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13 *Class Counsel for Indirect Purchaser Plaintiffs*

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 OAKLAND DIVISION

17 IN RE LITHIUM ION BATTERIES
18 ANTITRUST LITIGATION

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

MDL No. 2420

19
20 This Documents Relates to:

21 ALL INDIRECT PURCHASER ACTIONS
22
23
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25
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DECLARATION OF STEVE W.
BERMAN IN SUPPORT OF INDIRECT
PURCHASER PLAINTIFFS' NOTICE
OF MOTION AND MOTION FOR
FINAL APPROVAL OF
SETTLEMENTS WITH SDI, TOKIN,
TOSHIBA AND PANASONIC
DEFENDANTS AND OMNIBUS
RESPONSE TO OBJECTIONS

Date: July 16, 2019

Time: 2:00pm

Judge: Hon. Yvonne Gonzalez Rogers
Court: Courtroom 1, 4th Floor

DATE ACTION FILED: Oct. 3, 2012

1 I, STEVE W. BERMAN, declare as follows:

2 1. I am an attorney duly licensed to practice law before this court. I am a member of
3 the Washington Bar, and I have been admitted to this court *pro hac vice*. I am the managing partner
4 of Hagens Berman Sobol Shapiro LLP (“HBSS”), co-lead counsel for the indirect purchaser
5 plaintiffs (“Plaintiffs” or “IPPs”) in the above-titled action. Based on personal knowledge or
6 discussions with counsel in my firm of the matters stated herein, if called upon, I could and would
7 competently testify thereto.

8 2. HBSS, Lieff Cabraser Heimann & Bernstein, LLP (“LCHB”), and Cotchett, Pitre, &
9 McCarthy, LLP (“CPM”) have been appointed Interim Co-Lead Class Counsel for the IPPs by the
10 Court in this action.¹

11 3. In this declaration, I provide information in support of (i) Indirect Purchaser
12 Plaintiffs’ Notice of Motion and Motion for Final Approval of Settlements with SDI, TOKIN,
13 Toshiba and Panasonic Defendants (“Motion for Final Approval”), and (ii) Indirect Purchaser
14 Plaintiffs’ Omnibus Response to Objections to Settlements with SDI, TOKIN, Toshiba and
15 Panasonic Defendants (“Response to Objections”). Both of these briefs are concurrently filed
16 herewith.

17 4. Attached hereto are true and correct copy of the following documents:

18 Exhibit A: IPP-SDI Settlement Agreement, dated March 7, 2018;

19 Exhibit B: IPP-TOKIN Corporation Settlement Agreement, dated March 2, 2018;

20 Exhibit C: IPP-Toshiba Settlement Agreement, dated January 29, 2018;

21 Exhibit D: IPP-Panasonic Settlement Agreement, dated December 27, 2018; and

22 Exhibit E: 2018 Antitrust Annual Report: Class Action Filings in Federal Court,
23 published May 2019.

24 5. The largest settlement at issue in this motion, the \$39.5 million settlement with SDI,
25 followed multiple mediation sessions involving retired Judge Vaughn R. Walker.

26
27 ¹ See Order Appointing Interim Co-Lead Counsel and Liaison Counsel for Direct Purchaser
28 Plaintiffs and Appointing Interim Co-Lead Counsel and Liaison Counsel for Indirect Purchaser
Plaintiffs, May 17, 2013, ECF No. 194.

7. I am informed that the SDI, Tokin, Toshiba, and Panasonic/Sanyo Defendants timely provided the required CAFA notices on February 27, 2019, February 1, 2019, January 31, 2019, and February 1, 2019, respectively.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 11th day of June 2019 at Seattle, Washington.

/s/ Steve W. Berman
STEVE W. BERMAN

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,

This Document Relates to:

ALL INDIRECT PURCHASER
ACTIONS

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

MDL No. 2420

SDI SETTLEMENT AGREEMENT

DATE ACTION FILED: Oct. 3, 2012

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

7 RECITALS

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

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

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

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

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

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

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

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

15 AGREEMENT

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

21 **A. Definitions**

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

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

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

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

4 d. "Class" or "Classes" are generally defined as all persons and entities who,
5 as residents of the United States and during the period from January 1, 2000 through May 31,
6 2011, indirectly purchased new for their own use and not for resale one of the following products
7 which contained a lithium-ion cylindrical battery manufactured by one or more defendants or
8 their coconspirators: (i) a portable computer; (ii) a power tool; (iii) a camcorder; or (iv) a
9 replacement battery for any of these products. Excluded from the class are any purchases of
10 Panasonic-branded computers. Also excluded from the class are any federal, state, or local
11 governmental entities, any judicial officers presiding over this action, members of their
12 immediate families and judicial staffs, and any juror assigned to this action, but included in the
13 class are all nonfederal and non-state governmental entities in California.

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

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

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

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

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

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

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

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

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

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

22 o. "Indirect Purchaser Plaintiffs" means Christopher Hunt, Piya Robert
23 Rojanasathit, Steve Bugge, Tom Pham, Bradley Seldin, Patrick McGuinness, John Kopp, Drew
24 Fennelly, Jason Ames, William Cabral, Donna Shawn, Joseph O'Daniel, Cindy Booze, Matthew
25 Ence, David Tolchin, Matt Bryant, Sheri Harmon, Christopher Bessette, Caleb Batey, Linda
26 Lincoln, Bradley Van Patten, the City of Palo Alto, and the City of Richmond, as well as any
27 other Person added as an Indirect Purchaser Plaintiff in the Actions.
28

1 p. “Judgment” means the order of judgment and dismissal of the Actions with
2 prejudice.

3 q. “Lithium Ion Battery” means a Lithium Ion Battery Cell or Lithium Ion
4 Battery Pack.

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

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

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

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

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

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

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

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

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

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

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

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

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

4 cc. "Settlement Amount" means Thirty-Nine and one-half Million U.S. Dollars
5 (\$39,500,000).

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

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

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

19 **B. Preliminary Approval Order, Notice Order and Settlement Hearing**

20 **2. Reasonable Best Efforts to Effectuate This Settlement.** The Settling Parties:

21 (a) acknowledge that it is their intent to consummate this Agreement; and (b) agree to cooperate
22 to the extent reasonably necessary to effectuate and implement the terms and conditions of this
23 Agreement and to exercise their best efforts to accomplish the terms and conditions of this
24 Agreement.

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

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

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

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

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

24 b. fully and finally approving the Settlement contemplated by this Agreement
 25 and its terms as being fair, reasonable and adequate within the meaning of Federal Rule of Civil
 26 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.

1 **C. Releases**

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

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

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

21 **10. Waiver of California Civil Code § 1542 and Similar Laws.** The Releasors
22 acknowledge that, by executing this Agreement, and for the consideration received hereunder, it
23 is their intention to release, and they are releasing, all Released Claims, even Unknown Claims. In
24 furtherance of this intention, the Releasors expressly waive and relinquish, to the fullest extent
25 permitted by law, any rights or benefits conferred by the provisions of California Civil Code
26 § 1542, as set forth in ¶ 1(ee), or equivalent, similar or comparable laws or principles of law. The
27 Releasors acknowledge that they have been advised by Class Counsel of the contents and effects
28 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.

1 **13. Disbursements Prior to Effective Date.** No amount may be disbursed from the
 2 Gross Settlement Fund unless and until the Effective Date, except that: (a) Notice and
 3 Administrative Costs, which may not exceed seven hundred fifty thousand U.S. Dollars
 4 (\$750,000.00), may be paid from the Gross Settlement Fund as they become due; (b) Taxes and
 5 Tax Expenses (as defined in ¶ 17(b) below) may be paid from the Gross Settlement Fund as they
 6 become due; and (c) attorneys' fees and reimbursement of litigation costs and expenses, as may
 7 be ordered by the Court, may be disbursed during the pendency of any appeals which may be
 8 taken from the judgment to be entered by the Court finally approving this Settlement. Class
 9 Counsel will attempt in good faith to minimize the amount of Notice and Administrative Costs
 10 and may seek to coordinate the notice described herein with other settlements in these Actions.

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

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

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

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

10 a. For the purpose of § 468B of the Internal Revenue Code of 1986, as
 11 amended, and the regulations promulgated thereunder, the “administrator” shall be the Escrow
 12 Agent. The Escrow Agent shall satisfy the administrative requirements imposed by Treas. Reg.
 13 § 1.468B-2 by, *e.g.*, (i) obtaining a taxpayer identification number, (ii) satisfying any information
 14 reporting or withholding requirements imposed on distributions from the Gross Settlement Fund,
 15 and (iii) timely and properly filing applicable federal, state and local tax returns necessary or
 16 advisable with respect to the Gross Settlement Fund (including, without limitation, the returns
 17 described in Treas. Reg. § 1.468B-2(k)) and paying any taxes reported thereon. Such returns (as
 18 well as the election described in this paragraph) shall be consistent with the provisions of this
 19 paragraph and in all events shall reflect that all Taxes as defined in ¶ 17(b) below on the income
 20 earned by the Gross Settlement Fund shall be paid out of the Gross Settlement Fund as provided
 21 in ¶ 19 hereof;

22 b. The following shall be paid out of the Gross Settlement Fund: (i) all taxes
 23 (including any estimated taxes, interest or penalties) arising with respect to the income earned by
 24 the Gross Settlement Fund, including, without limitation, any taxes or tax detriments that may be
 25 imposed upon SDI or their counsel with respect to any income earned by the Gross Settlement
 26 Fund for any period during which the Gross Settlement Fund does not qualify as a “qualified
 27 settlement fund” for federal or state income tax purposes (collectively, “Taxes”); and (ii) all
 28 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

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

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

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

24 **23. Distribution Plan Not Part of Settlement.** It is understood and agreed by the
25 Settling Parties that any Distribution Plan, including any adjustments to any Authorized
26 Claimant's claim, is not a part of this Agreement and is to be considered by the Court separately
27 from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement set
28 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

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

4 **G. Cooperation**

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

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

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

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

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

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

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

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

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

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

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

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

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

10 **31. Confidentiality.** Indirect Purchaser Plaintiffs and Class Counsel agree that they
11 will not use the information provided by SDI or their representatives for any purpose other than
12 pursuit of the Actions, and will not publicize the information beyond what is reasonably
13 necessary for the prosecution of the Actions. Any information provided pursuant to this
14 Agreement shall be subject to the Stipulated Protective Order entered in the Actions on May 17,
15 2013 (ECF No. 193) "Protective Order") as if produced in response to discovery requests and so
16 designated.

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

26 **33. Resolution of Disputes.** To the extent the Settling Parties disagree about the
27 interpretation or enforcement of any terms of this Agreement relating to future cooperation by
28

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

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

5 **37. Failure of Effective Date to Occur.** If all of the conditions specified in ¶ 35 are
6 not met, then this Agreement shall be cancelled and terminated, subject to and in accordance with
7 ¶ 42 unless the Settling Parties mutually agree in writing to proceed with this Agreement.

8 **38. Exclusions and Rights to Terminate.**

9 a. Class Counsel shall cause copies of requests for exclusion from the Classes
10 to be provided to SDI's counsel. No later than fourteen (14) days after the final date for mailing
11 requests for exclusion, Class Counsel shall provide SDI's counsel with a complete and final list of
12 opt-outs. With the motion for final approval of the Settlement, Class Counsel will file with the
13 Court a complete list of requests for exclusion from the Classes, including only the name, city and
14 state of the person or entity requesting exclusion. With respect to any member of the Class who
15 requests exclusion from the Classes, SDI reserves all of their legal rights and defenses, including,
16 but not limited to, any defenses relating to whether the member of the Class is an indirect
17 purchaser of the allegedly price-fixed product and/or has standing to bring any claim. SDI shall
18 have the option to terminate this Agreement if the purchases of Lithium Ion Batteries, Lithium
19 Ion Packs and/or Finished Products made by members of the Classes who timely and validly
20 request exclusion from the Classes equal or exceed five percent (5%) of the total volume of
21 purchases made by the Classes. After meeting and conferring with Class Counsel, SDI may elect
22 to terminate this Agreement by serving written notice on Class Counsel by email and overnight
23 courier and by filing a copy of such notice with the Court no later than thirty (30) days before the
24 date for the final approval hearing of this Agreement, except that SDI shall have a minimum of
25 ten (10) days in which to decide whether to terminate this Agreement after receiving the final opt-
26 out list.

27 b. SDI believes it has made their best efforts to reasonably comply with their
28 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.

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

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

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

24 b. within thirty (30) business days after written notification of such event is
 25 sent by counsel for SDI to Class Counsel, all attorneys' fees and costs which have been disbursed
 26 to Class Counsel pursuant to Court order shall be refunded, reimbursed and repaid by Class
 27 Counsel to SDI;
 28

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

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

8 e. the terms and provisions of this Agreement, with the exception of ¶¶ 13-15,
9 17, 27, 31, 33-35, 37, 40-42, 44-45, 47-48, 50-57 (which shall continue in full force and effect),
10 shall be null and void and shall have no further force or effect with respect to the Settling Parties,
11 and neither the existence nor the terms of this Agreement (nor any negotiations preceding this
12 Agreement nor any acts performed pursuant to, or in furtherance of, this Agreement) shall be used
13 in the Actions or in any other action or proceeding for any purpose (other than to enforce the
14 terms remaining in effect); and

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

17 **I. No Admission of Liability**

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

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

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

17 **J. Miscellaneous Provisions**

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

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

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

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

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

23 **50. Authorization to Enter Settlement Agreement.** The undersigned representatives
 24 of SDI represent that they are fully authorized to enter into and to execute this Agreement on
 25 behalf of SDI. Class Counsel, on behalf of Indirect Purchaser Plaintiffs and the Classes, represent
 26 that they are, subject to Court approval, expressly authorized to take all action required or
 27 permitted to be taken by or on behalf of the Classes pursuant to this Agreement to effectuate its
 28

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
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If directed to SDI, address notice to:

ALLEN & OVERY LLP
Michael S. Feldberg (michal.feldberg@allenoverly.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.

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

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

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

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

20 **57. Integrated Agreement.** This Agreement constitutes the entire agreement between
21 the Settling Parties and no representations, warranties or inducements have been made to any
22 party concerning this Agreement other than the representations, warranties and covenants
23 contained and memorialized herein. It is understood by the Settling Parties that, except for the
24 matters expressly represented herein, the facts or law with respect to which this Agreement is
25 entered into may turn out to be other than or different from the facts now known to each party or
26 believed by such party to be true. Each party therefore expressly assumes the risk of the facts or
27 law turning out to be so different, and agrees that this Agreement shall be in all respects effective
28

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

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

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

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

11 Dated: March 7, 2018

HAGENS BERMAN SOBOL SHAPIRO LLP

12 By: 
13 JEFF D. FRIEDMAN

14 Steve W. Berman (pro hac vice)
15 Jeff D. Friedman (173886)
16 Shana E. Scarlett (217895)
17 715 Hearst Avenue, Suite 202
18 Berkeley, CA 94710
Telephone: (510) 725-3000
Facsimile: (510) 725-3001
steve@hbsslaw.com
jefff@hbsslaw.com
shanas@hbsslaw.com

1 Dated: March 7, 2018

COTCHETT, PITRE & MCCARTHY, LLP

2
3 By: 

ADAM J. ZAPALA

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

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9 Burlingame, CA 94010
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12 jcotchett@cpmlegal.com
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14 ashapiro@cpmlegal.com
15 tprevost@cpmlegal.com

11 Dated: March 7, 2018

LIEFF CABRASER HEIMANN & BERNSTEIN

12
13 By: 

BRENDAN P. GLACKIN

14 Elizabeth J. Cabraser (SBN 083151)
15 Brendan P. Glackin (SBN 199643)
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1 Dated: March __, 2018

COTCHETT, PITRE & McCARTHY , LLP

2
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11 Dated: March 7, 2018

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22 bglackin@lchb.com
23 lchan@lchb.com

1 Dated: March 30, 2018

ALLEN & OVERY LLP

By: 

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*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

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

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

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

6 (j) “Escrow Agent” means the agent jointly designated by Class Counsel and
7 TOKIN, and any successor agent.

