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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

**[PROPOSED] ORDER DIRECTING
NOTICE TO THE CLASS
REGARDING THE SDI, TOKIN,
TOSHIBA & PANASONIC
SETTLEMENTS**

This Document Relates to:
ALL INDIRECT PURCHASER ACTIONS.

This matter comes before the Court on Indirect Purchaser Plaintiffs’ Motion to Direct Notice to the Class Regarding the SDI, Tokin, Toshiba, and Panasonic Settlements (the “Motion”).

WHEREAS Indirect Purchaser Plaintiffs (“IPPs”), on behalf of themselves and of the proposed stipulated settlement class (“Settlement Class”), and defendants Samsung SDI Co., Ltd. and Samsung SDI America, Inc. (collectively, “SDI”); TOKIN Corporation (“TOKIN”); Toshiba Corporation (“Toshiba”); and Panasonic Corporation, Panasonic Corporation of North America, SANYO Electric Co., Ltd., and SANYO North America Corporation (collectively, “Panasonic,” and with SDI, TOKIN, and Toshiba, the “Settling Defendants”), have agreed—subject to Court approval following notice to the Settlement Class and a hearing—to settle the above-captioned matter (the “Action”) upon the terms set forth in the SDI Settlement, the TOKIN Settlement, the Toshiba Settlement, and the Panasonic Settlement (together, the “Settlement Agreements”);

1 WHEREAS, this Court has reviewed and considered the Settlement Agreements entered
2 into among the parties, the record in this case, the briefs and their supporting exhibits and
3 declarations, and the arguments of counsel;

4 WHEREAS, IPPs have applied for an order to direct notice to the Settlement Class
5 (defined in paragraph 2 below) in connection with the proposed Settlement Agreements pursuant
6 to Rule 23(e)(1) of the Federal Rules of Civil Procedure;

7 WHEREAS, IPPs have presented sufficient information, pursuant to the Federal Rules and
8 this District's Procedural Guidance for Class Action Settlements, to justify directing notice of the
9 proposed Settlement Agreements to the Settlement Class;

10 WHEREAS, this Court finds that it is likely to approve the proposed Settlement
11 Agreements under Rule 23(e)(2), and that it is likely to certify the Settlement Class for purposes
12 of judgment on the proposed Settlement Agreements; and

13 WHEREAS, all defined terms contained herein shall have the same meanings as set forth
14 in the Settlement Agreements;

15 NOW, THEREFORE, IT IS HEREBY ORDERED:

16 1. The Court does hereby find that it is likely to approve the proposed Settlement
17 Agreements under Rule 23(e)(2). Specifically:

18 a. The class representatives and counsel have vigorously represented the
19 interests of the Settlement Class, having prosecuted this action on behalf of the Settlement Class
20 for more than five years.

21 b. The Settlement Agreements arise out of arm's-length, informed, and non-
22 collusive negotiations between counsel for IPPs and the Settling Defendants, who convened
23 multiple times over several months to arrive at settlement terms.

24 c. The relief provided for the Settlement Class is adequate, considering: (i)
25 the costs, risks, and delay of trial and appeal, particularly in light of the complex nature of IPPs'
26 case; (ii) the effectiveness and straightforwardness of the proposed claims process, which is
27 similar to the process this Court previously approved; (iii) the reasonableness of the anticipated
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1 request for an award of attorneys' fees; and (iv) the absence of any agreement required to be
2 identified under Rule 23(e)(3).

