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23 **UNITED STATES DISTRICT COURT**
24 **NORTHERN DISTRICT OF CALIFORNIA**
25 **OAKLAND DIVISION**

26 **IN RE: LITHIUM ION BATTERIES**
27 **ANTITRUST LITIGATION**

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

MDL NO. 2420

**INDIRECT PURCHASER PLAINTIFFS’
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENTS WITH
HITACHI MAXELL, NEC, AND LG
CHEM**

28 **This Document Relates to:**

**ALL INDIRECT PURCHASER
ACTIONS**

Date: October 3, 2017

Time: 2:00 p.m.

Judge: Hon. Yvonne Gonzalez Rogers

Location: Courtroom 1 - 4th Floor

DATE ACTION FILED: Oct. 3, 2012

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT, on October 3, 2017 at 2:00 p.m., or as soon thereafter as the matter may be heard, in the Courtroom of the Honorable Yvonne Gonzalez Rogers, United States District Judge for the Northern District of California, located at 1301 Clay Street, Oakland, California, the Indirect Purchaser Plaintiffs (“IPPs”) will and hereby do move, under Rule 23(e) of the Federal Rules of Civil Procedure (“FRCP”), for entry of an Order:

1. Granting final approval of the proposed settlements with Hitachi Maxell, Ltd. and Maxell Corporation of America (collectively, “Hitachi”), NEC Corporation (“NEC”), and LG Chem, Ltd. and LG Chem America (collectively, “LG Chem”).
2. Dismissing, with prejudice, claims against Hitachi, NEC, and LG Chem from the IPPs’ actions; and
3. Approving IPPs’ plan of distribution.

The grounds for the motion are as follows: (a) the proposed settlements are fair, reasonable, and adequate and satisfy FRCP 23(e); (b) the proposed settlements are the product of arm’s-length negotiations; (c) the plan of distribution is fair, adequate, and reasonable; and (d) the Court-approved notice plan satisfies due process.

IPPs’ Motion is based upon this Notice; the following Memorandum of Points and Authorities; the accompanying Declarations of Steven N. Williams, Alan Vasquez, and Jonathan Mendelson; IPPs’ concurrently-filed Omnibus Response to Objections; and arguments of counsel and all records on file in this matter.

///

1 Dated: August 28, 2017

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DEFINITIONS

A.B. Data	A.B. Data, Ltd.
applEcon	applEcon LLC
Catalyst	Catalyst Repository Systems Inc.
CCAC	IPPs' Consolidated Class Action Complaint (ECF No. 221)
Co-Lead Counsel	Cotchett, Pitre & McCarthy, LLP, Hagens Berman Sobol Shapiro LLP, and Lief Cabraser Heimann & Bernstein, LLP
Dell	Dell Inc.
DPPs	Direct Purchaser Plaintiffs
EconOne	EconOne Research, LLC
Ex. or Exhibit	Unless otherwise noted, this refers to exhibits to the Williams Declaration in Support of IPPs' Motion for Final Approval (filed herewith)
FCAC	IPPs' Fourth Consolidated Amended Complaint (ECF No. 1168)
FRCP	Federal Rules of Civil Procedure
Gilardi	Gilardi & Co. LLC (a KCC Class Action Services company)
Hitachi	Hitachi Maxell, Ltd. and Maxell Corporation of America
HP	Hewlett Packard Company
IDS	iDiscovery Solutions, Inc.
IPPs	Indirect Purchaser Plaintiffs
IPPs' Response to Objections	IPPs' Omnibus Response to Objections to the LG Chem, Hitachi, and NEC Settlements (filed herewith)
IPPs' Preliminary Approval Motions	IPPs' Notice of Motion and Motion for Preliminary Approval of Settlements with LG Chem (ECF No. 1652), and Hitachi and NEC (ECF No. 1672)
IPPs' Motion for Reimbursement	IPPs' Motion for Reimbursement of Certain Expenses (ECF No. 1446)
JPML	Judicial Panel on Multidistrict Litigation
LG Chem	LG Chem, Ltd. and LG Chem America, Inc.
LIBs	Lithium Ion Batteries