8 (k) “Execution Date” means the date of the last signature set forth on the
9 signature pages below.

10 (l) “Final” means, with respect to any order of court, including, without
11 limitation, the Judgment, that such order represents a final and binding
12 determination of all issues within its scope and is not subject to further
13 review on appeal or otherwise. Without limitation, an order becomes
14 “Final” when: (a) no appeal has been filed and the prescribed time for
15 commencing any appeal has expired; or (b) an appeal has been filed and
16 either (i) the appeal has been dismissed and the prescribed time, if any, for
17 commencing any further appeal has expired, or (ii) the order has been
18 affirmed in its entirety and the prescribed time, if any, for commencing any
19 further appeal has expired. For purposes of this Agreement, an “appeal”
20 includes appeals as of right, discretionary appeals, interlocutory appeals,
21 proceedings involving writs of certiorari or mandamus, and any other
22 proceedings of like kind. Any appeal or other proceeding pertaining solely
23 to any order adopting or approving a Distribution Plan, and/or to any order
24 issued with respect to an application for attorneys’ fees and expenses
25 consistent with this Agreement, shall not in any way delay or preclude the
26 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.

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

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

23 **5. Motion for Final Approval and Entry of Final Judgment.** Not less than thirty-
24 five (35) days prior to the date set by the Court to consider whether this Settlement should be
25 finally approved, Class Counsel shall submit a motion for final approval (“Final Approval”) of the
26 Settlement by the Court. The Settling Parties shall jointly seek entry of the final approval order
27 (“Final Approval Order”) and Judgment:
28

- (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).

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

8 **C. Releases**

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

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

19 **9. Covenant Not to Sue.** Releasors hereby covenant not to sue the Releasees with
20 respect to any such Released Claims. Releasors shall be permanently barred and enjoined from
21 instituting, commencing or prosecuting against the Releasees any claims based in whole or in part
22 on the Released Claims. The parties contemplate and agree that this Agreement may be pleaded as
23 a bar to a lawsuit, and an injunction may be obtained, preventing any action from being initiated or
24 maintained in any case sought to be prosecuted on behalf of any Releasors with respect to the
25 Released Claims.
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1 **10. Waiver of California Civil Code § 1542 and Similar Laws.** The Releasors
2 acknowledge that, by executing this Agreement, and for the consideration received hereunder, it is
3 their intention to release, and they are releasing, all Released Claims, even Unknown Claims. In
4 furtherance of this intention, the Releasors expressly waive and relinquish, to the fullest extent
5 permitted by law, any rights or benefits conferred by the provisions of California Civil Code §
6 1542, as set forth in ¶ 1(ee), or equivalent, similar or comparable laws or principles of law. The
7 Releasors acknowledge that they have been advised by Class Counsel of the contents and effects of
8 California Civil Code § 1542, and hereby expressly waive and release with respect to the Released
9 Claims any and all provisions, rights and benefits conferred by California Civil Code § 1542 or by
10 any equivalent, similar or comparable law or principle of law in any jurisdiction. The Releasors
11 may hereafter discover facts other than or different from those which they know or believe to be
12 true with respect to the subject matter of the Released Claims, but the Releasors hereby expressly
13 waive and fully, finally and forever settle and release any known or unknown, suspected or
14 unsuspected, foreseen or unforeseen, asserted or unasserted, contingent or non-contingent, and
15 accrued or unaccrued claim, loss or damage with respect to the Released Claims, whether or not
16 concealed or hidden, without regard to the subsequent discovery or existence of such additional or
17 different facts. The release of unknown, unanticipated, unsuspected, unforeseen, and unaccrued
18 losses or claims in this paragraph is not a mere recital.

19 **11. Claims Excluded from Release.** Notwithstanding the foregoing, the releases
20 provided herein shall not release claims against TOKIN for product liability, breach of contract,
21 breach of warranty or personal injury, or any other claim unrelated to the allegations in the Actions.
22 For avoidance of doubt, this Agreement does not release claims arising from restraints of
23 competition directed at goods other than (a) Lithium Ion Batteries, or (b) Lithium Ion Batteries
24 contained in Finished Products. Additionally, the releases provided herein shall not release any
25 claims to enforce the terms of this Agreement.
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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.

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

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

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

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

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

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

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

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

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

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

1 for mailing requests for exclusion, Class Counsel shall provide TOKIN's counsel with a complete
2 and final list of opt-outs. With the motion for final approval of the Settlement, Class Counsel will
3 file with the Court a complete list of requests for exclusion from the Classes, including only the
4 name, city and state of the person or entity requesting exclusion. With respect to any member of
5 the Class who requests exclusion from the Classes, TOKIN reserves all of its legal rights and
6 defenses, including, but not limited to, any defenses relating to whether the member of the Class is
7 an indirect purchaser of the allegedly price-fixed product and/or has standing to bring any claim.
8 TOKIN shall have the option to terminate this Agreement if the purchases of Lithium Ion Batteries,
9 Lithium Ion Packs and/or Finished Products made by members of the Classes who timely and
10 validly request exclusion from the Classes equal or exceed five percent (5%) of the total volume of
11 purchases made by the Classes. After meeting and conferring with Class Counsel, TOKIN may
12 elect to terminate this Agreement by serving written notice on Class Counsel by email and
13 overnight courier and by filing a copy of such notice with the Court no later than thirty (30) days
14 before the date for the final approval hearing of this Agreement, except that TOKIN shall have a
15 minimum of ten (10) days in which to decide whether to terminate this Agreement after receiving
16 the final opt-out list. In the event that this Agreement is terminated by either of the Settling
17 Parties: (i) this Agreement shall be null and void, and shall have no force or effect and shall be
18 without prejudice to the rights and contentions of Releasees and Releasors in this or any other
19 litigation; and (ii) the Settlement fund paid by TOKIN, plus interest thereon, shall be refunded
20 promptly to TOKIN, minus such payment (as set forth in this Agreement) of Notice and
21 Administrative Costs and Taxes and Tax Expenses, consistent with the provisions of ¶ 35.

22 **32. Objections.** Settlement Class members who wish to object to any aspect of the
23 Settlement must file with the Court a written statement containing their objection by the end of the
24 period to object to the Settlement. Any award or payment of attorneys' fees made to the counsel of
25 an objector to the Settlement shall only be made by Court order and upon a showing of the benefit
26 conferred to the Classes. In determining any such award of attorneys' fees to an objectors'
27 counsel, the Court will consider the incremental value to the Classes caused by any such objection.
28

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

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

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

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

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

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

27 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,

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

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

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

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

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

26 IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives,
27 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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shanas@hbsslaw.com

DATED: March 5, 2018

COTCHETT, PITRE & MCCARTHY, LLP

By: 
ADAM J. ZAPALA

Joseph W. Cotchett (SBN 36324)
Adam J. Zapala (SBN 245748)
Adam M. Shapiro (SBN 267429)
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jcotchett@cpmlegal.com
azapala@cpmlegal.com
ashapiro@cpmlegal.com
tprevost@cpmlegal.com

1 DATED: March 5, 2018

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

2 By: Brendan P. Glackin

3 BRENDAN P. GLACKIN

4 Elizabeth J. Cabraser (SBN 083151)

5 Lin Y. Chan (SBN 255027)

6 275 Battery Street, 29th Floor

7 San Francisco, CA 94111-3339

8 Telephone: (415) 956-1000

9 Facsimile: (415) 956-1008

ecabraser@lchb.com

bglackin@lchb.com

lchan@lchb.com

10 DEFENDANT TOKIN CORP.

11 DATED: March 2, 2018

GIBSON, DUNN & CRUTCHER, LLP

12 By: George A. Nicoud III

13 GEORGE A. NICLOUD III

14 GIBSON, DUNN & CRUTCHER, LLP

15 555 Mission Street, Ste. 3000

16 San Francisco, CA 94105

17 Telephone: 415-393-8308

18 Facsimile: 415-374-8473

19 Email: tnicoud@gibsondunn.com

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

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

7 R E C I T A L S

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

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

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

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

23 WHEREAS, arm's length settlement negotiations have taken place between Toshiba and
 24 Indirect Purchaser Plaintiffs' Class Counsel, and this Agreement, which embodies all of the terms
 25 and conditions of the Settlement between the Settling Parties, has been reached (subject to the
 26 approval of the Court) as provided herein and is intended to supersede any prior agreements
 27 between the Settling Parties;
 28

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;

A G R E E M E N T

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.

- 1 (b) “Affiliates” means entities controlling, controlled by or under common
2 control with a Releasee or Releasor, including any other entity that is now or
3 was previously owned by Toshiba or a Releasor, where “owned” means
4 holding directly or indirectly 50% greater equity or beneficial interest.
- 5 (c) “Authorized Claimant” means any Indirect Plaintiff Purchaser who, in
6 accordance with the terms of this Agreement, is entitled to a distribution
7 consistent with any Distribution Plan or order of the Court.
- 8 (d) “Class” or “Classes” are generally defined as all persons and entities who, as
9 residents of the United States and during the period from January 1, 2000
10 through May 31, 2011, indirectly purchased new for their own use and not
11 for resale one of the following products which contained a lithium-ion
12 cylindrical battery manufactured by one or more defendants or their co-
13 conspirators: (i) a portable computer; (ii) a power tool; (iii) a camcorder; or
14 (iv) a replacement battery for any of these products. Excluded from the class
15 are any purchases of Panasonic-branded computers. Also excluded from the
16 class are any federal, state, or local governmental entities, any judicial
17 officers presiding over this action, members of their immediate families and
18 judicial staffs, and any juror assigned to this action, but included in the class
19 are all non-federal and non-state governmental entities in California.
- 20 (e) “Class Counsel” means the law firms of Cotchett, Pitre & McCarthy, LLP;
21 Hagens Berman Sobol Shapiro LLP; and Lieff Cabraser Heimann &
22 Bernstein, LLP.
- 23 (f) “Class Member” means a Person who or California government entity that
24 falls within the definition of the Classes and does not timely and validly
25 elect to be excluded from the Classes in accordance with the procedure to be
26 established by the Court.
- 27 (g) “Court” means the United States District Court for the Northern District of
28 California.

- 1 (h) “Distribution Plan” means any plan or formula of allocation of the Gross
2 Settlement Fund, to be approved by the Court, whereby the Net Settlement
3 Fund shall in the future be distributed to Authorized Claimants. Any
4 Distribution Plan is not part of this Agreement.
- 5 (i) “Effective Date” means the first date by which all of the events and
6 conditions specified in ¶ 28 of this Agreement have occurred and have been
7 met.
- 8 (j) “Escrow Agent” means the agent jointly designated by Class Counsel and
9 Toshiba, and any successor agent.
- 10 (k) “Execution Date” means the date of the last signature set forth on the
11 signature pages below.
- 12 (l) “Final” means, with respect to any order of court, including, without
13 limitation, the Judgment, that such order represents a final and binding
14 determination of all issues within its scope and is not subject to further
15 review on appeal or otherwise. Without limitation, an order becomes
16 “Final” when: (a) no appeal has been filed and the prescribed time for
17 commencing any appeal has expired; or (b) an appeal has been filed and
18 either (i) the appeal has been dismissed and the prescribed time, if any, for
19 commencing any further appeal has expired, or (ii) the order has been
20 affirmed in its entirety and the prescribed time, if any, for commencing any
21 further appeal has expired. For purposes of this Agreement, an “appeal”
22 includes appeals as of right, discretionary appeals, interlocutory appeals,
23 proceedings involving writs of certiorari or mandamus, and any other
24 proceedings of like kind. Any appeal or other proceeding pertaining solely
25 to any order adopting or approving a Distribution Plan, and/or to any order
26 issued with respect to an application for attorneys’ fees and expenses
27 consistent with this Agreement, shall not in any way delay or preclude the
28 Judgment from becoming Final.

- 1 (m) “Finished Product” means any product and/or electronic device that contains
2 a Lithium Ion Battery or Lithium Ion Battery Pack, including but not limited
3 to laptop PCs, notebook PCs, netbook computers, tablet computers, mobile
4 phones, smart phones, cameras, camcorders, digital video cameras, digital
5 audio players and power tools.
- 6 (n) “Gross Settlement Fund” means the Settlement Amount plus any interest
7 that may accrue.
- 8 (o) “Indirect Purchaser Plaintiffs” means Christopher Hunt, Piya Robert
9 Rojanasathit, Steve Bugge, Tom Pham, Bradley Seldin, Patrick McGuiness,
10 John Kopp, Drew Fennelly, Jason Ames, William Cabral, Donna Shawn,
11 Joseph O’Daniel, Cindy Booze, Matthew Ence, David Tolchin, Matt Bryant,
12 Sheri Harmon, Christopher Bessette, Caleb Batey, Linda Lincoln, Bradley
13 Van Patten, the City of Palo Alto, and the City of Richmond, as well as any
14 other Person added as an Indirect Purchaser Plaintiff in the Actions.
- 15 (p) “Judgment” means the order of judgment and dismissal of the Actions with
16 prejudice.
- 17 (q) “Lithium Ion Battery” means a Lithium Ion Battery Cell or Lithium Ion
18 Battery Pack.
- 19 (r) “Lithium Ion Battery Cell” means cylindrical, prismatic or polymer cell used
20 for the storage of power that is rechargeable and uses lithium ion
21 technology.
- 22 (s) “Lithium Ion Battery Pack” means Lithium Ion Cells that have been
23 assembled into a pack, regardless of the number of Lithium Ion Cells
24 contained in such packs.
- 25 (t) “Net Settlement Fund” means the Gross Settlement Fund, less the payments
26 set forth in ¶ 19(a)-(e).
- 27 (u) “Notice and Administrative Costs” means the reasonable sum of money not
28 in excess of three hundred thousand U.S. Dollars (\$300,000.00) to be paid

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

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

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

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

15 (y) "Released Claims" means any and all manner of claims, demands, rights,
16 actions, suits, causes of action, whether class, individual or otherwise in
17 nature, fees, costs, penalties, injuries, damages whenever incurred and
18 liabilities of any nature whatsoever, known or unknown (including, but not
19 limited to, "Unknown Claims"), foreseen or unforeseen, suspected or
20 unsuspected, asserted or unasserted, contingent or non-contingent, in law or
21 in equity, under the laws of any jurisdiction, which Releasors or any of them,
22 whether directly, representatively, derivatively, or in any other capacity, ever
23 had, now have or hereafter can, shall or may have, relating in any way to any
24 conduct prior to the date of this Agreement and arising out of or related in
25 any way in whole or in part to any facts, circumstances, acts or omissions
26 arising out of or related to (1) any purchase or sale of Lithium Ion Batteries
27 (including Lithium Ion Batteries contained in Finished Products) up through
28 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) “Releasers” 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

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

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

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

- 24 (a) certifying the Classes, pursuant to Federal Rule of Civil Procedure 23, solely
 25 for purposes of this Settlement;
- 26 (b) fully and finally approving the Settlement contemplated by this Agreement
 27 and its terms as being fair, reasonable and adequate within the meaning of
 28

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.

