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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;

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:
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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 &
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1 Bernstein, LLP.

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

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

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

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

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

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

19 (l) "Final" means, with respect to any order of court, including, without
20 limitation, the Judgment, that such order represents a final and binding
21 determination of all issues within its scope and is not subject to further
22 review on appeal or otherwise. Without limitation, an order becomes
23 "Final" when: (a) no appeal has been filed and the prescribed time for
24 commencing any appeal has expired; or (b) an appeal has been filed and
25 either (i) the appeal has been dismissed and the prescribed time, if any, for
26 commencing any further appeal has expired, or (ii) the order has been
27 affirmed in its entirety and the prescribed time, if any, for commencing
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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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1 (ee) “Settling Parties” means, collectively, Panasonic Corp. and the Indirect
2 Purchaser Plaintiffs (on behalf of themselves and the Classes).

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

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

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

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

24 3. **Motion for Preliminary Approval.** At a time to be determined by Class
25 Counsel, and subject to prior notice of ten (10) days to Panasonic Corp., Class Counsel shall
26 submit this Agreement to the Court and shall apply for entry of a preliminary approval order
27 (“Preliminary Approval Order”), requesting, *inter alia*, preliminary approval (“Preliminary
28 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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1 notice practicable under the circumstances and complies in all respects
2 with the requirements of Federal Rule of Civil Procedure 23 and due
3 process;

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

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

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

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

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

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

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

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

26 **C. Releases**

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

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

18 **D. Settlement Fund**

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

27 **13. Disbursements Prior to Effective Date.** No amount may be disbursed from the
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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.
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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
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1
2 of this paragraph.

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

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

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

- 14 (a) To pay all costs and expenses reasonably and actually incurred in
15 connection with providing notice to the Classes in connection with
16 administering and distributing the Net Settlement Fund to Authorized
17 Claimants, and in connection with paying escrow fees and costs, if any;
- 18 (b) To pay all costs and expenses, if any, reasonably and actually incurred in
19 soliciting claims and assisting with the filing and processing of such
20 claims;
- 21 (c) To pay the Taxes and Tax Expenses as defined herein;
- 22 (d) To pay any Fee and Expense Award that is allowed by the Court, subject
23 to and in accordance with the Agreement; and
- 24 (e) To distribute the balance of the Net Settlement Fund to Authorized
25 Claimants as allowed by the Agreement, any Distribution Plan or order of
26 the Court.

27 20. **Distribution of Net Settlement Fund.** Upon the Effective Date and thereafter,
28 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
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1 the distribution of the Gross Settlement Fund; the Distribution Plan; the determination,
2 administration or calculation of claims; the Settlement Fund's qualification as a "qualified
3 settlement fund"; the payment or withholding of Taxes or Tax Expenses; the distribution of the
4 Net Settlement Fund; or any losses incurred in connection with any such matters. The Releasors
5 hereby fully, finally and forever release, relinquish and discharge the Releasees and their
6 counsel from any and all such liability. No Person shall have any claim against Class Counsel
7 or the Notice and Claims Administrator based on the distributions made substantially in
8 accordance with the Agreement and the Settlement contained herein, the Distribution Plan or
9 further orders of the Court.

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

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

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

27 24. **Fee and Expense Application.** Class Counsel may submit an application or
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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 Releasers 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
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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
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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
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1 of this Agreement shall be treated as vacated, *nunc pro tunc*.

2 H. **No Admission of Liability**

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

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

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

1 715 Hearst Avenue, Suite 202
2 Berkeley, CA 94710
3 Telephone: 510-725-3000
4 Facsimile: 510-725-3001

5 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
6 Brendan P. Glackin (bglackin@lchb.com)
7 275 Battery Street, 29th Floor
8 San Francisco, CA 94111-3339
9 Telephone: 415-956-1000
10 Facsimile: 415-956-1008

11 COTCHETT, PITRE & MCCARTHY, LLP
12 Adam Zapala (azapala@cpmlegal.com)
13 San Francisco Airport Office Center
14 840 Malcolm Road, Suite 200
15 Burlingame, CA 94010
16 Telephone: 650-697-6000
17 Facsimile: 650-697-0577

18 If directed to Panasonic Corp., address notice to:

19 Jeffrey L. Kessler (jkessler@winston.com)
20 Eva W. Cole (ewcole@winston.com)
21 WINSTON & STRAWN LLP
22 200 Park Avenue
23 New York, NY 10166-4193
24 Telephone: 212-294-6700
25 Facsimile: 212-294-4700

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

28 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.
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INDIRECT PURCHASER PLAINTIFFS' CLASS
COUNSEL, on behalf of Indirect Purchaser
Plaintiffs individually and on behalf of the Classes

DATED: December 19, 2018


HAGENS BERMAN SOBOL SHAPIRO LLP

By: 
JEFF D. FRIEDMAN

Steve W. Berman (*pro hac vice*)
Shana E. Scarlett (217895)
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Telephone: (510) 725-3000
Facsimile: (510) 725-3001
jefff@hbsslw.com
steve@hbsslw.com
shanas@hbsslw.com

DATED: December 18, 2018

COTCHETT, PITRE, & MCCARTHY, LLP

By: 
ADAM J. ZAPALA

Joseph W. Cotchett (SBN 36324)
Adam J. Zapala (SBN 245748)
Tamarah Prevost (SBN 313422)
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tprevost@cpmlegal.com

DATED: December 19, 2018

LIEFF CABRASER HEIMANN & BERNSTEIN,
LLP

By: 
BRENDAN P. GLACKIN

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


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DEFENDANT PANASONIC CORPORATION

DATED: December 27, 2018

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