for and schedule for dissemination of notice to the Classes. To the extent practicable and to the extent consistent with this paragraph, Class Counsel may seek to coordinate this notice program with other settlements that may be reached in the Actions in order to reduce the expense of notice. This motion shall recite and ask the Court to find that the proposed form of and method for dissemination of notice to the Classes constitutes valid, due and sufficient notice to the Classes, constitutes the best notice practicable under the circumstances, and complies fully with the requirements of Federal Rule of Civil Procedure 23. Class Counsel shall provide TOKIN with seven days advance notice of the text of the notice(s) to be provided to the Classes, and shall consider in good faith any concerns or suggestions expressed by TOKIN. TOKIN shall be responsible for providing all notices required by the Class Action Fairness Act of 2005 to be provided to state attorneys general or to the United States of America.

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

(a) certifying the Classes, pursuant to Federal Rule of Civil Procedure 23, solely for purposes of this Settlement;

(b) fully and finally approving the Settlement contemplated by this Agreement and its terms as being fair, reasonable and adequate within the meaning of Federal Rule of Civil Procedure 23 and directing its consummation pursuant to its terms and conditions;

(c) finding that the notice given to the Class Members constituted the best notice practicable under the circumstances and complies in all respects with the requirements of Federal Rule of Civil Procedure 23 and due process;

(d) directing that the Actions be dismissed with prejudice as to TOKIN and, except as provided for herein, without costs;

(e) discharging and releasing the Releasees from all Released Claims;

(f) permanently barring and enjoining the institution and prosecution, by Indirect Purchaser Plaintiffs and Class Members, of any other action against the Releasees in any court asserting any claims related in any way to the Released Claims;

(g) reserving continuing and exclusive jurisdiction over the Settlement, including all future proceedings concerning the administration, consummation and enforcement of this Agreement;

(h) determining pursuant to Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing entry of a final judgment as to TOKIN; and

(i) containing such other and further provisions consistent with the terms of this Agreement to which the parties expressly consent in writing.

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

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

C. Releases

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

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

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

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

11. Claims Excluded from Release. Notwithstanding the foregoing, the releases provided herein shall not release claims against TOKIN for product liability, breach of contract, breach of warranty or personal injury, or any other claim unrelated to the allegations in the Actions. For avoidance of doubt, this 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. Additionally, the releases provided herein shall not release any claims to enforce the terms of this Agreement.

D. Settlement Fund

12. Settlement Payment. TOKIN shall pay by wire transfer the Settlement Amount to the Escrow Agent pursuant to mutually agreeable escrow instructions within no more than thirty (30) business days after the later of the Execution Date and the date on which TOKIN receives appropriate instructions for making payment to the Escrow Agent. This amount constitutes the total amount of payment that TOKIN is required to make in connection with this Settlement Agreement. This amount shall not be subject to reduction, and upon the occurrence of the Effective Date, no funds may be returned to TOKIN. The Escrow Agent shall only act in accordance with the mutually agreed escrow instructions.

13. Disbursements Prior to Effective Date. No amount may be disbursed from the Gross Settlement Fund unless and until the Effective Date, except that: (a) Notice and Administrative Costs, which may not exceed three hundred thousand U.S. Dollars ($300,000.00), may be paid from the Gross Settlement Fund as they become due; (b) Taxes and Tax Expenses (as defined in ¶ 17(b) below) may be paid from the Gross Settlement Fund as they become due; and (c) attorneys' fees and reimbursement of litigation costs and expenses, as may be ordered by the Court, may be disbursed during the pendency of any appeals which may be taken from the judgment to be entered by the Court finally approving this Settlement. Class Counsel will attempt in good faith to minimize the amount of Notice and Administrative Costs and may seek to coordinate the notice described herein with other settlements in these Actions.

14. Refund by Escrow Agent. If the Settlement as described herein is finally disapproved by any court, or it is terminated as provided herein, or the Judgment is overturned on appeal or by writ, the Gross Settlement Fund, including the Settlement Amount and all interest earned on the Settlement Amount while held in escrow, excluding only Notice and Administrative Costs, Taxes and Tax Expenses (as defined herein), shall be refunded, reimbursed and repaid by the Escrow Agent to TOKIN within five (5) business days after receiving notice pursuant to ¶ 35 below.

15. Refund by Class Counsel. If the Settlement as described herein is finally disapproved by any court, or it is terminated as provided herein, or the Judgment is overturned on appeal or by writ, any attorneys' fees and costs previously paid pursuant to this Agreement (as well as interest on such amounts) shall be refunded, reimbursed and repaid by Class Counsel to TOKIN within thirty (30) business days after receiving notice pursuant to ¶ 35 below.

16. No Additional Payments by TOKIN. Under no circumstances will TOKIN be required to pay more or less than the Settlement Amount pursuant to this Agreement and the Settlement set forth herein. For purposes of clarification, the payment of any Fee and Expense Award (as defined in ¶ 24 below), the Notice and Administrative Costs, and any other costs associated with the implementation of this Settlement Agreement shall be exclusively paid from the Settlement Amount.

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

(a) For the purpose of §468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "administrator" shall be the Escrow Agent. The Escrow Agent shall satisfy the administrative requirements imposed by Treas. Reg. §1.468B-2 by, *e.g.*, (i) obtaining a taxpayer identification number, (ii) satisfying any information reporting or withholding requirements imposed on distributions from the Gross Settlement Fund, and (iii) timely and properly filing applicable

federal, state and local tax returns necessary or advisable with respect to the Gross Settlement Fund (including, without limitation, the returns described in Treas. Reg. §1.468B-2(k)) and paying any taxes reported thereon. Such returns (as well as the election described in this paragraph) shall be consistent with the provisions of this paragraph and in all events shall reflect that all Taxes as defined in ¶ 17(b) below on the income earned by the Gross Settlement Fund shall be paid out of the Gross Settlement Fund as provided in ¶ 19 hereof;

(b) The following shall be paid out of the Gross Settlement Fund: (i) all taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Gross Settlement Fund, including, without limitation, any taxes or tax detriments that may be imposed upon TOKIN or its counsel with respect to any income earned by the Gross Settlement Fund for any period during which the Gross Settlement Fund does not qualify as a "qualified settlement fund" for federal or state income tax purposes (collectively, "Taxes"); and (ii) all expenses and costs incurred in connection with the operation and implementation of this paragraph, including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this paragraph (collectively, "Tax Expenses"). In all events neither TOKIN nor its counsel shall have any liability or responsibility for the Taxes or the Tax Expenses. With funds from the Gross Settlement Fund, the Escrow Agent shall indemnify and hold harmless TOKIN and its counsel for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Gross Settlement Fund and shall timely be paid by the Escrow Agent out of the

Gross Settlement Fund without prior order from the Court, and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. §1.468B-2(1)(2)); neither TOKIN nor its counsel is responsible therefor, nor shall they have any liability therefor. The Settling Parties agree to cooperate with the Escrow Agent, each other, their tax attorneys and their accountants to the extent reasonably necessary to carry out the provisions of this paragraph.

E. Administration and Distribution of Gross Settlement Fund

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

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

(a) To pay all costs and expenses reasonably and actually incurred in connection with providing notice to the Classes in connection with administering and distributing the Net Settlement Fund to Authorized Claimants, and in connection with paying escrow fees and costs, if any;

(b) To pay all costs and expenses, if any, reasonably and actually incurred in soliciting claims and assisting with the filing and processing of such claims;

(c) To pay the Taxes and Tax Expenses as defined herein;

(d) To pay any Fee and Expense Award that is allowed by the Court, subject to and in accordance with the Agreement; and

(e) To distribute the balance of the Net Settlement Fund to Authorized Claimants as allowed by the Agreement, any Distribution Plan or order of the Court.

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

(a) Each member of the Classes who claims to be an Authorized Claimant shall be required to submit to the Notice and Claims Administrator a completed Proof of Claim and Release in such form as shall be approved by the Court;

(b) Except as otherwise ordered by the Court, each member of the Classes who fails to submit a Proof of Claim and Release within such period as may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any payments pursuant to this Agreement and the Settlement set forth herein;

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

(d) All Persons that fall within the definition of the Classes who do not timely and validly request to be excluded from the Classes shall be subject to and bound by the provisions of this Agreement, the releases contained herein,

and the Judgment with respect to all Released Claims, regardless of whether such Persons seek or obtain by any means, including, without limitation, by submitting a Proof of Claim and Release or any similar document, any distribution from the Gross Settlement Fund or the Net Settlement Fund.

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

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

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

Settlement shall commence upon the Court's entry of the Judgment regardless of whether the Distribution Plan or an application for attorneys' fees and expenses has been submitted to the Court or approved.

F. Attorneys' Fees and Reimbursement of Expenses

24. Fee and Expense Application. Class Counsel may submit an application or applications (the "Fee and Expense Application") for distributions from the Gross Settlement Fund for: (a) an award of attorneys' fees; plus (b) reimbursement of expenses incurred in connection with prosecuting the Actions; plus (c) any interest on such attorneys' fees and expenses (until paid) at the same rate and for the same periods as earned by the Gross Settlement Fund, as appropriate, and as may be awarded by the Court.

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

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

27. No Liability for Fees and Expenses of Class Counsel. Neither the Releasees nor their counsel shall have any responsibility for or liability whatsoever with respect to any payment(s) to Class Counsel pursuant to this Agreement and/or to any other Person who may assert

some claim thereto or any Fee and Expense Award that the Court may make in the Actions, other than as set forth in this Agreement.

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

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

(a) TOKIN no longer has any right under ¶¶ 33-34 to terminate this Agreement or, if TOKIN does have such right, they have given written notice to Class Counsel that they will not exercise such right;

(b) Indirect Purchaser Plaintiffs no longer have any right under ¶¶ 33-34 to terminate this Agreement or, if Indirect Purchaser Plaintiffs do have such right, they have given written notice to TOKIN that they will not exercise such right;

(c) the Court has finally approved the Settlement as described herein, following notice to the Classes and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure, and has entered the Judgment; and

(d) the Judgment has become Final.

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

30. Failure of Effective Date to Occur. If all of the conditions specified in ¶ 28 are not met, then this Agreement shall be cancelled and terminated, subject to and in accordance with ¶¶ 33-35 unless the Settling Parties mutually agree in writing to proceed with this Agreement.

31. Exclusions. Class Counsel shall cause copies of requests for exclusion from the Classes to be provided to TOKIN's counsel. No later than fourteen (14) days after the final date

for mailing requests for exclusion, Class Counsel shall provide TOKIN's counsel with a complete and final list of opt-outs. With the motion for final approval of the Settlement, Class Counsel will file with the Court a complete list of requests for exclusion from the Classes, including only the name, city and state of the person or entity requesting exclusion. With respect to any member of the Class who requests exclusion from the Classes, TOKIN reserves all of its legal rights and defenses, including, but not limited to, any defenses relating to whether the member of the Class is an indirect purchaser of the allegedly price-fixed product and/or has standing to bring any claim. TOKIN shall have the option to terminate this Agreement if the purchases of Lithium Ion Batteries, Lithium Ion Packs and/or Finished Products made by members of the Classes who timely and validly request exclusion from the Classes equal or exceed five percent (5%) of the total volume of purchases made by the Classes. After meeting and conferring with Class Counsel, TOKIN 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 TOKIN shall have a minimum of ten (10) days in which to decide whether to terminate this Agreement after receiving the final opt-out list. In the event that this Agreement is terminated by either of the Settling Parties: (i) this Agreement shall be null and void, and shall have no force or effect and shall be without prejudice to the rights and contentions of Releasees and Releasors in this or any other litigation; and (ii) the Settlement fund paid by TOKIN, plus interest thereon, shall be refunded promptly to TOKIN, minus such payment (as set forth in this Agreement) of Notice and Administrative Costs and Taxes and Tax Expenses, consistent with the provisions of ¶ 35.

32. Objections. Settlement Class members who wish to object to any aspect of the Settlement must file with the Court a written statement containing their objection by the end of the period to object to the Settlement. Any award or payment of attorneys' fees made to the counsel of an objector to the Settlement shall only be made by Court order and upon a showing of the benefit conferred to the Classes. In determining any such award of attorneys' fees to an objectors' counsel, the Court will consider the incremental value to the Classes caused by any such objection.

Any award of attorneys' fees by the Court will be conditioned on the objector and his or her attorney stating under penalty of perjury that no payments shall be made to the objector based on the objector's participation in the matter other than as ordered by the Court. TOKIN shall have no responsibility for any such payments.

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

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

35. Termination. Unless otherwise ordered by the Court, in the event that the Effective Date does not occur or this Agreement should terminate, or be cancelled or otherwise fail to become effective for any reason, including, without limitation, in the event that this Agreement is terminated by either of the Settling Parties pursuant to ¶ 31, the Settlement as described herein is not finally approved by the Court or the Judgment is reversed or vacated following any appeal taken therefrom, then:

(a) within five (5) business days after written notification of such event is sent by counsel for TOKIN to the Escrow Agent, the Gross Settlement Fund—including the Settlement Amount and all interest earned on the Settlement Fund while held in escrow excluding only Notice and Administrative Costs that have either been properly disbursed or are due and owing, Taxes and Tax Expenses that have been paid or that have accrued and will be payable at some later date, and attorneys' fees and costs that have been disbursed pursuant to Court order—will be refunded, reimbursed and repaid by the Escrow Agent to TOKIN; if said amount or any portion thereof is not returned within such five (5) day period, then interest shall accrue thereon at the rate of ten percent (10%) per annum until the date that said amount is returned;

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

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

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

(e) the terms and provisions of this Agreement, with the exception of ¶¶ 13-15, 17, 27-28, 30, 33-35, 37-38, 40-41, 43-50 (which shall continue in full force and effect), shall be null and void and shall have no further force or effect with respect to the Settling Parties, and neither the existence nor the terms of

this Agreement (nor any negotiations preceding this Agreement nor any acts performed pursuant to, or in furtherance of, this Agreement) shall be used in the Actions or in any other action or proceeding for any purpose (other than to enforce the terms remaining in effect); and

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

H. No Admission of Liability

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

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

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

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

I. Miscellaneous Provisions

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

40. Consent to Jurisdiction. TOKIN and each Class Member hereby irrevocably submit to the exclusive jurisdiction of the Court only for the specific purpose of any suit, action, proceeding or dispute arising out of or relating to this Agreement or the applicability of this Agreement. Solely for purposes of such suit, action or proceeding, to the fullest extent that they may effectively do so under applicable law, TOKIN and the Class Members irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of the Court or that the Court is in any way an improper venue or an inconvenient forum. Without limiting the generality of the foregoing, it is hereby agreed that any dispute concerning the provisions of ¶¶ 7-11 hereof, including but not limited to any suit, action or proceeding in which the provisions of ¶¶ 7-11 hereof are asserted as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection, constitutes a suit, action or proceeding arising out of or relating to this Agreement. In the event that the provisions of ¶¶ 7-11 hereof are asserted by any Releasee as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection in any suit, action or proceeding, it is hereby agreed that such Releasee shall be entitled to a stay of that suit, action or proceeding until the Court has entered a final judgment no longer subject to any appeal or review determining any issues relating

to the defense or objection based on the provisions of ¶¶ 7-11. Nothing herein shall be construed as a submission to jurisdiction for any purpose other than any suit, action, proceeding or dispute arising out of or relating to this Agreement or the applicability of this Agreement.

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

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

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

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

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

COTCHETT, PITRE & MCCARTHY, LLP
Adam J. Zapala (azapala@cpmlegal.com)
San Francisco Airport Office Center
840 Malcolm Road, Suite 200
Burlingame, CA 94010
Telephone: 650-697-6000
Facsimile: 650-697-0577

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

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

If directed to TOKIN, address notice to:

GIBSON DUNN & CRUTCHER, LLP.
Trey Nicoud (tnicoud@gibsondunn.com)
555 Mission Street, Ste. 3000
San Francisco, CA 94105
Telephone: 415-393-8308
Facsimile: 415-374-8473
Email: tnicoud@gibsondunn.com

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

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

47. Choice of Law. This Agreement shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of California, and the rights and obligations of the parties to this Agreement shall be construed and enforced in accordance with,

and governed by, the internal, substantive laws of the State of California without giving effect to that state's choice of law principles.

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

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

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

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

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

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

DATED: March 5, 2018

HAGENS BERMAN SOBOL SHAPIRO LLP

By: _____
JEFF D. FRIEDMAN

Steve W. Berman (*pro hac vice)*
Shana E. Scarlett (217895)
Jeff D. Friedman (173886)
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steve@hbsslaw.com
jefff@hbsslaw.com
shanas@hbsslaw.com

DATED: March 5, 2018

COTCHETT, PITRE & McCARTHY, LLP

By: _____
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EXHIBIT C

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

IN RE LITHIUM ION BATTERIES ANTITRUST LITIGATION,	Case No. 13-MD-02420 YGR (DMR) MDL No. 2420
This Documents Relates to: ALL INDIRECT PURCHASER ACTIONS	TOSHIBA SETTLEMENT AGREEMENT DATE ACTION FILED: Oct. 3, 2012

This Settlement Agreement (hereinafter, "Agreement") is made and entered into as of the 15th day of February, 2018, by and between Defendant Toshiba Corporation ("Toshiba"), and Indirect Purchaser Plaintiffs, both individually and on behalf of the Classes in the above-captioned class action. This Agreement is intended by the Settling Parties to fully, finally and forever resolve, discharge and settle the Released Claims, upon and subject to the terms and conditions hereof.

R E C I T A L S

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

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

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

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

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

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

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

AGREEMENT

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

A. Definitions

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

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

(b) "Affiliates" means entities controlling, controlled by or under common control with a Releasee or Releasor, including any other entity that is now or was previously owned by Toshiba or a Releasor, where "owned" means holding directly or indirectly 50% greater equity or beneficial interest.

(c) "Authorized Claimant" means any Indirect Plaintiff Purchaser who, in accordance with the terms of this Agreement, is entitled to a distribution consistent with any Distribution Plan or order of the Court.

(d) "Class" or "Classes" are generally defined as all persons and entities who, as residents of the United States and during the period from January 1, 2000 through May 31, 2011, indirectly purchased new for their own use and not for resale one of the following products which contained a lithium-ion cylindrical battery manufactured by one or more defendants or their co-conspirators: (i) a portable computer; (ii) a power tool; (iii) a camcorder; or (iv) a replacement battery for any of these products. Excluded from the class are any purchases of Panasonic-branded computers. Also excluded from the class are any federal, state, or local governmental entities, any judicial officers presiding over this action, members of their immediate families and judicial staffs, and any juror assigned to this action, but included in the class are all non-federal and non-state governmental entities in California.

(e) "Class Counsel" means the law firms of Cotchett, Pitre & McCarthy, LLP; Hagens Berman Sobol Shapiro LLP; and Lieff Cabraser Heimann & Bernstein, LLP.

(f) "Class Member" means a Person who or California government entity that falls within the definition of the Classes and does not timely and validly elect to be excluded from the Classes in accordance with the procedure to be established by the Court.

(g) "Court" means the United States District Court for the Northern District of California.

(h) "Distribution Plan" means any plan or formula of allocation of the Gross Settlement Fund, to be approved by the Court, whereby the Net Settlement Fund shall in the future be distributed to Authorized Claimants. Any Distribution Plan is not part of this Agreement.

(i) "Effective Date" means the first date by which all of the events and conditions specified in ¶ 28 of this Agreement have occurred and have been met.

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

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

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

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

(n) "Gross Settlement Fund" means the Settlement Amount plus any interest that may accrue.

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

(p) "Judgment" means the order of judgment and dismissal of the Actions with prejudice.

(q) "Lithium Ion Battery" means a Lithium Ion Battery Cell or Lithium Ion Battery Pack.

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

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

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

(u) "Notice and Administrative Costs" means the reasonable sum of money not in excess of three hundred thousand U.S. Dollars ($300,000.00) to be paid

out of the Gross Settlement Fund to pay for notice to the Classes and related administrative costs.

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

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

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

(y) "Released Claims" means any and all manner of claims, demands, rights, actions, suits, causes of action, whether class, individual or otherwise in nature, fees, costs, penalties, injuries, damages whenever incurred and liabilities of any nature whatsoever, known or unknown (including, but not limited to, "Unknown Claims"), foreseen or unforeseen, suspected or unsuspected, asserted or unasserted, contingent or non-contingent, in law or in equity, under the laws of any jurisdiction, which Releasors or any of them, whether directly, representatively, derivatively, or in any other capacity, ever had, now have or hereafter can, shall or may have, relating in any way to any conduct prior to the date of this Agreement and arising out of or related in any way in whole or in part to any facts, circumstances, acts or omissions arising out of or related to (1) any purchase or sale of Lithium Ion Batteries (including Lithium Ion Batteries contained in Finished Products) up through May 31, 2011; or (2) any agreement, combination or conspiracy to raise, fix,

maintain or stabilize the prices of Lithium Ion Batteries (including Lithium Ion Batteries contained in Finished Products) or restrict, reduce, alter or allocate the supply, quantity or quality of Lithium Ion Batteries (including Lithium Ion Batteries contained in Finished Products) or concerning the development, manufacture, supply, distribution, transfer, marketing, sale or pricing of Lithium Ion Batteries (including Lithium Ion Batteries contained in Finished Products), or any other conduct alleged in the Actions or relating to restraint of competition that could have been or hereafter could be alleged against the Releasees relating to Lithium Ion Batteries (including Lithium Ion Batteries contained in Finished Products); or (3) any other restraint of competition relating to Lithium Ion Batteries (including Lithium Ion Batteries contained in Finished Products) that could be asserted as a violation of the Sherman Act or any other antitrust, unjust enrichment, unfair competition, unfair practices, trade practices, price discrimination, unitary pricing, racketeering, contract, civil conspiracy or consumer protection law, whether under federal, state, local or foreign law.

(z) "Releasees" means Toshiba and its former, present and future direct and indirect parents, subsidiaries and Affiliates, and its respective former, present and future officers, directors, supervisors, employees, managers, members, partners, agents, shareholders (in their capacity as shareholders), insurers, attorneys and legal representatives, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing.

(aa) "Releasors" means the Indirect Purchaser Plaintiffs and each and every Class Member on their own behalf and on behalf of their respective direct and indirect parents, subsidiaries and Affiliates, their former, present or future officers, directors, supervisors, employees, managers, members, partners, agents, shareholders (in their capacity as shareholders), attorneys and legal

representatives, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing.

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

(cc) "Settlement Amount" means Two Million U.S. Dollars ($2,000,000).

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

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

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

B. Preliminary Approval Order, Notice Order and Settlement Hearing

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

3. Motion for Preliminary Approval. At a time to be determined by Class Counsel, but no later than six months from the Execution Date, and subject to prior notice of ten (10) days to Toshiba, Class Counsel shall submit this Agreement to the Court and shall apply for entry of a

preliminary approval order ("Preliminary Approval Order"), requesting, *inter alia*, preliminary approval ("Preliminary Approval") of the Settlement. The motion shall include (a) the proposed Preliminary Approval Order, and (b) a definition of the proposed settlement classes pursuant to Federal Rule of Civil Procedure 23. The text of the foregoing items (a)-(b) shall be agreed upon by the Settling Parties.

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

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

(a) certifying the Classes, pursuant to Federal Rule of Civil Procedure 23, solely for purposes of this Settlement;

(b) fully and finally approving the Settlement contemplated by this Agreement and its terms as being fair, reasonable and adequate within the meaning of

Federal Rule of Civil Procedure 23 and directing its consummation pursuant to its terms and conditions;

(c) finding that the notice given to the Class Members constituted the best notice practicable under the circumstances and complies in all respects with the requirements of Federal Rule of Civil Procedure 23 and due process;

(d) directing that the Actions be dismissed with prejudice as to Toshiba and, except as provided for herein, without costs;

(e) discharging and releasing the Releasees from all Released Claims;

(f) permanently barring and enjoining the institution and prosecution, by Indirect Purchaser Plaintiffs and Class Members, of any other action against the Releasees in any court asserting any claims related in any way to the Released Claims;

(g) reserving continuing and exclusive jurisdiction over the Settlement, including all future proceedings concerning the administration, consummation and enforcement of this Agreement;

(h) determining pursuant to Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing entry of a final judgment as to Toshiba; and

(i) containing such other and further provisions consistent with the terms of this Agreement to which the parties expressly consent in writing.