1 **C. Releases**

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

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

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

19 **10. Waiver of California Civil Code § 1542 and Similar Laws.** The Releasors
20 acknowledge that, by executing this Agreement, and for the consideration received hereunder, it is
21 their intention to release, and they are releasing, all Released Claims, even Unknown Claims. In
22 furtherance of this intention, the Releasors expressly waive and relinquish, to the fullest extent
23 permitted by law, any rights or benefits conferred by the provisions of California Civil Code §
24 1542, as set forth in ¶ 1(ee), or equivalent, similar or comparable laws or principles of law. The
25 Releasors acknowledge that they have been advised by Class Counsel of the contents and effects of
26 California Civil Code § 1542, and hereby expressly waive and release with respect to the Released
27 Claims any and all provisions, rights and benefits conferred by California Civil Code § 1542 or by
28 any equivalent, similar or comparable law or principle of law in any jurisdiction. The Releasors

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

9 **11. Claims Excluded from Release.** Notwithstanding the foregoing, the releases
10 provided herein shall not release claims against Toshiba for product liability, breach of contract,
11 breach of warranty or personal injury, or any other claim unrelated to the allegations in the Actions.
12 For avoidance of doubt, this Agreement does not release claims arising from restraints of
13 competition directed at goods other than (a) Lithium Ion Batteries, or (b) Lithium Ion Batteries
14 contained in Finished Products. Additionally, the releases provided herein shall not release any
15 claims to enforce the terms of this Agreement.

16 **D. Settlement Fund**

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

24 **13. Disbursements Prior to Effective Date.** No amount may be disbursed from the
25 Gross Settlement Fund unless and until the Effective Date, except that: (a) Notice and
26 Administrative Costs, which may not exceed three hundred thousand U.S. Dollars (\$300,000.00),
27 may be paid from the Gross Settlement Fund as they become due; (b) Taxes and Tax Expenses (as
28 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

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

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

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

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

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

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

26 **19. Distribution of Gross Settlement Fund.** Upon further orders of the Court, the
 27 Notice and Claims Administrator, subject to such supervision and direction of the Court and/or
 28 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.

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

11 **F. Attorneys' Fees and Reimbursement of Expenses**

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

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

21 **26. Award of Fees and Expenses Not Part of Settlement.** The procedure for, and the
 22 allowance or disallowance by the Court of, the Fee and Expense Application are not part of the
 23 Settlement set forth in this Agreement, and are to be considered by the Court separately from the
 24 Court's consideration of the fairness, reasonableness and adequacy of the Settlement set forth in
 25 this Agreement. Any order or proceeding relating to the Fee and Expense Application, or any
 26 appeal from any Fee and Expense Award or any other order relating thereto or reversal or
 27 modification thereof, shall not operate to terminate or cancel this Agreement, or affect or delay the
 28 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.

1 **30. Failure of Effective Date to Occur.** If all of the conditions specified in ¶ 28 are
2 not met, then this Agreement shall be cancelled and terminated, subject to and in accordance with
3 ¶ 35 unless the Settling Parties mutually agree in writing to proceed with this Agreement.

4 **31. Exclusions and Rights to Terminate.**

5 (a) Class Counsel shall cause copies of requests for exclusion from the Classes
6 to be provided to Toshiba's counsel. No later than fourteen (14) days after
7 the final date for mailing requests for exclusion, Class Counsel shall provide
8 Toshiba's counsel with a complete and final list of opt-outs. With the
9 motion for final approval of the Settlement, Class Counsel will file with the
10 Court a complete list of requests for exclusion from the Classes, including
11 only the name, city and state of the person or entity requesting exclusion.
12 With respect to any member of the Class who requests exclusion from the
13 Classes, Toshiba reserves all of its legal rights and defenses, including, but
14 not limited to, any defenses relating to whether the member of the Class is
15 an indirect purchaser of the allegedly price-fixed product and/or has standing
16 to bring any claim. Toshiba shall have the option to terminate this
17 Agreement if the purchases of Lithium Ion Batteries, Lithium Ion Packs
18 and/or Finished Products made by members of the Classes who timely and
19 validly request exclusion from the Classes equal or exceed five percent (5%)
20 of the total volume of purchases made by the Classes. After meeting and
21 conferring with Class Counsel, Toshiba may elect to terminate this
22 Agreement by serving written notice on Class Counsel by email and
23 overnight courier and by filing a copy of such notice with the Court no later
24 than thirty (30) days before the date for the final approval hearing of this
25 Agreement, except that Toshiba shall have a minimum of ten (10) days in
26 which to decide whether to terminate this Agreement after receiving the final
27 opt-out list.
28

(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

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

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

- 11 (a) within five (5) business days after written notification of such event is sent
 12 by counsel for Toshiba to the Escrow Agent, the Gross Settlement Fund—
 13 including the Settlement Amount and all interest earned on the Settlement
 14 Amount while held in escrow excluding only Notice and Administrative
 15 Costs that have either been properly disbursed or are due and owing, Taxes
 16 and Tax Expenses that have been paid or that have accrued and will be
 17 payable at some later date, and attorneys' fees and costs that have been
 18 disbursed pursuant to Court order—will be refunded, reimbursed and repaid
 19 by the Escrow Agent to Toshiba; if said amount or any portion thereof is not
 20 returned within such five (5) day period, then interest shall accrue thereon at
 21 the rate of ten percent (10%) per annum until the date that said amount is
 22 returned;
- 23 (b) within thirty (30) business days after written notification of such event is
 24 sent by counsel for Toshiba to Class Counsel, all attorneys' fees and costs
 25 which have been disbursed to Class Counsel pursuant to Court order shall be
 26 refunded, reimbursed and repaid by Class Counsel to Toshiba;
- 27 (c) the Escrow Agent or its designee shall apply for any tax refund owed to the
 28 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.

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

16 **I. Miscellaneous Provisions**

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

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

1 any dispute concerning the provisions of ¶¶ 7-11 hereof, including but not limited to any suit,
2 action or proceeding in which the provisions of ¶¶ 7-11 hereof are asserted as a defense in whole or
3 in part to any claim or cause of action or otherwise raised as an objection, constitutes a suit, action
4 or proceeding arising out of or relating to this Agreement. In the event that the provisions of ¶¶ 7-
5 11 hereof are asserted by any Releasee as a defense in whole or in part to any claim or cause of
6 action or otherwise raised as an objection in any suit, action or proceeding, it is hereby agreed that
7 such Releasee shall be entitled to a stay of that suit, action or proceeding until the Court has
8 entered a final judgment no longer subject to any appeal or review determining any issues relating
9 to the defense or objection based on the provisions of ¶¶ 7-11. Nothing herein shall be construed
10 as a submission to jurisdiction for any purpose other than any suit, action, proceeding or dispute
11 arising out of or relating to this Agreement or the applicability of this Agreement.

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

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

21 **43. Authorization to Enter Settlement Agreement.** The undersigned representatives
22 of Toshiba represent that they are fully authorized to enter into and to execute this Agreement on
23 behalf of Toshiba. Class Counsel, on behalf of Indirect Purchaser Plaintiffs and the Classes,
24 represent that they are, subject to Court approval, expressly authorized to take all action required or
25 permitted to be taken by or on behalf of the Classes pursuant to this Agreement to effectuate its
26 terms and to enter into and execute this Agreement and any modifications or amendments to the
27 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.

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

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

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

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

20 **50. Integrated Agreement.** This Agreement constitutes the entire agreement between
21 the Settling Parties and no representations, warranties or inducements have been made to any party
22 concerning this Agreement other than the representations, warranties and covenants contained and
23 memorialized herein. It is understood by the Settling Parties that, except for the matters expressly
24 represented herein, the facts or law with respect to which this Agreement is entered into may turn
25 out to be other than or different from the facts now known to each party or believed by such party
26 to be true. Each party therefore expressly assumes the risk of the facts or law turning out to be so
27 different, and agrees that this Agreement shall be in all respects effective and not subject to
28

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

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

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

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

17
 18
 19 **FEBRUARY**
 20 DATED: January 14, 2018

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

HAGENS BERMAN SOBOL SHAPIRO LLP

21 By: 

JEFF D. FRIEDMAN

22
 23 Steve W. Berman (*pro hac vice*)
 24 Jeff D. Friedman (173886)
 25 Shana E. Scarlett (217895)
 26 715 Hearst Avenue, Suite 202
 27 Berkeley, CA 94710
 28 Telephone: (510) 725-3000
 Facsimile: (510) 725-3001
 steve@hbsslaw.com
 jefff@hbsslaw.com
 shanas@hbsslaw.com

1
2 DATED: ^{February} ~~January~~ 15, 2018

COTCHETT, PITRE & McCARTHY, LLP

3
4 By: 

ADAM ZAPALA

5 Joseph W. Cotchett (SBN 36324)
6 Adam Zapala (SBN 245748)
7 840 Malcolm Road
8 Burlingame, CA 94010
9 Telephone: (650) 697-6000
Facsimile: (650) 697-0577
jcotchett@cpmlegal.com
azapala@cpmlegal.com

10 DATED: ^{February} ~~January~~ 14, 2018

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

11
12 By: 

BRENDAN P. GLACKIN

13 Elizabeth J. Cabraser (SBN 083151)
14 Brendan P. Glackin (SBN 199643)
15 Lin Y. Chan (SBN 255027)
16 275 Battery Street, 29th Floor
17 San Francisco, CA 94111-3339
18 Telephone: (415) 956-1000
19 Facsimile: (415) 956-1008
ecabraser@lchb.com
bglackin@lchb.com
lchan@lchb.com

20 DATED: January 29, 2018

TOSHIBA CORPORATION

21
22 By: 

23 Christopher A. Curran
24 White & Case LLP
25 Outside Counsel w/ Express Authority
26
27
28

1
2 DATED: January __, 2018

COTCHETT, PITRE & MCCARTHY, LLP

3 By: _____
4 ADAM ZAPALA

5 Joseph W. Cotchett (SBN 36324)
6 Adam Zapala (SBN 245748)
7 840 Malcolm Road
8 Burlingame, CA 94010
9 Telephone: (650) 697-6000
jcotchett@cpmlegal.com
azapala@cpmlegal.com

10 DATED: ~~January~~ ^{February} 14, 2018

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

11 By: 
12 BRENDAN P. GLACKIN

13 Elizabeth J. Cabraser (SBN 083151)
14 Brendan P. Glackin (SBN 199643)
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16 275 Battery Street, 29th Floor
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18 Telephone: (415) 956-1000
19 Facsimile: (415) 956-1008
ecabraser@lchb.com
bglackin@lchb.com
lchan@lchb.com

20 DATED: January 29, 2018

TOSHIBA CORPORATION

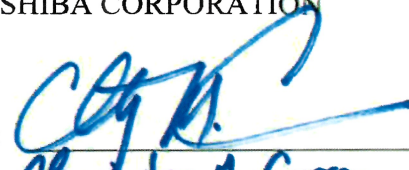
21 By: 
22 Christopher M. Curran
23 White + Case LLP
24 Outside Counsel w/ Express Authority

EXHIBIT D

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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

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

7 RECITALS

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

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

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

23 WHEREAS, Indirect Purchaser Plaintiffs and Panasonic Corp. agree that neither this
24 Agreement nor any statement made in the negotiation thereof shall be deemed or construed to
25 be an admission or evidence of any violation of any statute or law or of any liability or
26 wrongdoing by the Panasonic and Sanyo Defendants or of the truth of any of the claims or
27 allegations alleged in the Actions;
28

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

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

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

22 AGREEMENT

23 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among
24 the Settling Parties, by and through their attorneys of record, that, subject to the approval of the
25 Court, the Actions and the Released Claims as against the Panasonic and Sanyo Defendants
26 shall be finally and fully settled, compromised and dismissed on the merits and with prejudice
27 upon and subject to the terms and conditions of this Agreement, as follows:
28

1 **A. Definitions**

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

- 4 (a) “Actions” means *In re Lithium Ion Batteries Antitrust Litigation – All*
5 *Indirect Purchaser Actions*, Case No. 13-MD-02420 YGR (DMR), and
6 each of the cases brought on behalf of indirect purchasers previously
7 consolidated and/or included as part of MDL Docket No. 2420.
- 8 (b) “Affiliates” means entities controlling, controlled by or under common
9 control with a Releasee or Releasor.
- 10 (c) “Authorized Claimant” means any Indirect Plaintiff Purchaser who, in
11 accordance with the terms of this Agreement, is entitled to a distribution
12 consistent with any Distribution Plan or order of the Court.
- 13 (d) “Class” or “Classes” are generally defined as all persons and entities who,
14 as residents of the United States and during the period from January 1,
15 2000 through May 31, 2011, indirectly purchased new, for their own use
16 and not for resale one of the following products which contained a lithium-
17 ion cylindrical battery manufactured by one or more defendants or their
18 co-conspirators: (i) a portable computer; (ii) a power tool; (iii) a
19 camcorder; or (iv) a replacement battery for any of these products.
20 Excluded from the class are any purchases of Panasonic-branded
21 computers. Also excluded from the class are any federal, state, or local
22 governmental entities, any judicial officers presiding over this action,
23 members of their immediate families and judicial staffs, and any juror
24 assigned to this action, but included are all non-federal and non-state
25 governmental entities in California.
- 26 (e) “Class Counsel” means the law firms of Cotchett, Pitre & McCarthy, LLP;
27 Hagens Berman Sobol Shapiro LLP; and Lieff Cabraser Heimann &
28

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

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

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

14 (n) “Gross Settlement Fund” means the Settlement Amount plus any interest
15 that may accrue.

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

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

26 (q) “Lithium Ion Battery” means a Lithium Ion Battery Cell or Lithium Ion
27 Battery Pack.
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- 1 (r) “Lithium Ion Battery Cell” means cylindrical, prismatic or polymer cell
2 used for the storage of power that is rechargeable and uses lithium ion
3 technology.
- 4 (s) “Lithium Ion Battery Pack” means Lithium Ion Cells that have been
5 assembled into a pack, regardless of the number of Lithium Ion Cells
6 contained in such packs.
- 7 (t) “MDL Defendants” means any defendant named in the Actions, including
8 LG Chem, Ltd.; LG Chem America, Inc.; Samsung SDI Co. Ltd.;
9 Samsung SDI America, Inc.; Panasonic Corporation; Panasonic
10 Corporation of North America; SANYO Electric Co., Ltd.; SANYO North
11 America Corporation; SANYO GS Soft Energy Co., Ltd.; LG Chem
12 Corporation; LG Chem Energy Devices Corporation; LG Chem
13 Electronics Inc.; Maxell Holdings, Ltd.; Maxell Corporation of America;
14 GS Yuasa Corporation; NEC Corporation; TOKIN Corporation; Toshiba
15 Corporation; A&T Battery Corporation; and Toshiba America Electronic
16 Components Inc.
- 17 (u) “Net Settlement Fund” means the Gross Settlement Fund, less the
18 payments set forth in ¶ 19(a)-(e).
- 19 (v) “Notice and Administrative Costs” means the reasonable sum of money
20 not in excess of two hundred fifty thousand U.S. Dollars (\$250,000.00) to
21 be paid out of the Gross Settlement Fund to pay for notice to the Classes
22 and related administrative costs.
- 23 (w) “Notice and Claims Administrator” means the claim administrator(s) to be
24 selected by Class Counsel and approved by the Court.
- 25 (x) “Person(s)” means an individual, corporation, limited liability
26 corporation, professional corporation, limited liability partnership,
27 partnership, limited partnership, association, joint stock company, estate,
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1 legal representative, trust, unincorporated association, government or any
2 political subdivision or agency thereof, and any business or legal entity
3 and any spouses, heirs, predecessors, successors, representatives or
4 assignees of any of the foregoing.