1	Mendelson Declaration	Declaration of Jonathan Mendelson Regarding Implementation of Notice Email Campaigns and Claim Submissions to Date (filed herewith)
2		
3	NEC	NEC Corporation
4	Omega	Omega Discovery Solutions, LLC
5	Panasonic	Panasonic Corporation and Panasonic Corporation of North America
6	Preliminary Approval Order	The Court's Order Granting Settlement Class Certification and Preliminary Approval of Class Action Settlements with LG Chem, Hitachi, and NEC Defendants (ECF No. 1714)
7		
8	Schachter Declaration	Declaration of Eric Schachter re Dissemination of the Sony Settlement Notice and Requests for Exclusion (ECF No. 1492-1)
9		
10	Sanyo	Sanyo Electric Co., Ltd., Sanyo North America Corporation, and Sanyo GS Soft Energy Co. Ltd.
11		
12	SCAC	Second Consolidated Amended Complaint (ECF No. 419)
13		
14	Second Round Settlements	IPPs' proposed settlements with LG Chem, Hitachi and NEC
15	The Settlements	IPPs' settlements with LG Chem, Hitachi and NEC
16		
17	Settling Defendants	LG Chem, Hitachi, and NEC
18	Settlement Class	The class certified for settlement purposes in this Court's order granting preliminary approval (ECF No. 1714)
19		
20	Sipree	Sipree, Inc.
21	Sony	Sony Corporation, Sony Energy Devices Corporation, and Sony Electronics, Inc.
22	Sony Settlement	IPPs' Settlement with Sony
23	Supporting Counsel	The attorneys and law firms that assisted Interim Co-Lead Counsel in the prosecution of this litigation.
24		
25	TCAC	IPPs' Third Consolidated Amended Complaint (ECF No. 519)
26	Toshiba	Toshiba Corporation and A&T Battery Corporation
27		
28	First Vasquez Declaration	Declaration of Alan Vasquez in Support of IPPs' Motion for Preliminary Approval of the Settlements with LG Chem, Hitachi, and NEC

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	(ECF No. 1652-4)
Second Vasquez Declaration	Declaration of Alan Vasquez (Gilardi) in Support of IPPs' Motion for Final Approval of the Settlements with LG Chem, Hitachi, and NEC (filed herewith)
Williams Declaration	Declaration of Steven N. Williams in Support of IPPs' Motion for Final Approval of the Settlements with LG Chem, Hitachi, and NEC (filed herewith)

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MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF ISSUES TO BE DECIDED

The issues before the Court are as follows:

1. Whether to grant final approval of IPPs' settlements with LG Chem, Hitachi and NEC (collectively, "the Settlements");
2. Whether to dismiss with prejudice IPPs' claims against LG Chem, Hitachi, and NEC; and
3. Whether to approve IPPs' plan of distribution.

II. INTRODUCTION AND STATEMENT OF RELEVANT FACTS

IPPs move for final approval of the Settlements with LG Chem, Hitachi, and NEC. These Settlements are fair, reasonable, and adequate, and provide substantial benefits to the Settlement Class. They are also a reflection of the painstaking and difficult work Co-Lead Counsel has completed to date. Each Settlement is the result of extensive arm's-length negotiations between experienced and informed counsel from both sides.

Below is a summary of all the settlements IPPs have achieved to date¹:

Defendant Family	Damages Attributed to Defendant Family by IPPs	Percent Share of Total Damages	Contribution to Settlement Fund	Percent Recovery for IPPs (of Damages Attributed to Defendant Family by IPPs)
Hitachi	\$3,187,687.00	0.3%	\$3,450,000.00	108.2%
NEC	\$967,035.00	0.1%	\$2,500,000.00	258.5%
LG Chem	\$123,312,217.00	12.8%	\$39,000,000.00	31.6%
Sony	\$239,725,760.00	24.8%	\$19,500,000.00	8.1%
TOTAL	\$367,192,699.00	38%	\$64,450,000.00	17.55%

¹ IPPs allege total damages of \$967,000,000. IPP Class Cert. Mot. (ECF No. 1036) at 35.

