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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE LITHIUM ION BATTERIES
ANTITRUST LITIGATION,

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

MDL No. 2420

This Documents Relates to:
ALL INDIRECT PURCHASER ACTIONS

TOKIN CORPORATION
SETTLEMENT AGREEMENT

DATE ACTION FILED: Oct. 3, 2012

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

7 **RECITALS**

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

10 WHEREAS, Indirect Purchaser Plaintiffs allege, among other things, that TOKIN 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, TOKIN 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 Classes were harmed by any conduct by TOKIN alleged in
18 the Actions or otherwise;

19 WHEREAS, Indirect Purchaser Plaintiffs and TOKIN 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 TOKIN 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 TOKIN 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;

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

- 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 McGuinness,
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 as to TOKIN.
- 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).
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- 1 (u) “Notice and Administrative Costs” means the reasonable sum of money not
2 in excess of three hundred fifty thousand U.S. Dollars (\$300,000.00) to be
3 paid out of the Gross Settlement Fund to pay for notice to the Classes and
4 related administrative costs.
- 5 (v) “Notice and Claims Administrator” means the claims administrator(s) to be
6 selected by Class Counsel and approved by the Court.
- 7 (w) “Person(s)” means an individual, corporation, limited liability corporation,
8 professional corporation, limited liability partnership, partnership, limited
9 partnership, association, joint stock company, estate, legal representative,
10 trust, unincorporated association, government or any political subdivision or
11 agency thereof, and any business or legal entity and any spouses, heirs,
12 predecessors, successors, representatives or assignees of any of the
13 foregoing.
- 14 (x) “Proof of Claim and Release” means the form to be sent to the Classes, upon
15 further order(s) of the Court, by which any member of the Classes may make
16 claims against the Gross Settlement Fund.
- 17 (y) “Released Claims” means any and all manner of claims, demands, rights,
18 actions, suits, causes of action, whether class, individual or otherwise in
19 nature, fees, costs, penalties, injuries, damages whenever incurred and
20 liabilities of any nature whatsoever, known or unknown (including, but not
21 limited to, “Unknown Claims”), foreseen or unforeseen, suspected or
22 unsuspected, asserted or unasserted, contingent or non-contingent, in law or
23 in equity, under the laws of any jurisdiction, which Releasors or any of them,
24 whether directly, representatively, derivatively, or in any other capacity, ever
25 had, now have or hereafter can, shall or may have, relating in any way to any
26 conduct prior to the Execution Date of this Agreement and arising out of or
27 related in any way in whole or in part to any facts, circumstances, acts or
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1 omissions arising out of or related to (1) any purchase or sale of Lithium Ion
2 Batteries (including Lithium Ion Batteries contained in Finished Products)
3 up through May 31, 2011; or (2) any agreement, combination or conspiracy
4 to raise, fix, maintain or stabilize the prices of Lithium Ion Batteries
5 (including Lithium Ion Batteries contained in Finished Products) or restrict,
6 reduce, alter or allocate the supply, quantity or quality of Lithium Ion
7 Batteries (including Lithium Ion Batteries contained in Finished Products) or
8 concerning the development, manufacture, supply, distribution, transfer,
9 marketing, sale or pricing of Lithium Ion Batteries (including Lithium Ion
10 Batteries contained in Finished Products), or any other conduct alleged in the
11 Actions or relating to restraint of competition that could have been or
12 hereafter could be alleged against the Releasees relating to Lithium Ion
13 Batteries; or (3) any other restraint of competition relating to Lithium Ion
14 Batteries that could be asserted as a violation of the Sherman Act or any
15 other antitrust, unjust enrichment, unfair competition, unfair practices, trade
16 practices, price discrimination, unitary pricing, racketeering, contract, civil
17 conspiracy or consumer protection law, whether under federal, state, local or
18 foreign law.

- 19 (z) “Releasees” means TOKIN and their former, present and future direct and
20 indirect parents, subsidiaries and Affiliates, and their respective former,
21 present and future officers, directors, employees, managers, members,
22 partners, agents, shareholders (in their capacity as shareholders), attorneys
23 and legal representatives, and the predecessors, successors, heirs, executors,
24 administrators and assigns of each of the foregoing.
- 25 (aa) “Releasors” means the Indirect Purchaser Plaintiffs and each and every Class
26 Member on their own behalf and on behalf of their respective direct and
27 indirect parents, subsidiaries and Affiliates, their former, present or future
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1 officers, directors, employees, agents and legal representatives, and the
2 predecessors, successors, heirs, executors, administrators and assigns of each
3 of the foregoing.