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

8 (z) “Released Claims” means any and all manner of claims, demands, rights,
9 actions, suits, causes of action, whether class, individual or otherwise in
10 nature, fees, costs, penalties, injuries, damages whenever incurred and
11 liabilities of any nature whatsoever, known or unknown (including, but
12 not limited to, “Unknown Claims”), foreseen or unforeseen, suspected or
13 unsuspected, asserted or un-asserted, contingent or non-contingent, in law
14 or in equity, under the laws of any jurisdiction, which Releasors or any of
15 them, whether directly, representatively, derivatively, or in any other
16 capacity, ever had, now have or hereafter can, shall or may have, relating
17 in any way to any conduct prior to the Execution Date of this Agreement
18 and arising out of or related in any way in whole or in part to any facts,
19 circumstances, acts or omissions arising out of or related to (1) any
20 purchase or sale of Lithium Ion Batteries (including Lithium Ion Batteries
21 contained in Finished Products) up through May 31, 2011; or (2) any
22 agreement, combination or conspiracy to raise, fix, maintain or stabilize
23 the prices of Lithium Ion Batteries (including Lithium Ion Batteries
24 contained in Finished Products) or restrict, reduce, alter or allocate the
25 supply, quantity or quality of Lithium Ion Batteries (including Lithium Ion
26 Batteries contained in Finished Products) or concerning the development,
27 manufacture, supply, distribution, transfer, marketing, sale or pricing of
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1 Lithium Ion Batteries (including Lithium Ion Batteries contained in
2 Finished Products), or any other conduct alleged in the Actions or relating
3 to restraint of competition that could have been or hereafter could be
4 alleged against the Releasees relating to Lithium Ion Batteries; or (3) any
5 other restraint of competition relating to Lithium Ion Batteries that could
6 be asserted as a violation of the Sherman Act or any other antitrust, unjust
7 enrichment, unfair competition, unfair practices, trade practices, price
8 discrimination, unitary pricing, racketeering, contract, civil conspiracy or
9 consumer protection law, whether under federal, state, local or foreign
10 law.

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

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

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

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

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

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

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

- 21 (a) certifying the Classes, pursuant to Federal Rule of Civil Procedure 23,
22 solely for purposes of this Settlement;
- 23 (b) fully and finally approving the Settlement contemplated by this
24 Agreement and its terms as being fair, reasonable and adequate within the
25 meaning of Federal Rule of Civil Procedure 23 and directing its
26 consummation pursuant to its terms and conditions;
- 27 (c) finding that the notice given to the Class Members constituted the best
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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

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

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

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

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

1 Gross Settlement Fund unless and until the Effective Date, except that: (a) Notice and
2 Administrative Costs, which may not exceed two hundred fifty thousand U.S. Dollars
3 (\$250,000.00), may be paid from the Gross Settlement Fund as they become due; (b) Taxes and
4 Tax Expenses (as defined in ¶ 17(b) below) may be paid from the Gross Settlement Fund as
5 they become due; and (c) attorneys' fees and reimbursement of litigation costs and expenses, as
6 may be ordered by the Court, may be disbursed during the pendency of any appeals which may
7 be taken from the judgment to be entered by the Court finally approving this Settlement. Class
8 Counsel will attempt in good faith to minimize the amount of Notice and Administrative Costs
9 and may seek to coordinate the notice described herein with other settlements in these Actions.

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

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

22 **16. No Additional Payments by Panasonic.** Under no circumstances will Panasonic
23 Corp. be required to pay more or less than the Settlement Amount pursuant to this Agreement
24 and the Settlement set forth herein. For purposes of clarification, the payment of any Fee and
25 Expense Award (as defined in ¶ 25 below), the Notice and Administrative Costs, and any other
26 costs associated with the implementation of this Settlement Agreement shall be exclusively paid
27 from the Settlement Amount.
28

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

- 10 (a) For the purpose of §468B of the Internal Revenue Code of 1986, as
11 amended, and the regulations promulgated thereunder, the “administrator”
12 shall be the Escrow Agent. The Escrow Agent shall satisfy the
13 administrative requirements imposed by Treas. Reg. §1.468B-2 by, *e.g.*,
14 (i) obtaining a taxpayer identification number, (ii) satisfying any
15 information reporting or withholding requirements imposed on
16 distributions from the Gross Settlement Fund, and (iii) timely and properly
17 filing applicable federal, state and local tax returns necessary or advisable
18 with respect to the Gross Settlement Fund (including, without limitation,
19 the returns described in Treas. Reg. §1.468B-2(k)) and paying any taxes
20 reported thereon. Such returns (as well as the election described in this
21 paragraph) shall be consistent with the provisions of this paragraph and in
22 all events shall reflect that all Taxes as defined in ¶ 17(b) below on the
23 income earned by the Gross Settlement Fund shall be paid out of the Gross
24 Settlement Fund as provided in ¶ 19 hereof;
- 25 (b) The following shall be paid out of the Gross Settlement Fund: (i) all taxes
26 (including any estimated taxes, interest or penalties) arising with respect
27 to the income earned by the Gross Settlement Fund, including, without
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1 limitation, any taxes or tax detriments that may be imposed upon
2 Panasonic Corp. or its counsel with respect to any income earned by the
3 Gross Settlement Fund for any period during which the Gross Settlement
4 Fund does not qualify as a “qualified settlement fund” for federal or state
5 income tax purposes (collectively, “Taxes”); and (ii) all expenses and
6 costs incurred in connection with the operation and implementation of this
7 paragraph, including, without limitation, expenses of attorneys and/or
8 accountants and mailing and distribution costs and expenses relating to
9 filing (or failing to file) the returns described in this paragraph
10 (collectively, “Tax Expenses”). In all events, neither Panasonic Corp. nor
11 its counsel shall have any liability or responsibility for the Taxes or the
12 Tax Expenses. With funds from the Gross Settlement Fund, the Escrow
13 Agent shall indemnify and hold harmless Panasonic Corp. and its counsel
14 for Taxes and Tax Expenses (including, without limitation, Taxes payable
15 by reason of any such indemnification). Further, Taxes and Tax Expenses
16 shall be treated as, and considered to be, a cost of administration of the
17 Gross Settlement Fund and shall timely be paid by the Escrow Agent out
18 of the Gross Settlement Fund without prior order from the Court, and the
19 Escrow Agent shall be obligated (notwithstanding anything herein to the
20 contrary) to withhold from distribution to Authorized Claimants any funds
21 necessary to pay such amounts, including the establishment of adequate
22 reserves for any Taxes and Tax Expenses (as well as any amounts that
23 may be required to be withheld under Treas. Reg. §1.468B-2(1)(2));
24 neither Panasonic Corp. nor its counsel is responsible therefor, nor shall
25 they have any liability therefor. The Settling Parties agree to cooperate
26 with the Escrow Agent, each other, their tax attorneys and their
27 accountants to the extent reasonably necessary to carry out the provisions
28

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

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

- 4 (a) Each member of the Classes who claims to be an Authorized Claimant
5 shall be required to submit to the Notice and Claims Administrator a
6 completed Proof of Claim and Release in such form as shall be approved
7 by the Court;
- 8 (b) Except as otherwise ordered by the Court, each member of the Classes
9 who fails to submit a Proof of Claim and Release within such period as
10 may be ordered by the Court, or otherwise allowed, shall be forever barred
11 from receiving any payments pursuant to this Agreement and the
12 Settlement set forth herein;
- 13 (c) The Net Settlement Fund shall be distributed to Authorized Claimants
14 substantially in accordance with a Distribution Plan to be approved by the
15 Court. Any such Distribution Plan is not a part of this Agreement. No
16 funds from the Net Settlement Fund shall be distributed to Authorized
17 Claimants until after the Effective Date; and
- 18 (d) All Persons who fall within the definition of the Classes who do not timely
19 and validly request to be excluded from the Classes shall be subject to and
20 bound by the provisions of this Agreement, the releases contained herein,
21 and the Judgment with respect to all Released Claims, regardless of
22 whether such Persons seek or obtain by any means, including, without
23 limitation, by submitting a Proof of Claim and Release or any similar
24 document, any distribution from the Gross Settlement Fund or the Net
25 Settlement Fund.

26 21. **No Liability for Distribution of Settlement Funds.** Neither the Releasees nor
27 their counsel shall have any responsibility for, interest in or liability whatsoever with respect to
28

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

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

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

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

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

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

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

- 1 (a) Panasonic Corp. no longer has any right under ¶¶ 33-34 to terminate this
2 Agreement or if Panasonic Corp. does have such right, they have given
3 written notice to Class Counsel that they will not exercise such right;
4 (b) the Court has finally approved the Settlement as described herein,
5 following notice to the Classes and a hearing, as prescribed by Rule 23 of
6 the Federal Rules of Civil Procedure, and has entered the Judgment; and
7 (c) the Judgment has become Final.
8

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

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

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

1 terminate this Agreement if the purchases of Lithium Ion Batteries, Lithium Ion Packs and/or
2 Finished Products made by members of the Classes who timely and validly request exclusion
3 from the Classes equal or exceed five percent (5%) of the total volume of purchases made by
4 the Classes. After meeting and conferring with Class Counsel, Panasonic Corp. may elect to
5 terminate this Agreement by serving written notice on Class Counsel by email and overnight
6 courier and by filing a copy of such notice with the Court no later than thirty (30) days before
7 the date for the final approval hearing of this Agreement, except that Panasonic Corp. shall have
8 a minimum of ten (10) days in which to decide whether to terminate this Agreement after
9 receiving the final opt-out list. In the event that Panasonic Corp. exercises its option to terminate
10 this Agreement: (i) this Agreement shall be null and void, and shall have no force or effect and
11 shall be without prejudice to the rights and contentions of Releasees and Releasors in this or
12 any other litigation; and (ii) the Settlement fund paid by Panasonic Corp., plus interest thereon,
13 shall be refunded promptly to Panasonic Corp., minus such payment (as set forth in this
14 Agreement) of Notice and Administrative Costs and Taxes and Tax Expenses, consistent with
15 the provisions of ¶¶ 34-35.

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

26 **33. Failure to Enter Proposed Preliminary Approval Order, Final Approval**
27 **Order or Judgment.** If the Court does not enter the Preliminary Approval Order, the Final
28

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

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

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

- 22 (a) within five (5) business days after written notification of such event is sent
23 by counsel for Panasonic Corp. to the Escrow Agent, the Gross Settlement
24 Fund—including the Settlement Amount and all interest earned on the
25 Settlement Fund while held in escrow excluding only Notice and
26 Administrative Costs that have either been properly disbursed or are due
27 and owing, Taxes and Tax Expenses that have been paid or that have
28

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

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

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

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

19 (e) the terms and provisions of this Agreement, with the exception of ¶¶ 13-
20 15, 17, 21, 28, 30, 33-35, 37-38, 40-41, 43-50 (which shall continue in full
21 force and effect), shall be null and void and shall have no further force or
22 effect with respect to the Settling Parties, and neither the existence nor the
23 terms of this Agreement (nor any negotiations preceding this Agreement
24 nor any acts performed pursuant to, or in furtherance of, this Agreement)
25 shall be used in the Actions or in any other action or proceeding for any
26 purpose (other than to enforce the terms remaining in effect); and

27 (f) any judgment or order entered by the Court in accordance with the terms
28

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

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

3 I. **Miscellaneous Provisions**

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

8 40. **Consent to Jurisdiction.** Panasonic Corp. and each Class Member hereby
9 irrevocably submit to the exclusive jurisdiction of the Court only for the specific purpose of any
10 suit, action, proceeding or dispute arising out of or relating to this Agreement or the applicability
11 of this Agreement. Solely for purposes of such suit, action or proceeding, to the fullest extent
12 that they may effectively do so under applicable law, Panasonic Corp. and the Class Members
13 irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any
14 claim or objection that they are not subject to the jurisdiction of the Court or that the Court is in
15 any way an improper venue or an inconvenient forum. Without limiting the generality of the
16 foregoing, it is hereby agreed that any dispute concerning the provisions of ¶¶ 7-11 hereof,
17 including but not limited to any suit, action or proceeding in which the provisions of ¶¶ 7-11
18 hereof are asserted as a defense in whole or in part to any claim or cause of action or otherwise
19 raised as an objection, constitutes a suit, action or proceeding arising out of or relating to this
20 Agreement. In the event that the provisions of ¶¶ 7-11 hereof are asserted by any Releasee as a
21 defense in whole or in part to any claim or cause of action or otherwise raised as an objection
22 in any suit, action or proceeding, it is hereby agreed that such Releasee shall be entitled to a stay
23 of that suit, action or proceeding until the Court has entered a final judgment no longer subject
24 to any appeal or review determining any issues relating to the defense or objection based on the
25 provisions of ¶¶ 7-11. Nothing herein shall be construed as a submission to jurisdiction for any
26 purpose other than any suit, action, proceeding or dispute arising out of or relating to this
27 Agreement or the applicability of this Agreement.
28

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

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

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

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

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

27 HAGENS BERMAN SOBOL SHAPIRO LLP
28 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

1 effect to that state's choice of law principles.

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

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

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

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

26 IN WITNESS WHEREOF, the parties hereto, through their fully authorized
27 representatives, have executed this Agreement as of the Execution Date.
28

1
2
3 DATED: December 9, 2018
4

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

HAGENS BERMAN SOBOL SHAPIRO LLP

5 By: 
6 JEFF D. FRIEDMAN

7 Steve W. Berman (*pro hac vice*)
8 Shana E. Scarlett (217895)
9 715 Hearst Avenue, Suite 202
10 Berkley, CA 94710
11 Telephone: (510) 725-3000
12 Facsimile: (510) 725-3001
13 jefff@hbsslaw.com
14 steve@hbsslaw.com
15 shanas@hbsslaw.com

12 DATED: December 18, 2018
13

COTCHETT, PITRE, & MCCARTHY, LLP

14 By: 
15 ADAM J. ZAPALA

16 Joseph W. Cotchett (SBN 36324)
17 Adam J. Zapala (SBN 245748)
18 Tamarah Prevost (SBN 313422)
19 840 Malcolm Road
20 Burlingame, CA 94010
21 Telephone: (650) 697-6000
22 Facsimile: (650) 697-0577
23 jcotchett@cpmlegal.com
24 azapala@cpmlegal.com
25 tprevost@cpmlegal.com

22 DATED: December 19, 2018
23

LIEFF CABRASER HEIMANN & BERNSTEIN,
LLP

24 By: 
25 BRENDAN P. GLACKIN

26 Elizabeth J. Cabraser (SBN 083151)
27 Eric B. Fastiff (SBN 182260)
28 Dean M. Harvey (SBN 250298)
Lin Y. Chan (SBN 255027)

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ecabraser@lchb.com
efastiff@lchb.com
dharvey@lchb.com
lchan@lchb.com
msheen@lchb.com

DEFENDANT PANASONIC CORPORATION

DATED: December 27, 2018


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

EXHIBIT E

2018 Antitrust Annual Report

Class Action Filings in Federal Court

Published May 2019



UNIVERSITY OF
SAN FRANCISCO

School of Law



2018 Antitrust Annual Report

Foreword

We are pleased to present the inaugural Antitrust Annual Report produced in partnership with the University of San Francisco Law School and The Huntington National Bank.