1 The Settlements are a significant achievement for the Settlement Class. In addition to
2 their settlement with Sony, these three additional settlements brings the total settlement fund up to
3 \$64,650,000. This represents more than 17% of the total damages IPPs estimate resulted from
4 Settling Defendants' conduct in this case. Under the terms of these Settlements, the Settling
5 Defendants will make cash payments as detailed above, and will cooperate with IPPs in
6 prosecuting the case against the remaining Defendants. Williams Declaration ¶ 29; Ex. 1 (LG
7 Chem Settlement) ¶ G; Ex. 2 (Hitachi Settlement) ¶ G; and Ex. 3 (NEC Settlement) ¶ G. In
8 exchange, the Settling Defendants will receive a complete release of the Settlement Class claims
9 involving anticompetitive conduct related to the sales of LIBs. Exs. 1-3 at ¶ B. 5(e).

10 The Settlement Classes have received adequate notice of the Settlements. Gilardi & Co.,
11 LLC ("Gilardi") and Sipree, Inc. ("Sipree"), nationally recognized notice providers, implemented
12 the Court approved notice program as follows: Sipree directly emailed the long form notice to
13 more than 8.7 million potential Class Members (of which 7.3 million were successfully
14 delivered), posted the notice on <https://www.reversethecharge.com>, maintained the website and
15 processed claims. Mendelson Declaration ¶ 5-6. To date, there have been 1.92 million visits to
16 the settlement website, 557,551 claims, and 6 opt-out requests. *Id.* ¶ 7. Gilardi published the
17 short form notice in *USA Today*, used banner and text ads with Collective
18 (<http://www.collective.com/>) to achieve more than 359,640,400 million digital impressions,
19 created a Facebook banner ad campaign that reached 273,293 unique individuals, created a
20 Twitter campaign that resulted in 41,861 clicks to the settlement website, and disseminated a
21 nationwide news release via PR Newswire. Second Vasquez Declaration ¶ 15-22.

22 After this extensive notice program, there were only ten objections (filed by four
23 objectors) and six requests for exclusion. *See* Table 1 below and Mendelson Declaration ¶ 7.
24 One of these objections has since been withdrawn, and none provides any valid reason to deny
25 final approval of these settlements.

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Objector	Objection	Counsel	ECF No.	Filing Date
Christopher Andrews	Objections to LG, HML, & NEC Settlements	<i>pro se</i>	1753	April 24, 2017
Christopher Andrews	Supplemental Objection to LG, HML, & NEC Settlements	<i>pro se</i>	1787	May 4, 2017
Christopher Andrews	2nd Supplemental Objection to LG, HML, & NEC Settlements	<i>pro se</i>	1833	June 7, 2017
Christopher Andrews	3rd Supplemental Objection to LG, HML, & NEC Settlements	<i>pro se</i>	1834	June 7, 2017
William H. Yoes	Objections to terms of Settlement *** Withdrawn on July 21, 2017 (ECF 1886)***	<i>pro se</i>	1843	June 26, 2017
Christopher Andrews	4th Supplemental Objection to LG, HML, & NEC Settlements	<i>pro se</i>	1900	August 3, 2017
Michael Frank Bednarz	IPP Settlements and Fee Request	Theodore H. Frank	1902	August 9, 2017
Gordon Morgan	Objections to LG, HML, & NEC Settlements	Timothy Hanigan	1906	August 11, 2017
Michael Frank Bednarz	Supplemental Objection	Theodore H. Frank	1907	August 11, 2017
Gordon Morgan	Objections to LG, HML, & NEC Settlements	Timothy Hanigan	1915	August 21, 2017

IPPs therefore move that the Court grant final approval of the Settlements, enter final judgment dismissing IPPs' claims against the Settling Defendants, and approve the plan of distribution.

III. PROCEDURAL HISTORY

IPPs alleged that Defendants (including LG Chem, Hitachi, and NEC), conspired to fix the prices of LIBs, which are widely used in consumer electronics, and that the conspiracy began at least as early as January 1, 2000 and continued until at least May 31, 2011. TCAC ¶ 4.