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

6. Stay Order. Upon the date that the Court enters an order preliminarily approving the Settlement, Indirect Purchaser Plaintiffs and members of the Classes shall be barred and enjoined from commencing, instituting or continuing to prosecute any action or any proceeding in any court of law or equity, arbitration tribunal, administrative forum or other forum of any kind worldwide based on the Released Claims.

C. **Releases**

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

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

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

10. Waiver of California Civil Code § 1542 and Similar Laws. The Releasors acknowledge that, by executing this Agreement, and for the consideration received hereunder, it is their intention to release, and they are releasing, all Released Claims, even Unknown Claims. In furtherance of this intention, the Releasors expressly waive and relinquish, to the fullest extent permitted by law, any rights or benefits conferred by the provisions of California Civil Code § 1542, as set forth in ¶ 1(ee), or equivalent, similar or comparable laws or principles of law. The Releasors acknowledge that they have been advised by Class Counsel of the contents and effects of California Civil Code § 1542, and hereby expressly waive and release with respect to the Released Claims any and all provisions, rights and benefits conferred by California Civil Code § 1542 or by any equivalent, similar or comparable law or principle of law in any jurisdiction. The Releasors

may hereafter discover facts other than or different from those which they know or believe to be true with respect to the subject matter of the Released Claims, but the Releasors hereby expressly waive and fully, finally and forever settle and release any known or unknown, suspected or unsuspected, foreseen or unforeseen, asserted or unasserted, contingent or non-contingent, and accrued or unaccrued claim, loss or damage with respect to the Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such additional or different facts. The release of unknown, unanticipated, unsuspected, unforeseen, and unaccrued losses or claims in this paragraph is not a mere recital.

11. Claims Excluded from Release. Notwithstanding the foregoing, the releases provided herein shall not release claims against Toshiba for product liability, breach of contract, breach of warranty or personal injury, or any other claim unrelated to the allegations in the Actions. For avoidance of doubt, this 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. Additionally, the releases provided herein shall not release any claims to enforce the terms of this Agreement.

D. Settlement Fund

12. Settlement Payment. Toshiba shall pay by wire transfer the Settlement Amount to the Escrow Agent pursuant to mutually agreeable escrow instructions within thirty (30) business days after issuance of a Preliminary Approval Order. This amount constitutes the total amount of payment that Toshiba is required to make in connection with this Settlement Agreement. This amount shall not be subject to reduction, and upon the occurrence of the Effective Date, no funds may be returned to Toshiba. The Escrow Agent shall only act in accordance with the mutually agreed escrow instructions.

13. Disbursements Prior to Effective Date. No amount may be disbursed from the Gross Settlement Fund unless and until the Effective Date, except that: (a) Notice and Administrative Costs, which may not exceed three hundred thousand U.S. Dollars ($300,000.00), may be paid from the Gross Settlement Fund as they become due; (b) Taxes and Tax Expenses (as defined in ¶ 17(b) below) may be paid from the Gross Settlement Fund as they become due; and (c)

attorneys' fees and reimbursement of litigation costs and expenses, as may be ordered by the Court, may be disbursed during the pendency of any appeals which may be taken from the judgment to be entered by the Court finally approving this Settlement. Class Counsel will attempt in good faith to minimize the amount of Notice and Administrative Costs and may seek to coordinate the notice described herein with other settlements in these Actions.

14. Refund by Escrow Agent. If the Settlement as described herein is finally disapproved by any court, or it is terminated as provided herein, or the Judgment is overturned on appeal or by writ, the Gross Settlement Fund, including the Settlement Amount and all interest earned on the Settlement Amount while held in escrow, excluding only Notice and Administrative Costs, Taxes and Tax Expenses (as defined herein), shall be refunded, reimbursed and repaid by the Escrow Agent to Toshiba within five (5) business days after receiving notice pursuant to ¶ 35 below.

15. Refund by Class Counsel. If the Settlement as described herein is finally disapproved by any court, or it is terminated as provided herein, or the Judgment is overturned on appeal or by writ, any attorneys' fees and costs previously paid pursuant to this Agreement (as well as interest on such amounts) shall be refunded, reimbursed and repaid by Class Counsel to Toshiba within thirty (30) business days after receiving notice pursuant to ¶ 35 below.

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

17. Taxes. The Settling Parties and the Escrow Agent agree to treat the Gross Settlement Fund as being at all times a "qualified settlement fund" within the meaning of Treas. Reg. §1.468B-1. The Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this paragraph, including the "relation-back election" (as defined in Treas. Reg. §1.468B-1) back to the earliest permitted date. Such elections shall be made in

compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to prepare and deliver timely and properly the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

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

(b) The following shall be paid out of the Gross Settlement Fund: (i) all taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Gross Settlement Fund, including, without limitation, any taxes or tax detriments that may be imposed upon Toshiba or its counsel with respect to any income earned by the Gross Settlement Fund for any period during which the Gross Settlement Fund does not qualify as a "qualified settlement fund" for federal or state income tax purposes (collectively, "Taxes"); and (ii) all expenses and costs incurred in connection with the operation and implementation of this paragraph, including, without

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

E. Administration and Distribution of Gross Settlement Fund

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

19. Distribution of Gross Settlement Fund. Upon further orders of the Court, the Notice and Claims Administrator, subject to such supervision and direction of the Court and/or Class Counsel as may be necessary or as circumstances may require, shall administer the claims

submitted by members of the Classes and shall oversee distribution of the Gross Settlement Fund to Authorized Claimants pursuant to the Distribution Plan. Subject to the terms of this Agreement and any order(s) of the Court, the Gross Settlement Fund shall be applied as follows:

(a) To pay all costs and expenses reasonably and actually incurred in connection with providing notice to the Classes in connection with administering and distributing the Net Settlement Fund to Authorized Claimants, and in connection with paying escrow fees and costs, if any;

(b) To pay all costs and expenses, if any, reasonably and actually incurred in soliciting claims and assisting with the filing and processing of such claims;

(c) To pay the Taxes and Tax Expenses as defined herein;

(d) To pay any Fee and Expense Award that is allowed by the Court, subject to and in accordance with the Agreement; and

(e) To distribute the balance of the Net Settlement Fund to Authorized Claimants as allowed by the Agreement, any Distribution Plan or order of the Court.

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

(a) Each member of the Classes who claims to be an Authorized Claimant shall be required to submit to the Notice and Claims Administrator a completed Proof of Claim and Release in such form as shall be approved by the Court;

(b) Except as otherwise ordered by the Court, each member of the Classes who fails to submit a Proof of Claim and Release within such period as may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any payments pursuant to this Agreement and the Settlement set forth herein;

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

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

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

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

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

F. Attorneys' Fees and Reimbursement of Expenses

24. Fee and Expense Application. Class Counsel may submit an application or applications (the "Fee and Expense Application") for distributions from the Gross Settlement Fund for: (a) an award of attorneys' fees; plus (b) reimbursement of expenses incurred in connection with prosecuting the Actions; plus (c) any interest on such attorneys' fees and expenses (until paid) at the same rate and for the same periods as earned by the Gross Settlement Fund, as appropriate, and as may be awarded by the Court.

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

26. Award of Fees and Expenses Not Part of Settlement. The procedure for, and the allowance or disallowance by the Court of, the Fee and Expense Application are not part of the Settlement set forth in this Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement set forth in this Agreement. Any order or proceeding relating to the Fee and Expense Application, or any appeal from any Fee and Expense Award or any other order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Agreement, or affect or delay the finality of the Judgment and the Settlement of the Actions as set forth herein. No order of the

Court or modification or reversal on appeal of any order of the Court concerning any Fee and Expense Award or Distribution Plan shall constitute grounds for cancellation or termination of this Agreement.

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

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

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

(a) Toshiba no longer has any right under ¶¶ 33-35 to terminate this Agreement or, if Toshiba does have such right, they have given written notice to Class Counsel that they will not exercise such right;

(b) Indirect Purchaser Plaintiffs no longer have any right under ¶¶ 33-35 to terminate this Agreement or, if Indirect Purchaser Plaintiffs do have such right, they have given written notice to Toshiba that they will not exercise such right;

(c) the Court has finally approved the Settlement as described herein, following notice to the Classes and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure, and has entered the Judgment; and

(d) the Judgment has become Final.

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

30. Failure of Effective Date to Occur. If all of the conditions specified in ¶ 28 are not met, then this Agreement shall be cancelled and terminated, subject to and in accordance with ¶ 35 unless the Settling Parties mutually agree in writing to proceed with this Agreement.

31. Exclusions and Rights to Terminate.

(a) Class Counsel shall cause copies of requests for exclusion from the Classes to be provided to Toshiba's counsel. No later than fourteen (14) days after the final date for mailing requests for exclusion, Class Counsel shall provide Toshiba's counsel with a complete and final list of opt-outs. With the motion for final approval of the Settlement, Class Counsel will file with the Court a complete list of requests for exclusion from the Classes, including only the name, city and state of the person or entity requesting exclusion. With respect to any member of the Class who requests exclusion from the Classes, Toshiba reserves all of its legal rights and defenses, including, but not limited to, any defenses relating to whether the member of the Class is an indirect purchaser of the allegedly price-fixed product and/or has standing to bring any claim. Toshiba shall have the option to terminate this Agreement if the purchases of Lithium Ion Batteries, Lithium Ion Packs and/or Finished Products made by members of the Classes who timely and validly request exclusion from the Classes equal or exceed five percent (5%) of the total volume of purchases made by the Classes. After meeting and conferring with Class Counsel, Toshiba 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 Toshiba shall have a minimum of ten (10) days in which to decide whether to terminate this Agreement after receiving the final opt-out list.

(b) In the event that this Agreement is terminated: (i) this Agreement shall be null and void, and shall have no force or effect and shall be without prejudice to the rights and contentions of Releasees and Releasors in this or any other litigation; and (ii) the Settlement Amount paid by Toshiba, plus interest thereon, shall be refunded promptly to Toshiba, minus such payment (as set forth in this Agreement) of Notice and Administrative Costs and Taxes and Tax Expenses, consistent with the provisions of ¶ 35.

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

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

34. No Settling Party shall have any obligation whatsoever to proceed under any terms other than substantially in the form provided and agreed to herein; provided, however, that no order of the Court concerning any Fee and Expense Application or Distribution Plan, or any modification

or reversal on appeal of such order, shall constitute grounds for cancellation or termination of this Agreement by any Settling Party. Without limiting the foregoing, Toshiba shall have, in its sole and absolute discretion, the option to terminate the Settlement in its entirety in the event that the Judgment, upon becoming Final, does not provide for the dismissal with prejudice of all of the Actions against it.

35. Termination. Unless otherwise ordered by the Court, in the event that the Effective Date does not occur or this Agreement should terminate, or be cancelled or otherwise fail to become effective for any reason, including, without limitation, in the event that this Agreement is terminated by Toshiba pursuant to ¶ 31, the Settlement as described herein is not finally approved by the Court or the Judgment is reversed or vacated following any appeal taken therefrom, then:

(a) within five (5) business days after written notification of such event is sent by counsel for Toshiba to the Escrow Agent, the Gross Settlement Fund—including the Settlement Amount and all interest earned on the Settlement Amount while held in escrow excluding only Notice and Administrative Costs that have either been properly disbursed or are due and owing, Taxes and Tax Expenses that have been paid or that have accrued and will be payable at some later date, and attorneys' fees and costs that have been disbursed pursuant to Court order—will be refunded, reimbursed and repaid by the Escrow Agent to Toshiba; if said amount or any portion thereof is not returned within such five (5) day period, then interest shall accrue thereon at the rate of ten percent (10%) per annum until the date that said amount is returned;

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

(c) the Escrow Agent or its designee shall apply for any tax refund owed to the Gross Settlement Fund and pay the proceeds to Toshiba, after deduction of

any fees or expenses reasonably incurred in connection with such application(s) for refund, pursuant to such written request;

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

(e) the terms and provisions of this Agreement, with the exception of ¶¶ 13-15, 17, 27-28, 30, 33-35, 37-38, 40-41, 43-50 (which shall continue in full force and effect), shall be null and void and shall have no further force or effect with respect to the Settling Parties, and neither the existence nor the terms of this Agreement (nor any negotiations preceding this Agreement nor any acts performed pursuant to, or in furtherance of, this Agreement) shall be used in the Actions or in any other action or proceeding for any purpose (other than to enforce the terms remaining in effect); and

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

H. No Admission of Liability

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

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

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

I. Miscellaneous Provisions

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

40. Consent to Jurisdiction. Toshiba and each Class Member hereby irrevocably submit to the exclusive jurisdiction of the Court only for the specific purpose of any suit, action, proceeding or dispute arising out of or relating to this Agreement or the applicability of this Agreement. Solely for purposes of such suit, action or proceeding, to the fullest extent that they may effectively do so under applicable law, Toshiba and the Class Members irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of the Court or that the Court is in any way an improper venue or an inconvenient forum. Without limiting the generality of the foregoing, it is hereby agreed that

any dispute concerning the provisions of ¶¶ 7-11 hereof, including but not limited to any suit, action or proceeding in which the provisions of ¶¶ 7-11 hereof are asserted as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection, constitutes a suit, action or proceeding arising out of or relating to this Agreement. In the event that the provisions of ¶¶ 7-11 hereof are asserted by any Releasee as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection in any suit, action or proceeding, it is hereby agreed that such Releasee shall be entitled to a stay of that suit, action or proceeding until the Court has entered a final judgment no longer subject to any appeal or review determining any issues relating to the defense or objection based on the provisions of ¶¶ 7-11. Nothing herein shall be construed as a submission to jurisdiction for any purpose other than any suit, action, proceeding or dispute arising out of or relating to this Agreement or the applicability of this Agreement.

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

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

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

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

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

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

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

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

If directed to Toshiba, address notice to:

WHITE & CASE LLP
Christopher M. Curran (ccurran@whitecase.com)
701 Thirteenth Street NW
Washington, DC 20005-3807
Telephone: 202-626-3600
Fax: 202-639-9355

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

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

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

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

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

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

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

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

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

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

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

DATED: ~~January~~ FEBRUARY 14, 2018

HAGENS BERMAN SOBOL SHAPIRO LLP

By: _____
JEFF D. FRIEDMAN

Steve W. Berman (*pro hac vice)*
Jeff D. Friedman (173886)
Shana E. Scarlett (217895)
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Telephone: (510) 725-3000
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steve@hbsslaw.com
jefff@hbsslaw.com
shanas@hbsslaw.com

DATED: ~~January~~ February 15, 2018

COTCHETT, PITRE & McCARTHY, LLP

By: _____
ADAM ZAPALA

Joseph W. Cotchett (SBN 36324)
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Facsimile: (650) 697-0577
jcotchett@cpmlegal.com
azapala@cpmlegal.com

DATED: ~~January~~ February 14, 2018

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

By: _____
BRENDAN P. GLACKIN

Elizabeth J. Cabraser (SBN 083151)
Brendan P. Glackin (SBN 199643)
Lin Y. Chan (SBN 255027)
275 Battery Street, 29th Floor
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Telephone: (415) 956-1000
Facsimile: (415) 956-1008
ecabraser@lchb.com
bglackin@lchb.com
lchan@lchb.com

DATED: January 29, 2018

TOSHIBA CORPORATION

By: _____
Christopher M. Curran
White & Case LLP
Outside Counsel of Express Authority

DATED: January ___, 2018

COTCHETT, PITRE & McCARTHY, LLP

By: _____
ADAM ZAPALA

Joseph W. Cotchett (SBN 36324)
Adam Zapala (SBN 245748)
840 Malcolm Road
Burlingame, CA 94010
Telephone: (650) 697-6000
Facsimile: (650) 697-0577
jcotchett@cpmlegal.com
azapala@cpmlegal.com

DATED: ~~January~~ February 14, 2018

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

By: Brendan Glackin
BRENDAN P. GLACKIN

Elizabeth J. Cabraser (SBN 083151)
Brendan P. Glackin (SBN 199643)
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ecabraser@lchb.com
bglackin@lchb.com
lchan@lchb.com

DATED: January 29, 2018

TOSHIBA CORPORATION

By: Christopher M. Curran
White & Case LLP
Outside Counsel of Express Authority

EXHIBIT D

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

(OAKLAND DIVISION)

IN RE: LITHIUM ION BATTERIES ANTITRUST LITIGATION	No. 4:13-md-02420-YGR-DMR
	MDL NO. 2420
This Document Relates to:	**PANASONIC SETTLEMENT AGREEMENT**
ALL INDIRECT PURCHASER ACTIONS	

This Settlement Agreement (hereinafter, "Agreement") is made and entered into as of December 27, 2018, by and between Defendant Panasonic Corporation ("Panasonic Corp.") and Indirect Purchaser Plaintiffs, both individually and on behalf of Classes in the above-captioned class action. This Agreement is intended by the Settling Parties to fully, finally and forever resolve, discharge and settle the Released Claims, upon and subject to the terms and conditions hereof.

RECITALS

WHEREAS, Indirect Purchaser Plaintiffs are prosecuting the above-captioned litigation on their own behalf and on behalf of Classes against, among others, Panasonic Corp.; Panasonic Corporation of North America; SANYO Electric Co., Ltd.; and SANYO North America Corporation (collectively the "Panasonic and Sanyo Defendants");

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

WHEREAS, the Panasonic and Sanyo Defendants have denied and continue to deny each and all of the claims and allegations of wrongdoing made by the Indirect Purchaser Plaintiffs in the Actions; all charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Actions; and the allegations that the Indirect Purchaser Plaintiffs or any member of Classes were harmed by any conduct by the Panasonic and Sanyo Defendants alleged in the Actions or otherwise;

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

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

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

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

AGREEMENT

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

A. Definitions

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

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

(b) "Affiliates" means entities controlling, controlled by or under common control with a Releasee or Releasor.

(c) "Authorized Claimant" means any Indirect Plaintiff Purchaser who, in accordance with the terms of this Agreement, is entitled to a distribution consistent with any Distribution Plan or order of the Court.

(d) "Class" or "Classes" are generally defined as all persons and entities who, as residents of the United States and during the period from January 1, 2000 through May 31, 2011, indirectly purchased new, for their own use and not for resale one of the following products which contained a lithium-ion cylindrical battery manufactured by one or more defendants or their co-conspirators: (i) a portable computer; (ii) a power tool; (iii) a camcorder; or (iv) a replacement battery for any of these products. Excluded from the class are any purchases of Panasonic-branded computers. Also excluded from the class are any federal, state, or local governmental entities, any judicial officers presiding over this action, members of their immediate families and judicial staffs, and any juror assigned to this action, but included are all non-federal and non-state governmental entities in California.

(e) "Class Counsel" means the law firms of Cotchett, Pitre & McCarthy, LLP; Hagens Berman Sobol Shapiro LLP; and Lieff Cabraser Heimann &

Bernstein, LLP.

(f) "Class Member" means a Person who, or California governmental entity that, falls within the definition of the Classes and does not timely and validly elect to be excluded from the Classes in accordance with the procedure to be established by the Court.

(g) "Court" means the United States District Court for the Northern District of California.

(h) "Distribution Plan" means any plan or formula of allocation of the Gross Settlement Fund, to be approved by the Court, whereby the Net Settlement Fund shall, in the future, be distributed to Authorized Claimants. Any Distribution Plan is not part of this Agreement.

(i) "Effective Date" means the first date by which all of the events and conditions specified in ¶ 28 of this Agreement have occurred and have been met.

(j) "Escrow Agent" means the agent jointly designated by Class Counsel and Panasonic Corp., and any successor agent.

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

(l) "Final" means, with respect to any order of court, including, without limitation, the Judgment, that such order represents a final and binding determination of all issues within its scope and is not subject to further review on appeal or otherwise. Without limitation, an order becomes "Final" when: (a) no appeal has been filed and the prescribed time for commencing any appeal has expired; or (b) an appeal has been filed and either (i) the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired, or (ii) the order has been affirmed in its entirety and the prescribed time, if any, for commencing

any further appeal has expired. For purposes of this Agreement, an "appeal" includes appeals as of right, discretionary appeals, interlocutory appeals, proceedings involving writs of certiorari or mandamus, and any other proceedings of like kind. Any appeal or other proceeding pertaining solely to any order adopting or approving a Distribution Plan, and/or to any order issued with respect to an application for attorneys' fees and expenses consistent with this Agreement, shall not in any way delay or preclude the Judgment from becoming Final.

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

(n) "Gross Settlement Fund" means the Settlement Amount plus any interest that may accrue.

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

(p) "Judgment" means the order of judgment and dismissal of the Actions with prejudice as to the Panasonic and Sanyo Defendants.

(q) "Lithium Ion Battery" means a Lithium Ion Battery Cell or Lithium Ion Battery Pack.

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

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

(t) "MDL Defendants" means any defendant named in the Actions, including LG Chem, Ltd.; LG Chem America, Inc.; Samsung SDI Co. Ltd.; Samsung SDI America, Inc.; Panasonic Corporation; Panasonic Corporation of North America; SANYO Electric Co., Ltd.; SANYO North America Corporation; SANYO GS Soft Energy Co., Ltd.; LG Chem Corporation; LG Chem Energy Devices Corporation; LG Chem Electronics Inc.; Maxell Holdings, Ltd.; Maxell Corporation of America; GS Yuasa Corporation; NEC Corporation; TOKIN Corporation; Toshiba Corporation; A&T Battery Corporation; and Toshiba America Electronic Components Inc.

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

(v) "Notice and Administrative Costs" means the reasonable sum of money not in excess of two hundred fifty thousand U.S. Dollars ($250,000.00) to be paid out of the Gross Settlement Fund to pay for notice to the Classes and related administrative costs.

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

(x) "Person(s)" means an individual, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, association, joint stock company, estate,

legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and any spouses, heirs, predecessors, successors, representatives or assignees of any of the foregoing.

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

(z) "Released Claims" means any and all manner of claims, demands, rights, actions, suits, causes of action, whether class, individual or otherwise in nature, fees, costs, penalties, injuries, damages whenever incurred and liabilities of any nature whatsoever, known or unknown (including, but not limited to, "Unknown Claims"), foreseen or unforeseen, suspected or unsuspected, asserted or un-asserted, contingent or non-contingent, in law or in equity, under the laws of any jurisdiction, which Releasors or any of them, whether directly, representatively, derivatively, or in any other capacity, ever had, now have or hereafter can, shall or may have, relating in any way to any conduct prior to the Execution Date of this Agreement and arising out of or related in any way in whole or in part to any facts, circumstances, acts or omissions arising out of or related to (1) any purchase or sale of Lithium Ion Batteries (including Lithium Ion Batteries contained in Finished Products) up through May 31, 2011; or (2) any agreement, combination or conspiracy to raise, fix, maintain or stabilize the prices of Lithium Ion Batteries (including Lithium Ion Batteries contained in Finished Products) or restrict, reduce, alter or allocate the supply, quantity or quality of Lithium Ion Batteries (including Lithium Ion Batteries contained in Finished Products) or concerning the development, manufacture, supply, distribution, transfer, marketing, sale or pricing of

Lithium Ion Batteries (including Lithium Ion Batteries contained in Finished Products), or any other conduct alleged in the Actions or relating to restraint of competition that could have been or hereafter could be alleged against the Releasees relating to Lithium Ion Batteries; or (3) any other restraint of competition relating to Lithium Ion Batteries that could be asserted as a violation of the Sherman Act or any other antitrust, unjust enrichment, unfair competition, unfair practices, trade practices, price discrimination, unitary pricing, racketeering, contract, civil conspiracy or consumer protection law, whether under federal, state, local or foreign law.