It is our hope that this publication will provide a greater understanding of the outcomes of antitrust class actions. Key findings include:

- In the last 10 years, a mean number of 420 complaints are filed per year, with outlier years as low as 223 and as high as 660.
- From 2013-2018, there were Claim Defendant Wins in 43 cases as a result of Judgment on the Pleadings, Summary Judgment, or Trial.
- From 2013-2018, most antitrust class actions that reached Final Approval did so within three to five years.
- The mean settlement amount varied by year from about \$25 million to \$42 million, and the median amount varied by year from about \$5 million to \$11 million.
- The total annual settlements ranged from about \$1 billion to \$5 billion per year.
- The cumulative total of settlements was \$19.3 billion from 2013-2018.

This report contains federal class actions from 2013-2018, summarizing complaints filed and cases with settlements reaching final approval.

We want to acknowledge several people who helped with the report including Nathaniel Ament-Stone, Noelle Feigenbaum, Lindsay Tejada, and Brent Landau. We would also like to acknowledge Lex Machina, as our primary data resource platform and for guidance from Rachel Bailey on the Lex Machina team.

We hope that you find this information interesting and helpful.

Professor Joshua Davis
University of San Francisco Law School
davisj@usfca.edu

Rose Kohles
The Huntington National Bank
rose.kohles@huntington.com



Photo Credit: Mark Thomas

2018 Antitrust Annual Report

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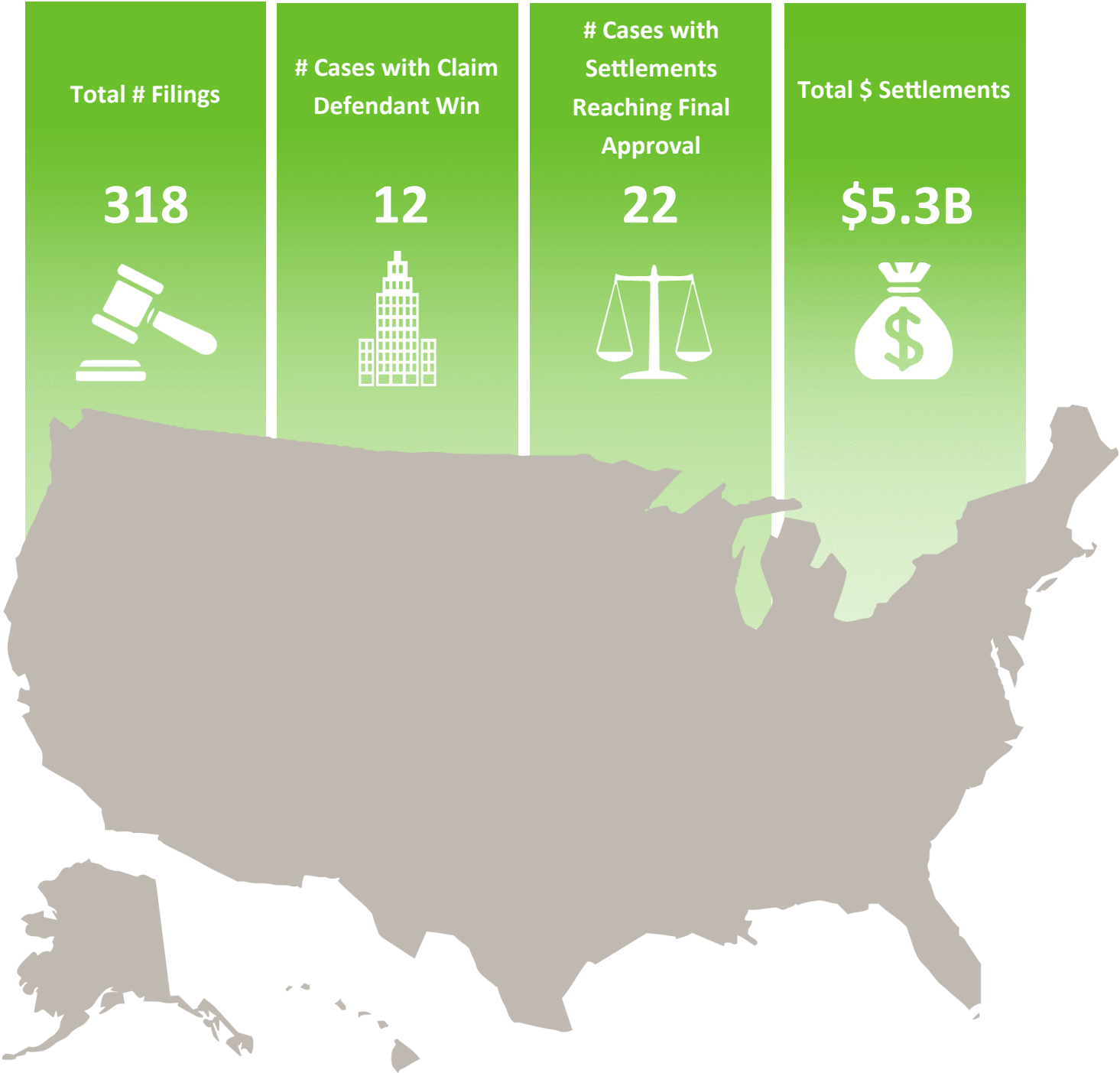
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2018 Year at a Glance

Federal Antitrust Class Actions



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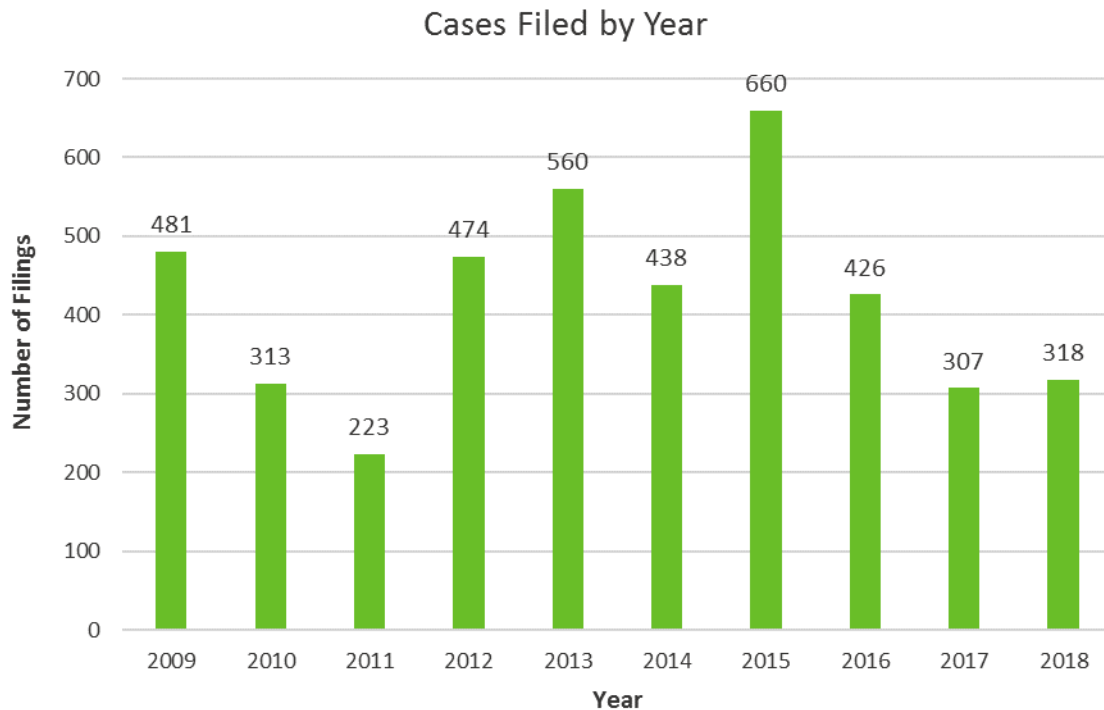
Federal Antitrust Class Action Filings by Year

Compared to other years in the last decade, filings of antitrust class action complaints were down in 2017 and 2018 (307 and 318, respectively), and were well below the mean (420) during the last 10 years. Over the decade, two years fall outside of one standard deviation from the mean: in 2011, 233 complaints were filed, and in 2015, 660 complaints were filed.

The fact that 660 cases were filed in 2015 is interesting as it follows the premise that case filings are driven by the size of the industry and number of purchasers affected by the alleged activity. Thus, industries with large numbers of purchasers are more likely to have a higher number of filings if collusive activity is suspected—particularly under Section 1 of the Sherman Act. This is illustrated by *In re: Domestic Airline Travel Antitrust Litigation* with 111 historical related actions, and *In re: Disposable Contact Lens Antitrust Litigation* with 58 historical related actions.

- Mean Number of Filings in a year: 420 complaints
- Standard Deviation: ~126 filings

Figure 1: **Federal Antitrust Filings**
2009 - 2018



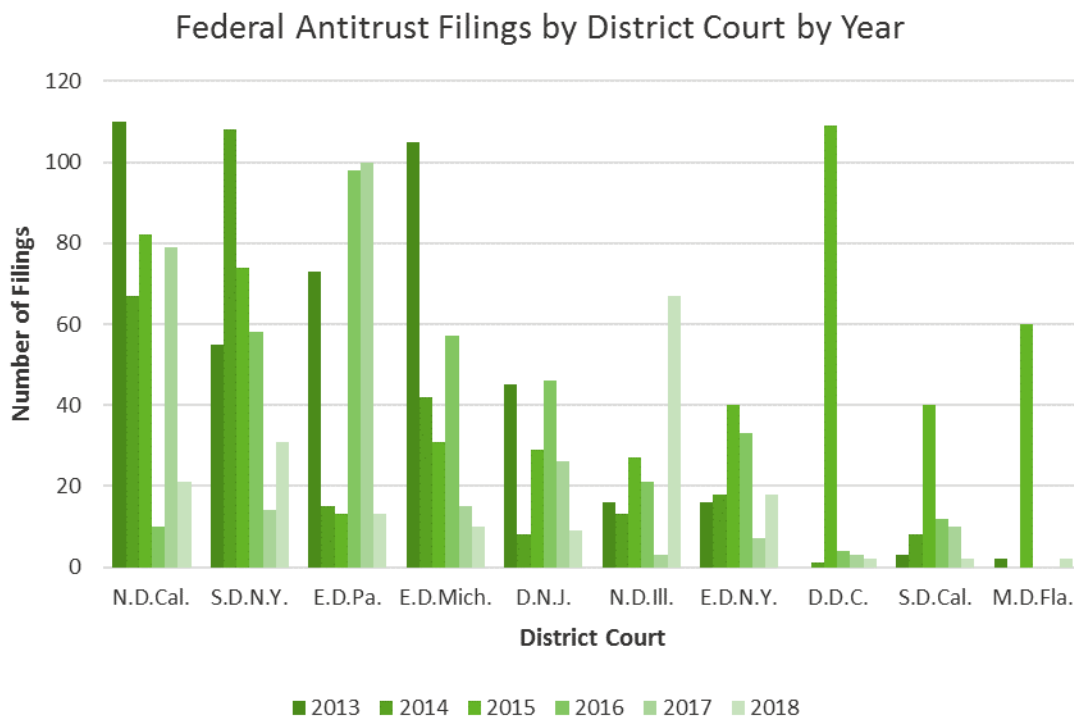
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Federal Antitrust Class Action Filings by District Court

Since 2013, over 2,500 antitrust class action complaints were filed across all districts in the United States District Court. Of these districts, Northern District of California (369), Southern District of New York (340), and Eastern District of Pennsylvania (312) have been the most frequent forums for antitrust filings. The chart below shows that there are several years where specific courts saw a notable influx of case filings. These tend to be associated with a few later-consolidated MDLs, such as:

- Northern District of California (N.D.Cal.): In 2013, 110 complaints were filed in this district. The largest action by filings for this year is *In re: Lithium Ion Batteries Antitrust Litigation*, with 85 historical related actions.
- Southern District of New York (S.D.N.Y.): High numbers of filings in this district cluster around financial instruments and the financial institutions that actively trade within these markets. A few examples:
 - *In re: Commodity Exchange Inc. Gold Futures and Options Trading Litigation* - 29 historical related actions
 - *In re: Treasury Securities Auction Antitrust Litigation* - 42 historical related actions
 - *In re: LIBOR Based Financial Instrument Antitrust Litigation* - 78 historical related actions
- District Court for the District of Columbia (D.D.C.): In 2015, D.D.C. saw a spike of filing activity, highly correlated to filings associated with *In re: Domestic Airline Travel Antitrust Litigation*, with 111 historical related actions.
- Eastern District of Pennsylvania (E.D.Pa.): High numbers of filings in this district may be attributed to antitrust actions in the pharmaceuticals industry. Specifically, there are 182 historical actions related to *In re: Generic Pharmaceuticals Pricing Antitrust Litigation* alone.

Figure 2: **Federal Antitrust Class Action Filings by District Court**
2013 - 2018



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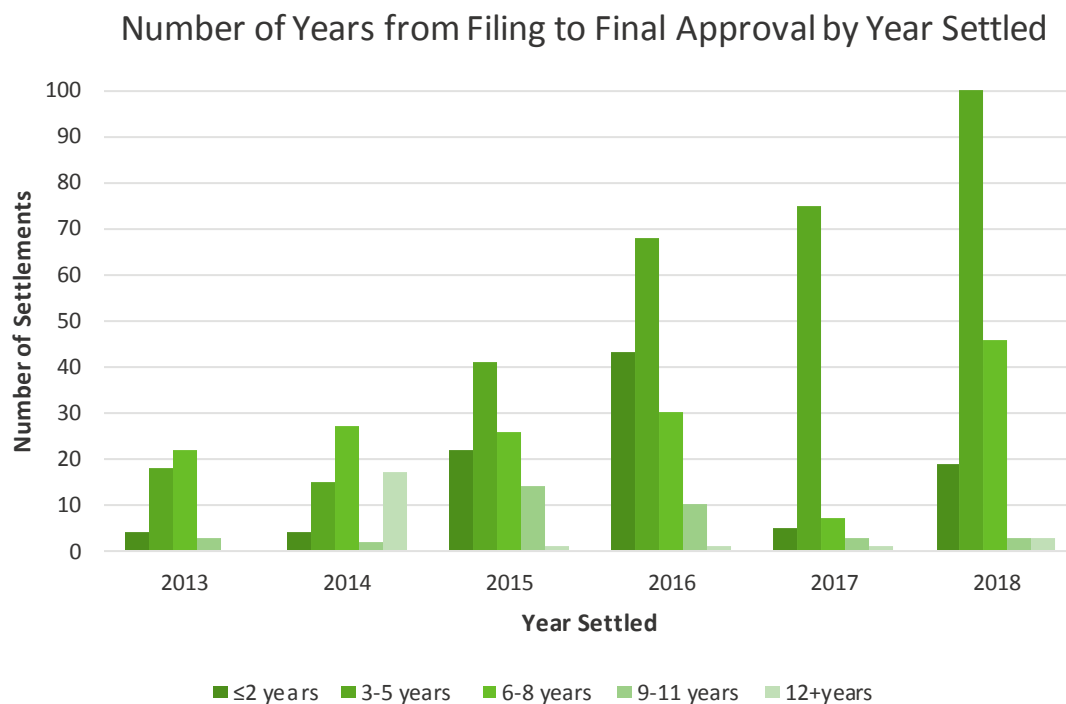
Time from Filing to Final Approval

As shown in Figure 3, half of the settlements analyzed reached final approval within 3-5 years of the case being filed. Figure 4 illustrates a general increase in the number of cases settled per year. Of the settlements analyzed (2013-2018), the median time from the filing of the complaint to the order granting final approval of the settlement is 5 years.