IPPs alleged a textbook price-fixing cartel carried out through agreements to fix prices, restrict output, and allocate markets. *Id.* ¶ 6. IPPs alleged that Defendants' collusive activities were implemented through various means, including direct communication between competitors, face-to-face meetings, and the use of trade associations. *Id.* ¶¶ 6, 7, 277-293, and 503. IPPs also alleged that Defendants attempted to conceal their activities by meeting in private rooms at restaurants and hotels, and instructing subordinates to delete suspicious emails. *Id.* ¶¶ 7 and 18.

1 Two Defendants—LG Chem and Sanyo—pled guilty to criminal charges for fixing the prices of
2 LIBs, and Sanyo named a third Defendant, Panasonic, as a co-conspirator. *Id.* ¶¶ 294 and 302.

3 **A. Litigation History**

4 **1. IPPs’ Early Complaints and Proceedings Before the JPML**

5 The first IPP complaint was filed on October 4, 2012 in the Northern District of
6 California. *See Hanlon v. LG Chem. et al.*, No. 12-12419 (N.D. Cal.) (ECF No. 1). Thereafter,
7 additional complaints making substantially similar allegations were filed in several district courts.
8 In total, forty-seven such actions were filed. *See* ECF No. 1 (Transfer Order). Interim Co-Lead
9 Counsel participated in proceedings before the JPML, where Defendants and numerous Plaintiffs
10 in the tag-along actions argued that the related actions should be transferred and centralized in the
11 Northern District of California. On February 6, 2013, the JPML transferred all cases to this Court
12 and found centralization appropriate under 28 U.S.C. Section 1407. *Id.*

13 **2. Appointment of Leadership**

14 On May 17, 2013, this Court appointed Cotchett, Pitre & McCarthy, LLP, Hagens Berman
15 Sobol Shapiro LLP, and Lief Cabraser Heimann & Bernstein, LLP as Interim Co-Lead Counsel
16 for the IPPs. ECF No. 194. Jennie Anderson of Andrus Anderson LLP was appointed Liaison
17 Counsel for the IPPs. *Id.*

18 **3. The Consolidated Complaints and Three Rounds of Motions to
19 Dismiss**

20 On July 2, 2013, IPPs filed a detailed 162-page Consolidated Class Action Complaint.
21 ECF No. 221. The CCAC named twenty-seven Defendants from nine corporate families that
22 manufactured LIBs. *Id.* This complaint outlined IPPs’ allegations that these companies
23 conspired to fix the prices of LIBs used in consumer electronics in the U.S. *Id.*

24 In the first round of motions to dismiss, Defendants filed one joint and five individual
25 motions to dismiss. *See* ECF Nos. 288 (Joint Motion); 284 (Hitachi and Maxell); 289 (Panasonic
26 and Sanyo); 291 (LG Chem America); 293 (Toshiba); and 296 (Sony). Defendants made the
27 following arguments: (1) that Plaintiffs had failed to allege a plausible “overarching” conspiracy
28 involving each Defendant; (2) that IPPs’ claims were barred by the statute of limitations; (3) that

1 Defendants' U.S.-based subsidiaries were not properly named as Defendants; and (4) that various
2 state law claims should be dismissed. *Id.* Defendants filed a second, joint supplemental motion
3 to dismiss challenging IPPs' antitrust standing and claims under various state laws. *See* ECF No.
4 401. On July 21, 2014, this Court issued a 29-page Order dismissing IPPs' CCAC with leave to
5 amend. ECF No. 361. The Court rejected Defendants' first two arguments, holding that IPPs had
6 alleged a plausible conspiracy as to the Defendants' Korean and Japanese parent companies, but
7 found that IPPs needed to make more detailed allegations as to Defendants' subsidiaries. *Id.* at 3.

8 On April 11, 2014, IPPs filed their SCAC. ECF No. 419. The SCAC expanded to 196-
9 pages and added significant detail regarding Defendants' domestic subsidiaries. *Id.* On April 25,
10 2015, Defendants filed a joint motion to dismiss the SCAC on multiple grounds. ECF 428. With
11 the exception of the Court's dismissal of two state law claims (Montana and New Hampshire),
12 and the dismissal of the State Governmental Damages Subclass (except California), Defendants'
13 motion was denied. *See* ECF No. 512 at 36 and 44. On October 22, 2014, IPPs filed their TCAC
14 to conform to this order. ECF No. 519.