- 4 (bb) "Settlement" means the settlement of the Released Claims set forth herein.
5 (cc) "Settlement Amount" means Two Million U.S. Dollars (\$2,000,000).
6 (dd) "Settling Parties" means, collectively, TOKIN 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
10 or its favor at the time of the release of the Releasees that if known by him,
11 her or it, might have affected his, her or its settlement with and release of the
12 Releasees, or might have affected his, her or its decision not to object to or
13 opt out of this Settlement. Such Unknown Claims include claims that are the
14 subject of California Civil Code § 1542 and equivalent, similar or
15 comparable laws or principles of law. California Civil Code § 1542
16 provides:

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

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

22 **2. Reasonable Best Efforts to Effectuate This Settlement.** The Settling Parties: (a)
23 acknowledge that it is their intent to consummate this Agreement; and (b) agree to cooperate to the
24 extent reasonably necessary to effectuate and implement the terms and conditions of this
25 Agreement and to exercise their reasonable best efforts to accomplish the terms and conditions of
26 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:

- 1 (a) certifying the Classes, pursuant to Federal Rule of Civil Procedure 23, solely
2 for purposes of this Settlement;
- 3 (b) fully and finally approving the Settlement contemplated by this Agreement
4 and its terms as being fair, reasonable and adequate within the meaning of
5 Federal Rule of Civil Procedure 23 and directing its consummation pursuant
6 to its terms and conditions;
- 7 (c) finding that the notice given to the Class Members constituted the best notice
8 practicable under the circumstances and complies in all respects with the
9 requirements of Federal Rule of Civil Procedure 23 and due process;
- 10 (d) directing that the Actions be dismissed with prejudice as to TOKIN and,
11 except as provided for herein, without costs;
- 12 (e) discharging and releasing the Releasees from all Released Claims;
- 13 (f) permanently barring and enjoining the institution and prosecution, by
14 Indirect Purchaser Plaintiffs and Class Members, of any other action against
15 the Releasees in any court asserting any claims related in any way to the
16 Released Claims;
- 17 (g) reserving continuing and exclusive jurisdiction over the Settlement,
18 including all future proceedings concerning the administration,
19 consummation and enforcement of this Agreement;
- 20 (h) determining pursuant to Federal Rule of Civil Procedure 54(b) that there is
21 no just reason for delay and directing entry of a final judgment as to TOKIN;
22 and
- 23 (i) containing such other and further provisions consistent with the terms of this
24 Agreement to which the parties expressly consent in writing.

25 Class Counsel also will request that the Court approve the proposed Distribution Plan,
26 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.

1 **D. Settlement Fund**

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

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

20 **14. Refund by Escrow Agent.** If the Settlement as described herein is finally
21 disapproved by any court, or it is terminated as provided herein, or the Judgment is overturned on
22 appeal or by writ, the Gross Settlement Fund, including the Settlement Amount and all interest
23 earned on the Settlement Amount while held in escrow, excluding only Notice and Administrative
24 Costs, Taxes and Tax Expenses (as defined herein), shall be refunded, reimbursed and repaid by
25 the Escrow Agent to TOKIN within five (5) business days after receiving notice pursuant to ¶ 35
26 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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1 Gross Settlement Fund without prior order from the Court, and the Escrow
2 Agent shall be obligated (notwithstanding anything herein to the contrary) to
3 withhold from distribution to Authorized Claimants any funds necessary to
4 pay such amounts, including the establishment of adequate reserves for any
5 Taxes and Tax Expenses (as well as any amounts that may be required to be
6 withheld under Treas. Reg. §1.468B-2(1)(2)); neither TOKIN nor its counsel
7 is responsible therefor, nor shall they have any liability therefor. The
8 Settling Parties agree to cooperate with the Escrow Agent, each other, their
9 tax attorneys and their accountants to the extent reasonably necessary to
10 carry out the provisions of this paragraph.