Figure 3: **Percentage of Cases Settled by Number of Years from Filing to Final Approval**
2013 - 2018

Percentage of Cases Settled by Number of Years from Filing to Final Approval					
Year	≤2 Years	3-5 Years	6-8 Years	9-11 Years	12+ Years
2013	8.5%	38.3%	46.8%	6.4%	0.0%
2014	6.2%	23.1%	41.5%	3.1%	26.2%
2015	21.2%	39.4%	25.0%	13.5%	1.0%
2016	28.3%	44.7%	19.7%	6.6%	0.7%
2017	5.5%	82.4%	7.7%	3.3%	1.1%
2018	11.1%	58.5%	26.9%	1.8%	1.8%
All Years	15.4%	50.3%	25.1%	5.6%	3.7%

Figure 4: **Number of Years from Filing to Final Approval for Federal Cases**
2013 - 2018



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Defendant Wins by Case Resolution

Of the 43 cases won by defendants between 2013-2018, almost half were based upon Judgment on the Pleadings. Approximately one third were won on Summary Judgment.

Figure 5: **Defendant Wins by Case Resolution**

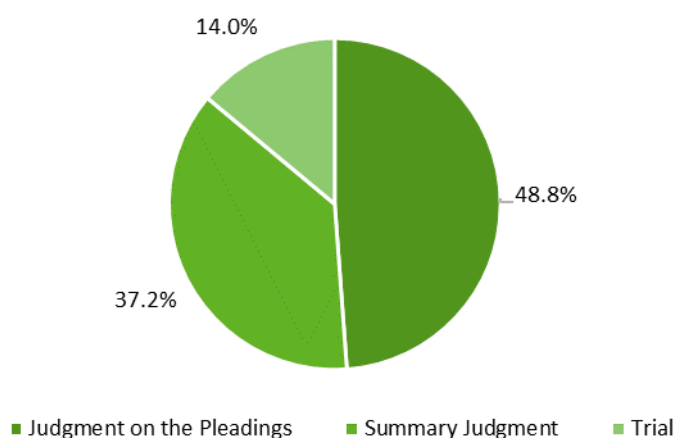
2013 - 2018

Defendant Wins by Case Resolution		
Case Resolution	# of Cases	% of Cases
Judgment on the Pleadings	21	48.8%
Summary Judgment	16	37.2%
Trial	6	14.0%
Total	43	100%

Figure 6: **Percentage of Defendant Wins by Case Resolution**

2013 - 2018

Defendant Wins by Case Resolution

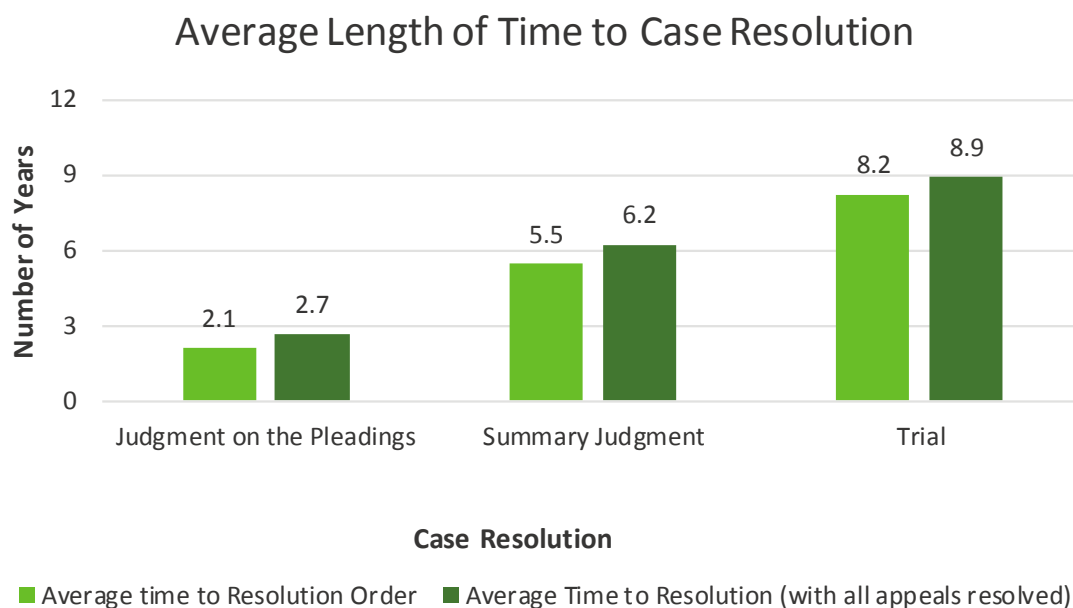


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Claim Defendant Wins by Length of Case Resolution

Comparing figures 5, 6, and 7, Judgment on the Pleadings was the quickest resolution in favor of defendants, and the most frequently awarded by the Court. Judgment on the Pleadings is ordered on average 2.1 years after filing. Summary Judgment is ordered on average 5.5 years after filing, and is also a frequent outcome when assessing defendant wins. As expected, a resolution by trial is the most time consuming, lasting on average for 8.2 years between filing and the Court's order to resolve the case.

Figure 7: **Claim Defendant Wins by Length of Case Resolution**
2013 - 2018



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Top Defense Counsel in Claim Defendant Wins

Rank	Firm	# of Cases 2013-2018
1	Covington & Burling LLP	5
2	Winston & Strawn LLP	5
3	Howrey LLP	5
4	Morgan Lewis & Bockius LLP	4
5	O'Melveny & Myers LLP	4
6	Latham & Watkins LLP	4
7	Baker Botts LLP	4
8	Mayer Brown LLP	4
9	Kirkland & Ellis LLP	4
10	Ballard Spahr LLP	4
11	Skadden, Arps, Slate, Meagher & Flom LLP	3
12	Arnold & Porter Kaye Scholer LLP	3
13	Morrison & Foerster LLP	3
14	Gibson, Dunn & Crutcher	3

Note: Cases with more than one law firm as listed on complaint are attributed to each firm

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Total Settlement Amount by Year

From the data analyzed, 2016 and 2018 stand out for the Total Settlement Amount by Year. These years are notable not only for total settlement amounts, but also for the number of settlements reaching final approval in those years. In 2016, 152 settlements reached final approval, while in 2018, 171 settlements reached final approval.

High dollar settlements in 2016 include:

- *In re: Credit Default Swaps Antitrust Litigation*: \$1.8B from 14 individual settlements
- *In re: Urethane Antitrust Litigation*: \$835M from 1 settlement
- *In re: Automotive Parts Antitrust Litigation*: \$224M from 24 settlements for end payors class (first round of settlements)

High dollar settlements in 2018 include:

- *In re: Foreign Exchange Benchmark Rates Antitrust Litigation*: \$2.3B from 15 settlements
- *In re: LIBOR Based Financial Instruments Antitrust Litigation*: \$590M from 4 settlements
- *In re: ISDAfix Antitrust Litigation*: \$504M from 15 settlements

Figure 8: **Total Settlement Amount by Year**
2013 - 2018



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Average Settlement Amount by Year

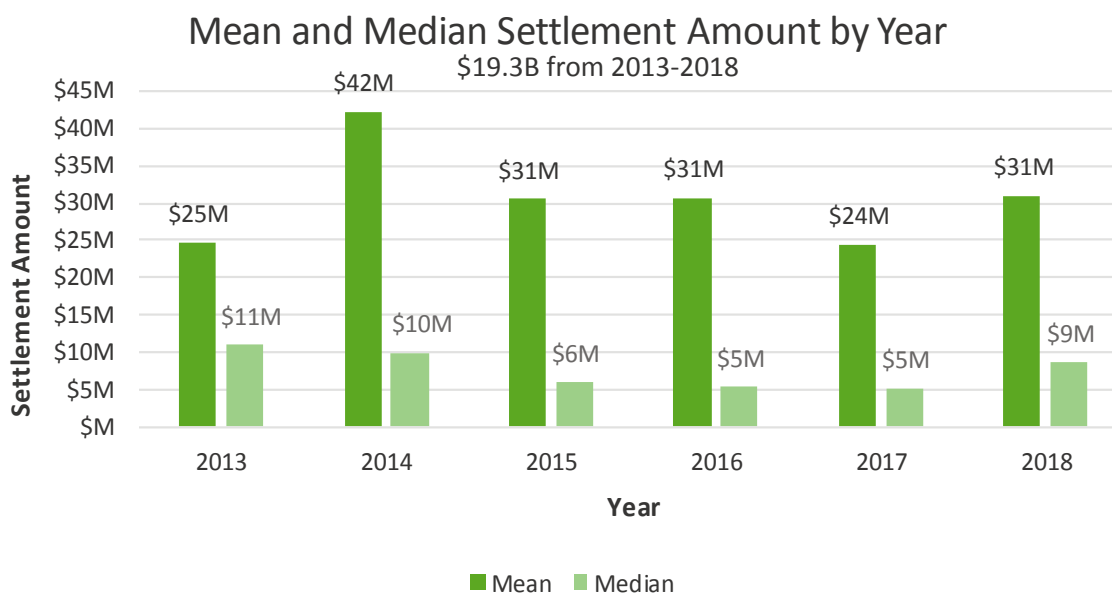
Across the six years of data analyzed, the mean settlement amount is \$31M, and the median settlement amount is \$7M. The median settlement amount is trending lower than the mean due to a small number of high dollar settlements that drive up the mean.

In 2018, the number of settlements (171) and the median amount (\$9M) were both high. There were more large dollar settlements than in prior years, with 16 settlements surpassing \$100M. Conversely, 2014 had the second lowest number of settlements reach final approval, but those that did tended to be higher than the median settlements in other years analyzed. In 2014, six settlements were for over \$100M. The combination of high settlement values and a lower amount of settlements inflates the mean in 2014.

Figure 9: **Number of Settlements by Year**
2013 - 2018

Number of Settlements by Year	
Year	# of Settlements
2013	47
2014	65
2015	104
2016	152
2017	91
2018	171

Figure 10: **Mean and Median Federal Case Settlement Amount by Year**
2013 - 2018

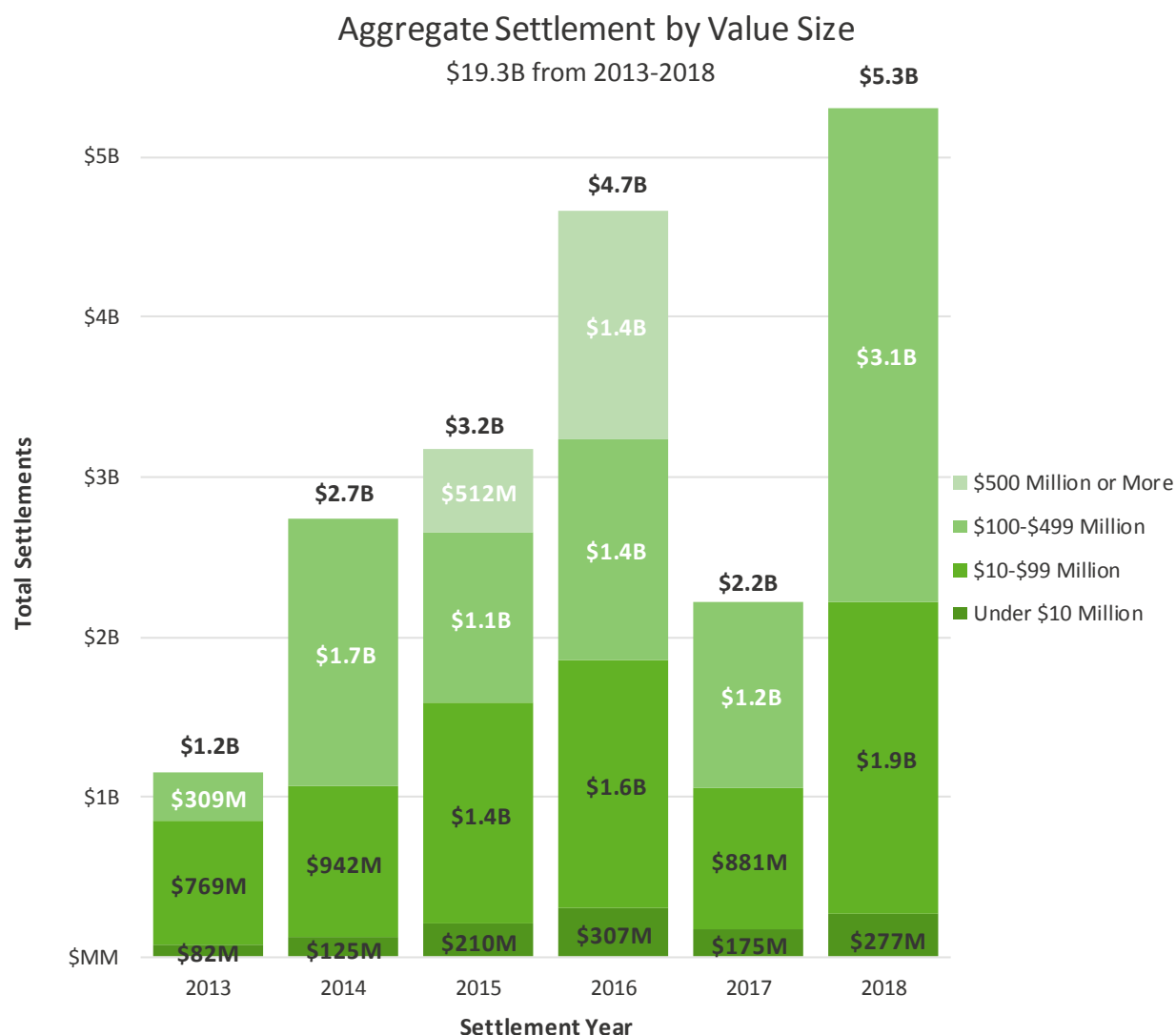


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Aggregate Settlement Value by Size

Since 2013, \$19.3B in settlements have been reached with defendants in antitrust cases. During this timeframe, 92% of settlements were settled for amounts under \$100M. Over half of the total amount came from 14 settlements, each over \$100M. Specifically, 3 settlements that reached final approval were settled for amounts over \$500M: *King Drug Company of Florence v. Cephalon* (\$512M) in 2015, *In re: Urethane Antitrust Litigation* (\$835M) in 2016, and *In re: Credit Default Swaps Litigation* (\$595M) in 2016. There were 11 cases that recovered over \$500M of settlement funds for the class—a listing of the largest cases can be found on page 18 of this report. The \$5.3B in settlements during 2018 was the largest of the years analyzed, driven by 16 settlements for more than \$100M each.