(aa) "Releasees" means Panasonic Corp.; Panasonic Corporation of North America; SANYO Electric Co., Ltd.; and SANYO North America Corporation and their former, present and future direct and indirect parents, subsidiaries and Affiliates, and their respective former, present and future officers, directors, employees, managers, members, partners, agents, shareholders (in their capacity as shareholders), attorneys and legal representatives, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing.

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

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

(dd) "Settlement Amount" means five million five hundred thousand U.S. Dollars ($5,500,000).

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

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

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

B. Preliminary Approval Order, Notice Order and Settlement Hearing

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

3. **Motion for Preliminary Approval.** At a time to be determined by Class Counsel, and subject to prior notice of ten (10) days to Panasonic Corp., Class Counsel shall submit this Agreement to the Court and shall apply for entry of a preliminary approval order ("Preliminary Approval Order"), requesting, *inter alia*, preliminary approval ("Preliminary Approval") of the Settlement. The motion shall include (a) the proposed Preliminary Approval Order, and (b) a definition of the proposed settlement classes pursuant to Federal Rule of Civil

Procedure 23. The text of the foregoing items (a)-(b) shall be agreed upon by the Settling Parties.

4. **Proposed Form of Notice.** At a time to be determined in their sole discretion, Class Counsel shall submit to the Court for approval a proposed form of, method for and schedule for dissemination of notice to the Classes. To the extent practicable and to the extent consistent with this paragraph, Class Counsel may seek to coordinate this notice program with other settlements that may be reached in the Actions in order to reduce the expense of notice. This motion shall recite and ask the Court to find that the proposed form of and method for dissemination of notice to the Classes constitutes valid, due and sufficient notice to the Classes, constitutes the best notice practicable under the circumstances, and complies fully with the requirements of Federal Rule of Civil Procedure 23. Class Counsel shall provide Panasonic Corp. with seven (7) days advance notice of the text of the notice(s) to be provided to the Classes, and shall consider in good faith any concerns or suggestions expressed by Panasonic Corp. Panasonic Corp. shall be responsible for providing all notice required by the Class Action Fairness Act of 2005 to be provided to state attorneys general or to the United States of America.

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

(a) certifying the Classes, pursuant to Federal Rule of Civil Procedure 23, solely for purposes of this Settlement;

(b) fully and finally approving the Settlement contemplated by this Agreement and its terms as being fair, reasonable and adequate within the meaning of Federal Rule of Civil Procedure 23 and directing its consummation pursuant to its terms and conditions;

(c) finding that the notice given to the Class Members constituted the best

notice practicable under the circumstances and complies in all respects with the requirements of Federal Rule of Civil Procedure 23 and due process;

(d) directing that the Actions be dismissed with prejudice as to the Panasonic and Sanyo Defendants and, except as provided for herein, without costs;

(e) discharging and releasing the Releasees from all Released Claims;

(f) permanently barring and enjoining the institution and prosecution, by Indirect Purchaser Plaintiffs and Class Members, of any other action against the Releasees in any court asserting any claims related in any way to the Released Claims;

(g) reserving continuing and exclusive jurisdiction over the Settlement, including all future proceedings concerning the administration, consummation and enforcement of this Agreement;

(h) determining pursuant to Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing entry of a final judgment as to the Panasonic and Sanyo Defendants; and

(i) containing such other and further provisions consistent with the terms of this Agreement to which the parties expressly consent in writing.

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

6. **Stay Order.** Upon the date that the Court enters an order preliminarily approving the Settlement, Indirect Purchaser Plaintiffs and members of the Classes shall be barred and enjoined from commencing, instituting or continuing to prosecute any action or any proceeding in any court of law or equity, arbitration tribunal, administrative forum or other forum of any kind worldwide based on the Released Claims.

C. Releases

7. **Released Claims.** Upon the Effective Date, the Releasors (regardless of whether

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

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

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

10. **Waiver of California Civil Code §1542 and Similar Laws.** The Releasors acknowledge that, by executing this Agreement, and for the consideration received hereunder, it is their intention to release, and they are releasing, all Released Claims, even Unknown Claims. In furtherance of this intention, the Releasors expressly waive and relinquish, to the fullest extent permitted by law, any rights or benefits conferred by the provisions of California Civil Code §1542, as set forth in ¶ 1(ff), or equivalent, similar or comparable laws or principles of law. The Releasors acknowledge that they have been advised by Class Counsel of the contents and effects of California Civil Code §1542, and hereby expressly waive and release with respect to the Released Claims any and all provisions, rights and benefits conferred by

California Civil Code §1542 or by any equivalent, similar or comparable law or principle of law in any jurisdiction. The Releasors may hereafter discover facts other than or different from those which they know or believe to be true with respect to the subject matter of the Released Claims, but the Releasors hereby expressly waive and fully, finally and forever settle and release any known or unknown, suspected or unsuspected, foreseen or unforeseen, asserted or un-asserted, contingent or non-contingent, and accrued or unaccrued claim, loss or damage with respect to the Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such additional or different facts. The release of unknown, unanticipated, unsuspected, unforeseen, and unaccrued losses or claims in this paragraph is not a mere recital.

11. **Claims Excluded from Release.** Notwithstanding the foregoing, the releases provided herein shall not release claims against the Panasonic and Sanyo Defendants for product liability, breach of contract, breach of warranty or personal injury, or any other claim unrelated to the allegations in the Actions. For avoidance of doubt, this 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. Additionally, the releases provided herein shall not release any claims to enforce the terms of this Agreement.

D. Settlement Fund

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

13. **Disbursements Prior to Effective Date.** No amount may be disbursed from the

Gross Settlement Fund unless and until the Effective Date, except that: (a) Notice and Administrative Costs, which may not exceed two hundred fifty thousand U.S. Dollars ($250,000.00), may be paid from the Gross Settlement Fund as they become due; (b) Taxes and Tax Expenses (as defined in ¶ 17(b) below) may be paid from the Gross Settlement Fund as they become due; and (c) attorneys' fees and reimbursement of litigation costs and expenses, as may be ordered by the Court, may be disbursed during the pendency of any appeals which may be taken from the judgment to be entered by the Court finally approving this Settlement. Class Counsel will attempt in good faith to minimize the amount of Notice and Administrative Costs and may seek to coordinate the notice described herein with other settlements in these Actions.

14. **Refund by Escrow Agent.** If the Settlement as described herein is finally disapproved by any court, or it is terminated as provided herein, or the Judgment is overturned on appeal or by writ, the Gross Settlement Fund, including the Settlement Amount and all interest earned on the Settlement Amount while held in escrow, excluding only Notice and Administrative Costs, Taxes and Tax Expenses (as defined herein), shall be refunded, reimbursed and repaid by the Escrow Agent to Panasonic Corp. within five (5) business days after receiving notice pursuant to ¶ 35 below.

15. **Refund by Class Counsel.** If the Settlement as described herein is finally disapproved by any court, or it is terminated as provided herein, or the Judgment is overturned on appeal or by writ, any attorneys' fees and costs previously paid pursuant to this Agreement (as well as interest on such amounts) shall be refunded, reimbursed and repaid by Class Counsel to Panasonic Corp. within thirty (30) business days after receiving notice pursuant to ¶ 35 below.

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

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

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

(b) The following shall be paid out of the Gross Settlement Fund: (i) all taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Gross Settlement Fund, including, without

limitation, any taxes or tax detriments that may be imposed upon Panasonic Corp. or its counsel with respect to any income earned by the Gross Settlement Fund for any period during which the Gross Settlement Fund does not qualify as a "qualified settlement fund" for federal or state income tax purposes (collectively, "Taxes"); and (ii) all expenses and costs incurred in connection with the operation and implementation of this paragraph, including, without limitation, expenses of attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this paragraph (collectively, "Tax Expenses"). In all events, neither Panasonic Corp. nor its counsel shall have any liability or responsibility for the Taxes or the Tax Expenses. With funds from the Gross Settlement Fund, the Escrow Agent shall indemnify and hold harmless Panasonic Corp. and its counsel for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Gross Settlement Fund and shall timely be paid by the Escrow Agent out of the Gross Settlement Fund without prior order from the Court, and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. §1.468B-2(1)(2)); neither Panasonic Corp. nor its counsel is responsible therefor, nor shall they have any liability therefor. The Settling Parties agree to cooperate with the Escrow Agent, each other, their tax attorneys and their accountants to the extent reasonably necessary to carry out the provisions

of this paragraph.

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

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

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

(a) To pay all costs and expenses reasonably and actually incurred in connection with providing notice to the Classes in connection with administering and distributing the Net Settlement Fund to Authorized Claimants, and in connection with paying escrow fees and costs, if any;

(b) To pay all costs and expenses, if any, reasonably and actually incurred in soliciting claims and assisting with the filing and processing of such claims;

(c) To pay the Taxes and Tax Expenses as defined herein;

(d) To pay any Fee and Expense Award that is allowed by the Court, subject to and in accordance with the Agreement; and

(e) To distribute the balance of the Net Settlement Fund to Authorized Claimants as allowed by the Agreement, any Distribution Plan or order of the Court.

20. **Distribution of Net Settlement Fund.** Upon the Effective Date and thereafter, and in accordance with the terms of this Agreement, the Distribution Plan and such further

approval and further order(s) of the Court as may be necessary or as circumstances may require, the Net Settlement Fund shall be distributed to Authorized Claimants, subject to and in accordance with the following:

(a) Each member of the Classes who claims to be an Authorized Claimant shall be required to submit to the Notice and Claims Administrator a completed Proof of Claim and Release in such form as shall be approved by the Court;

(b) Except as otherwise ordered by the Court, each member of the Classes who fails to submit a Proof of Claim and Release within such period as may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any payments pursuant to this Agreement and the Settlement set forth herein;

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

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

21. **No Liability for Distribution of Settlement Funds.** Neither the Releasees nor their counsel shall have any responsibility for, interest in or liability whatsoever with respect to

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

22. **Balance Remaining in Net Settlement Fund.** If there is any balance remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), Class Counsel may reallocate such balance among Authorized Claimants in an equitable and economic fashion, distribute remaining funds through *cy pres*, or allow the money to escheat to federal or state governments, subject to Court approval. Except as provided in ¶¶ 34-35, in no event shall any unclaimed funds remaining in the Net Settlement Fund revert to Panasonic Corp.

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

F. **Attorneys' Fees, Reimbursement of Expenses**

24. **Fee and Expense Application.** Class Counsel may submit an application or

applications (the "Fee and Expense Application") for distributions from the Gross Settlement Fund for: (a) an award of attorneys' fees; plus (b) reimbursement of expenses incurred in connection with prosecuting the Actions; plus (c) any interest on such attorneys' fees and expenses (until paid) at the same rate and for the same periods as earned by the Settlement Fund, as appropriate, and as may be awarded by the Court.

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

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

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

G. **Conditions of Settlement, Effect of Disapproval, Cancellation or Termination**

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

(a) Panasonic Corp. no longer has any right under ¶¶ 33-34 to terminate this Agreement or if Panasonic Corp. does have such right, they have given written notice to Class Counsel that they will not exercise such right;

(b) the Court has finally approved the Settlement as described herein, following notice to the Classes and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure, and has entered the Judgment; and

(c) the Judgment has become Final.

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

30. **Failure of Effective Date to Occur.** If all of the conditions specified in ¶ 28 are not met, then this Agreement shall be cancelled and terminated, subject to and in accordance with ¶¶ 34-35 unless the Settling Parties mutually agree in writing to proceed with this Agreement.

31. **Exclusions.** Class Counsel shall cause copies of requests for exclusion from the Classes to be provided to Panasonic Corp.'s counsel. No later than fourteen (14) days after the final date for mailing requests for exclusion, Class Counsel shall provide Panasonic Corp.'s counsel with a complete and final list of opt-outs. With the motion for final approval of the Settlement, Class Counsel will file with the Court a complete list of requests for exclusion from the Classes, including only the name, city and state of the person or entity requesting exclusion. With respect to any member of the Class who requests exclusion from the Classes, Panasonic Corp. reserves all of its legal rights and defenses, including, but not limited to, any defenses relating to whether the member of the Class is an indirect purchaser of the allegedly price-fixed product and/or has standing to bring any claim. Panasonic Corp. shall have the option to

terminate this Agreement if the purchases of Lithium Ion Batteries, Lithium Ion Packs and/or Finished Products made by members of the Classes who timely and validly request exclusion from the Classes equal or exceed five percent (5%) of the total volume of purchases made by the Classes. After meeting and conferring with Class Counsel, Panasonic Corp. 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 Panasonic Corp. shall have a minimum of ten (10) days in which to decide whether to terminate this Agreement after receiving the final opt-out list. In the event that Panasonic Corp. exercises its option to terminate this Agreement: (i) this Agreement shall be null and void, and shall have no force or effect and shall be without prejudice to the rights and contentions of Releasees and Releasors in this or any other litigation; and (ii) the Settlement fund paid by Panasonic Corp., plus interest thereon, shall be refunded promptly to Panasonic Corp., minus such payment (as set forth in this Agreement) of Notice and Administrative Costs and Taxes and Tax Expenses, consistent with the provisions of ¶¶ 34-35.

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

33. **Failure to Enter Proposed Preliminary Approval Order, Final Approval Order or Judgment.** If the Court does not enter the Preliminary Approval Order, the Final

Approval Order or the Judgment, or if the Court enters the Final Approval Order and the Judgment and appellate review is sought and, on such review, the Final Approval Order or the Judgment is finally vacated, modified or reversed, then this Agreement and the Settlement incorporated therein shall be cancelled and terminated; provided, however, the Settling Parties agree to act in good faith to secure Final Approval of this Settlement and to attempt to address in good faith concerns regarding the Settlement identified by the Court and any court of appeal.

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

35. **Termination.** Unless otherwise ordered by the Court, in the event that the Effective Date does not occur or this Agreement should terminate, or be cancelled or otherwise fail to become effective for any reason, including, without limitation, in the event that Panasonic Corp. elects to terminate this Agreement pursuant to ¶ 31, the Settlement as described herein is not fully approved by the Court or the Judgment is reversed or vacated following any appeal taken therefrom, then:

(a) within five (5) business days after written notification of such event is sent by counsel for Panasonic Corp. to the Escrow Agent, the Gross Settlement Fund—including the Settlement Amount and all interest earned on the Settlement Fund while held in escrow excluding only Notice and Administrative Costs that have either been properly disbursed or are due and owing, Taxes and Tax Expenses that have been paid or that have

accrued and will be payable at some later date, and attorneys' fees and costs that have been disbursed pursuant to Court order—will be refunded, reimbursed and repaid by the Escrow Agent to Panasonic Corp.; if said amount or any portion thereof is not returned within such five (5) day period, then interest shall accrue thereon at the rate of ten percent (10%) per annum until the date that said amount is returned;

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

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

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

(e) the terms and provisions of this Agreement, with the exception of ¶¶ 13-15, 17, 21, 28, 30, 33-35, 37-38, 40-41, 43-50 (which shall continue in full force and effect), shall be null and void and shall have no further force or effect with respect to the Settling Parties, and neither the existence nor the terms of this Agreement (nor any negotiations preceding this Agreement nor any acts performed pursuant to, or in furtherance of, this Agreement) shall be used in the Actions or in any other action or proceeding for any purpose (other than to enforce the terms remaining in effect); and

(f) any judgment or order entered by the Court in accordance with the terms

of this Agreement shall be treated as vacated, *nunc pro tunc*.

H. **No Admission of Liability**

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

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

38. **Use of Agreement as Evidence.** Neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claims, any allegation made in the Actions, or any wrongdoing or liability of the Panasonic and Sanyo Defendants; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any liability, fault or omission of the Releasees in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement, shall be admissible in any proceeding for any purpose, except as to enforce the terms of the Settlement, and except that the Releasees may file this Agreement and/or the Judgment in any action for any purpose, including, but not limited to, in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim. The

limitations described in this paragraph apply whether or not the Court enters the Preliminary Approval Order, the Final Approval Order or the Judgment.

I. **Miscellaneous Provisions**

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

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

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

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

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

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

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

HAGENS BERMAN SOBOL SHAPIRO LLP
Jeff Friedman (jeff@hbsslaw.com)

715 Hearst Avenue, Suite 202
Berkeley, CA 94710
Telephone: 510-725-3000
Facsimile: 510-725-3001

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

COTCHETT, PITRE & MCCARTHY, LLP
Adam Zapala (azapala@cpmlegal.com)
San Francisco Airport Office Center
840 Malcolm Road, Suite 200
Burlingame, CA 94010
Telephone: 650-697-6000
Facsimile: 650-697-0577

If directed to Panasonic Corp., address notice to:

Jeffrey L. Kessler (jkessler@winston.com)
Eva W. Cole (ewcole@winston.com)
WINSTON & STRAWN LLP
200 Park Avenue
New York, NY 10166-4193
Telephone: 212-294-6700
Facsimile: 212-294-4700

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

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

48. **Choice of Law.** This Agreement shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of California, and the rights and obligations of the parties to this Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of California without giving

effect to that state's choice of law principles.

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

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

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

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

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

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

DATED: December 19, 2018

HAGENS BERMAN SOBOL SHAPIRO LLP

By: _____
JEFF D. FRIEDMAN

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

DATED: December 18, 2018

COTCHETT, PITRE, & MCCARTHY, LLP

By: _____
ADAM J. ZAPALA

Joseph W. Cotchett (SBN 36324)
Adam J. Zapala (SBN 245748)
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DATED: December 19, 2018

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By: _____
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msheen@lchb.com

DEFENDANT PANASONIC CORPORATION

DATED: December 27, 2018

By: _____
PANASONIC CORPORATION
Kenji Tamura
Executive Vice President
Automotive & Industrial Systems Company

EXHIBIT E

Laura Alexander (#255485)
COHEN MILSTEIN SELLERS & TOLL PLLC
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Attorney for Plaintiffs Residing in *Illinois Brick* Repealer States

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 **MEDIATION STATEMENT**
This Documents Relates to: ALL INDIRECT PURCHASER ACTIONS	DATE ACTION FILED: Oct. 3, 2012

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A nationwide settlement for considerable value unquestionably serves the best interest of all of the parties to this litigation; the defendants achieve global peace, and the plaintiffs receive fair value for their claims without the risk and expense of lengthy and drawn-out litigation. Accordingly, the relevant question for the current mediation is not whether a nationwide settlement class of indirect purchasers may be certified. It can and should be. Instead, the question at issue here is, given a nationwide settlement class of indirect purchasers, what is the most fair and reasonable way to allocate that settlement across the class. The correct answer to that question will provide the greatest chance that the settlement will be approved and that all parties will achieve the resolution that best serves them. We hereby submit that the most fair and efficient allocation of the settlement in this case, given the stark disparity in legal remedies available in *Illinois Brick* repealer and *Illinois Brick* non-repealer states, is for all or the vast majority of the settlement to be allocated to the residents of the *Illinois Brick* repealer states.

Typically, a court is presented with a completed settlement, and is only able to weigh whether the settlement meets the bare minimum of fairness and reasonableness. If so, the court approves it. If not, the court's only choice is to reject the settlement wholesale. *See, e.g.*, *Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco*, 688 F.2d 615, 630 (9th Cir. 1982) ("Initially, it must be recognized that we are not presented with a choice between alternative remedies. Neither the district court nor this court is empowered to rewrite the settlement agreed upon by the parties…. In short, the settlement must stand or fall as a whole.") (citing *Pettway v. Am. Cast Iron Pipe Co.*, 576 F.2d 1157, 1172 (5th Cir. 1978); *Cotton v. Hinton*, 559 F.2d 1326, 1331-32 (5th Cir. 1977); *U.S. v. Allegheny-Ludlum Indus. Inc.*, 517 F.2d 826, 850 (5th Cir. 1975)). This mediation presents a unique opportunity to evaluate not only whether an allocation meets the bare minimum requirements of Rule 23, but what allocation is the fairest and the most reasonable.

There is a range of settlements and allocations of settlements that meet the bare minimum of Rule 23's mandate. Courts have considerable discretion to approve settlements and Rule 23 requires only that those settlements be fair and reasonable. The range and discretion are not unlimited, however. In addition, within that range, some allocations are fairer and more reasonable than others. Given the facts and law in this case, the most fair and reasonable approach would be to allocate the

settlement on a pro rata basis only among the residents of the states that have enacted *Illinois Brick* repealer laws. A less fair and less reasonable, but still permissible, allocation would be to provide a small portion of the settlement (ten percent or less) to the residents of *Illinois Brick* non-repealer states with the remainder allocated to the residents of the *Illinois Brick* repealer states, again on a pro rata basis within each group. Allocating anything more than a nominal amount of the settlement to residents of *Illinois Brick* non-repealer states would be unfair and unreasonable, because it would not account for the stark differences in the strength of the various claims, would dilute the recovery of the residents of the *Illinois Brick* repealer states, and would raise significant concerns about federalism.

I. PROCEDURAL HISTORY

The first complaint in this case was filed in 2012. In 2013, that case and 46 related actions were centralized into an MDL, which has now been pending for more than five years. Over that time, there have been multiple settlements between indirect purchaser plaintiffs ("IPPs") and various defendants.

The most recent round of settlements, those whose allocation is at issue here, took place in January to March of 2018. After the previous round of settlements received final approval, but before the current settlements were negotiated, the MDL court issued an order denying certification to a proposed nationwide IPP litigation class. In denying class certification, the court, following Ninth Circuit precedent, conducted a choice of law analysis and found that, under California's choice-of-law rules, California law could not be applied to claims from residents of states that had decided not to repeal or otherwise countermand the Supreme Court's holding in *Illinois Brick* that only direct purchasers have standing to sue for money damages from antitrust violations ("*Illinois Brick* non-repealer states"). Order Denying Without Prejudice Motions for Class Certification ("4/12/17 Class Cert. Order") at 20-24 (Apr. 12, 2017), ECF No. 1735. Instead, the court held that the laws of the *Illinois Brick* non-repealer states would apply to claims of *Illinois Brick* non-repealer state residents, and California antitrust law would apply only to the claims of residents of California and the other states that had repealed *Illinois Brick* ("*Illinois Brick* repealer states"). *Id.* at 24. Because the court had already determined that the IPPs' motion for class certification should be

denied due to issues with their damages model, the court did not reach a conclusion about whether the differences between California law (to be applied to claims from *Illinois Brick* repealer states) and the state laws of *Illinois Brick* non-repealer states, would preclude certification of a nationwide class. *Id.* Instead, the court instructed the parties to take its choice-of-law analysis into account in any future renewed motion for class certification. *Id.* The IPPs' motion for certification of a nationwide class was denied without prejudice. *Id.* at 31.

The IPPs filed a renewed motion for certification of a class consisting only of residents of *Illinois Brick* repealer states and certain government entities. IPPs' Renewed Motion for Class Certification (Sept. 26, 2017), ECF No. 1960. On March 5, 2018, the court denied IPP's renewed motion for class certification because it found that IPPs' damages expert's analysis was unreliable and that, accordingly, damages to the class could not be established on a common basis. Order Denying IPP's Renewed Motion for Class Certification at 1-2, ECF No. 2197. The MDL court indicated that the case should proceed to trial on an individual basis and entered a scheduling order accordingly. Amended Order Granting Motion to Strike IPP's Second Renewed Motion for Class Certification at 2-3 (Sept. 4, 2018), ECF No. 2407. On June 27, 2018, the Ninth Circuit denied IPPs' motion to appeal the March 5, 2018 order denying IPPs' renewed motion for class certification. *Id.* at 3. On August 10, 2018, IPPs filed a second renewed motion for class certification, seeking certification of a class consisting only of *Illinois Brick* repealer residents and certain government entities. ECF No. 2369, corrected at 2382 (Aug. 15, 2018). The MDL court struck the IPPs' second renewed motion for class certification. ECF No. 2407 at 7.