15 On December 2, 2015, IPPs filed a Motion to Amend the TCAC to add, substitute, and
16 dismiss certain class representatives. ECF No. 984. On March 14, 2016, with the exception of
17 five proposed substitute class representatives who only purchased Apple products, the Court
18 granted IPPs' motion. ECF No. 1154. IPPs filed the FCAC on March 18, 2016. ECF No. 1168.

19 **4. Toshiba's Summary Judgment Motion**

20 On June 30, 2015, Toshiba filed a motion for summary judgment, and argued that
21 Plaintiffs' claims were barred by the statute of limitations, because Toshiba allegedly withdrew
22 from the conspiracy by 2004. ECF No. 735. On November 13, 2015, IPPs and DPPs collectively
23 opposed the motion. ECF No. 957. On March 16, 2016, after oral argument, the Court denied
24 Toshiba's motion. ECF No. 1160.

25 **5. The Discovery Process**

26 IPPs propounded and responded to multiple sets of discovery, conducted numerous
27 (lengthy) meet and confers, and engaged in multiple rounds of motion practice in front of
28 Magistrate Judge Ryu on various discovery issues. *See* ECF Nos. 805, 822, 836, 938, 1143, and

1 1177. Defendants have produced more than 2.7 million pages of documents from over 250
2 document custodians and centralized files, and produced voluminous electronic transactional
3 data. Williams Declaration ¶ 9. IPPs contracted with Catalyst, Omega Discovery Solutions, and
4 iDiscovery Solutions to retrieve, host, review, and synthesize these documents. *Id.* IPPs engaged
5 IDS to retrieve documents from the class representatives in response to requests from Defendants.
6 *Id.* As of the date of the filing of their most recent motion for reimbursement of expenses, IPPs
7 had incurred a total of \$660,994.53 in costs for these services. *Id.* ¶ 11; *see also* ECF 1814.
8 Having reviewed these documents, and identified relevant witnesses, IPPs have taken thirty-four
9 depositions of Defendants' witnesses (merits and 30(b)(6) combined). Williams Declaration ¶ 5.
10 IPPs have also conducted extensive expert discovery. *Infra* at 8.

11 Many of the documents produced in discovery are written in Japanese and Korean and
12 IPPs had to obtain certified translations of the documents before they could be used in depositions
13 and court filings. *See* Williams Declaration ¶ 12; and ECF No. 665 at 1. As of the date of the
14 filing of their most recent motion for reimbursement of expenses, IPPs had incurred a total of
15 \$199,193.97 in charges for certified translations for nearly 1,400 documents. Williams
16 Declaration ¶ 12; *see also* ECF No. 1814. IPPs have used hundreds of certified translations at
17 depositions and in court filings in this case. *Id.* Every class representative identified in the FCAC
18 has been deposed. *Id.* at ¶ 5. Co-Lead Counsel and Supporting Counsel prepared the class
19 representatives for, and defended them in, these depositions. *Id.*

20 6. Class Certification

21 On January 22, 2016, IPPs filed their motion for class certification. ECF No. 1036. IPPs
22 filed the expert reports of economists Dr. Edward Leamer and Dr. Rosa Abrantes-Metz in support
23 of this motion. ECF Nos. 1036-1 and 1036-2. Drs. Leamer and Abrantes-Metz have done
24 substantial work on this case over a long period of time, and in the course of preparing their
25 reports, they conducted a significant amount of work analyzing the impact of Defendants'
26 conspiracy and the damages to the IPP class.

27 Defendants filed their opposition to class certification on May 24, 2016. ECF No. 1551.
28 As part of that filing, Defendants submitted two *Daubert* motions and the expert reports of

1 Margaret Guerin-Calvert, Dr. Quinn Horn, and Daniel Moe to counter the opinions offered by Dr.
2 Leamer and Dr. Abrantes-Metz. ECF Nos. 128-3; 1280-5. On August 23, 2016, IPPs filed their
3 reply in support of class certification. ECF No. 1402-2. IPPs submitted reply reports by Drs.
4 Leamer and Abrantes-Metz that provided specific responses to criticisms of their work made by
5 Defendants' experts. *Id.* Each of the expert reports filed by IPPs was based on extensive
6 economic analyses of Defendants' documents, transactional data and opposing expert reports, and
7 took many hours to complete. Williams Declaration ¶¶ 12-16. Drs. Leamer and Abrantes-Metz
8 were deposed by defendants for a collective sixteen and a half hours. *Id.* ¶ 14.