Figure 11: **Aggregate Federal Settlement Value by Size**
2013 - 2018



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Cases with Settlements Reaching Final Approval in 2018

Rank	Case Name	Co-Lead Counsel	Aggregate Settlement Amount 2018
1	Foreign Exchange Benchmark Rates Antitrust Litigation	Hausfeld LLP Scott+Scott Attorneys at Law LLP	\$2,310,275,000
2	Libor Based Financial Instruments Antitrust Litigation - OTC Class	Hausfeld LLP Susman Godfrey LLP	\$590,000,000
3	ISDAfix Antitrust Litigation	Quinn Emanuel Urquhart & Sullivan LLP Robbins Geller Rudman & Dowd LLP Scott+Scott Attorneys at Law LLP	\$504,500,000
4	Automotive Parts - End Payors	Cotchett Pitre & McCarthy LLP Robins Kaplan LLP Susman Godfrey LLP	\$432,823,040
5	Sullivan v Barclays PLC et al (Euribor)	Lovell Stewart Halebian & Jacobson LLP Lowey Dannenberg PC	\$309,000,000
6	Lidoderm Antitrust Litigation - Direct Purchasers	Faruqi & Faruqi LLP Garwin Gerstein & Fisher LLP Hagens Berman Sobol Shapiro LLP	\$166,000,000
7	Domestic Drywall Antitrust Litigation - Direct Purchasers	Berger Montague PC Cohen Milstein Sellers & Toll PLLC Spector Roseman Kodroff & Willis PC	\$125,000,000
8	Automotive Parts - Dealership Actions	Barrett Law Group PA Cuneo Gilbert & LaDuca LLP Larson King LLP	\$115,180,800
9	Lidoderm Antitrust Litigation - End Payors	Cohen Milstein Sellers & Toll PLLC Girard Gibbs LLP Heins Mills & Olson PLC	\$104,750,000

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Cases with Settlements Reaching Final Approval in 2018 (continued)

Rank	Case Name	Co-Lead Counsel	Aggregate Settlement Amount
10	Celebrex Direct Purchaser Antitrust Litigation	Hagens Berman Sobol Shapiro LLP	\$94,000,000
11	Automotive Parts - Direct Purchasers	Freed Kanner London & Millen LLC Kohn Swift & Graf PC Preti Flaherty Beliveau & Pachios LLP Spector Roseman Kodroff & Willis PC	\$90,384,320
12	Solodyn (Minocycline Hydrochloride) Antitrust Litigation - Direct Purchasers	Berger Montague PC Hagens Berman Sobol Shapiro LLP	\$72,500,000
13	Lithium Ion Batteries Antitrust Litigation - Direct Purchasers	Berman Tabacco Pearson Simon & Warshaw LLP Saveri & Saveri Inc	\$70,450,000
14	Capacitors Antitrust Litigation - Direct Purchasers	Joseph Saveri Law Firm Inc	\$66,900,000
15	Transpacific Passenger Air Transportation Antitrust Litigation	Cotchett Pitre & McCarthy LLP Hausfeld LLP	\$50,400,000
16	Solodyn (Minocycline Hydrochloride) Antitrust Litigation - End Payors	Hilliard & Shadowen LLP Motley Rice LLC	\$43,000,000
17	Libor Based Financial Instruments Antitrust Litigation - Lender Class	Pomerantz LLP	\$31,000,000
18	Laydon v. Mizuho Bank, Ltd. et al	Lowey Dannenberg PC	\$30,000,000
19	Merced Irrigation District v Barclays Bank PLC	Cera LLP Klafter Olsen & Lesser LLP	\$29,000,000

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Cases with Settlements Reaching Final Approval in 2018 (continued)

Rank	Case Name	Co-Lead Counsel	Aggregate Settlement
20	Blood Reagents Antitrust Litigation	Spector Roseman Kodroff & Willis PC	\$19,500,000
21	Adel Tawfilis et al v Allergan Inc	The Katriel Law Firm Krause Kalfayan Benink & Slavens	\$13,450,000
22	Mushroom Direct Purchaser Antitrust Litigation - Direct Purchasers	Garwin Gerstein & Fisher LLP	\$11,875,000
23	Hartig Drug Company, Inc. v Senju Pharmaceuticals Ltd	Frank LLP Hausfeld LLP	\$9,000,000
24	Ductile Iron Pipe Fittings Direct Purchaser Antitrust Litigation	Cohen Milstein Sellers & Toll PLLC Fox Rothschild Kaplan Fox & Kilsheimer LLP Lite DePalma Greenberg	\$8,787,500
25	Automotive Parts - Truck and Heavy Equipment Plaintiffs	Duane Morris LLP	\$4,404,990
26	Maplevale Farms Inc v Koch Foods Inc	Lockridge Grindal Nauen PLLP Pearson Simon & Warshaw LLP	\$2,250,000
27	Ductile Iron Pipe Fittings Indirect Purchaser Antitrust Litigation	Kirby McInerney LLP Kohn Swift & Graf PC Weinstein Kitchenoff & Asher LLC	\$1,425,000
28	Domestic Drywall Antitrust Litigation - Indirect Purchasers	Block & Leviton LLP Finkelstein Thompson LLP Green & Noblin PC	\$1,250,000

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Top 50 Cases with Settlements Reaching Final Approval 2013-2018

Rank	Case Name	Co-Lead Counsel	Aggregate Settlement Amount
1	Foreign Exchange Benchmark Rates Antitrust Litigation	Hausfeld LLP Scott+Scott Attorneys at Law LLP	\$2,310,275,000
2	Credit Default Swaps Antitrust Litigation	Pearson Simon & Warshaw LLP Quinn Emanuel Urquhart & Sullivan LLP	\$1,864,650,000
3	TCT-LCD (Flat Panel) Antitrust Litigation—Indirect	Alioto Law Firm Zelle LLP	\$1,082,055,647
4	Automotive Parts - End Payor Actions	Cotchett Pitre & McCarthy LLP Robins Kaplan LLP Susman Godfrey LLP	\$1,036,895,658
5	Urethane Antitrust Litigation	Cohen Milstein Sellers & Toll PLLC Fine Kaplan and Black RPC	\$835,000,000
6	Air Cargo Shipping Services Antitrust Litigation	Hausfeld LLP Kaplan Fox & Kilsheimer LLP Levin Sedran & Berman Robins Kaplan LLP	\$750,342,442
7	Klein et al v Bain Capital Partners LLC et al	Robbins Geller Rudman & Dowd LLP Robins Kaplan LLP Scott+Scott Attorneys at Law LLP	\$590,500,000
8	Libor Based Financial Instruments Antitrust Litigation - OTC Class	Hausfeld LLP Susman Godfrey LLP	\$590,000,000
9	Electronic Books Antitrust Litigation	Cohen Milstein Sellers & Toll PLLC Hagens Berman Sobol Shapiro LLP	\$566,119,000
10	King Drug Company of Florence Inc v Cephalon Inc et al (Provigil) - Direct Purchasers	Garwin Gerstein & Fisher LLP	\$512,000,000

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Top 50 Cases with Settlements Reaching Final Approval 2013-2018 (continued)

Rank	Case Name	Co-Lead Counsel	Aggregate Settlement Amount
11	ISDAfix Antitrust Litigation	Quinn Emanuel Urquhart & Sullivan LLP Robbins Geller Rudman & Dowd LLP Scott+Scott Attorneys at Law LLP	\$504,000,000
12	Automotive Parts - Direct Purchaser Actions	Freed Kanner London & Millen LLC Kohn Swift & Graf PC Preti Flaherty Beliveau & Pachios LLP Spector Roseman Kodroff & Willis PC	\$422,435,320
13	High-Tech Employee Antitrust Litigation	Berger Montague PC Grant & Eisenhofer PA Joseph Saveri Law Firm, Inc Lieff Cabraser Heimann & Bernstein LLP	\$435,000,000
14	Kleen Products LLC et al v International Paper et al	Freed Kanner London & Millen LLC MoginRubin LLP	\$376,400,000
15	Precision Associates Inc et al v Panalpina World Transport	Cotchett Pitre & McCarthy LLP Gustafson Gluek PLLC Lockridge Grindal Nauen PLLP Lovell Stewart Halebian Jacobson LLP	\$344,315,228
16	Sullivan v. Barclays PLC et al	Lovell Stewart Halebian Jacobson LLP Lowey Dannenberg PC	\$309,000,000
17	Automotive Parts - Dealership Actions	Barrett Law Group PA Cuneo Gilbert & LaDuca LLP Larson King LLP	\$298,859,627
18	Polyurethane Foam Antitrust Litigation - Direct Purchasers	Boies Schiller Flexner LLP Quinn Emanuel Urquhart & Sullivan LLP	\$275,500,000
19	Dynamic Random Access Memory (DRAM) Antitrust Litigation	Cooper & Kirkham PC Gustafson Gluek PLLC MoginRubin LLP Straus & Boies LLP	\$265,176,800
20	Dial Corporation et al v News Corporation et al	Kellogg Hansen Todd Figel & Frederick PLLC Susman Godfrey LLP	\$244,000,000

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Top 50 Cases with Settlements Reaching Final Approval 2013-2018 (continued)

Rank	Case	Co-Lead Counsel	Aggregate Settlement
21	Laydon v. Mizuho Bank, Ltd. et al	Lowey Dannenberg PC	\$236,000,000
22	National Collegiate Athletic Association Athletic Grant-in-Aid Cap Antitrust Litigation	Hagens Berman Sobol Shapiro LLP Pearson Simon & Warshaw LLP	\$208,664,445
23	Steel Antitrust Litigation	Fine Kaplan and Black RPC Kellogg Hansen Todd Figel & Frederick PLLC	\$193,899,999
24	Domestic Drywall Antitrust Litigation - Direct Purchasers	Berger Montague PC Cohen Milstein Sellers & Toll PLLC Spector Roseman Kodroff & Willis PC	\$192,500,000
25	Neurontin Antitrust Litigation	Garwin Gerstein & Fisher LLP Kaplan Fox & Kilsheimer LLP	\$190,000,000
26	Marchese v Cablevision Systems Corporation	Taus Cebulash & Landau LLP	\$179,093,858
27	Municipal Derivatives Antitrust Litigation	Boies Schiller Flexner LLP Hausfeld LLP Susman Godfrey LLP	\$174,367,879
28	Cathode Ray Tube (CRT) Antitrust Litigation - Direct Purchasers	Saveri & Saveri Inc	\$169,700,000
29	Animation Workers Antitrust Litigation	Cohen Milstein Sellers & Toll PLLC Hagens Berman Sobol Shapiro LLP Susman Godfrey LLP	\$168,950,000
30	Lidoderm Antitrust Litigation - Direct Purchasers	Faruqi & Faruqi LLP Garwin Gerstein & Fisher LLP Hagens Berman Sobol Shapiro LLP	\$166,000,000

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Top 50 Cases with Settlements Reaching Final Approval 2013-2018 (continued)

Rank	Case	Co-Lead Counsel	Aggregate Settlement
31	Haley Paint Company et al v Kronos Worldwide Inc (Titanium Dioxide)	Cera LLP Joseph Saveri Law Firm Inc Lieff Cabraser Heimann & Bernstein LLP Shapiro Sher Guinot & Sandler	\$163,500,000
32	Southeastern Milk Antitrust Litigation	BakerHostetler LLP Brewer & Terry PC	\$158,600,000
33	Polyurethane Foam Antitrust Litigation - Indirect Purchasers	The Miller Law Firm	\$151,250,000
34	American Sales Company Inc v Smithkline Beecham Corporation	Hagens Berman Sobol Shapiro LLP Kessler Topaz Meltzer & Check LLP	\$150,000,000
35	Aggrenox Antitrust Litigation	Garwin Gerstein & Fisher LLP	\$146,000,000
36	Lithium Ion Batteries Antitrust Litigation - Direct Purchasers	Berman Tabacco Pearson Simon & Warshaw LLP Saveri & Saveri Inc	\$139,300,000
37	Universal Delaware Inc v Ceridian Corporation	Berger Montague PC Lieff Cabraser Heimann & Bernstein LLP Quinn Emanuel Urquhart & Sullivan LLP	\$130,000,000
38	Processed Egg Products Antitrust Litigation	Bernstein Liebhard LLP Hausfeld LLP Lite DePalma Greenberg LLC Susman Godfrey LLP Weinstein Kitchenoff & Asher LLC	\$111,425,000
39	Lidoderm Antitrust Litigation - End Payors	Cohen Milstein Sellers & Toll PLLC Girard Gibbs LLP Heins Mills & Olson PLC	\$104,750,000
40	Capacitors Antitrust Litigation (No III) - Direct	Joseph Saveri Law Firm Inc	\$99,500,000

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Top 50 Cases with Settlements Reaching Final Approval 2013-2018 (continued)

Rank	Case	Co-Lead Counsel	Aggregate Settlement
41	Prograf Antitrust Litigation - Direct Purchasers	Garwin Gerstein & Fisher LLP Hagens Berman Sobol Shapiro LLP	\$98,000,000
42	Celebrex Direct Purchaser Antitrust Litigation	Hagens Berman Sobol Shapiro LLP	\$94,000,000
43	Parsons v Bright House Networks LLC	Quinn Connor Weaver Davies & Rouco Whatley Kallas LLP Wiggins Childs Pantazis Fisher & Goldfarb	\$91,164,760
44	Potash Antitrust Litigation - Direct Purchasers	Lockridge Grindal Nauen PLLP Pearson Simon & Warshaw	\$90,000,000
45	Platinum and Palladium Commodities Litigation - Plaintiffs in Futures Class	Lovell Stewart Halebian & Jacobson LLP	\$88,072,500
46	Optical Disk Drive Products Antitrust Litigation - Direct Purchasers	Saveri & Saveri Inc	\$74,750,000
47	Skelaxin (Metaxalone) Antitrust Litigation - Direct Purchasers	Hagens Berman Sobol Shapiro LLP	\$73,000,000
48	Solodyn (Minocycline Hydrochloride) Antitrust Litigation - Direct Purchasers	Berger Montague PC Hagens Berman Sobol Shapiro LLP	\$72,500,000
49	Cason-Merendo et al v VHS of Michigan Inc et al	Cohen Milstein Sellers & Toll PLLC James & Hoffman PC Keller Rohrbach LLP	\$68,967,925
50	Plasma-Derivative Protein Therapies Antitrust Litigation	Cohen Milstein Sellers & Toll PLLC Williams Montgomery & John LTD	\$64,000,000

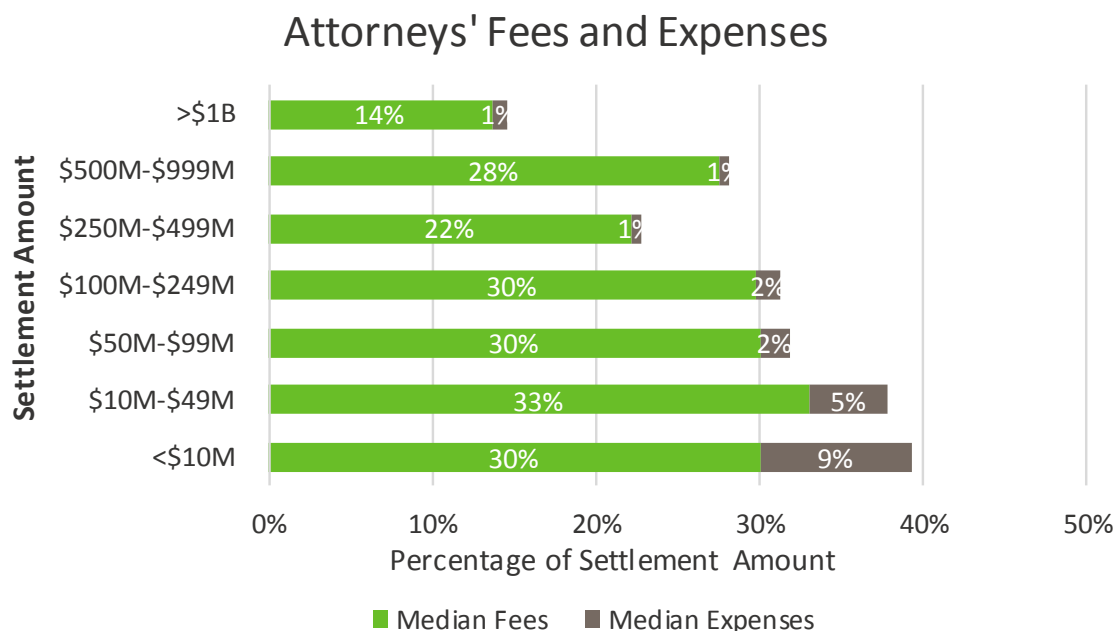
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Plaintiffs' Lawyers' Fees and Expenses by Settlement Size

Among the analyzed antitrust settlements from 2013-2018, attorneys' fees and expenses were most often calculated as a percentage of the overall settlement fund addressed in the court order. Lodestar cross checks often accompany motions requesting attorneys' fees of a specific percent. The figure below analyzes the percentage of the total settlement fund attorneys typically earn by settlement size. Excluded from this data are settlements that are awaiting the court's order on fees and expenses, settlements that order partial attorney fee awards, and settlements with orders of attorneys' fees and expenses on appeal.