The current settlements were negotiated after the MDL court denied IPPs' initial motion to certify a nationwide class, but before the court denied the IPPs' renewed motion to certify a class consisting only of residents of *Illinois Brick* repealer states and certain government entities.[1]

[1] The settlements that are the subject of the current mediation were entered into on February 15, 2018 (Toshiba), March 5, 2018 (Tonkin), and March 30, 2018 (SDI). Although the SDI settlement was finalized after the court's March 5, 2018 order denying IPPs' renewed motion for class certification, all parties except SDI had signed it on or before March 5, and its content was determined before the court's March 5, 2018 order.

II. LEGAL STANDARD

"Approval of a plan of allocation of settlement proceeds in a class action…is governed by the same standards of review applicable to approval of the settlement as a whole: the plan must be fair, reasonable and adequate." *In re Cathode Ray Tube (CRT) Antitrust Litig.*, MDL No. 1917, 2016 WL 3648478, at *11 (N.D. Cal. July 7, 2016). "It is reasonable to allocate the settlement funds to class members based on the extent of their injuries or the strength of their claims on the merits." *Id.* The fairness requirement is intended to "ensure that similarly situated class members are treated similarly and that dissimilarly treated class members are not arbitrarily treated as if they were similarly situated." William B. Rubenstein, 4 NEWBERG ON CLASS ACTIONS § 13:59 (5th ed. 2014). Class members with different claims ought not "receive the same relief." *Id.* at 13:60. A settlement-only certification that "gives the same monetary remedy to all members of the class, despite significant differences in the nature of their claims or injuries" is not "fair or reasonable." AMERICAN LAW INSTITUTE, PRINCIPLES OF THE LAW OF AGGREGATE LITIG. § 3.05, cmt. b. (2010).

III. RESIDENTS OF NON-REPEALER STATES SHOULD NOT RECEIVE A SHARE OF THE SETTLEMENT FUND

None of the settlement funds should be allocated to residents of *Illinois Brick* non-repealer states. Allocating any significant portion of the settlement to residents of *Illinois Brick* non-repealer states would unfairly and unreasonably dilute the recovery by residents of *Illinois Brick* repealer states, would raise serious questions of federalism, and would risk up-ending the settlement.

The claims by residents from *Illinois Brick* non-repealer states are, effectively, worthless. As such, there is no reason to allocate any settlement funds to those claims. Although it is generally considered a red flag when claims are released for little or no compensation, "[i]t is fine to release a claim without compensation if the value of the claim is zero." Rubenstein, 4 NEWBERG ON CLASS ACTIONS § 13:60. "A claim which cannot be proven is worth essentially nothing. Consideration of nothing for releasing a worthless claim is therefore fair, reasonable, and adequate." *In re CRT*, 2016 WL 3648478, at *12 (quoting *Parker v. Time Warner Entm't Co., L.P.*, 239 F.R.D. 318, 339 (E.D.N.Y. 2007)). *See also*, *Nguyen v. Radient Pharm. Corp.*, No. SACV 11-00406 DOC (MLGx), 2014 WL 1802293, at *7 (C.D. Cal. May 6, 2014).

The court in this MDL has already held, consistent with precedent, that residents of *Illinois Brick* non-repealer states cannot proceed with their claims under California law, but must instead proceed under the laws of their own states. Each of the *Illinois Brick* non-repealer states is so characterized because it has chosen not to enact or adopt laws that allow indirect purchasers to sue for money damages in antitrust cases. Although the claims for money damages of residents of *Illinois Brick* non-repealer states are technically still active, there can be no serious contention that they can ever be litigated to a successful conclusion. Absent settlement, they will eventually be dismissed and the residents of *Illinois Brick* non-repealer states will never recover on these claims. There is no reason to compensate residents of *Illinois Brick* non-repealer states for releasing their claims in settlement when they had no realistic chance of recovering on them in the first place. Indeed, to do so would be to provide them a windfall at the expense of class members with credible claims for damages.

The settlement class in this MDL is in a nearly identical situation as the settlement classes were in *In re CRT* and in *In re Flat Panel*. In both of those cases, the court approved settlement allocations providing no monetary award to the residents of the *Illinois Brick* non-repealer states. *In re CRT* concerned a settlement on behalf of a nationwide class of IPPs and the release of all of their claims in exchange for a monetary award to be distributed only to those IPP class members residing in *Illinois Brick* repealer states. *In re Cathode Ray Tube (CRT) Antitrust Litig.*, MDL No. 1917, 2016 WL 721680 at *2, *11 (N.D. Cal. Jan. 28, 2016). Several class members and several state Attorneys General objected to the plan of allocation, and particularly to the release of claims from class members in *Illinois Brick* non-repealer states who would not receive compensation. Some argued that the claims of class members in *Illinois Brick* non-repealer states had value, even though those states' laws did not allow indirect purchasers to sue for money damages. Others argued that, even though the claims were valueless, they should still be compensated for their release due to nuisance value. *Id.* at *11-12. The court rejected both arguments. According to the court, the claims were valueless because no monetary relief could be obtained, and any injunctive relief would

be obsolete, given the time that had elapsed since the conduct took place.[2] *Id.* at *13-14. As for requiring compensation for the release of valueless claims, the court held: "no Ninth Circuit case holds that the release of a class action claim must be compensated in all instances, *Nguyen*, 2014 WL 1802293, at *7, and this Court will not break new ground by announcing one." *Id.* In *In re Flat Panel*, the court likewise approved a settlement whereby the nationwide IPP settlement class would release all of their claims, but where the monetary relief would be distributed only to the members of a monetary relief class consisting of residents of *Illinois Brick* repealer states. *In re TFT-LCD (Flat Panel) Antitrust Litig.*, MDL. No. 1827, 2013 WL 1365900, at *3-4 (N.D. Cal. Apr. 3, 2013).

Allocating money from these settlements to residents of *Illinois Brick* non-repealer states would dilute the recovery of residents in *Illinois Brick* repealer states without justification. Unlike the earlier settlements in this litigation, which were allocated pro rata across the nationwide class, these settlements were negotiated after the court had denied certification of a nationwide litigation class and held that *Illinois Brick* non-repealer residents would have to proceed under their own states' laws. Although the claims of *Illinois Brick* non-repealer residents may have posed a credible threat to defendants before the court denied certification of a nationwide litigation class, they posed no such threat once certification of a nationwide litigation class was denied and the court made clear that these claims could not proceed under California law. Because they posed no threat, the claims were valueless and could not have meaningfully contributed to the settlement negotiations. *See In re CRT*, 2016 WL 3648478, at *13-14.

To diminish the money available to compensate the residents of repealer states for the release of their legitimate and credible claims in order to provide money to residents of non-repealer states who had no credible claims would be unfair and unreasonable. This settlement was only achievable

[2] To the extent that residents of the *Illinois Brick* non-repealer states contend they should be compensated for releasing their claims to injunctive relief in this case, that argument should be rejected. The residents of the *Illinois Brick* non-repealer states sought only a duplicative injunction prohibiting defendants from engaging in conduct already illegal under the antitrust laws. Moreover, under the terms of the settlement, the defendants agree to avoid engaging in this same conduct. Accordingly, to the extent the injunction would have provided those class members any benefit, that benefit has been realized through the settlement, and no additional compensation for the injunctive claims is required.

because the claims of the *Illinois Brick* repealer state residents posed a credible threat of liability to Defendants. Were it not for the claims of the *Illinois Brick* repealer state residents, these settlements would not exist whatsoever. Moreover, unlike the claims of residents of the *Illinois Brick* non-repealer states, the claims of the residents of the *Illinois Brick* repealer states have real and substantial value. Were those claims litigated to conclusion, there is a good chance that they would be successful and result in a sizeable recovery. By releasing those claims as part of these settlements, the class members from the *Illinois Brick* repealer states are giving up a valuable right for which fairness and reasonableness requires they receive considerable compensation. Allocating a significant portion of the monetary settlement to residents of *Illinois Brick* non-repealer states would reduce the amount of compensation available to residents of *Illinois Brick* repealer states and dilute their recovery to benefit only holders of worthless claims. This is not fair and reasonable because such dilution is unnecessary to achieve global peace. Because the claims of the *Illinois Brick* non-repealer residents are meritless, global peace can effectively be achieved with or without their release. Indeed, at the time these settlements were negotiated, IPPs were no longer even seeking certification of a class that included the *Illinois Brick* non-repealer residents. Moreover, as discussed above, there is no requirement in the Ninth Circuit that settlement funds be allocated to compensate for the release of meritless claims so, as a matter of law, Defendants can resolve all pending claims against them without the settlement compensating holders of meritless claims. Given this dynamic, it would be unfair and unreasonable to allocate any significant portion of the settlement funds to residents of *Illinois Brick* non-repealer states.

Fairness aside, allocating money from these settlements to residents of *Illinois Brick* non-repealer states would raise serious questions of federalism. The Supreme Court has held that federal antitrust law does not pre-empt state antitrust law and, accordingly, each state is entitled to decide what legal remedies it wishes to provide for antitrust violations. *California v. ARC America Corp.*, 490 U.S. 93, 101 (1989). This includes the right to decide whether to allow indirect purchasers to pursue monetary damages for antitrust violations. *Id.* That *Illinois Brick* non-repealer states have decided not to allow indirect purchasers to sue for monetary damages is a decision that federalism requires the federal courts to respect. Allocating money to non-repealer residents as part of the

settlement of these antitrust claims would undermine the rights of these states to determine their legal systems and their citizens' rights and would be contrary to the principles that led the court in this MDL to hold that non-repealer residents cannot proceed with their claims under California law: "the interests of *Illinois Brick* non-repealer states in precluding indirect purchaser claims would be impaired more significantly by applying the Cartwright Act than California's interests would be impaired by limiting its application to *Illinois Brick* repealer states." 4/12/17 Class Cert. Order at 24. By allocating settlement funds to residents of *Illinois Brick* non-repealer states, the court would be effectively applying California's indirect purchaser laws to the claims from those states rather than those own states' laws as federalism requires. As other courts have noted, it would also raise concerns under the Rules Enabling Act. *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 294 (3d Cir. en banc 2011) (characterizing vacated Panel decision) ("The Panel further observed that the District Court's certification order contravened the Rules Enabling Act, 28 U.S.C. § 2072(b), by extending antitrust remedies not rooted in state substantive law to putative class members."). Allocating the entire settlement to residents of states whose laws allow for the recovery of money damages by indirect purchasers avoids these issues and respects federalism.

Finally, any allocation that provides any significant money to claimants from *Illinois Brick* non-repealer states is almost certain to invite vociferous objection from class members in *Illinois Brick* repealer states. The previous round of settlements, which was entered into before the court denied class certification, faced strenuous objection from class members in *Illinois Brick* repealer states who believed the pro rata distribution unfairly diluted their recovery. Final approval of those settlements is now on appeal to the Ninth Circuit, where the outcome is uncertain. Any allocation that dilutes the recovery of the *Illinois Brick* repealer residents from these settlements will be subject to the same objection. Except, because the settlements were negotiated after the court denied class certification, the primary argument in favor of distributing settlement funds to residents of non-repealer states will not be available to defend the allocation. Answering Brief of Plaintiff-Appellee Indirect Purchaser Plaintiffs at 4 ("The timing of when these settlements were reached is critical in evaluating their reasonableness."); at 7 ("In support of a pro rata distribution to claimants in all 50 states, class counsel correctly explained that the landscape at the time the settlements were reached

was focused on a 'nationwide' resolution.") (July 16, 2018), ECF No. 26. Given that these settlements were negotiated long after the MDL court had determined the *Illinois Brick* non-repealers' claims could not proceed under California law, and the IPPs had dropped their bid to certify a nationwide litigation class, it is not clear how or whether a nationwide allocation of these settlements to residents of all 50 states could be defended against such objections.

IV. IN THE ALTERNATIVE, A NOMINAL MONETARY AWARD TO RESIDENTS OF NON-REPEALER STATES WOULD PROVIDE MORE THAN ADEQUATE VALUE FOR THOSE CLAIMS WHILE MINIMIZING DILUTION OF THE VALUE OF THE SETTLEMENT TO RESIDENTS OF REPEALER STATES

As discussed above, the fairest and most reasonable allocation would be to allocate the entire monetary recovery to residents of the *Illinois Brick* repealer states. However, if it is determined that some portion of the monetary recovery should be allocated to residents of *Illinois Brick* non-repealer states, notwithstanding the fact that they have no viable claims, only a small fraction of the settlement should be allocated to those class members. An allocation of a nominal amount, such as 10% of the settlement funds, would be more than adequate to compensate residents of *Illinois Brick* non-repealer states for their claims (which have, at best, nuisance value), and would only dilute the recovery of the residents of *Illinois Brick* repealer states by a small amount. As discussed above, were this case to be litigated to conclusion, the residents of *Illinois Brick* non-repealer states would undoubtedly find themselves "out of the money." That is, there is no way that they could recover any money on their claims in litigation. To the extent these claims have any value at all, such value derives solely from the fact that those claims have not (yet) been dismissed with prejudice, combined with the fact that defendants desire global peace and thus demand resolution of all outstanding claims in exchange for settlement. As discussed above, neither fairness nor reasonableness requires compensation for release of these worthless claims. Nevertheless, Rule 23's fair and reasonable standard permits a range of acceptable allocations, and a small allocation to residents of *Illinois Brick* non-repealer states would be defensible. If it is determined that some compensation for the release of these non-viable claims is merited, the fairest and most reasonable allocation is one that compensates for this *de minimis* value without diluting the *Illinois Brick* repealer residents' claims any more than absolutely necessary; namely, a 90/10 split of the settlement with a pro rata

distribution within each group and a $10 minimum claim amount.

A. A *de minimis* Award to Residents of Non-Repealer States is Defensible

Although there is little if any chance that they could ever recover on their claims through litigation, a nominal award to residents of *Illinois Brick* non-repealer states is defensible. The court has significant discretion in approving settlements and allocations. Rule 23's fairness standard permits a range of settlement outcomes, provided they are fair and reasonable. "Indeed, the Ninth Circuit has observed that the district court's determination in approving a settlement is nothing more than 'an amalgam of delicate balancing, gross approximations and rough justice.' *Officers for Justice*, 688 F.2d at 625." *In re CRT*, 2016 WL 721680 at *16. It would be impossible to determine the exact value or the exact portion of the settlement fund that would accurately compensate the *Illinois Brick* non-repealer residents for giving up their meritless claims, but the law does not require exactness in this context. Rather, provided that the plan of allocation is fair and reasonable, and the distribution is roughly proportional to the value of the claims being surrendered, that is sufficient. Here, any proposed allocation between zero and ten percent would clearly meet these criteria. *See, e.g.*, *In re MicroStrategy, Inc. Sec. Litig.*, 148 F. Supp. 2d 654, 668 (E.D. Va. 2001) (ten percent*); In re Ikon Office Sols., Inc. Sec. Litig.,* 194 F.R.D. 166, 184 (E.D. Pa. 2000) (ten percent and less); *cf. also In re Charter Commc'ns, Inc. Sec. Litig.*, No 4:02–CV–1186 CAS, 2005 WL 4045741, at *10 (E.D. Mo. June 30, 2005) (allocating settlement funds on basis of the relative strengths and weaknesses of class members' individual claims and the timing of purchases and sales of the securities at issue); *In re Gulf Oil/Cities Serv. Tender Offer Litig.*, 142 F.R.D. 588, 596 (S.D.N.Y. 1992) (same). Although an allocation of a portion of the settlement to *Illinois Brick* non-repealer claims does dilute the settlement amount payable to those with stronger claims, if there is a determination that an allocation is helpful or necessary to achieve global peace and insulate the settlement from appeal, it will benefit all relative to the prospect of continued litigation.

B. A Minimum Claim Threshold for All Class Members is Appropriate

Any allocation should ensure that settlement funds are not wasted on administrative cost to distribute tiny claims and should impose a minimum claim amount on monetary claims. A ten-dollar minimum is appropriate, and such a threshold has been approved in similar cases. *Sullivan*, 667 F.3d

at 328 ("Lastly, the objectors contend that the settlement's minimum claim payment requirement of $10 provides inadequate settlement relief, as it will eliminate the rights of many class members without providing any compensation. They urge that a minimum payment provision contradicts the purpose of the class action mechanism to provide recovery even where the amount is "paltry." We disagree and find no abuse in the District Court's decision to approve the minimum claim payment threshold.") (internal citations omitted). "As other courts have observed, 'de minimis thresholds for payable claims are beneficial to the class as a whole since they save the settlement fund from being depleted by the administrative costs associated with claims unlikely to exceed those costs and courts have frequently approved such thresholds, often at $10.' *In re Gilat Satellite Networks, Ltd.*, No. CV–02–1510, 2007 WL 1191048, at *9 (E.D.N.Y. Apr. 19, 2007); *see, e.g., In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 463 (S.D.N.Y. 2004) (noting that the minimum recovery requirement is a common procedure that addresses "the undeniable fact that claims-processing costs money, which comes out of the settlement fund"); *Mehling v. New York Life Ins. Co.*, 248 F.R.D. 455, 463 (E.D. Pa. 2008) (approving settlement plan with $50 minimum payment)." *Sullivan*, 667 F.3d at 328.

V. A NATIONWIDE PRO RATA APPORTIONMENT IS NOT FAIR OR REASONABLE

Nationwide pro rata apportionment is not fair or reasonable, because it does not account for the massive disparity in the value of the class members' claims. The only reason that plaintiffs were able to achieve such a large settlement is because residents of *Illinois Brick* repealer states could make a credible claim for the recovery of significant money damages to remedy the harm caused by defendants' conduct. Although citizens of *Illinois Brick* non-repealer states may have suffered equal harm, at the point when these settlements were reached, they had no credible claim for money damages and could never have achieved this settlement, or any settlement, without relying entirely on the value of the claims of *Illinois Brick* repealer states' citizens. In these circumstances, a pro rata settlement would dilute the value of the *Illinois Brick* repealer state residents' claims to provide a windfall to residents of *Illinois Brick* non-repealer states. As such, it is not fair or reasonable.

A. Apportionment Must Account for the Strength of Class Members' Claims

In determining if a settlement is fair, adequate, and reasonable, a court must weigh the strength of the plaintiffs' case against the amount of the settlement. *Churchill Village, LLC v. Gen. Elec.*, 361 F.3d 566, 576 (9th Cir. 2004). It is not enough to weigh the collective strength of the class members' case against the amount of the settlement; a court must also look at differences in the strength of claims between class members. *See In re CRT*, 2016 WL 3648478, at *13 (in approving historically large settlement of antitrust claims, court evaluated plan of allocation by assessing the relative strength of claims from residents of *Illinois Brick* repealer states vis-à-vis residents of *Illinois Brick* non-repealer states).

The fairness requirement is intended to "ensure that similarly situated class members are treated similarly and that dissimilarly treated class members are not arbitrarily treated as if they were similarly situated." Rubenstein, 4 NEWBERG ON CLASS ACTIONS §13:59. Class members with different claims ought not "receive the same relief." *Id.* at 13:60. In discussing settlements, Newberg notes: "The release of claims for no relief is the most obvious red flag, but there are other troubling situations. For example, claims may go implicitly uncompensated if class members with different claims receive the same relief." *Id.* A settlement-only certification that "gives the same monetary remedy to all members of the class, despite significant differences in the nature of their claims or injuries" is not "fair or reasonable." AMERICAN LAW INSTITUTE, PRINCIPLES OF THE LAW OF AGGREGATE LITIG. § 3.05, cmt. b. (2010).

Many courts have rejected settlements where the allocation did not account for difference among the class members. *See, e.g.*, *Philliben v. Uber Techs., Inc.*, No. 14-cv-5615-JST, 2016 WL 4537912, at *5 (N.D. Cal. Aug. 30, 2016) (rejecting a settlement treating those within the class who had a strong claim the same as those who did not); *Altamirano v. Shaw Indus., Inc.*, No. 13-cv-939-HSG, 2015 WL 4512372, at *1 (N.D. Ca. Jul. 24, 2015) ("[The] proposed *pro rata* method did not account for [the] reality" of the intraclass disparity, resulting in drastic[] undercompensate[ion]" for one class subgroup); *Valdez v. Neil Jones Food Co.*, No. 13-cv-519-AWI-SAB, 2014 WL 3940558, at *11 (E.D. Cal. Aug. 12, 2014) (rejecting settlement where class members made differing wages); *Newman v. AmeriCredit Fin. Servs.*, No. 11-cv-3041 DMS (BLM), 2014 WL 12789177, at *5 (S.D.

Cal. Feb. 3, 2014) (rejecting a settlement that proposed treating equally all members of a class where half the class potentially had no claim).

On the other hand, many settlements have been approved that allocated different amounts to different class members according to the strength of severity of their claims. "As noted above with respect to the Berger objection, settlement proceeds may be allocated with respect to the strengths and weaknesses of various claims." *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 348 (S.D.N.Y. 2005) (citing *In re Holocaust Victim Assets Litig.*, 413 F.3d 183, 186 (2d Cir. 2005)). For example, courts have approved much smaller settlement distribution to class members with pre-disclosure sales of securities. *See Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002) (awarding twenty percent of their recognized losses); *In re MicroStrategy*, 148 F. Supp. 2d 654, 668 (E.D. Va. 2001) (ten percent); *In re Ikon Office Sols.*, 194 F.R.D. at 184 (ten percent and less); *In re Sapiens Sec. Litig.*, No. 94 Civ. 3315(RPP), 1996 WL 689360, at *2 (S.D.N.Y. Nov. 27, 1996) (thirty percent); *cf. also In re Charter Commc'ns*, 2005 WL 4045741, at *10 (allocating settlement funds on basis of the relative strengths and weaknesses of class members' individual claims and the timing of purchases and sales of the securities at issue); *In re Gulf Oil/Cities Serv. Tender*, 142 F.R.D. at 596 (same).

The settlements previously approved in this MDL, which included a pro rata allocation across a nationwide IPP class, occurred in a fundamentally different environment than the current settlements. Those settlements were all achieved before it was clear that residents of *Illinois Brick* non-repealer states could not proceed under California law. If the claims of class members from *Illinois Brick* non-repealer states had been allowed to proceed under California law, the distinction between the value of claims by *Illinois Brick* repealer residents and *Illinois Brick* non-repealer residents would have been eliminated and all class members' claims would have stood an equal chance of success on the merits and a substantial monetary recovery. In that context, a pro rata distribution was defensible, as it was proportional to the value of the claims being released. Once the MDL court held that *Illinois Brick* non-repealer claims could not proceed under California law, however, the value of those claims was fundamentally changed. A pro rata distribution of these settlements, given the developments in the case at the time the settlements were negotiated, would be

fundamentally unfair, as it would ignore the MDL court's choice-of-law analysis and finding that the *Illinois Brick* non-repealer residents cannot proceed under California law.

B. Class Members Residing in *Illinois Brick* Repealer States Have Much More Valuable Claims.

In this case, there can be no serious dispute that residents of *Illinois Brick* repealer states have significantly stronger claims than residents of *Illinois Brick* non-repealer states. To apportion the settlement equally across these two groups would be unfair and unreasonable. State-law antitrust settlements in the Ninth Circuit routinely distinguish between repealer and non-repealer states. *E.g.*, *In re Optical Disk Drive Prods. Antitrust Litig.*, No. 10-md-2143 RS, 2016 WL 7364803, at *1-2 (N.D. Cal. Dec. 19, 2016), *appeals filed*, Nos. 17-15065 (9th Cir. Jan. 13, 2017), 17-15067 (9th Cir. Jan. 13, 2017), 17-15143 (9th Cir. Jan. 24, 2017) (excluding residents of non-repealer states from settlement class definition); *In re CRT*, 2016 WL 721680 (excluding residents of non-repealer states from distribution under plan of allocation); *In re Flat Panel*, 2013 WL 1365900 (same).