3 d. The Settlement Agreements treat class members equitably relative to each
4 other. IPPs propose a distribution plan, as recommended by Judge Rebecca J. Westerfield (ret.),
5 that would allocate 90 percent of the settlement funds to class members from states that have
6 passed laws allowing recovery by indirect purchasers (so-called "repealer states") and 10 percent
7 of the settlement funds to class members from states that have not done so ("non-repealer
8 states").¹ I have reviewed the adversarial process undertaken by the IPPs to arrive at this
9 recommendation, and find that it was appropriate. This Court is therefore likely to find IPPs'
10 proposed distribution plan fair, reasonable, and adequate. It is appropriate for class members
11 from non-repealer states to receive a limited recovery because they are still active litigants in the
12 case, and their claims have been neither dismissed from nor amended out of the pleadings.
13 Moreover, this Court's prior analysis of California choice-of-law rules would have been subject
14 to an appeal had this case gone to judgment. *National Super Spuds, Inc. v. New York Mercantile*
15 *Exchange*, 660 F.2d 9, 19 (2d Cir. 1981); *see also Anderson v. Nextel Retail Stores, LLC*, No. CV
16 07-4480-SVW FFMX, 2010 WL 8591002, at *9 (C.D. Cal. Apr. 12, 2010).

17 2. The Court does hereby find that, for purposes of judgment on the proposed
18 Settlement Agreements, it is likely to certify the Settlement Class, which is defined as follows:

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

27 ¹ The term "repealer" refers to a state whose highest court has concluded that the relevant state
28 law affords a right of recovery to consumers notwithstanding the Supreme Court's decision in
Illinois Brick Co. v. Illinois, 431 U.S. 720 (1977).

1 Specifically:

2 a. The Settlement Class is sufficiently numerous, as there are millions of
3 geographically-dispersed class members, making joinder of all members impracticable.

4 b. There are questions of law and fact common to the Settlement Class.

5 c. The claims of the class representatives are typical of the claims of the
6 Settlement Class.

7 d. The class representatives will fairly and adequately protect the interests of
8 the Settlement Class, and the class representatives have no interests in conflict with those of the
9 Settlement Class. Moreover, the class representatives have retained counsel experienced in
10 antitrust class action litigation who have, and will continue to, vigorously represent the Settlement
11 Class.

12 e. Common questions of law and fact predominate over any questions
13 affecting only individual members. Predominance is satisfied with respect to the nationwide
14 Settlement Class. *First*, questions as to the existence of the alleged conspiracy and as to the
15 occurrence of price-fixing are common to all class members and predominate over any
16 conceivable individual issues. Resolution of IPPs' claims depends principally on whether
17 defendants participated in a price-fixing conspiracy, and whether that conspiracy caused an
18 artificial and non-competitive increase to the market price of lithium ion batteries. Thus, if IPPs
19 were able to prove these elements, based on common evidence, a jury could reasonably infer that
20 every class member suffered some injury as a result. *Second*, certification of a Settlement Class
21 that includes residents from both repealer and non-repealer states does not affect the
22 predominance of common issues, because (i) the legal issue of whether purchasers from non-
23 repealer states can assert claims under California law is a common question susceptible to a
24 common answer, and the only differences—state law remedies—fall into a predictable binary
25 pattern; and (ii) even if an individual component to that legal question were to exist, that
26 individual component would be only one issue among a host of predominantly common issues.
27 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1022 (9th Cir. 1998). *Third*, the distribution of
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1 different amounts to subgroups of the Settlement Class (*i.e.*, repealer state residents and non-
2 repealer state residents) does not affect predominance because it is yet another common question.

3 f. Resolving these claims through a class settlement is superior to other
4 available methods for a fair and efficient adjudication.

5 3. Having found that it will likely approve the Settlement Agreements and certify the
6 Settlement Class, the Court does hereby direct IPPs to give notice of the proposed Settlement
7 Agreements to the Settlement Class.

8 4. The Court designates Jason Ames, Caleb Batey, Christopher Bessette, Cindy
9 Booze, Matt Bryant, Steve Bugge, William Cabral, Matthew Ence, Drew Fennelly, Sheri
10 Harmon, Christopher Hunt, John Kopp, Linda Lincoln, Patrick McGuinness, Joseph O’Daniel,
11 Tom Pham, Piya Robert Rojanasathit, Bradley Seldin, Donna Shawn, David Tolchin, Bradley
12 Van Patten, the City of Palo Alto, and the City of Richmond as representatives for the Settlement
13 Class for purposes of disseminating notice.