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

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

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

- 22 (a) To pay all costs and expenses reasonably and actually incurred in connection
23 with providing notice to the Classes in connection with administering and
24 distributing the Net Settlement Fund to Authorized Claimants, and in
25 connection with paying escrow fees and costs, if any;
- 26 (b) To pay all costs and expenses, if any, reasonably and actually incurred in
27 soliciting claims and assisting with the filing and processing of such claims;

- 1 (c) To pay the Taxes and Tax Expenses as defined herein;
- 2 (d) To pay any Fee and Expense Award that is allowed by the Court, subject to
- 3 and in accordance with the Agreement; and
- 4 (e) To distribute the balance of the Net Settlement Fund to Authorized
- 5 Claimants as allowed by the Agreement, any Distribution Plan or order of
- 6 the Court.

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

- 12 (a) Each member of the Classes who claims to be an Authorized Claimant shall
- 13 be required to submit to the Notice and Claims Administrator a completed
- 14 Proof of Claim and Release in such form as shall be approved by the Court;
- 15 (b) Except as otherwise ordered by the Court, each member of the Classes who
- 16 fails to submit a Proof of Claim and Release within such period as may be
- 17 ordered by the Court, or otherwise allowed, shall be forever barred from
- 18 receiving any payments pursuant to this Agreement and the Settlement set
- 19 forth herein;
- 20 (c) The Net Settlement Fund shall be distributed to Authorized Claimants
- 21 substantially in accordance with a Distribution Plan to be approved by the
- 22 Court. Any such Distribution Plan is not a part of this Agreement. No funds
- 23 from the Net Settlement Fund shall be distributed to Authorized Claimants
- 24 until after the Effective Date; and
- 25 (d) All Persons that fall within the definition of the Classes who do not timely
- 26 and validly request to be excluded from the Classes shall be subject to and
- 27 bound by the provisions of this Agreement, the releases contained herein,
- 28

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

4 **F. Attorneys’ Fees and Reimbursement of Expenses**

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

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

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

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

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

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

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

- 6 (a) TOKIN no longer has any right under ¶¶ 33-34 to terminate this Agreement
7 or, if TOKIN does have such right, they have given written notice to Class
8 Counsel that they will not exercise such right;
- 9 (b) Indirect Purchaser Plaintiffs no longer have any right under ¶¶ 33-34 to
10 terminate this Agreement or, if Indirect Purchaser Plaintiffs do have such
11 right, they have given written notice to TOKIN that they will not exercise such
12 right;
- 13 (c) the Court has finally approved the Settlement as described herein, following
14 notice to the Classes and a hearing, as prescribed by Rule 23 of the Federal
15 Rules of Civil Procedure, and has entered the Judgment; and
- 16 (d) the Judgment has become Final.

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

23 **30. Failure of Effective Date to Occur.** If all of the conditions specified in ¶ 28 are
24 not met, then this Agreement shall be cancelled and terminated, subject to and in accordance with
25 ¶¶ 33-35 unless the Settling Parties mutually agree in writing to proceed with this Agreement.

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

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

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

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

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

- 1 (a) within five (5) business days after written notification of such event is sent
2 by counsel for TOKIN to the Escrow Agent, the Gross Settlement Fund—
3 including the Settlement Amount and all interest earned on the Settlement
4 Fund while held in escrow excluding only Notice and Administrative Costs
5 that have either been properly disbursed or are due and owing, Taxes and
6 Tax Expenses that have been paid or that have accrued and will be payable
7 at some later date, and attorneys’ fees and costs that have been disbursed
8 pursuant to Court order—will be refunded, reimbursed and repaid by the
9 Escrow Agent to TOKIN; if said amount or any portion thereof is not
10 returned within such five (5) day period, then interest shall accrue thereon at
11 the rate of ten percent (10%) per annum until the date that said amount is
12 returned;
- 13 (b) within thirty (30) business days after written notification of such event is
14 sent by counsel for TOKIN to Class Counsel, all attorneys’ fees and costs
15 which have been disbursed to Class Counsel pursuant to Court order shall be
16 refunded, reimbursed and repaid by Class Counsel to TOKIN;
- 17 (c) the Escrow Agent or its designee shall apply for any tax refund owed to the
18 Gross Settlement Fund and pay the proceeds to TOKIN, after deduction of
19 any fees or expenses reasonably incurred in connection with such
20 application(s) for refund, pursuant to such written request;
- 21 (d) the Settling Parties shall be restored to their respective positions in the Actions
22 as of the Execution Date, with all of their respective claims and defenses
23 preserved as they existed on that date;
- 24 (e) the terms and provisions of this Agreement, with the exception of ¶¶ 13-15,
25 17, 27-28, 30, 33-35, 37-38, 40-41, 43-50 (which shall continue in full force
26 and effect), shall be null and void and shall have no further force or effect
27 with respect to the Settling Parties, and neither the existence nor the terms of
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1 this Agreement (nor any negotiations preceding this Agreement nor any acts
2 performed pursuant to, or in furtherance of, this Agreement) shall be used in
3 the Actions or in any other action or proceeding for any purpose (other than
4 to enforce the terms remaining in effect); and