There is good reason for this. As the Court's class certification decision in this very case makes clear, residents of *Illinois Brick* non-repealer states are in a fundamentally different position when making claims for money damages than are residents of states that have decided to enact *Illinois Brick* repealer laws. In denying class certification, this Court found: "Because the Court finds that the interests of *Illinois Brick* non-repealer states in precluding indirect purchaser claims would be impaired more significantly by applying the Cartwright Act than California's interests would be impaired by limiting its application to *Illinois Brick* repealer states, the Court finds that a nationwide class under the Cartwright Act would not be appropriate." 4/12/17 Class Cert. Order at 24. Lumping these two groups together in a settlement class does not make these differences disappear. On the contrary, it counsels that attention be paid to these differences to ensure that the use of the class action mechanism does not unduly impair or enlarge any party's rights. *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 74 (D. Mass. 2005).

It is irrelevant that the class members all suffered similar harms, because what matters under the law is not the harm caused but the remedy provided by the law. Under federal law, none of the members of this class could make a claim for money damages—not because they were not injured,

but because the federal antitrust laws, as interpreted by *Illinois Brick* and progeny, only allow monetary damages to be claimed by direct purchasers. Any federal claims for money damages brought by any these class members for the harm done to them would have been immediately dismissed. The absolute best outcome they could hope to achieve for such claims would be a nominal settlement from defendants to buy peace and avoid the hassle of litigation. After the MDL court determined that residents of *Illinois Brick* non-repealer states must proceed under the laws of their own states and not California, they were in essentially the same positions as if they had brought their claims under federal law. Accordingly, their claims had only nuisance value, and any apportionment of the settlement must take that into account. *See In re Relafen*, 231 F.R.D. at 76 ("In the considered judgment of this Court, had this case proceeded to trial and judgment, claimants from [non-repealer] states would have recovered nothing at all. The decision to cut them a slice of the pie at all is borne out of SmithKline's unwillingness to bargain for less than a global settlement nationwide as well as the inherent vicissitudes of litigation."); *In re CRT*, 2016 WL 721680, at *27 ("This plan of allocation [releasing non-repealer residents' claims for no monetary damages] is fair, reasonable and adequate as to these members of the Nationwide Class who are not eligible for monetary compensation because Lead Counsel made reasonable, rational, good-faith valuations of the strength of potential claims in non-repealer states based on governing law….")

The distinctions between the relative strengths of these class members' claims in this case is not speculative or uncertain; it is settled law. "The case law is clear and consistent in holding that such state law claims [claims for money damages on behalf of residents of non-repealer states] are not permissible in indirect purchaser cases." *In re CRT*, 2016 WL 721680, at *24. Defendants raised *Illinois Brick* as a defense against claims from residents of non-repealer states well before these settlements were reached. Indeed, the Court had already determined that these claims could not proceed under a unified legal framework. Although the residents of the non-repealer states still technically had live claims when these settlements were reached, those claims had no realistic chance of success. As the court in *In re CRT Antitrust Litig.* held, in approving the release of non-repealer residents' claims for no compensation, "actively pursuing such a claim would have been quixotic." *Id.* at *25. The Court's own choice-of-law analysis concluded that: "the interests of

Illinois Brick non-repealer states in precluding indirect purchaser claims would be impaired more significantly by applying the Cartwright Act than California's interests would be impaired by limiting its application to *Illinois Brick* repealer states." 4/12/17 Class Cert. Order at 24.

This result cannot be ignored. In order to approve any settlement in this case, the court will have to certify a settlement class. And, as the Supreme Court instructed in *Amchem*, to certify a settlement-only class, the court will have to scrutinize whether the proposed class meets the requirements of Rule 23 (save for Rule 23(b)(3)(D)'s manageability requirement). *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) ("[O]ther specifications of the Rule [besides manageability concerns]—those designed to protect absentees by blocking unwarranted or overbroad class definitions—demand undiluted, even heightened, attention in the settlement context."). Given the law of the case here, such scrutiny necessarily incorporates this Court's previous choice-of-law analysis and the conclusion reached: residents of non-repealer states cannot proceed under California law, and their claims must rest on the laws of their own states. *See, e.g.*, *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 592-93 (9th Cir. 2012). To maximize the fairness and reasonableness of this settlement and, thus, to ensure the greatest chance that it will be approved, one must reject the temptation to accept a simple pro rata settlement and must take account of the fact that the residents of the repealer states are forfeiting their right to pursue much more valuable claims than those held by residents of non-repealer states.

C. Even If a Pro Rata Allocation Might Be Approved, Such an Allocation Would Be Risky, Would Raise Serious Questions of Federalism, and Might Violate the Rules Enabling Act.

"Although Rule 23(e) is silent respecting the standard by which a proposed settlement is to be evaluated, the universally applied standard is whether the settlement is fundamentally fair, adequate and reasonable." *Officers for Justice*, 688 F.2d at 625. Several courts, confronting this very same issue, have held that an allocation that draws no distinction between claimants from *Illinois Brick* repealer states and claimants from *Illinois Brick* non-repealer states is unfair to claimants residing in *Illinois Brick* repealer states. As the court put it in *In re Relafen*: "[I]t would be unfair to claimants residing in states that had repealed *Illinois Brick* to allow claimants from states that had not repealed *Illinois Brick* to share equally in a settlement since they would likely receive

nothing at trial." 231 F.R.D. at 75. The Ninth Circuit has likewise recognized that "ordinarily a small, definable group of class members should not be called upon to bear an unduly disproportionate share of the compromises made in the settlement process." *Officers for Justice*, 688 F.2d at 631.

Whether or not a pro rata apportionment would meet the bare minimum for approval under Rule 23(e), such an apportionment would raise serious questions or fairness and reasonableness and would unnecessarily imperil the settlement altogether. Although pro rata settlements have been approved, even for nationwide indirect purchaser classes, none of those cases involved a situation like this one where a choice-of-law analysis had already been conducted. For example, in *Sullivan v. DB Investments*, the en banc court "decline[d] to require" an analysis of the relative strength or weakness of the claims of various members of a settlement class in allocating the settlement. 667 F.3d at 328. However, the court only did so because "only by engaging in the type of fact-intensive merits and choice-of-law analyses that we have rejected could a district court attempt to assay the 'varying strengths and weaknesses' of asserted state claims." *Id.* But, in this case, the court has already conducted the requisite choice-of-law analysis and held that the claims of these two groups cannot proceed under the same laws. Accordingly, to embrace a pro rata apportionment given the courts own findings in this case and recent Ninth Circuit precedent would only serve to needlessly imperil this settlement's ultimate chance of success.

VI. CONCLUSION

For all of the reasons discussed above, these settlements should not be allocated on a pro rata basis. Instead, all or almost all of the settlement funds should be allocated to class members who are residents of *Illinois Brick* repealer states. Any other allocation would be unfair, unreasonable, and ultimately indefensible.

Dated: October 31, 2018

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE: LITHIUM ION BATTERIES ANTITRUST LITIGATION	Case No. 13-MD-02420-YGR MDL NO. 2420
This Document Relates to: ALL INDIRECT PURCHASER ACTIONS	**MEDIATION STATEMENT BEFORE THE HON. REBECCA WESTERFIELD (RET.)** Date Action Filed: Oct. 3, 2012

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I. INTRODUCTION

The settlement agreements at issue, involving Samsung SDI Co., Ltd. and Samsung SDI America, Inc. (collectively, "SDI"), NEC Tokin Corporation ("Tokin"), and Toshiba Corporation ("Toshiba") (collectively "Settling Defendants"), all propose certification of nationwide settlement classes and the release of all claims, including claims for damages that were or could have been asserted by all class members, wherever they reside. Because the settlement agreements propose certification of nationwide settlement classes, requiring residents of both repealer and non-repealer states to release their claims against Settling Defendants, a *pro rata* distribution of the net settlement funds is not only appropriate, but the most reasonable plan of allocation.

Because the settlement agreements do not provide for any injunctive relief to class members, settling claims on behalf of residents of non-repealer states that would require those class members to give up all of their claims for no consideration would be an unreasonable and unjust result. Not only is this position supported by ample caselaw, including *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 302 (3d Cir. 2011) and *In re Transpacific Passenger Air Transp. Antitrust Litig.*, No. C 07-05634 CRB, 2015 WL 3396829 at *3 (N.D. Cal. May 26, 2015), *aff'd*, 701 F. App'x 554 (9th Cir. 2017), but ***the Court in this very case*** has expressly ruled that a *pro rata* plan of allocation was reasonable in distributing damages among all class members in a nationwide antitrust indirect purchaser class action of a nationwide class.

II. PROCEDURAL BACKGROUND

Indirect Purchaser Plaintiffs allege that the Settling Defendants conspired with each other and other defendants to fix the price of lithium ion batteries, which are widely used in consumer electronic devices. Third Consolidated Amended Complaint ¶ 4.[1] The alleged conspiracy began at least as early as January 1, 2000 and continued until at least May 31, 2011. *Id.*

[1] The operative complaint is the Fourth Consolidated Amended Complaint. Doc. No. 1168.

Since the commencement of this litigation, Indirect Purchaser Plaintiffs have settled with Hitachi Maxell, NEC, and LG Chem. The settlements were preliminarily approved on March 30, 2017, and finally approved on October 27, 2017. Doc. Nos. 1714, 2003. In connection with the briefing on those settlement agreements, the Court recognized that a *pro rata* allocation of settlement funds among all members of a nationwide class was appropriate. Indirect Purchaser Plaintiffs have also entered into settlement agreements with Settling Defendants, the allocation of which are at issue here.

The settlements with Hitachi Maxell, NEC, and LG Chem were reached while the parties were briefing Indirect Purchaser Plaintiffs' motion for class certification, which was filed on January 22, 2016. Doc. No. 1036. Defendants filed their opposition to class certification on May 24, 2016. Doc. No. 1551. With their opposition, defendants filed two *Daubert* motions as well as three expert reports. Doc. No. 1280-3, 1280-5. On August 23, 2016, Indirect Purchaser Plaintiffs filed their reply in support of class certification, along with reply reports that responded to defendants' experts' criticisms. Doc. No. 1402-2. On April 12, 2017, the Court entered its Order denying Indirect Purchaser Plaintiffs' motion for class certification without prejudice. Doc. No. 1735. In that Order, the Court requested additional information and briefing on issues related to pass through, third party packers, and focal point pricing. *Id.* at 19.

Indirect Purchaser Plaintiffs filed their renewed motion for class certification on September 26, 2017, which Panasonic Corporation, Panasonic Corporation of North America, Sanyo Electronic Co. Ltd., and Sanyo North America Corporation opposed on November 15, 2017. Doc. Nos. 1960, 2024. Panasonic and Sanyo also again moved to exclude the proposed testimony of one of Indirect Purchaser Plaintiffs' experts. Doc. No. 2022. Indirect Purchaser Plaintiffs filed their Reply on November 21, 2017. Doc. No. 2044. The Court denied Indirect Purchaser Plaintiffs' renewed motion for class certification on March 5, 2018. Doc. No. 2197.

Indirect Purchaser Plaintiffs filed their second renewed motion for class certification on August 10, 2018, which was stricken on September 4, 2018. Doc. Nos. 2369, 2407.

III. LEGAL STANDARD

District courts enjoy broad supervisory powers over the administration of class action settlements to allocate the proceeds equitably to ensure that distribution is fair, adequate, and reasonable. *Dunleavy v. Nadler* (*In re Mego Fin. Corp. Sec. Litig.*), 213 F.3d 454 (9th Cir. 2000); *see also Nachshin v. AOL, LLC*, 663 F.3d 1034, 1038 (9th Cir. 2011). "[A] Plan of Allocation need not be, and cannot be, perfect." *In re Cendant Corp. Sec. Litig.*, 109 F. Supp. 2d 235, 272 (D.N.J. 2000), *aff'd*, 264 F.3d 201 (3d Cir.), *cert. denied*, 535 U.S. 929 (2002). It is very difficult, if not impossible, to create a plan of distribution that is optimal from the perspective of each and every individual potential claimant, but that is not cause to reject a plan of distribution if it is fair, adequate, and reasonable. *See In re Warfarin Sodium Antitrust Litigation*, 212 F.R.D. 231, 258 (E.D. Del. 2002), aff'd, 391 F.3d 516, 534 (3d Cir. 2004). "Any settlement value based on averages will undercompensate some and overcompensate others." *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, and Prods. Liab. Litig.*, No. 16-17157, 2018 WL 3340398, at *7 n.16 (9th Cir. July 9, 2018). *See also In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 CIV. 5450, 2018 WL 3677875, at *9 (S.D.N.Y. Aug. 1, 2018) ("[I]n the case of a large class action the apportionment of a settlement can never be tailored to the rights of each plaintiff with mathematical precision.") (citing *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 133 (S.D.N.Y.), *aff'd*, 117 F.3d 721 (2d Cir. 1997) (per curiam)).

A *pro rata* distribution plan is fair, adequate and reasonable to the settlement class members. Many courts have approved distribution plans that provide for recovery on a *pro rata* basis. *See, e.g., Noll v. eBay, Inc.*, No. 5:11-cv-04585-EJD, 2015 U.S. Dist. LEXIS 123147 at *10, *50) (N.D. Cal. Sept. 15, 2015) (approving *pro rata* distribution as fair and reasonable); *In re High-Tech Emp. Antitrust Litig.*, No. 11-CV-02509-LHK, 2015 U.S. Dist. LEXIS 118051, at *29-30 (N.D. Cal. Sept. 2, 2015) (approving *pro rata* distribution of fractional share based upon class member's total base salary is fair and reasonable). *See also In re DRAM Antitrust Litig.*, No. 02-md-1486, 2014 U.S. Dist. LEXIS 89622, *77 (N.D. Cal. June 27, 2014) (overruling an objection that the plan was "unfair and unreasonable because it provides for the payment of

claims from residents of non-repealer states *pro rata* with the claims of residents of states whose courts or legislatures have determined that their antitrust laws are not constrained by *Illinois Brick*").

IV. ARGUMENT

A. Judge Rogers Previously Approved A *Pro Rata* Plan Of Allocation As Fair And Adequate

Judge Rogers previously considered – and rejected – the argument that an allocation plan must account for "intraclass conflicts between consumers that reside in Illinois Brick repealer states and those that reside in other states." *In re Lithium Ion Batteries Litig.*, Case No. 13-MD-02420-YGR, Doc. No. 2003 at 3 (N.D. Cal. Oct. 27, 2017) (granting final approval of class action settlements with Hitachi Maxell, NEC, and LG Chem Defendants and denying motion to intervene).

Indirect Purchaser Plaintiffs and Hitachi Maxell, NEC, and LG Chem entered into settlement agreements in November and December 2016.[2] *Id.* at 9 (LG Chem), 46 (Hitachi Maxell), 83 (NEC). The settlement agreements totaled more than $64 million. Doc. No. 1921 at 12. On December 6, 2016, Indirect Purchaser Plaintiffs moved for preliminary approval of the settlement agreement with LG Chem. Doc. No. 1921 at 19. On January 24, 2017, Indirect Purchaser Plaintiffs moved for preliminary approval of the settlement agreements with Hitachi Maxell and NEC. Doc. Nos. 1652, 1672. The Court granted preliminary approval of the three settlements, certifying a nationwide settlement class. Doc. No. 1714.

In all three of the settlement agreements, the releases relinquished any claims class members had against settling defendants based, in whole or in part, on matters alleged or which could have been alleged in the Indirect Purchaser Plaintiffs' consolidated complaint, excluding claims for product liability, breach of contract, breach of warranty, personal injury, or any other claim unrelated to the allegations of the litigation. Doc. No. 1921, Exs. 1-3 at ¶ 11. Indirect

[2] Six Indirect Purchaser Plaintiffs requested to opt out of the settlement. *Id.* at 117.

Purchaser Plaintiffs proposed to distribute the funds *pro rata* to class members based on the number of qualifying purchases submitted through claim forms. Doc. No. 1921 at 23. Under the plan, each class member received the same treatment regardless of whether he or she lived in an *Illinois Brick*-repealer state or a non-repealer state.

In conjunction with the three settlements, four objectors filed a total of ten objections. Doc. No. 1921 at 2. Michael Frank Bednarz filed an objection and supplemental declaration. Doc. Nos. 1902, 1907. Mr. Bednarz argued that intraclass conflicts between class members who purchased lithium ion battery products in *Illinois Brick*-repealer states and those who did precluded certification of the proposed settlement classes. Doc. No. 1902 at 11. In making this argument, Mr. Bednarz relied upon the Court's prior order denying certification of a proposed nationwide class against the non-settling defendants. *Id.* at 11 (citing Doc. No. 1735): "As the Court determined, California's Cartwright Act cannot be applied to indirect purchases made in *Illinois Brick* non-repealer states without overriding the policies of those non-repealer state and thereby creating a conflict of law." *Id.* at 11-12. Mr. Bednarz also criticized Indirect Purchaser Plaintiffs for seeking a nationwide settlement class given that they had previously asserted that if the Court declined to certify a nationwide damages class under California law, they would seek an alternative *Illinois Brick*-repealer-state-only class, relying on *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581 (9th Cir. 2012). *Id.* at 12 (citing Doc. No. 1168 at ¶ 489). He claimed that a *pro rata* distribution plan would "force class members with legitimate claims to unfairly compromise and dilute their claims for damages so that class members with no claims can participate in a single settlement class." *Id.*

Mr. Bednarz further argued that the proposed settlement class did not satisfy predominance grounds because the proposed nationwide class was not sufficiently cohesive in light of the fact that "class members who indirectly purchased items in the approximately 20 non-repealer states have no viable monetary antitrust claims," *id.*, and that the class did not satisfy Rule 23(a)(4)'s adequacy requirement because of the "foundational intraclass conflict." *Id.* at 14.

Indirect Purchaser Plaintiffs filed their omnibus response to the settlement objections on August 28, 2017. Doc. No. 1923. In response to Mr. Bednarz' objection, they noted that "[e]very court that has addressed these arguments has rejected them, including within the Ninth Circuit and in the leading case of *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 302 (3d Cir. 2011), *cert denied Murray v. Sullivan*, No. 11-1111, 2012 U.S. LEXIS 2656 (Apr. 2, 2012).[3] In response to Mr. Bednarz' argument that the nationwide class failed to satisfy Rule 23(b)(3)'s predominance requirement, Indirect Purchaser Plaintiffs argued:

> Courts in the Ninth Circuit have relied on *Sullivan* in approving nationwide antitrust class action settlements. For example, the court in *CRTs* held that predominance for purposes of a settlement class is met 'even if there are individual state law issues, as long as the common issues still outweigh the individual ones.' *In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. 3:07-CV-5944 JST, 2016 WL 721680, at *15 (N.D. Cal. Jan. 28, 2016).

Doc. No. 1923 at 12. They also highlighted the language from the *In re CRT* court explaining that the predominance inquiry in the settlement context differs from the predominance inquiry in the class certification context:

> [P]redominance is not considered deficient merely because claims were subject to the [varying] laws of fifty states . . .[; instead,] in the settlement context, variations in state antitrust, consumer protection and unjust enrichment laws did not present the types of insuperable obstacles that could render class litigation unmanageable . . . since a settlement would eliminate the principal burden of establishing the elements of liability under disparate laws.

Id. at 13 (citing *In re CRT*, 2016 WL 271680 at *15, *Sullivan*, 667 F.3d at 301, 303; and *In re Transpacific Passenger Air Transp. Antitrust Litig.*, No. C 07-05634 CRB, 2015 WL 3396829 at *3 (N.D. Cal. May 26, 2015)). And in response to Mr. Bednarz' challenge to the adequacy of the settlement class, Indirect Purchaser Plaintiffs argued, relying on *Transpacific:*

> [T]he Ninth Circuit affirmed Judge Breyer's rejection of a similar adequacy argument against a class action antitrust settlement. Judge Breyer relied on the Third Circuit's decision in *Sullivan*, as well as Ninth Circuit precedent, in overruling a Rule 23(a)(4) objection. *Transpacific*, 2015 WL 3396829, at *3. The court explained that "while some class members' claims might have been more valuable than others at trial, 'that does not cast doubt on the district court's conclusion as to the fairness and adequacy of the overall settlement amount as the class as a whole.'" *Id*. (quoting *Lane v. Facebook*, 696 F.3d 811, 824 (9th Cir.

[3] *Sullivan* is discussed in more detail at pp. 11-12, *infra.*

> 2012) (emphasis in original)). Similarly here, as explained in IPPs' Motion for Final Approval, the settlement amount represents a fair and adequate recovery for the entire class, irrespective of whether certain class members may have more valuable claims than others. Mr. Bednarz in fact acknowledged that his arguments have been rejected by the Ninth Circuit (and he does not cite any case accepting the argument). See ECF No. 1902 at 10-11 n.5. Nonetheless, he argues that this case is distinguishable from *Transpacific* because, he says, this Court has acknowledged a difference in the value of different class members' claims when it decided not to certify a nationwide class under California law. *Id*. (citing ECF No. 1735 at 24). Again, Judge Breyer considered and rejected an analogous argument in *Transpacific*. There, an objector argued in that case that there was an intra-class conflict because certain class members' claims were more valuable than others due to the court's FTAIA decision barring recovery for some claims. *Id*. Similarly in this case, the Second Round Settlements were all were reached before this Court's class certification decision, and IPPs can still appeal that decision.

Id. at 13-14.

On August 28, 2017, Indirect Purchaser Plaintiffs moved for final approval. Doc. No. 1921. In addressing Mr. Bednarz' objection, Judge Rogers noted: "[F]or purposes of settlement, common issues predominate, even if individual state laws might have affected some settlement class members' right to recover had the case proceeded to trial . . . The Court finds the settlement, and the pro rata allocation among settlement class members, fair and adequate despite these differences." *Id.* at 4 (citing *Sullivan*, 667 F.3d at 302; *Transpacific*, 2017 WL 2772177; and *In re CRT*, 2016 WL 721680 at *15).

The same result is appropriate here. As detailed below, the arguments available to potential objectors are no different than those made by Mr. Bednarz when he objected to the settlements with Hitachi Maxell, NEC, and LG Chem Defendants. The settlement agreements at issue, like the prior settlement agreements, resolve claims on behalf of a nationwide class, and do not provide injunctive relief for any class members. It would be manifestly unreasonable to require residents of non-repealer states to release all of their claims in exchange for no compensation. And there is no caselaw suggesting that, in the settlement context, it would be appropriate for a court to approve a plan of allocation that disregards the right of residents of non-repealer states to be compensated for releasing their claims.

Moreover, the fact that this ruling is currently on appeal provides no reason to deviate from Judge Rogers' ruling at this time. *See In re Lithium Ion Batteries Litig.*, No. 17-17367, Doc. No. 12 (9th Cir. Apr. 2, 2018); *id.* at Doc. No. 26 (9th Cir. July 16, 2018); *id.* at Doc. No.

33 (9th Cir. Aug. 28, 2018). If the Ninth Circuit rules to the contrary, the plan can be adjusted accordingly.

B. Residents Of Non-Repealer States Should Share In The Settlement Funds

Courts in this Circuit and elsewhere have consistently held that plans of allocation that distribute funds on a *pro rata* basis are fair and reasonable. In contrast with Mr. Bednarz' argument, that class members from non-repealer states have "no claims," residents of non-repealer states may well have viable claims and cannot be required to give up their claims for no consideration.

1. Residents of Non-Repealer States Have Claims For Damages To Release

It is simply untrue that residents of non-repealer states lack any possible claims for damages or restitution. As explained below, Indirect Purchaser residents of non-repealer states may well have claims for damages, restitution, or both, which are compromised as part of the settlement agreements.

First, Indirect Purchaser Plaintiffs alleged in their complaint that California law should be applied on a nationwide basis. While the Court rejected that argument in declining to certify a litigation class, Doc. No. 1735, that issue was never finally reached because the parties settled instead. It is possible that, in the absence of settlement, plaintiffs may have prevailed on that issue, if not at the trial court level, then on appeal. If so, all Indirect Purchaser Plaintiffs would all be on an equal footing and have viable claims for damages and restitution under California law. Those potential claims on behalf of residents in non-repealer states are to be compromised and released by the settlements.