14 5. The Court designates Cotchett, Pitre & McCarthy, LLP; Hagens Berman Sobol
15 Shapiro LLP; and Lieff Cabraser Heimann & Bernstein, LLP as Class Counsel for the Settlement
16 Class.

17 6. The Court approves as to form and content the proposed notice form, attached
18 hereto as **Exhibit 1**. The Court further finds that the proposed plan of notice, and the proposed
19 contents of these notices, meet the requirements of Rule 23 and due process, and are the best
20 notice practicable under the circumstances and shall constitute due and sufficient notice to all
21 persons entitled thereto.

22 7. The Court appoints the firm Epiq Class Action & Claims Solutions (“Epiq”) as the
23 Settlement Notice Administrator. IPPs and their designees, including the Settlement Notice
24 Administrator, are authorized to expend funds from the escrow accounts to pay taxes, tax
25 expenses, notice, and administration costs as set forth in the Settlement Agreements.

26 8. The Final Approval Hearing shall be held before this Court on _____,
27 2019, at 2:00 p.m., at the United States District Court, located in Courtroom 1, 4th Floor, at 1301
28 Clay Street, Oakland, CA 94612, to determine: whether the proposed Settlement Agreements are

1 fair, reasonable, and adequate under Rule 23(e)(2); whether the Settlement Class should be
2 certified; whether final judgment should be entered herein; whether the proposed plan of
3 distribution should be approved; the amount of fees and expenses that should be awarded to Class
4 Counsel; and the amount of the incentive awards that should be provided to class representatives.
5 The Court may adjourn the Final Approval Hearing without further notice to the members of the
6 Settlement Class.

7 9. The Court directs the Settlement Notice Administrator to supervise and administer
8 the notice procedure as well as the processing of claims as more fully set forth below:

9 a. No later than _____, **2019**, the Settlement Notice Administrator
10 shall provide e-mail notice, substantially in the manner described in the Declaration of Cameron
11 R. Azari, to all class members whose e-mail addresses have been identified or can be identified
12 with reasonable effort;

13 b. No later than _____, **2019**, the Settlement Notice Administrator
14 shall commence a broadcast notice campaign, substantially in the manner described in the
15 Declaration of Cameron R. Azari;

16 c. No later than _____, **2019**, the Settlement Notice Administrator
17 shall commence a digital banner and video notice campaign, substantially in the manner
18 described in the Declaration of Cameron R. Azari.

19 d. No later than _____, **2019**, the Settlement Notice Administrator
20 shall release a party-neutral press release to approximately 15,000 media outlets across all 50
21 states.

22 e. The Settlement Notice Administrator shall continue to maintain the
23 existing website (www.reversethecharge.com) and toll-free phone number (1-888-418-5566),
24 established in connection with previous settlement agreements in this case. The website shall
25 continue to make available to class members additional, detailed information, including links to
26 file claims online, answers to frequently asked questions, important case documents, and contact
27 information for both Class Counsel and the Settlement Notice Administrator. The Settlement
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1 Notice Administrator shall cause the full versions of the Settlement Agreements and this Order
2 Directing Notice to the Class to be published on the website.

3 10. The claims period shall commence _____, **2019**, and shall continue
4 through and including _____, **2019**. The Court further finds that the claims period for
5 the Settlement Agreements shall run concurrent with the claims period for all prior settlements—
6 specifically, those with defendants Sony Corporation, Sony Energy Devices Corporation, and
7 Sony Electronics Inc. (collectively, “Sony”); LG Chem Ltd. and LG Chem America, Inc.
8 (collectively, “LG Chem”); Hitachi Maxell, Ltd. and Maxell Corporation of America
9 (collectively, “Hitachi Maxell”); and NEC Corporation (“NEC”). Class Members who have
10 submitted claims in connection with a prior round of settlements (and who do not exclude
11 themselves) do not need to make a new claim; prior claims will be deemed to include the
12 settlements with SDI, Toshiba, Tokin and Panasonic.