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

7 **H. No Admission of Liability**

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

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

19 **38. Use of Agreement as Evidence.** Neither this Agreement nor the Settlement, nor
20 any act performed or document executed pursuant to or in furtherance of this Agreement or the
21 Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the
22 validity of any Released Claims, any allegation made in the Actions, or any wrongdoing or liability
23 of TOKIN; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any
24 liability, fault or omission of the Releasees in any civil, criminal or administrative proceeding in
25 any court, administrative agency or other tribunal. Neither this Agreement nor the Settlement, nor
26 any act performed or document executed pursuant to or in furtherance of this Agreement or the
27 Settlement, shall be admissible in any proceeding for any purpose, except to enforce the terms of
28

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

7 **I. Miscellaneous Provisions**

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

12 **40. Consent to Jurisdiction.** TOKIN and each Class Member hereby irrevocably
13 submit to the exclusive jurisdiction of the Court only for the specific purpose of any suit, action,
14 proceeding or dispute arising out of or relating to this Agreement or the applicability of this
15 Agreement. Solely for purposes of such suit, action or proceeding, to the fullest extent that they
16 may effectively do so under applicable law, TOKIN and the Class Members irrevocably waive and
17 agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they
18 are not subject to the jurisdiction of the Court or that the Court is in any way an improper venue or
19 an inconvenient forum. Without limiting the generality of the foregoing, it is hereby agreed that
20 any dispute concerning the provisions of ¶¶ 7-11 hereof, including but not limited to any suit,
21 action or proceeding in which the provisions of ¶¶ 7-11 hereof are asserted as a defense in whole or
22 in part to any claim or cause of action or otherwise raised as an objection, constitutes a suit, action
23 or proceeding arising out of or relating to this Agreement. In the event that the provisions of ¶¶ 7-
24 11 hereof are asserted by any Releasee as a defense in whole or in part to any claim or cause of
25 action or otherwise raised as an objection in any suit, action or proceeding, it is hereby agreed that
26 such Releasee shall be entitled to a stay of that suit, action or proceeding until the Court has
27 entered a final judgment no longer subject to any appeal or review determining any issues relating
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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:

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

5 HAGENS BERMAN SOBOL SHAPIRO LLP
Jeff Friedman (jefff@hbsslaw.com)
6 715 Hearst Avenue, Suite 202
Berkley, CA 94710
7 Telephone: 510-725-3000
Facsimile: 510-725-3001

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

12 If directed to TOKIN, address notice to:

13 GIBSON DUNN & CRUTCHER, LLP.
Trey Nicoud (tnicoud@gibsondunn.com)
14 555 Mission Street, Ste. 3000
San Francisco, CA 94105
15 Telephone: 415-393-8308
16 Facsimile: 415-374-8473
Email: tnicoud@gibsondunn.com

17
18 **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.

19
20 **46. No Party Deemed to Be the Drafter.** None of the parties hereto shall be deemed
21 to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law,
22 rule of interpretation or construction that would or might cause any provision to be construed
against the drafter hereof.

23
24 **47. Choice of Law.** This Agreement shall be considered to have been negotiated,
25 executed and delivered, and to be wholly performed, in the State of California, and the rights and
26 obligations of the parties to this Agreement shall be construed and enforced in accordance with,
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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.

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

DATED: March 5, 2018

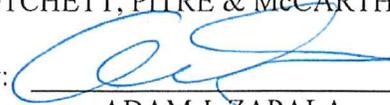
HAGENS BERMAN SOBOL SHAPIRO LLP

By: 
JEFF D. FRIEDMAN

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

1 DATED: March 5, 2018

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

2 By: Brendan 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. NICOUD 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
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