Second, the releases encompass claims under state law for restitution under principles of unjust enrichment. While it is possible that non-repealer states might reject claims by indirect purchasers for restitution, this is another matter that would require litigation to judgment to resolve. Those claims are compromised and released by the settlement agreements as well.

Third, the releases encompass claims for racketeering. While not alleged in the complaint, claims under federal and state RICO laws may allow indirect purchasers to sue for damages. Again, this issue was not decided on the merits.

Fourth, Plaintiffs argued on appeal that all indirect purchasers had claims for damages under the Wilson Tariff Act of 1894:

> Similar to *Sullivan*, all class members regardless of whether they hail from a state that repealed *Illinois Brick* have potential claims under the Wilson Tariff Act, which forbids anticompetitive conduct by corporations importing goods into the U.S. *See Sullivan*, 667 F.3d at 286 n.6; 15 U.S.C. § 8. In the settlement context, these claims would be released as to the settling defendants, along with all other claims related to defendants' conduct. *See, e.g.*, ER18-19. Because all class members hold this potential claim and all are being asked to release this claim, this is yet another reason to treat all class members equally through pro rata distribution Additionally, similar to *Sullivan*, all class members regardless of whether they hail from a state that repealed *Illinois Brick* have potential claims under the Wilson Tariff Act, which forbids anticompetitive conduct by corporations importing goods into the U.S. *See Sullivan*, 667 F.3d at 286 n.6; 15 U.S.C. § 8. In the settlement context, these claims would be released as to the settling defendants, along with all other claims related to defendants' conduct. *See, e.g.*, ER18-19. Because all class members hold this potential claim and all are being asked to release this claim, this is yet another reason to treat all class members equally through pro rata distribution.

In re Lithium Ion Batteries Litig., No. 17-17367, at Doc. No. 26 (9th Cir. July 16, 2018). Those potential claims, too, are necessarily encompassed by the releases and like the other claims that were or could have been asserted on behalf of Indirect Purchaser Plaintiffs in the non-repealer states, they were not adjudicated on the merits.

Thus, it would be incorrect to say that these class members have no actual or potential claims for damages or restitution.

2. Residents Of Non-Repealer States Cannot Be Required To Give Up Their Claims For No Consideration

If the plan of allocation denied recovery to residents of non-repealer states, those residents would be required to release their claims for damages and restitution as well as for injunctive relief. If they are not entitled to share in the settlement funds, they would be giving up their claims for nothing. This is manifestly unfair and unreasonable.

Unsurprisingly, caselaw says it is impermissible for class members to be required to give up their claims for no consideration. Although the Ninth Circuit has not confronted this issue directly, the Second Circuit has held that "[a]n advantage to the class, no matter how great, simply cannot be bought by the uncompensated sacrifice of claims of members, whether few or many, which were not within the description of claims assertable by the class." *Nat'l Super*

Spuds, Inc. v. New York Mercantile Exch., 660 F.2d 9, 19 (2d Cir. 1981) (finding settlement unfair where complaint was brought on behalf of class members who had purchased potato futures that were liquidated during a specific period of time and settlement resolved claims for both liquidated and unliquidated potato futures). *See also TBK Partners, Ltd. v. W. Union Corp.*, 675 F.2d 456, 461 (1982) ("[S]pecial care must be taken to ensure that the release of a claim not asserted within a class action or not shared alike by all class members does not represent an 'advantage to the class ... by the uncompensated sacrifice of claims of members, whether few or many.' ") (quoting *Nat'l Super Spuds*, 660 F.2d at 19); *Anderson v. Nextel Retail Stores, LLC*, No. CV 07-4480-SVW FFMX, 2010 WL 8591002, at *9 (C.D. Cal. Apr. 12, 2010).

In re CRT is an excellent example of a case demonstrating the value of the claims of residents of non-repealer states. In that case, a $576.8 million bundle of antitrust settlements settlements provided monetary compensation to class members in all repealer states except Massachusetts, Missouri, and New Hampshire. *In re CRT*, Doc. No. 4712 at 17. Residents of those states were nonetheless required to release their claims for injunctive relief, equitable monetary relief, and damages without receiving any monetary consideration. *Id.* Claims by Massachusetts were originally included in the complaint but dismissed twice, and claims by Missouri and New Hampshire were never brought in any version of the complaint due to lack of a named plaintiff. *Id.* at 24. The plaintiffs' lawyers defended this exclusion on the grounds that the claims for damages by residents in these states were "worthless." Several objectors objected to the settlement on the grounds that it required the release of damages without providing monetary compensation. *Id.* at 18. The objectors appealed to the Ninth Circuit. Case No. 16-16368. At oral argument, Judge Richard Clifton indicated that it is a "problem" that class counsel secured nationwide settlements without looking out for the people in Massachusetts, Missouri, and New Hampshire. *Id.*, Doc. No. 202 at 12:16.[4] In response, class counsel sought an indicative ruling from the trial court, proposing to supplement the net settlement fund from

[4] Available at: https://www.ca9.uscourts.gov/media/view_video.php?pk_vid=0000013465.

class counsel's fee award and amend the plan of distribution to allow the class members in Massachusetts, Missouri and New Hampshire to file claims. Doc. No. 5335. The Court has not yet ruled on the request.

Judge Clifton's admonition at oral argument highlights the perils of releasing claims with no consideration. It is manifestly unreasonable to require residents of non-repealer states to give up their argument for nothing in return. While counsel for residents of *Illinois Brick*-repealer states will likely argue that residents of non-repealer states do not have any claims for damages based on Judge Rogers' denial of Indirect Purchaser Plaintiffs' class certification motions, as detailed above, this argument, if made, would be without merit. Furthermore, in addition to their potential claims for monetary damages, residents of non-repealer states have viable claims for injunctive relief, which are not addressed in the settlement agreements. They must be entitled to share in the funds on at least some basis, otherwise they will be required to give releases for no consideration whatsoever.

Moreover, the Court denied certification of the class with respect to residents of the repealer states against the remaining non-settling defendants. Thus, if this litigation had not been settled as to these defendants, assuming that decision were not overturned, *no* class member, regardless of state of residence, would have any viable claims against any of the defendants. In these circumstances, all of the class members stand on an equal footing and therefore have an equitable claim to share equally in any recovery.

Finally, it bears mentioning that the Settling Defendants received the benefits of a nationwide release, which includes the release of all claims by residents of non-repealer states. Settling Defendants could have carved claims of residents of non-repealer states out of the releases, but they chose not to do so. It may reasonably be inferred that the Settling Defendants may have insisted on global releases covering all class members in order to agree to the settlements at all, which means that residents of repealer states received the benefit of the settlements at the expense of the interest of residents of non-repealer states if residents of non-repealer states are not provided any recovery.

3. Case Law Supports A *Pro Rata* Distribution Among Indirect Purchasers of All States

As Judge Rogers has previously recognized, the controlling case on this issue, *Sullivan*, supports distributing damages on a *pro rata* basis. 667 F.3d at 273. In *Sullivan*, an objector appealed the propriety of the district court's certification of two nationwide settlement classes comprising purchasers of diamonds from De Beers S.A. and related entities. *Id.* at 285. The settlement provided for a fund of $295 million to be distributed both to the direct and indirect purchasers. *Id.* A Third Circuit panel held the ruling was inconsistent with the predominance inquiry mandated by Federal Rule Civil Procedure 23(b)(3) and remanded the matter for further proceedings. *Id.* The Third Circuit granted plaintiffs' petition for rehearing *en banc* and vacated the prior order.

The *en banc* court noted that the objectors had conflated the predominance analysis for certification of a settlement class with that required for certification of a litigation class, which it called as a "particularly important point." *Id.* at 303. In the settlement context, the panel noted, there was no need to inquire whether varying state treatments of indirect purchaser damage claims would present "insuperable obstacles" or "intractable management problems" pertinent to certification of a litigation class because the proposed settlement obviates difficulties inherent in proving the elements of the varied claims at trial. *Id.* The panel went on to note: "At bottom, we can find no persuasive authority for deeming the certification of a class for settlement purposes improper based on differences in state law." *Id.* at 304. The panel also dismissed the argument that a lack of statutory standing for indirect purchasers from non-repealer states meant those members could not state a valid claim, noting the distinction between statutory standing and jurisdictional standing. *Id.* at 307.

Here, as Indirect Purchaser Plaintiffs noted in their response to Bednarz' Ninth Circuit Appeal:

> most of the defendants are international corporations. Regardless of where in the United States a class member resides, each was affected in the same way as to the same electronic devices containing defendants' price-fixed LIBs. The antitrust scheme was national; so too, was the impact across the United States. The predominant common fact that a national scheme caused economic injury could not be overcome by recourse to geography: class members could not escape the

> impact of price fixing by moving to a "repealer" state. Consequently, they should not be left without a remedy in the context of a nationwide compromise and release of contested claims (including the common law and state law claims in those non-repealer states).

In re Lithium Ion Batteries Litig., No. 17-17367, Doc. No. 26 (9th Cir. July 16, 2018) (internal citations omitted). Because all class members were injured regardless of their states of residence, they should be entitled to share in the settlement proceeds.

As Judge Rogers also noted, the Ninth Circuit reached a similar conclusion in *Transpacific*. In that case, the court rejected an objector's argument that "purchasers of foreign-originating travel and indirect purchasers of airfare should not be entitled to an equal pro rata share of the settlement funds, in light of *Illinois Brick*." *Transpacific*, 701 Fed. App'x at 556. The court acknowledged in its order on the motion for final approval that it had ruled in connection with a motion to dismiss that the FTAIA barred recovery for flights originating in Asia/Oceania, but plaintiffs argued, *inter alia*, that they could still appeal that ruling. *Id.* The court, relying on *Sullivan*, noted that it was not its role to "differentiat[e] within a class based on the strength or weakness of the theories of recovery," and also relied on *Lane v. Facebook* for the proposition that "while some class members' claims might have been more valuable than others at trial, 'that does not cast doubt on the district court's conclusion as to the fairness and adequacy of the overall settlement amount to the class as a whole.'" *Id.* (citing *Lane v. Facebook*, 696 F.3d 811, 824 (9th Cir. 2012)). *See also In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, No. C 06-4333 PJH, 2013 WL 12333442, at *15 (N.D. Cal. Jan. 8, 2013) ("The basic feature of the plan adopted by the parties here is that to the maximum extent all class members are to be treated equally and the settlement proceeds be divided *pro rata* based upon the quantity of DRAM purchased by each class member.").

In short, there is ample caselaw to support the notion that a plan of allocation that distributes funds to all class members in these cases on a *pro rata* basis is fair and reasonable because it prevents class members giving up their claims for no consideration.

V. CONCLUSION

Because the settlements require residents of non-repealer states to relinquish all of their claims against Settling Defendants, those class members are entitled to compensation in return for their releases. Any other result would be unfair and unjust, particularly in light of the fact that this Court has already recognized the propriety of using a *pro rata* plan of allocation for distributing settlement funds to a nationwide class in this very case.

Dated: November 1, 2018

Respectfully Submitted

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EXHIBIT G

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

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	**RESPONSE TO MEDIATION STATEMENT BY PLAINTIFFS RESIDING IN *ILLINOIS BRICK* REPEALER STATES** Date Action Filed: Oct. 3, 2012

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I. INTRODUCTION

Settling Defendants Samsung SDI Co., Ltd. and Samsung SDI America, Inc. (collectively, "SDI"), NEC Tokin Corporation ("Tokin"), and Toshiba Corporation ("Toshiba") (collectively, "Settling Defendants"), bargained for nationwide class action settlements that require residents of both repealer and non-repealer states to release all of their claims against Settling Defendants. As detailed below, a pro rata plan of allocation treating all class members alike would be fair and reasonable.

First, claims of residents of non-repealer states have value. Counsel for residents of repealer states assume that the claims of residents of non-repealer states are worthless, and that, as a result, nothing needs to be allocated to class members residing in those states. But there has been no adjudication of the merits of any of the claims of *any* of the class members. As counsel for residents of non-repealer states detailed in their opening memorandum, there are ample bases to conclude that these class members may have valid claims for relief.

Second, as discussed below, the fact that the settlements require the release of claims by residents of non-repealer states further demonstrates that Settling Defendants believe their claims may well be viable. Otherwise, Settling Defendants would not have required those releases.

Third, at a minimum, the fact that the settlements require the release of claims of residents of non-repealer states shows that the claims of residents of non-repealer states have value for settlement purposes. Presumably, the Settling Defendants would not have agreed to pay anything to any class members without those releases. It would be unfair to require residents of non-repealer states to give up their claims for nothing, and doing so would confer an uncompensated benefit on residents of repealer states.

Fourth, counsel for residents of repealer states' argument that residents of non-repealer states do not have viable claims for relief fails to take account of the fact that the Court's denial of class certification across the board – both for residents of repealer states and for residents of non-repealer states – means that all class members are now similarly situated, assuming those rulings would be affirmed. At the time Judge Rogers approved settlements with Hitachi Maxell, NEC, and LG Chem, the parties were briefing Indirect Purchaser Plaintiffs' motion for class

certification, which sought certification of a nationwide class. Doc. Nos. 1036, 1551, 1280-3, 1280-5, 1402-2. The Court subsequently denied class certification without prejudice to renewing a motion for certification of a nationwide class. Doc. No. 1735. The parties then briefed Indirect Purchaser Plaintiffs' renewed motion for class certification, which sought certification of a narrowed class. Doc. Nos. Doc. Nos. 1960, 2024, 2044. The Court denied Indirect Purchaser Plaintiffs' renewed motion for class certification and struck Indirect Purchaser Plaintiffs' second renewed motion for class certification. Doc. No. 2197, 2407. At this stage in the litigation, neither residents of repealer states nor residents of non-repealer states are members of a certified class, but absent the settlements, both groups would have prospects on appeal. The equal footing of both residents of repealer and non-repealer states, where class certification has been denied for all indirect purchaser plaintiffs, supports the reasonableness of a pro rata plan of allocation. Of course, because the case is being settled, the ultimate outcome of the litigation will never be known. Had the cases not been settled, it is possible that all class members might have ultimately been found to have valid claims for damages under California or other laws.

Finally, as detailed below, counsel for residents of repealer states' additional arguments, including their compromise proposal, lack merit.

II. ARGUMENT

A. A Pro Rata Plan of Allocation is Fair and Reasonable

As demonstrated by substantial caselaw in this Circuit and elsewhere, a pro rata plan of allocation is an appropriate way to distribute settlement proceeds among residents of repealer and non-repealer states. And a pro rata plan of allocation is particularly appropriate where there has been no adjudication on the merits of any of the claims of any of the class members. Counsel for repealer states' arguments to the contrary assume certainty about the comparative validity of class members' claims, which does not exist.

First, as counsel for residents of non-repealer states detailed in their opening memorandum, there are ample bases to conclude that these class members may have viable claims for relief, which are being compromised by the settlements. For example, the residents of non-repealer states may have been able to demonstrate on appeal that a nationwide class was

appropriate. *See, e.g., In re New Motor Vehicles Canadian Exp. Antitrust Litig.*, 269 F.R.D. 80, 82 (D. Me. 2010), *aff'd*, No. 2:03-MD-1532-DBH, 2012 WL 379947 (D. Me. Feb. 3, 2012) ("I do certify a nationwide damages settlement class under Rule 23(b)(3) because, at the time the parties settled, the plaintiffs had (and still have) a right to appeal my dismissal, based on *Illinois Brick Co. v. Illinois*, 431 U.S. 720, 97 S.Ct. 2061, 52 L.Ed.2d 707 (1977), of their national indirect purchaser claims under the Sherman Act."). Claims of residents of repealer states have value for the same reason.

Furthermore, counsel for residents of repealer states fail to consider non-antitrust claims of residents of non-repealer states that are encompassed by the releases. The releases include, among others, claims under state law for restitution under principles of unjust enrichment, racketeering, and claims for damages under the Wilson Tariff Act of 1894. Counsel for residents of repealer states' arguments that residents of non-repealer states' claims are "effectively worthless" or only have a "nuisance value" do not take into account the foregoing claims.

Second, the fact that the releases encompass claims of residents of non-repealer states demonstrates their value. If the claims were truly "worthless," as counsel for residents of repealer states contend, there would be no reason to include them in the release. The cases cited by counsel for residents of repealer states for this proposition only further demonstrate the problem with this argument.

In *CRT*, a case counsel for residents of non-repealer states highlighted in their opening memorandum, the district court approved a nationwide class and a plan of allocation that failed to offer monetary relief for residents of non-repealer states. As counsel for residents of repealer states do here, *CRT* class counsel argued that the releases were appropriate because the claims of these class members were "worthless." On appeal, the Ninth Circuit indicated that this approach was problematic for at least three states referred to as the "Omitted Repealer States," which prompted *CRT* class counsel to offer to give up part of their fee for residents of Missouri, Massachusetts, and New Hampshire. *CRT* class counsel then requested an indicative ruling from Judge Tigar regarding this revised proposal. *In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. 3:07-CV-5944 JST, Doc. No. 5335 (N.D. Cal. Oct. 1, 2018).

Counsel for residents of repealer states' heavy reliance on *CRT* is questionable in light of Judge Tigar's statement yesterday that with the benefit of hindsight, the Court made a mistake in approving the settlements. *In re CRT*, No. 3:07-CV-5944 JST, Doc. No. 5362 (N.D. Cal. Nov. 8, 2018). Judge Tigar said that he had erred in approving the settlement insofar as class members in Missouri, New Hampshire, and Massachusetts were required to release their claims without compensation, noting that "[t]he fact that the claims were required to be released meant they had value." *Id.* at 1. Of course, the same is true here. The fact that Settling Defendants required a release for claims from residents of non-repealer states indicates that they are not "worthless." Similarly, Judge Tigar recognized that in their argument before the Ninth Circuit, *CRT* class counsel "suggested that they needed to include a release of some class members' claims to get compensation for other class members." *Id.* at 2. As counsel for residents of non-repealer states indicated in their opening memorandum, the same is true here: the claims of residents of non-repealer states at the very least have settlement value because it may be reasonably inferred that the Settling Defendants would not have settled at all with any class members unless they obtained a release from all class members. In other words, the class members in the non-repealer states had a bargaining chip that was worth something and it would be unfair to give them nothing for using that chip to confer a benefit on class members in the repealer states.[1]

And in *Flat Panel*, those class members who were not members of statewide monetary relief classes did not release their claims for damages without compensation. In the preliminary approval motion, class counsel explained: "Members of the nationwide injunctive relief class, who are not also members of any statewide monetary relief class, will not receive monetary compensation (but ***neither will they release monetary claims*** under the Proposed Settlements)."

[1] While Judge Tigar's opinion was silent on the release of claims of residents of non-repealer states, in *CRT*, unlike in this case, the court had certified a class of residents of repealer states. *In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. 1917, 2013 WL 5429718, at *1 (N.D. Cal. June 20, 2013), *report and recommendation adopted*, No. C-07-5944-SC, 2013 WL 5391159, at *1 (N.D. Cal. Sept. 24, 2013).

In re TFT-LCD (Flat Panel) Antitrust Litig., MDL. No. 1827, Doc. 6141 at 13 (N.D. Cal. July 12, 2012) (emphasis added).

Similarly, in *ODD*, which counsel for residents of repealer states cite for the proposition that antitrust settlements in the Ninth Circuit routinely distinguish between repealer and non-repealer states, the settlement class did not include residents of non-repealer states. *In re Optical Disk Drive Prods. Antitrust Litig.*, No. 10-md-2143 RS, 2016 WL 7364803, at *1-2 (N.D. Cal. Dec. 19, 2016), *appeals filed*, Nos. 17-15065 (9th Cir. Jan. 13, 2017), 17-15067 (9th Cir. Jan. 13, 2017), 17-15143 (9th Cir. Jan. 24, 2017). Cases in which residents of non-repealer states did not release their claims are irrelevant to the issue at hand – whether it is appropriate to require residents of non-repealer states to release their claims for no consideration. Counsel for residents of repealer states have failed to offer any authority for the proposition that it is appropriate for residents of non-repealer states to give up their claims for nothing.

Third, the fact that Settling Defendants demanded the release of claims of residents of non-repealer states shows that those claims had value, even if those claims only had value for settlement purposes. It would be unfair to require claims of residents of non-repealer states to release their claims for nothing. In effect, the release of their claims for no compensation would confer an uncompensated benefit on the remaining members of the Class. *See In re CRT*, No. 3:07-CV-5944 JST, Doc. No. 5362, at *2.

Fourth, counsel for residents of repealer states' opening memorandum suggests that residents of repealer states' claims have more value than residents of non-repealer states claims because the Court denied indirect purchaser plaintiffs' motion for certification of a nationwide class and indirect purchaser plaintiffs' motion for certification of a narrowed class. *See* Doc. Nos. 1735, 2197. But the opposite is true. The Court has denied certification of ***both*** a nationwide class and a narrowed class of only those residents of repealer states. As such, residents of repealer states are on equal footing with residents of non-repealer states as to their claims for defendants' violations of antitrust laws – both would require an appellate victory in order to be able to prosecute their claims. Of course, because the case is being settled, the ultimate outcome of the litigation will never be known. Had the cases not been settled, it is

possible that all class members might have ultimately been found to have valid claims for damages under California or other laws. For these reasons, a pro rata allocation is perfectly fair.

This case is distinguishable from *In re Relafen Antitrust Litig.*, 231 F.R.D. 52 (D. Mass. 2005), in which the court had certified a narrowed class with respect to state law antitrust, unfair competition, and consumer protection claims including all persons or entities who purchased Relafen or its generic alternatives in the states of Arizona, California, Massachusetts, or Vermont; and a class with respect to unjust enrichment claims including all persons or entities in the United States who purchased Relafen in the states of Arizona, California, Massachusetts, Tennessee, or Vermont. And notably, even in *In re Relafen*, where the court had certified a narrowed class, the nationwide settlement still compensated residents of non-repealer states.

Fifth, counsel for residents of repealer states cite a number of cases for the proposition that choice of law rules would prevent residents of non-repealer states from asserting claims under California law. They overstate the choice of law rules applicable to indirect purchaser actions. *See* Opp. Br. at 16. There is no ironclad rule that says that the laws of each of the states must apply to their residents under *Mazza*. *See, e.g, In re Qualcomm Antitrust Litig.*, No. 17-MD-02773-LHK, 2018 WL 4680214, at *29 (N.D. Cal. Sept. 27, 2018) (holding that certification of a nationwide class applying California law was not inconsistent with *Mazza*).

Moreover, all of the cases cited by counsel for residents of repealer states are off-point because they fail to address the question of how funds should be allocated among residents of repealer states and non-repealer states. Instead, they address the unremarkable premise that plans of allocation can take into account variations in the monetary value of class members' claims. Of course, mathematical precision is not required in devising a plan of allocation; "rough justice" will suffice.

In *Philliben v. Uber Techs., Inc.*, No. 14-cv-5615-JST, 2016 WL 4537912, at *5 (N.D. Cal. Aug. 30, 2016), cited by counsel for residents of repealer states, for example, a consumer class action based on misrepresentations and omissions regarding Uber's "safe rides" fees, the court determined that consumers who did not purchase rides that incurred a safe fee should not be compensated in the plan of allocation because they were not injured. Here, there is no dispute

that if residents of repealer states were harmed by defendant's conduct, residents of non-repealer states were similarly harmed. Similarly, in *Altamirano v. Shaw Indus., Inc.*, No. 13-cv-939-HSG, 2015 WL 4512372, at *1 (N.D. Cal. Jul. 24, 2015), the court declined to approve a plan of allocation that failed to account for the fact that only employees working a ten-hour shift would be entitled to certain compensation. There was no question that a portion of the class was not entitled to that compensation.[2] Similarly, in *Newman v. AmeriCredit Fin. Servs.*, No. 11-cv-3041 DMS (BLM), 2014 WL 12789177, at *5 (S.D. Cal. Feb. 3, 2014), a TCPA class action, there was no way for the claims administrator to ascertain which claimants had valid claims. Again, that is not an issue with the residents of non-repealer states' proposed plan of allocation, as class members will be able to submit claim forms verifying whether they are entitled to claims for monetary damages.