Notable within the figure is the decrease of the percentage of the fund awarded as attorneys' fees as the settlement amount surpasses \$1B. There are two instances of this occurrence within the scope of the study, of which one is represented in the figure below. In the case of *In re: Credit Default Swaps Antitrust Litigation*, lead counsel and lead plaintiff negotiated the fee percentage early in the case using a sliding scale method. In the case of *In re: Foreign Exchange Benchmark*, for which the order regarding fees and expenses is currently on appeal, the court relied on fee analysis authored by Brian Fitzpatrick from Vanderbilt University Law School. The referenced study addresses "mega settlements" where the mean fee percentage for mega settlements (over \$1B in size) is 13.7%. The exception to this trend applies for *TFT LCD-Flat Panel Antitrust Litigation - Indirect Purchasers*; the fee awarded for this ~\$1B settlement was roughly 28.6%.

Figure 12: **Attorneys' Fees and Expenses**
2013 - 2018



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Top 25 Firms Acting as Defense Counsel

Rank	Firm	# of Complaints 2013-2018
1	Latham & Watkins LLP	255
2	Gibson, Dunn & Crutcher LLP	223
3	Kirkland & Ellis LLP	205
4	O'Melveny & Myers LLP	191
5	Morgan Lewis & Bockius LLP	176
6	Freshfields Bruckhaus Deringer LLP	173
7	Hogan Lovells LLP	168
8	Vinson & Elkins LLP	162
9	Skadden, Arps, Slate, Meagher & Flom LLP	153
10	Paul, Weiss, Rifkind, Wharton & Garrison LLP	146
11	Covington & Burling LLP	127
12	Simpson Thacher & Bartlett LLP	124
13	Arnold & Porter Kaye Scholer LLP	123
14	Winston & Strawn LLP	111
15	Sullivan & Cromwell LLP	107
16	WilmerHale LLP	106
17	Cleary Gottlieb Steen & Hamilton LLP	100
18	Allen & Overy LLP	98
19	Shearman & Sterling LLP	91
20	Boies Schiller & Flexner LLP	89
21	Cravath, Swaine & Moore LLP	87
22	Foley & Lardner LLP	87
23	Dechert LLP	85
24	White & Case LLP	82
25	Davis Polk & Wardwell LLP	78

Note: Filings with more than one law firm as listed on complaint are attributed to each firm

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Top 25 Lead Counsel in Complaints Filed

Rank	Firm	# of Complaints Filed 2013-2018
1	Hausfeld LLP	154
2	Cuneo Gilbert & LaDuca LLP	146
3	Lockridge Grindal Nauen PLLP	138
4	Berger Montague PC	135
5	Cotchett Pitre & McCarthy	130
6	Cohen Milstein Sellers & Toll PLLC	129
7	Mantese Honigman Rossman & Williamson	128
8	Nussbaum Law Group PC	127
9	Susman Godfrey LLP	119
10	Hagens Berman Sobol Shapiro LLP	115
11	Barrett Law Office	113
12	The Miller Law Firm	112
13	Spector Roseman Kodroff & Willis PC	110
14	Gustafson Gluek PLLC	109
15	Robins Kaplan LLP	96
16	NastLaw	90
17	Labaton Sucharow LLP	85
18	Freed Kanner London & Millen LLC	85
19	Joseph Saveri Law Firm, Inc	84
20	Glancy Prongay & Murray LLP	84
21	Grant & Eisenhofer	83
22	Cera LLP	81
23	Heins Mills & Olson PLC	75
24	Scott + Scott Attorneys at Law LLP	74
25	Wolf Haldenstein Adler Freeman & Herz LLC	73

Note: Filings with more than one law firm as listed on complaint are attributed to each firm

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Top 25 Lead Counsel in Number of Settlements

Rank	Firm	# of Settlements 2013-2018
1	Cotchett Pitre & McCarthy LLP	151
2	Susman Godfrey LLP	145
3	Robins Kaplan LLP	132
4	Cuneo Gilbert & LaDuca LLP	99
5	Barrett Law Group PA	98
6	Larson King LLP	98
7	Hausfeld LLP	69
8	Gustafson Gluek PLLC	42
9	Quinn Emanuel Urquhart & Sullivan LLP	41
10	Scott+Scott Attorneys at Law LLP	38
11	Lovell Stewart Halebian Jacobson LLP	35
12	Spector Roseman Kodroff & Willis PC	31
13	Cohen Milstein Sellers & Toll PLLC	30
14	Freed Kanner London & Millen LLC	28
15	Lockridge Grindal Nauen PLLP	27
16	Kohn Swift & Graf PC	27
17	Pearson Simon & Warshaw LLP	27
18	Saveri & Saveri	26
19	Hagens Berman Sobol & Shapiro LLP	25
20	Robbins Geller Rudman & Dowd LLP	23
21	Preti Flaherty Beliveau & Pachios LLP	22
22	Kaplan Fox & Kilsheimer LLP	21
23	MoginRubin LLP	19
24	Boies Schiller Flexner LLP	19
25	Berger Montague PC	18

Note: Settlements with more than one law firm as lead counsel are attributed to each firm

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Top 25 Lead Counsel in Aggregate Settlement Amount

Rank	Firm	Aggregate Settlement Amount 2013-2018	# of Settlements 2013-2018	Average Settlement Amount 2013-2018
1	Hausfeld LLP	\$4,214,197,321	69	\$61,075,323
2	Scott + Scott Attorneys at Law LLP	\$3,472,275,000	38	\$91,375,658
3	Quinn Emanuel Urquhart & Sullivan LLP	\$2,781,050,000	41	\$67,830,488
4	Susman Godfrey LLP	\$2,456,635,537	145	\$16,942,314
5	Robins Kaplan LLP	\$2,394,485,100	132	\$18,140,039
6	Pearson Simon & Warshaw LLP	\$2,324,364,445	27	\$86,087,572
7	Cohen Milstein Sellers & Toll PLLC	\$2,135,155,425	30	\$71,171,848
8	Hagens Berman Sobol Shapiro LLP	\$1,663,664,695	25	\$66,546,588
9	Cotchett Pitre & McCarthy LLP	\$1,486,059,886	151	\$9,841,456
10	Garwin Gerstein & Fisher LLP	\$1,184,075,000	12	\$98,672,917
11	Robbins Geller Rudman & Dowd LLP	\$1,142,500,000	23	\$49,673,913
12	Alioto Law Firm	\$1,082,055,647	10	\$108,205,565
13	Zelle LLP	\$1,082,055,647	10	\$108,205,565
14	Fine Kaplan and Black RPC	\$1,048,199,999	11	\$95,290,909
15	Kaplan Fox & Kilsheimer LLP	\$1,020,629,942	21	\$48,601,426
16	Berger Montague PC	\$975,046,250	18	\$54,169,236
17	Lovell Stewart Halebian & Jacobson LLP	\$870,887,728	35	\$24,882,507
18	Freed Kanner London & Millen LLC	\$829,885,320	28	\$29,638,761
19	Lieff Cabraser Heimann & Bernstein LLP	\$728,500,000	10	\$72,850,000
20	Joseph Saveri Law Firm, Inc	\$698,000,000	13	\$53,692,308
21	Spector Roseman Kodroff & Willis PC	\$694,185,320	31	\$22,393,075
22	MoginRubin LLP	\$641,576,800	19	\$33,767,200
23	Gustafson Gluek PLLC	\$614,392,028	42	\$33,767,200
24	Boies Schiller Flexner LLP	\$494,117,879	19	\$26,006,204
25	Lockridge Grindal Nauen PLLP	\$445,315,228	27	\$16,493,157

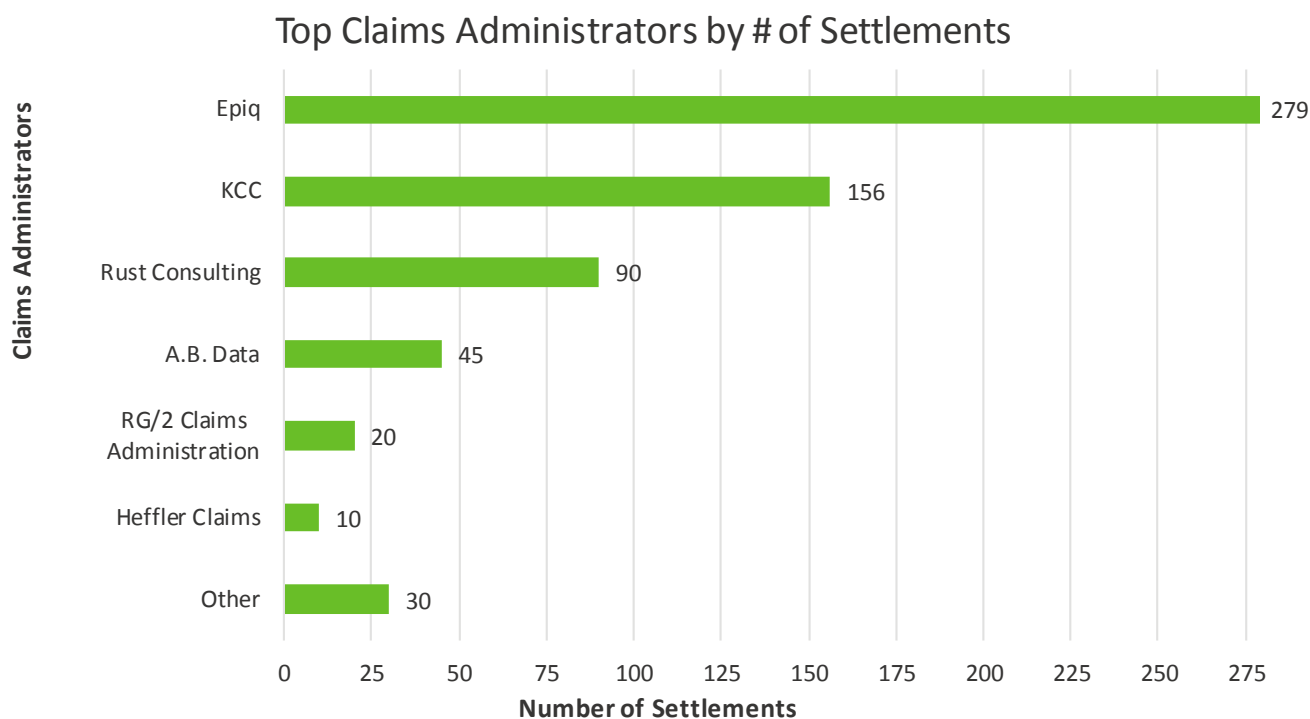
Note: Settlements with more than one law firm as lead counsel are attributed to each firm

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Top Claims Administrators

Figure 13: **Top Claims Administrators by Aggregate Settlement Amount**
2013 - 2018

Rank	Claims Administrator	Aggregate Settlement Amount	# of Settlements	Average Settlement Amount 2013-2018
1	Epiq	\$10,093,847,005	279	\$36,178,005
2	Rust Consulting	\$3,804,371,372	90	\$42,270,793
3	KCC	\$2,415,153,032	156	\$15,481,750
4	A.B. Data	\$1,453,856,629	45	\$32,307,925
5	RG/2 Claims Administration	\$296,742,250	20	\$14,837,112
6	Heffler Claims	\$55,250,000	10	\$5,525,000
	Other	\$1,155,516,763	30	\$38,517,225

Figure 14: **Top Claims Administrators by Number of Settlements**
2013 - 2018

Notes:

1. Epiq includes the Garden City Group (GCG)
2. KCC includes Gilardi & Co LLC

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Methodology and Sources

Our first edition of the Antitrust Annual Report sets the stage for additional reports and analysis in the years to come. The topics selected for 2018's Antitrust Annual Report intend to provide a high-level analysis of the activity within the antitrust bar. Study topics may change or be modified for data published in future years.

Cases Analyzed

The cases analyzed in the preceding report represent three individual data sets: complaints filed from 2013-2018, cases won by defendants from 2013-2018, and cases with settlements reaching final approval or verdicts awarded within the time period of 2013-2018. Settlement data analyzed within the 2013-2018 period is not first evaluated by complaint filing date; which is to say, any settlement granted final approval during the six year analysis period is represented in the data, regardless of when the complaint was filed. Only settlements granted final approval within the six year analysis period are represented in the data. Regarding cases with multiple settlements, settlements reaching final approval outside of the six year time period of the study are excluded.

Timeline

For our debut report, we selected to highlight two specific time periods to gather our data: 2018 'Year in Review', and 2013-2017 'Five Year Lookback'. Using two time periods has allowed us to not only highlight the past year's activity within the antitrust sector, but also to compare it to historical years' data.

Sources

Data for this report are collected primarily through Lex Machina's Legal Analytics Platform. Lex Machina uses artificial intelligence to categorize federal court case data from PACER (Public Access to Court Electronic Records). The case data obtained from Lex Machina was verified by the supporting court docket and supplemented with additional data points also available through the Lex Machina platform. All analysis, commentary and conclusions were reviewed by each member of the authoring team.

The data gathered are not necessarily exhaustive of every settlement during the analyzed period. While this is intended to be an accurate reflection of class action matters in Federal Court, there is a possibility that cases have been excluded due to source limitations or unintentional error.

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