13 11. All members of the Settlement Class shall be bound by all determinations and
14 judgments in this Action concerning the Settlement Agreements, whether favorable or
15 unfavorable to the Settlement Class.

16 12. Class Counsel shall file their motion for attorneys’ fees, costs, and service awards
17 for the class representatives, and all supporting documentation and papers, by _____,
18 **2019**, or fourteen days before the deadline for exclusions and objections.

19 13. Any person who desires to request exclusion from the Settlement Class shall do so
20 by _____, **2019**. Requests for exclusion must be in writing and set forth the name and
21 address of the person or entity who wishes to be excluded, as well as any trade name or business
22 name and address used by such person or entity, and must be signed by the class member seeking
23 exclusion. All persons who submit valid and timely requests for exclusion shall have no rights
24 under the Settlement Agreements, shall not share in the distribution of the settlement funds, and
25 shall not be bound by the final judgments relating to SDI, TOKIN, Toshiba, or Panasonic entered
26 in this Action.

27 14. Any member of the Settlement Classes who does not properly and timely request
28 exclusion from the Settlement Class as provided above shall, upon final approval of the

1 Settlements, be bound by the terms and provisions of the Settlements so approved, including, but
2 not limited to, the releases, waivers, and covenants set forth in the Settlement Agreements,
3 whether or not such person or entity objected to the Settlement Agreements and whether or not
4 such person or entity makes a claim upon the settlement funds.

5 15. Any member of the Settlement Class may enter an appearance in this litigation, at
6 his or her own expense, individually or through counsel of his or her own choice. If the member
7 does not enter an appearance, he or she will be represented by Class Counsel.

8 16. Any member of the Settlement Class may appear and show cause, if he or she has
9 any reason, why the Settlement Agreements should or should not be approved as fair, reasonable,
10 and adequate; why a judgment should or should not be entered thereon; why the plan of
11 distribution should or should not be approved; why attorney's fees and expenses should or should
12 not be awarded to Class Counsel; or why the incentive awards should or should not be awarded to
13 the class representatives. All written objections and supporting papers must (a) clearly identify
14 the case name and number (*In re Lithium Ion Batteries Antitrust Litigation, Indirect Purchaser*
15 *Action*, Case No. 13-md-02420 YGR (DMR)), (b) be submitted to the Court either by mailing
16 them to the Class Action Clerk, United States District Court for the Northern District of
17 California, 1301 Clay St, Oakland, CA 94612, and (c) be filed or postmarked on or before
18 _____, **2019**.

19 17. All papers in support of the settlements and responses by Class Counsel regarding
20 objections and exclusions shall be filed and served by _____, **2019**.

21 18. The Court retains authority to modify any of these dates for good cause shown or
22 on its own discretion.

23 19. All reasonable expenses incurred in identifying and notifying members of the
24 Settlement Class, as well as administering the settlement funds, shall be paid for as set forth in the
25 Settlement Agreements.

26 20. Neither the Settlement Agreements, nor any of its terms or provisions, nor any of
27 the negotiations or proceedings connected with it, shall be construed as an admission or
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1 concession by IPPs or defendants SDI, TOKIN, Toshiba, or Panasonic of the truth or falsity of
2 any of the allegations in the lawsuit, or of any liability, fault or wrongdoing of any kind.

3 21. All members of the Settlement Class are temporarily barred and enjoined from
4 instituting or continuing the prosecution of any action asserting the claims released in the
5 proposed settlements, until the Court enters final judgment with respect to the fairness,
6 reasonableness, and adequacy of the Settlement Agreements.

7 IT IS SO ORDERED.

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9 Dated: _____

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HONORABLE YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

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