Counsel for residents of repealer states also cite a number of securities class actions where settlements are allocated in ways that acknowledge differences in the strengths of individual claims. All of the cases cited by counsel for residents of repealer states deal with circumstances in which claimants were indisputably of less value because they sold their securities before defendants' misconduct was disclosed.[3] They do not address how to allocate funds among residents of repealer and non-repealer states where no such clear line exists.

Sixth, the proposed settlement class will meet the predominance requirement. Counsel for residents of repealer states' argue that a pro rata distribution would violate principles of federalism and might violate the Rules Enabling Act. However, this is a far-fetched argument.

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[2] In *Valdez v. Neil Jones Food Co.*, No. 13-cv-519-AWI-SAB, 2014 WL 3940558, at *11 (E.D. Cal. Aug. 12, 2014), the court similarly criticized a proposed settlement that failed to account for variations in employees' hourly rates because the plan of allocation provided that all employees would be paid the same amount for each workweek equivalent.

[3] *See In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 348 (S.D.N.Y. 2005); *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002); *In re MicroStrategy*, 148 F. Supp. 2d 654, 668 (E.D. Va. 2001); *In re Ikon Office Sols., Inc. Sec. Litig.*, 194 F.R.D. 166, 184 (E.D. Pa. 2000); *In re Sapiens Sec. Litig.*, No. 94 Civ. 3315(RPP), 1996 WL 689360, at *2 (S.D.N.Y. Nov. 27, 1996); *In re Charter Commc'ns, Inc. Sec. Litig.*, No 4:02–CV–1186 CAS, 2005 WL 4045741, at *10 (E.D. Mo. June 30, 2005); *In re Gulf Oil/Cities Serv. Tender Offer Litig.*, 142 F.R.D. 588, 596 (S.D.N.Y. 1992).

It ignores the substantial body of caselaw supporting approval of a plan of allocation notwithstanding distinctions among settlement class members. *See Sullivan v. DB Investments, Inc.*, 667 F.3d 273 (3d Cir. 2011) ("At bottom, we can find no persuasive authority for deeming the certification of a class for settlement purposes improper based on differences in state law."); *In re Transpacific Air Transp. Antitrust Litig.*, No. 15-16280, 701 Fed. App'x 554 (9th Cir. June 26, 2017) (rejecting an objector's argument that "purchasers of foreign-originating travel and indirect purchasers of airfare should not be entitled to an equal pro rata share of the settlement funds, in light of *Illinois Brick.*"); *In re Dynamic Random Access Memory ("DRAM") Antitrust Litig.* Case No. C 06-4333 PJH, Case No. C 06-6436 PJH, 2013 WL 12333442, at *15 (N.D. Cal. Jan. 8, 2013) ("The basic feature of the plan adopted by the parties here is that to the maximum extent all class members are to be treated equally and the settlement proceeds be divided *pro rata* based upon the quantity of DRAM purchased by each class member.").[4] It also is wide of the mark. This is not a litigated result on behalf of the Class. The funds in question were obtained by settlement.

Counsel for residents of repealer states rely on *Relafen* – decided six years before *Sullivan* – to suggest that it could be "unfair" for residents of non-repealer states to share in the settlement proceeds. Not only did *Relafen* deal with a situation in which a narrowed class had been certified, but the court approved a settlement where residents of non-repealer states shared in the settlement proceeds. *See p.* 6, *supra.* In any event, *Sullivan* commands a different result:

> Like the progressive settlement contemplated in *Insurance Brokerage,* the settlement at issue here provides for a pro rata distribution to all class members, and does not distinguish based upon any variables, such as the applicable state law of claimants' states of residence or location of purchase. While the District Court here did not specifically evaluate the pro rata allocation through the fairness lens, it did consider the differential allocation question in conducting the predominance analysis, noting the imprecision inherent in weighing class member claims "based on the relative strength of different state law claims." (App'x 279.)

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[4] *See also In re Budeprion XL Mktg. & Sales Litig.*, No. 09-MD-2107, 2012 WL 2527021, at *8 (E.D. Pa. July 2, 2012) (finding "no conflict present or any reason to suggest that the named Plaintiffs were unable or unwilling to vigorously advocate on behalf of the entire class" where the "litigation [was] based upon different states' laws").

> The District Court further noted in its Rule 23(a) analysis that the various "individual classes were represented by separate counsel during settlement negotiations, allowing for 'adequate structural protections to assure that differently situated plaintiffs negotiate for their own unique interests.'" (App'x 220 (quoting *Warfarin*, 391 F.3d at 533)). Moreover, the Court observed that there were no intra-class conflicts since all putative members experienced injury caused by De Beers, all sought recovery for overpayment caused by allegedly anticompetitive behavior, and all shared common interests in establishing damages and injunctive relief. (*Id.* at 220–21.)
>
> It may be entirely reasonable to apply the same damages calculation to claimants from all states because, as the district court in *Warfarin* observed, "[i]t is purely speculative that claimants from indirect purchaser states could anticipate a greater recovery than claimants from other states." *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 260 (D. Del. 2002); *see also Cendant*, 264 F.3d at 250 (given the "speculative" nature of such an inquiry, differences in the liability standards between § 11 and § 10(b) securities claims did *not* warrant differential plan of allocation). And only by engaging in the type of fact-intensive merits and choice-of-law analyses that we have rejected could a district court attempt to assay the "varying strengths and weaknesses" of asserted state claims. (*See* Murray Br. at 15–18.) We can find no support in our case law for differentiating within a class based on the strength or weakness of the theories of recovery. Accordingly, we decline to require such an analysis.

Sullivan, 667 F.3d at 327-28. Similarly, here, a pro rata allocation is justified for the same reasons adopted by the *Sullivan* court. In the context of settlement, the courts are not required to engage in a definitive adjudication of the rights of the class members.

B. Repealer States' Compromise Proposal is Unsupported and Untenable

Counsel for residents of repealer states' compromise proposal – that ninety percent of settlement proceeds should be allocated to residents of repealer states and that zero to ten percent of settlement proceeds should be allocated to residents of non-repealer states – is without merit.

Counsel for residents of repealer states concede that a pro rata distribution was appropriate for the prior settlements reached in this case before the trial court held that a nationwide class could not be certified under California law. Further, the settlements at issue were negotiated while plaintiffs' motion for certification of a class on behalf of residents of repealer states and government entities was pending.[5] Based on the timing of the settlements,

[5] And, in fact, the parties executed the SDI settlement after the renewed motion was denied.

they argue that the residents of non-repealer states had no chance of success. This argument fails to take into account that the trial court's denial of certification of a nationwide class was both made expressly without prejudice and was interlocutory in nature. *See* Doc. No. 1735 at 31. For counsel of residents of repealer states to say based on this ruling that residents of non-repealer states' claims had no chance of success is a prediction, at best. No final judgment was ever entered that would have incorporated this ruling as an ingredient in the judgment.

Similarly, as counsel for residents of repealer states acknowledge, as to all three settlements, Settling Defendants and Indirect Purchaser Plaintiffs' counsel had to make a prediction as to the likely ultimate outcomes of the claims of residents of repealer states. *See* Opp. Br. at 3, n.1. And the Court denied certification of that class as well. In essence, trying to appraise the respective worth of the claims of the two groups of claimants is an exercise in handicapping what the ultimate outcome of litigating the claims to an ultimate conclusion would be, including after exhausting all appellate rights. If the Court is assumed to have been correct on the merits of the class certification motions, all of the claims of all of the class members were always worthless as a practical matter. Plus, counsel for residents of repealer states' argument fails to take into account the other claims released under the settlements have been taken into account, including claims for restitution, unjust enrichment, racketeering, and claims under the Wilson Tariff Act of 1894. Those claims are not necessarily subject to any limitations on state law antitrust claims brought by indirect purchasers.

Finally, counsel for residents of repealer states acknowledge that some allocation to residents of non-repealer states would be appropriate. While counsel for residents of non-repealer states believe that a pro rata allocation would be most appropriate, the arguments made in favor of drawing a distinction between the different groups of claimants based on the different litigation environment they faced at the time of the earlier round of settlements and this round are worthy of consideration. However, the ninety percent and ten percent allocation proposed in the alternative by counsel for residents of repealer states is arbitrary in nature and has no apparent justification and no basis in law. All of the securities class actions cited by counsel for residents of repealer states – as detailed above at p. 7, *supra*, dealt with situations in which claimants were

plainly owed less because they sold their securities before defendants' misconduct was disclosed. They say nothing of how to allocate funds among residents of repealer and non-repealer states.

If a compromise were to be achieved on the respective parties' positions, it should not be so heavily weighted in favor of residents of repealer states. Rather, the residents of non-repealer states should have their claims valued at no less than 50% of the value of the repealer states' claimants.[6] If such a differentiation were to be drawn, we submit it should not be based on allocating separate pools to each group, but rather that each class member's allowed claim be based on the dollar amount of his or purchases, and the allowed claim amounts being adjusted accordingly. All claimants would then share in the net settlement funds on a pro rata basis, with each claimant receiving a percentage share of those funds based on the ratio between that claimant's adjusted allowed claim amount and the total of all allowed claim amounts.

And while counsel for non-repealer states do not oppose the idea of a minimum payment for purposes of administrative feasibility, and indeed agree that a minimum payment of $10 would be reasonable, counsel for repealer states' intimation that the residents of non-repealer states should automatically receive a minimum payment intsead of receiving the pro rata share of their claims is unsupported.

III. CONCLUSION

For the foregoing reasons, a pro rata plan of allocation is the most defensible result. In the alternative, a reasonable compromise would be as set forth above, where the allowed claim amounts of residents of non-repealer states would be adjusted to be equal to 50% of the allowed claim amounts of residents of repealer states.

[6] For example, if a resident of a repealer state had a claim that was worth $100, a resident of a non-repealer state who filed a claim based on the same dollar amount of purchases should be entitled to an allowed claim equal to no less than $50.

Dated: November 9, 2018

Respectfully Submitted

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

IN RE: LITHIUM ION BATTERIES ANTITRUST LITIGATION	Case No: 13-MD-02420 YGR (DMR) MDL No. 2420 **MEDIATION STATEMENT RESPONSE**
This Document Relates to: ALL INDIRECT PURCHASER ACTIONS	DATE ACTION FILED: Oct. 3, 2012

A nationwide pro rata allocation would unfairly and unreasonably dilute the monetary recovery by residents of repealer states and provide a windfall to residents of non-repealer states. Neither the recent decision in *CRT* nor any of the arguments made by the non-repealer residents change this fact.

Residents of non-repealer states may be excluded from a plan of allocation even if their claims are released. *In re Cathode Ray Tube (CRT) Antitrust Litig.*, 2016 WL 3648478, at *12 (N.D. Cal. July 7, 2016). The court's most recent opinion in the *CRT*, highlighted by counsel for residents in non-repealer states, does not support a conclusion otherwise. In *CRT*, the trial court approved a settlement and allocation plan that provided no monetary recovery to residents of states that had not repealed *Illinois Brick*. That settlement allocation also did not provide recovery to residents of three *Illinois Brick* repealer states. After oral argument at the Ninth Circuit, class counsel moved the trial court for an indicative ruling and proposed setting aside a portion of the fee award to allow residents of the three omitted *repealer* states to file claims. The trial court denied the motion, finding that there were additional issues to be decided on appeal that could not be resolved by the motion as it was framed. Order Denying Indirect Purchaser Plaintiffs' Motion for an Indicative Ruling, *In re CRT*, No. 3:07-CV-5944-JST (N.D. Cal. Nov. 8. 2018), ECF No. 5362. Notably, the court in *CRT* did not hold that the claims of residents of *non-repealer* states have any value, as their claims were not even the subject of the motion. In discussing the release of claims required by the settlement, the court noted that "[t]he fact the claims were required to be released meant they had value" specifically in the context of claims by class members residing in the three omitted *repealer* states. *Id.* at 1. Whether residents of non-repealer states had viable claims was not at issue and was not considered. Thus, the recent ruling does not contradict the court's previous holding that "[a] claim which cannot be proven is worth essentially nothing. Consideration of nothing for releasing a worthless claim is therefore fair, reasonable, and adequate." *In re CRT*, 2016 WL 3648478, at *12 (quoting *Parker v. Time Warner Entm't Co., L.P.*, 239 F.R.D. 318, 339 (E.D.N.Y. 2007).

The Court's prior approval of pro rata settlements in this case does not mean a pro rata apportionment of this settlement would be proper, because those prior settlements were reached under fundamentally different circumstances. The previous settlements were negotiated and

finalized in November and December 2016. The court granted preliminary approval of the settlements on March 30, 2017, and final approval on October 2017. Order Granting Motion for Final Approval, *In re Lithium Ion Batteries Litig.*, No. 13-MD-02420-YGR (N.D. Cal. Oct. 27, 2017), ECF No. 2003. When those settlements were negotiated, the case was still proceeding as a putative nationwide class action under California law. Accordingly, residents of repealer and non-repealer states were all proceeding in a single class with claims under the same substantive law. It was only after preliminary approval of the settlement that the Court denied the indirect purchaser plaintiffs' (IPPs) motion for class certification of a nationwide class without prejudice, holding that residents of non-repealer states would have to proceed under the laws of their own states if at all.

In contrast, at the time the current settlements were negotiated and agreed to, residents of non-repealer states had no viable claims against the settling Defendants and were in fundamentally a different position than the residents of repealer states and than they had been during previous settlements. The current settlements were negotiated after the MDL court denied the motion to certify a nationwide class, but before the court's order denying certification of a class of only residents of repealer states and certain government entities. The round of settlements at issue here took place between January and March of 2018. Unlike the previous round of settlements with Hitachi, LG, and NEC, when these settlements were negotiated, claims by residents of non-repealer states were not on equal footing with the claims of residents of repealer states. On the contrary, when *these* settlements were negotiated, only the claims of residents of repealer states posed any threat of liability to the settling defendants. Non-repealer claims posed no threat once a nationwide class was denied and, most importantly, once the Court held that such claims could not proceed under California law. As a result, non-repealer claims were valueless and did not meaningfully contribute to the negotiation of these settlements. *See In re CRT*, 2016 WL 3648478, at *13-14. As such, it would be unfair and unreasonable to diminish the recovery of residents of repealer states in order compensate residents of non-repealer states who no longer have credible claims.

It is immaterial that the Court has subsequently denied certification of the class consisting only of repealer residents. First, that decision did not come down until after the settlements were negotiated, and so cannot have played any role in the settlement dynamics. Second, although none

of the plaintiffs can now proceed in a class action, the repealer residents still have infinitely stronger and more valuable claims than the non-repealer residents; residents of repealer states can proceed individually under their states' laws, whereas residents of non-repealer states have absolutely no path forward[1], even on an individual basis, because their states do not provide for monetary recovery by indirect purchasers. By releasing their claims as part of the settlements, residents of repealer states are relinquishing a valuable right in exchange for monetary compensation. Conversely, residents of non-repealer states have no realistic chance of recovering on any claims for money damages, and any such claims will eventually be dismissed. As the trial court held in *CRT*, "no Ninth Circuit case holds that the release of a class action claim must be compensated in all instances, and this Court will not break new ground by announcing one." *In re CRT*, 2016 WL 3648478, at *14 (internal citation omitted).

For the foregoing reasons, and all of the reasons stated in the repealer resident's opening brief, a pro rata apportionment would be inappropriate and, instead, the vast majority of the settlement should be allocated to residents of repealer states.

[1] Counsel for non-repealer residents' raise the possibility of state law claims based on principles of unjust enrichment, racketeering, and damages under the Wilson Tariff Act of 1894, but any such claims would not entitle non-repealer residents to any monetary recovery or would rise and fall with the non-repealer residents' antitrust claims.

Dated: November 20, 2018

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NEUTRAL

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE LITHIUM ION BATTERIES ANTITRUST LITIGATION	Case No. 13-MD-02420-YGR MDL No. 2420
This Document Relates to: ALL INDIRECT PURCHASER ACTIONS	**NEUTRAL ANALYSIS**

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Neutral

Co-lead counsel for the Class seek the assistance of the following Neutral to determine the most fair and efficient allocation of settlement funds to Class Members:

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[1] As will be discussed and analyzed in more detail, *infra*, Non-Repealer states are states that have failed to enact statutes, known as repealer statutes, that reject the holding that was set forth in the *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977) case. In short, in *Illinois Brick*, the Supreme Court prohibited the "offensive" use of pass-on evidence to establish antitrust liability. After *Illinois Brick*, a downstream customer was not permitted to establish that the defendant had injured him using proof that he had paid an illegal overcharge that was passed-on to him by an intermediary purchaser of the defendant's product. Following *Illinois Brick*, various state courts and legislatures considered whether to apply the holding in *Illinois Brick* to their own state laws. Approximately half of the states in the country have either enacted statutes conferring on indirect purchasers the right to recover for damages passed on to them or issued court decisions that permit such recovery under state antitrust laws and/or consumer protection statutes ("repealer states").

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Procedural Background: The Court is obviously fully aware of the history of this matter, but the Neutral has included this procedural statement to reflect her own understanding of the state of the proceedings.

The first complaint in this case was filed in 2012. In 2013, that case, and 46 related actions, were centralized into an MDL. The allegations in the MDL arise out of an alleged price-fixing conspiracy for lithium ion battery ("LIB") cells. Since the initial case was filed, there have been multiple settlements between indirect purchaser plaintiffs ("IPPs") and various defendants.

For example, on March 30, 2017, the settlements between the IPPs and Hitachi Maxell, NEC and LG Chem were preliminarily approved, certifying a nationwide settlement class for a total settlement of more than $64 million. ECF No. 1921 at 12. As part of these settlements, the IPPs proposed to distribute the funds *pro rata* to Class Members based on the number of qualifying purchases submitted through claim forms. ECF No. 1921 at 23. Under the plan, each Class Member received the same treatment regardless of whether he or she lived in an *Illinois Brick* repealer or non-repealer state. The settlements were finally approved by the Court on October 27, 2017. ECF Nos. 1714, 2003.

In conjunction with the three settlements, four objectors filed a total of ten objections. ECF No. 1921 at 2. One of those objectors argued that intraclass conflicts

between Class Members who purchased lithium ion battery products in *Illinois Brick* repealer states and those who purchased the products in non-repealer states precluded certification of the proposed settlement classes. ECF No. 1902 at 11. In making this argument, the objector relied upon the Court's prior order denying certification of a proposed nationwide class against the non-settling defendants. *Id.* at 11. The objector claimed that a *pro rata* distribution would "force class members with legitimate claims to unfairly compromise and dilute their claims for damages so that class members with no claims can participate in a single settlement class." *Id.* The objector further argued that the proposed settlement class did not satisfy predominance grounds because the proposed nationwide class was not sufficiently cohesive in light of the fact that "class members who indirectly purchased items in the approximately 20 non-repealer states have no viable monetary antitrust claims." *Id.* When ruling on IPPs' motion for final approval, the Court noted: "[F]or purposes of settlement, common issues predominate, even if individual state laws might have affected some settlement class members' right to recover had the case proceeded to trial . . . The Court finds the settlement, and the pro rata allocation among settlement class members, fair and adequate despite these differences." ECF No. 1921 at 4 (citing *Sullivan v. DB Investments, Inc.*, 667 F.3d 273 (3d Cir. 2011); *In re Transpacific Passenger Air Transp. Antitrust Litig.* No. C 07-05634 CRB, 2015 WL 3396829 (N.D. Cal. May 26, 2015), *aff'd*, 701 F. App'x 554 (9th Cir. 2017); *In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. 3:07-CV-5944 JST, 2016 WL 721680 (N.D. Cal. Jan. 28, 2016).

Before these three settlements had been finally approved, the parties were briefing IPPs' motion for class certification, which, as noted, *supra*, the objector had referenced in his objections. IPPs' motion was filed on January 22, 2016. ECF No. 1036. Defendants filed

their opposition to class certification as well as two *Daubert* motions and three expert reports on May 24, 2016. ECF Nos. 1551, 1280-3, 1380-5. On August 23, 2016, IPPs filed their reply in support of class certification, along with reply reports that responded to defendants' experts' criticisms. ECF No. 1402-2.

On April 12, 2017, the Court issued an order denying certification to a proposed nationwide IPP litigation class. The IPP Plaintiffs' Motion for Class Certification was denied without prejudice "on the grounds that they [] failed to establish typicality and their ability to prove antitrust impact on a class-wide basis." Order Denying Without Prejudice Motions for Class Certification ("4/12/17 Class Cert. Order") at 31. The Court specifically found that one of the expert declarations submitted by the IPPs was "insufficient to show that passthrough and damages can be established by expert analysis on a class-wide basis." *Id.* at 19.

While not necessary to its decision, the Court provided "guidance to the parties" on the choice of law issues in light of the fact that Plaintiffs had maintained that the purchasers of lithium ion battery products nationwide could bring claims under California's Cartwright Act. *See id.* at 20. After significant analysis of this issue, the Court reached the following conclusion:

> Because the Court finds that the interests of *Illinois Brick* non-repealer states in precluding indirect purchaser claims would be impaired more significantly by applying the Cartwright Act than California's interests would be impaired by limiting its application to *Illinois Brick* repealer states, the Court finds that a nationwide class under the Cartwright Act would not be appropriate. However, as to the *Illinois Brick* repealer states, California's interests would prevail over less significant issues of whether a state follows some or all of the standing factors in *Associated General Contractors of California v. California State Council of Carpenters*, 459 U.S. 519 (1983), statute of

> limitations differences, and the like. Any renewed motion for class certification should take this determination into account.

Id. at 24. In reaching this conclusion, the Court noted that "the nationwide IPP classes certified in this district have been for injunctive relief to the class, not damages." *Id.* at 23, n.10 (citing *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 267 F.R.D. 583, 597 (N.D. Cal. 2010), *amended in part*, No. M 07-1827 SI, 2011 WL 3268649 (N.D. Cal. July 28, 2011); *In re Static Random Access Memory (SRAM) Antitrust Litig.*, 264 F.R.D. 603, 610 (N.D. Cal. 2009)).

Following this decision, the IPPs filed a renewed motion for certification of a class consisting only of residents of *Illinois Brick* repealer states and certain government entities. IPPs' Renewed Motion for Class Certification (Sept. 26, 2017), ECF No. 1960. On March 5, 2018, the Court denied IPP's renewed motion for class certification because it found that IPPs' damages expert's analysis was unreliable and that, accordingly, damages to the class could not be established on a common basis. Order Denying IPP's Renewed Motion for Class Certification at 1-2, ECF No. 2197. The Court indicated that the case should proceed to trial on an individual basis and entered a scheduling order accordingly. Amended Order Granting Motion to Strike IPP's Second Renewed Motion for Class Certification at 2-3 (Sept. 4, 2018), ECF No. 2407. On June 27, 2018, the Ninth Circuit denied IPP's motion to appeal the March 5, 2018 order denying IPP's renewed motion for class certification. *Id.* at 3. On August 10, 2018, IPPs filed a second renewed motion for class certification, seeking certification of a class consisting only of *Illinois Brick* repealer residents and certain government entities. ECF No. 2369, corrected at 2382 (Aug. 15, 2018). The Court struck the IPPs' second renewed motion for class certification. ECF No. 2407 at 7.

The most recent round of settlements (and the ones relevant here) took place from January to March of 2018. Specifically, on February 15, 2018, the IPPs entered into a

settlement with Toshiba Corporation ("Toshiba"), on March 5, 2018, they entered into a settlement with NEC Tokin Corporation ("Tokin"), and on March 30, 2018, they entered into a settlement with Samsung SDI Co., Ltd. and Samsung SDI America, Inc. (collectively, "SDI"). The settlements total $43.5 million in cash payments by the Settling Defendants, with no reversion should any funds remain after distribution to Class Members and payment of costs, fees, and expenses. Each of the settlements proposes the certification of a nationwide class.

Under the three settlement agreements, all IPPs and Class Members released the following claims:

> "Released Claims" means any and all manner of claims, demands, rights, actions, suits, causes of action, whether class, individual or otherwise in nature, fees, costs, penalties, injuries, damages whenever incurred and liabilities of any nature whatsoever, known or unknown (including, but not limited to, "Unknown Claims"), foreseen or unforeseen, suspected or unsuspected, asserted or unasserted, contingent or non-contingent, in law or in equity, under the laws of any jurisdiction, which Releasors or any of them, whether directly, representatively, derivatively, or in any other capacity, ever had, now have or hereafter can, shall or may have, relating in any way to any conduct prior to the date of this Agreement and arising out of or related in any way in whole or in part to any facts, circumstances, acts or omissions arising out of or related to (1) any purchase or sale of Lithium Ion Batteries (including Lithium Ion Batteries contained in Finished Products) up through May 31, 2011; or (2) any agreement, combination or conspiracy to raise, fix, maintain or stabilize the prices of Lithium Ion Batteries (including Lithium Ion Batteries contained in Finished Products) or restrict, reduce, alter or allocate the supply, quantity or quality of Lithium Ion Batteries (including Lithium Ion Batteries contained in Finished Products) or concerning the development, manufacture, supply, distribution, transfer, marketing, sale or pricing of Lithium Ion Batteries (including Lithium Ion Batteries contained in Finished Products), or any other conduct alleged in the Actions or relating to restraint of competition that could have been or hereafter could be alleged against the Releasees

> relating to Lithium Ion Batteries; or (3) any other restraint of competition relating to Lithium Ion Batteries that could be asserted as a violation of the Sherman Act or any other antitrust, unjust enrichment, unfair competition, unfair practices, trade practices, price discrimination, unitary pricing, racketeering, contract, civil conspiracy or consumer protection law, whether under federal, state, local or foreign law.

Settlement Agreements, ¶ A.1.y.

The settlement agreements define IPPs as 21 named individuals as well as the City of Palo Alto and the City of Richmond. They also define "Class Members" as "a Person who or California government entity that falls within the definition of the Classes and does not timely and validly elect to be excluded from the Classes in accordance with the procedure to be established by the Court." *Id.*, ¶ A.1.f. "Class" or "Classes" is defined in the agreements as "all persons and entities who, as residents of the United States and during the period from January 1, 2000 through May 31, 2011, indirectly purchased new for their own use and not for resale one of the following products which contained a lithium-ion cylindrical battery manufactured by one or more defendants or their coconspirators: (i) portable computer; (ii) a power tool; (iii) a camcorder; or (iv) a replacement battery for any of these products . . . ." *Id.*, ¶ A.1.d. Paragraph 11 of the settlement agreements excluded claims for product liability, breach of contract, breach of warranty, personal injury, and any other claim unrelated to the allegations of the litigation. *Id.*, ¶11.

Request for Neutral Analysis:

This Neutral was contacted by counsel at Lieff Cabraser Heimann & Bernstein LLP to ask if she would be interested in an assignment in which she would render a Neutral Analysis regarding allocation of a settlement fund. There was no discussion of any substance relating to the claims whatsoever during that conversation. On October 29, 2018,

the Neutral received notice, by way of a memorandum, that co-lead counsel for the class engaged the assistance of two advocates (Laura Alexander, Cohen Milstein Sellers & Toll PLLC and Marc Seltzer, Susman Godfrey LLP) and one Neutral (the undersigned), to determine the most fair and efficient allocation of these settlement funds to Class Members. The memorandum set forth a "Statement of Proposed Work."

The Statement of Proposed Work directed that each advocate would present a position statement to the undersigned on behalf of one portion of the class. Ms. Alexander was assigned to advocate on behalf of the Class Member residents of the states who have repealed, or otherwise declined to recognize the Supreme Court's decision in *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977) ("*Illinois-Brick* repealers"), and Mr. Seltzer was assigned to advocate on behalf of the Class Member residents of the states who decline to recognize standing for indirect purchaser plaintiffs. For the purposes of the assignment, the memorandum listed the following states that have declined to recognize standing for indirect purchaser plaintiffs: Alabama, Arizona, Arkansas, California, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, South Dakota, Tennessee, Utah, Vermont, West Virginia, and Wisconsin.

The memorandum set forth an expedited timeline for the advocates to serve their position statements. The advocates were directed to contest whether or not the settlement should be subject to a simple nationwide *pro-rata* distribution and, if not, to propose what percentage should be allocated between Class Member residents in the *Illinois-Brick* repealer states and the Class Member in the non-repealer states who decline to recognize

indirect purchaser standing. The memorandum also directed the undersigned to issue a recommendation regarding the allocation of settlement funds, no later than November 28, 2018, to be provided to the District Court in connection with plaintiffs' motion for preliminary approval of the settlement. By agreement of the advocates, the final date for submission of position statements was extended to November 20, 2018, and the date for the Neutral to file her analysis and recommendation was extended to December 7, 2018.

THE UNDERSIGNED NEUTRAL, having examined and considered all arguments and legal authority found in the submissions of the two advocates and having conducted the legal research necessary to her recommendation, hereby issues the following Neutral Analysis in this matter

DISCUSSION

Legal Standard

Approval of a plan of allocation of settlement proceeds in a class action is governed by the same standards of review applicable to approval of the settlement as a whole: the plan must be fair, reasonable and adequate. *In re Cathode Ray Tube (CRT) Antitrust Litig.*, MDL No. 1917, 2016 WL 3648478, at *11 (N.D. Cal. July 7, 2016); *In re Omnivision Tech., Inc.*, 559 F. Supp. 2d at 1045 (N.D. Cal. 2008); *see also In re Citric Acid Antitrust Litig.*, 145 F. Supp. 2d 1152, 1154 (N.D. Cal. 2001); *Vinh Nguyen v. Radient Pharms. Corp.*, No. 11-cv-00406, 2014 WL 1802293, at *5 (C.D. Cal. May 6, 2014) ("[A]n allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent counsel."). "It is reasonable to allocate the settlement funds to class members based on the extent of their injuries or the strength of their claims on the merits." *In re Omnivision*, 559 F. Supp. 2d at 1045. A settlement "can be reasonable if it fairly treats class

members by awarding a pro rata share to every Authorized Claimant, but also sensibly makes interclass distinctions based upon, *inter alia*, the relative strengths and weaknesses of class members' individual claims . . . ." *In re Zynga Inc. Sec. Litig.*, No. 12-CV-04007-JSC, 2015 WL 6471171, at *12 (N.D. Cal. Oct. 27, 2015) (quoting *Nguyen*, 2014 WL 1802293 at *5).

When determining whether a plan for allocation is fair, reasonable and adequate, courts have looked to a variety of factors. Considerations include whether the proposals were hastily arrived at or if there is evidence in the record suggesting the existence of collusion between the negotiators. *See Officers for Justice v. Civil Service Commission of City and County of San Francisco,* 688 F.2d 615, 627 (9th Cir. 1982). Courts also look to whether the settlements were reached after meaningful discovery and after arms-length negotiations by capable counsel. *See In re Heritage Bond Litig.,* 2005 WL 1594403, at *9 (C.D. Cal. June 10, 2005); *In re Tableware Antitrust Litig.,* 484 F.Supp.2d 1078, 1079 (N.D. Cal.2007). In reviewing the plan of allocation, the Court may also determine whether any of the claims that have been released have no value. "A claim which cannot be proven is worth essentially nothing. Consideration of nothing for releasing a worthless claim is therefore fair, reasonable, and adequate." *Parker v. Time Warner Entm't Co., L.P.* 631 F.Supp.2d 242, 262 (E.D.N.Y. 2009).

In assessing these, and other factors, courts recognize that a "Plan of Allocation need not be, and cannot be, perfect." *In re Cendant Corp. Sec. Litig.*, 109 F. Supp. 2d 235, 272 (D.N.J. 2000), *aff'd*, 264 F.3d 201 (3d Cir. 1992), *cert denied*, 536 U.S. 929 (2002). "[I]n the case of a large class action the apportionment of a settlement can never be tailored to the rights of each plaintiff with mathematical precision." *In re LIBOR-Based Fin. Instruments*

Antitrust Litig., No. 11 CIV. 5450, 2018 WL 3677875, at *9 (S.D.N.Y. Aug. 1, 2018). Indeed, the Ninth Circuit has observed that "the district court's determination in approving a settlement is nothing more than 'an amalgam of delicate balancing, gross approximations and rough justice.'" *CRT*, 2016 WL 721680 at *16 (quoting *Officers for Justice*, 688 F.2d at 625).

Analysis

As noted, *supra*, repealer-state residents argue that the most fair and efficient allocation would be for all of the settlement funds to be allocated to them.[2] Non-repealer-state residents maintain that the most fair and efficient allocation of settlement funds would be a *pro rata* distribution of the funds among all members of the settlement class, regardless of whether they reside in repealer or non-repealer states. After conducting an extensive review of the parties' briefs and the applicable caselaw, this Neutral recommends that the most fair, reasonable and adequate allocation of the settlement funds would be to allocate all of the funds to the residents of the repealer states.

There is no dispute that the Court in this MDL has already held that residents of *Illinois Brick* non-repealer states cannot proceed with their claims under California law but must instead proceed under the laws of their own states. Each of these states has chosen not to enact or adopt laws that allow indirect purchasers to sue for money damages in antitrust cases. Residents from these states, therefore, have no right under either federal or state antitrust laws and/or consumer protection statutes to recover for damages that have been passed on to them by an intermediary purchaser of price-fixed goods and services.

[2] In the alternative, should the Court determine that Class Members from non-repealer states should receive some compensation, the advocate for residents of repealer states proposes that they should receive no more than 10% of the settlement funds.

Any claims based on such damages, therefore, are not viable claims. In other words, such claims are worthless. As such, the release of these c claims does not require any consideration. *See In re CRT*, 2016 WL 3648478, at *12 ("A claim which cannot be proven is worth essentially nothing. Consideration of nothing for releasing a worthless claim is therefore fair, reasonable, and adequate.") (quoting *Parker v. Time Warner Entm't Co.,* 239 F.R.D. 318, 339 (E.D.N.Y. 2007)); *id*, at *14 ("no Ninth Circuit case holds that the release of a class action claim must be compensated in all instances . . . and this Court will not break new ground by announcing [such a rule here]"); *see also Nguyen v. Radient Pharm. Corp.*, No. SACV 11-00406 DOC (MLGx), 2014 WL 1802293, at *7 (C.D. Cal. May 6, 2014) ("It is reasonable to allocate the settlement funds to class members based on the extent of their injuries or the strength of their claims on the merits") (quoting *In re Omnivision*, 559 F.Supp.2d at 1045); Rubenstein, 4 NEWBERG ON CLASS ACTION § 13:60 ("[i]t is fine to release a claim without compensation if the value of the claim is zero.").

Thus, whether Class Member residents of non-repealer states are entitled to allocation of some of the settlement funds in this instance depends on whether they have released any other claims that are actually still viable. Non-repealer-state residents contend that they have, in fact, released viable claims. Those claims include claims for restitution under principles of unjust enrichment, claims for racketeering under federal and state RICO laws, and claims for damages under the Wilson Tariff Act of 1894.

With regard to non-repealer-state residents' restitution claim, the Special Master in *CRT*, after assessing the legal landscape with regard to such claims throughout the United States, specifically addressed, and rejected, the assertion that state law claims for equitable relief can replace the federal claim barred by *Illinois Brick*.

> The case law is clear and consistent in holding that such state law claims are not permissible in indirect purchaser cases. *In re Digital Music Antitrust Litig.*, 812 F.Supp.2d 1179, 1192 (N.D.Cal.2009) [unjust enrichment claims under Arkansas, Virginia, Montana and Puerto Rico law barred]; *In re K–Dur Antitrust Litigation*, No. CIV.A. 01–1652(JAG), 2008 WL 2660780, at *5 (D.N.J. Feb. 28, 2008) [unjust enrichment claim barred because it was based on the same facts and as the state antitrust claims which were not permitted under Pennsylvania, New Jersey or Delaware law]; *Aikens v. Microsoft Corp.*, 159 Fed. Appx. 471, 477 (4th Cir.2005) [unjust enrichment claim barred as attempt to circumvent the prohibition against indirect purchaser claims under Louisiana antitrust law]; *Sickles v. Cabot Corp.*, 877 A.2d 267, 277 (N.J.Super.Ct.2005)["[T]o permit an indirect purchaser ... to recast his antitrust claim as a consumer fraud violation would undermine the standing requirements of the ATA and would 'essentially permit an end run around the policies allowing only direct purchasers to recover under the Antitrust Act.' "]. Finally, in *In re New Motor Vehicles Canadian Export Antitrust Litig.*, 350 F.Supp.2d 160 (D.Me.2004), the court opined: "For those states that have maintained the *Illinois Brick* prohibition on indirect purchaser recovery, I conclude that it would subvert the statutory scheme to allow these same indirect purchasers to secure, for the statutory violation, restitutionary relief at common law (or in equity)."). *Id.* at 211.

In re CRT, 2016 WL 721680, at *24.

Consistent with this caselaw, the Neutral concludes that the restitution/unjust enrichment claims of Class Member residents from non-repealer states are not viable. These claims, therefore, have no value to the non-repealer-state residents; and as such, they do not support the non-repealer-state residents' request to receive a *pro rata* portion of the settlement fund allocation.

The same rationale applies to non-repealer-state residents' released RICO/racketeering claims.[3] Courts that have considered this issue have consistently held that the *Illinois Brick* doctrine "equally applies to RICO actions for treble damages" brought

[3] It should be noted that Plaintiffs did not allege any RICO/racketeering claims in their underlying complaint.

by indirect purchasers. The legal authority supporting this view is impressively multitudinous as reflected in just some of the following citations. *See McCarthy v. Recordex Serv. Inc.*, 80 F.3d 842, 855 (3d Cir. 1996); *Sperber v. Boesky*, 849 F.2d 60, 65 (2d Cir. 1988); *Carter v. Berger*, 777 F.2d 1173 (7th Cir. 1985); *Fiala v. Wasco Sanitary Dist.*, No. 10 C 2895, 2012 WL 917851, at *6 (N.D. Ill. Mar. 16, 2012) (citing multiple Seventh Circuit Court of Appeals cases in accord); *Macomb Interceptor Drain Drainage Dist. v. Kilpatrick*, 896 F. Supp. 2d 650, 668 (E.D. Mich. 2012); *Hale v. Stryker Orthopaedics*, No. CIV 08-3367(WJM), 2009 WL 321579, at *3 (D.N.J. Feb. 9, 2009); *Schwab v. Philip Morris USA, Inc.*, 449 F. Supp. 2d 992, 1051 (E.D.N.Y. 2006), rev'd sub nom *McLaughlin v. Am. Tobacco Co.*, 522 F.3d 215 (2d Cir. 2008). These string citations are only a modest number of the overwhelming authority addressing this issue.

With regard to non-repealer-state Class Members' released claims under the Wilson Tariff Act of 1894, the Neutral has found no case addressing the continuing viability of these claims in non-repealer states. Non-repealer-state Class Members have also failed to cite any cases in their brief to support this claim's continuing viability. Instead, non-repealer-state residents merely quote from one of Plaintiffs' prior briefs before the Court, where Plaintiffs stated that "all class members regardless of whether they hail from a state that repealed *Illinois Brick* have potential claims under the Wilson Tariff Act." Non-Repealer-State Class Members' Brief, 11/1/18, p.9 (quoting *In re Lithium Ion Batteries Litig.*, No. 17-17367, (9th Cir. July 16, 2018). A purely conjectural reference to "potential claims," without any legal support for the viability of those claims, is insufficient to justify allocation of settlement funds. *See In re CRT*, 2016 WL 3648478, at *12.

There is nothing at this point known to this Neutral to show that any of the non-repealer-state residents' released claims have any value. The Neutral therefore recommends that the Court allocate all of the settlement funds to Class Member residents of repealer states. This is consistent with plans of allocation in nationwide settlements that have been approved by courts within this jurisdiction where the residents of the *Illinois Brick* non-repealer states were awarded no monetary damages, despite the fact that they were releasing their claims. *See In re CRT*, 2016 WL 721680 at *2, *11. These plans of allocation were found to be fair and reasonable, just as the repealer-state residents' proposed plan of allocation is here. *See id.*, at *27 ("This plan of allocation is fair, reasonable and adequate as to these members of the Nationwide Class who are not eligible for monetary compensation because Lead Counsel made reasonable, rational, good-faith valuations of the strength of potential claims in non-repealer states based on governing law.").

The Class Members from the *Illinois Brick* repealer states are giving up a valuable right to bring their viable claims. As such, their compensation should not be diluted by the non-viable claims of non-repealer-state Class Member residents. Although residents of *Illinois Brick* non-repealer states may have suffered equal harm as residents of repealer states, harm is not what matters under the law when allocating settlement funds; what matters is the remedy that the law provides. At the point when these settlements were reached, residents of non-repealer states had no credible claim for money damages; thus, they could never have achieved this settlement, or any settlement, without relying entirely on the value of the claims of the residents of the *Illinois Brick* repealer states.

Non-repealer-state residents argue that this recommendation is inconsistent with the Court's earlier decision to approve the class action settlements with Hitachi Maxell, NEC

and LG Chem Defendants, where a *pro rata* allocation was approved and the argument that Rule 23's predominance analysis requires the Court to take into account "intraclass conflicts between consumers that reside in Illinois Brick repealer states and those that reside in other states" was rejected. *See In re Lithium Batteries Litig.*, Case No. 13-MD-02420-YGR, Doc. No. 2003 at 3 (N.D. Cal. Oct. 27, 2017). But those settlements were negotiated under completely different circumstances than the settlements at issue here. During the parties' November/December, 2016 negotiations under those settlements, the Court had not yet denied certification of a nationwide litigation class, and it had not yet held that *Illinois Brick* non-repealer-state residents would have to proceed under their own states' laws; thus, the case was still proceeding as a putative nationwide class action under California law. Here, however, during the parties' negotiations in early 2018, settling defendants knew that claims of non-repealer residents posed no credible threat to them. Those claims, therefore, were valueless to settling defendants and could not have meaningfully contributed to the settlement negotiations.

Non-repealer-state residents also argue that their claims must have had value to the Settling Defendants based on the fact that Class Member residents from non-repealer states were included in the settlement agreements. But this very argument was quite effectively rejected by the court in *CRT*.

> Certain class members were not injured in any manner recognized by law, and accordingly did not receive compensation. That Defendants insisted on a global release does not change this analysis, since defendants typically insist on a global release in *every* case. Were the Court to place any weight on this latter fact, it would essentially be adopting a *per se* compensation rule – which, as just explained, the Court is unwilling to do. Nor is the Court persuaded by the argument that plaintiffs with meritless claims should always be able to extract nuisance value for them whenever those claims are

> part of a global settlement. If such claims actually have value, the affected plaintiffs can demonstrate that fact during the objection process (or timely opt out). If they fail in that effort, the Court will not have worked any injustice in allowing claims with no value to go uncompensated.

In re CRT, 2016 WL 3648478, at *14

The Neutral notes that various objectors are currently appealing the District Court's opinion in *CRT*. The bulk of the arguments on appeal only relate to (1) the Court's approval of the settlement and allocation in so far as that approval provided no monetary recovery to residents of three *Illinois Brick* **repealer** states, and (2) the issue of attorneys' fees. As best the Neutral can ascertain, only one appeal directly addresses the Court's approval of the allocation plan in so far as it released the non-repealer state claims without compensation, and that appeal only discusses that issue minimally. It therefore does not appear that the District Court's decision on this key issue is in jeopardy.

And finally, non-repealer-state residents' reliance on *Sullivan v. DB Investments, Inc.*, 667 F.3d 273 (3d Cir. en banc 2011) is misplaced. The issue in *Sullivan* was the propriety of the District Court's certification of two nationwide settlement classes comprising of purchasers of diamonds from De Beers S.A. and related entities. *Id.*, at 285. Specifically, one of the issues that the Court assessed was whether the commonality and predominance requirements of Rule 23 had been met despite the differences in state laws. *See id.* at 302 ("statutory variations do not defeat predominance in the presence of other exceedingly common issues"). The question at issue here, however, is not whether the Court should certify the settlement class; it is whether and what plan of allocation would be fair, adequate and reasonable.

Moreover, while the Court in *Sullivan* did conclude that there was "no persuasive authority for deeming the certification of a class for settlement purposes improper based on differences in state law," *id.* at 304, it did not conclude that differences in state law cannot be taken into account in the allocation or class settlement context. And when the Court did look at the plan of allocation at issue in that case, finding that it "may be entirely reasonable to apply the same damages calculation to claimants from all states," it did so because it "decline[d] to require" an analysis of the relative strength or weakness of the claims of various members of a settlement class. *Id.* at 328. The Court only did so, however, because "only by engaging in the type of fact-intensive merits and choice-of-law analyses that we have rejected could a District Court attempt to assay the 'varying strengths and weaknesses' of asserted state claims." *See id.* at 327-28. Here, however, the Court has already conducted a choice-of-law analysis and held that the claims of the repealer- and non-repealer-state residents could not proceed under the same laws. *Sullivan* is therefore distinguishable from this case.

The Neutral should note that, if the Court were to disagree with her conclusion and find that, while weak, some of the non-repealer-state residents' released claims have at least some value, the Neutral recommends that the Court then only allocate Class Member residents from non-repealer states 10% of the settlement funds. *See Ferrington v. McAfee, Inc.*, No. 10-CV-01455-LHK, 2012 WL 1156399, at *9-10 (N.D. Cal. Apr. 6, 2012) ("While the Court agrees that the claims of the downloader subclass are relatively weak, that does not necessarily mean that the downloaders suffered *no* compensable harm . . . [T]he claims of the downloader subclass are not so meritless that releasing the claims for no consideration is fair and reasonable.") Non-repealer-state residents' propose that, instead of allocating

10% of the settlement funds to them, their claims should be valued at no less than 50% of the value of the repealer-states residents' claims. This proposal is too generous to residents of non-repealer states, however, in light of their much, much weaker and, in this Neutral's view, valueless claims. The Neutral does agree, however, that any allocation, whether it is to residents of repealer or non-repealer states, should impose a minimum claim amount (*i.e.*, $10) on monetary damages. Such a requirement has been approved in other cases so that settlement funds are not depleted by the administrative costs of *de minimus* claims. *See Sullivan*, 667 F.3d at 328-29; *In re Gilat Satellite Networks, Ltd.*, No. CV-02-1510, 2007 WL 1191048, at *9 (E.D.N.Y. Apr. 19, 2007).

RECOMMENDATION

In light of the fact that, at the time these settlements were negotiated, the released claims of the non-repealer-state residents were essentially valueless, a fair, reasonable and adequate allocation of settlement funds would be to allocate all funds to Class Member residents of repealer states.

Respectfully Submitted,

Dated: December 6, 2018

Hon. Rebecca J. Westerfield (Ret.)
Neutral

PROOF OF SERVICE BY EMAIL & U.S. MAIL

Re: In re: Lithium Ion Batteries Antitrust Litigation vs. Case No. 13-md-2420
Reference No. 1100091391

I, Brian Palencia, not a party to the within action, hereby declare that on December 06, 2018, I served the attached Neutral Analysis on the parties in the within action by Email and by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at San Francisco, CALIFORNIA, addressed as follows:

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I declare under penalty of perjury the foregoing to be true and correct. Executed at San Francisco, CALIFORNIA on December 06, 2018.

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