9 Economic consulting firm EconOne performed work at the direction of Dr. Leamer, which
10 included analysis of Defendants' and non-parties' transactional data. *Id.* ¶ 13. EconOne analyzed
11 seventy-one data sets, and data from each Defendant. *Id.* This analysis involved a systematic
12 review of more than 381 gigabytes of data as well as detailed regressions and sensitivity analyses.
13 *Id.* Class Counsel have also engaged appEcon for additional data collection. *Id.* ¶ 17. As a
14 result of this extensive work, IPPs have incurred a total of \$3,299,326.78 in expert expenses. *See*
15 Williams Declaration ¶ 18 and ECF No. 1814.

16 On April 12, 2017, this Court entered its Order denying IPPs' class certification motion
17 without prejudice. ECF No. 1735. In that Order, the Court requested additional information and
18 briefing on issues related to pass-on, third party packers, and focal point pricing. *Id.* at 19. IPPs'
19 renewed class certification motion is due on September 26, 2017. ECF No. 1873 at 2. To
20 respond to the Court's concerns, IPPs filed a request for issuance of Letters Rogatory to obtain
21 discovery from Simplo Technology Co. Ltd. ("Simplo Taiwan") and Dynapack International
22 Technology Corp. ("Dynapack"), which are both packers located in Taiwan. The Court granted
23 this request. ECF No. 1866. IPPs also served a subpoena on Simplo USA, Inc. (Simplo Taiwan's
24 subsidiary). While Simplo USA produced data, IPPs have also pursued information regarding
25 Simplo USA's ability to demand data from its parent company, Simplo Taiwan. ECF No. 1839.
26 Judge Ryu granted IPPs' motion. ECF No. 1905. The deposition of Simplo USA to probe its
27 custody and control over the data from its parents company is scheduled for the end of August.
28

1 **7. IPPs' Motion for Attorneys' Fees**

2 On May 29, 2017, IPPs filed their motion for attorney's fees, reimbursement of expenses,
3 and class representative service awards. ECF No. 1814. The hearing on this motion is on
4 October 3, 2017. ECF No. 1835.

5 **B. Settlement History**

6 On December 6, 2016, IPPs filed their Motion for Preliminary Approval of the LG Chem
7 Settlement, and on January 24, 2017, IPPs filed their Motion for Preliminary Approval of the
8 Settlements with Hitachi and NEC. ECF Nos. 1652 and 1672. Those motions describe the
9 Settlements' terms and explain how they are fair, adequate, and reasonable. *Id.* The Settlements
10 were the result of painstaking, arm's-length negotiations among experienced counsel. *Id.* On
11 March 9, 2017, LG Chem filed a supplemental motion in support of IPPs' motion for preliminary
12 approval. ECF No. 1699-2.

13 This Court granted IPPs' motion and preliminarily determined that "the Settlement Class
14 meets the Rule 23 requirements for a settlement class." ECF No. 1714 at ¶ 6.

15 **C. The Terms of the Settlements**

16 The terms of the Settlements are detailed below and in IPPs' motions for preliminary
17 approval. ECF Nos. 1652 and 1672. The Settlements are available on the settlement website.
18 Second Vasquez Declaration at ¶ 16.

19 **1. The Settlement Class**

20 When the Court granted preliminary approval of the Settlements, it certified the following
21 Settlement Class:

22 All persons who, as residents of the United States and during the period from and
23 including January 1, 2000 through May 31, 2011, indirectly purchased new and
24 for their own use and not for resale one of the following products which contained
25 a lithium-ion cylindrical battery manufactured by one or more defendants of their
coconspirators: (i) a portable computer; (ii) a power tool; (iii) a camcorder; or (iv)
a replacement battery for any of these products.

26 Excluded from the Class are the MDL Defendants, their parents, subsidiaries and
27 affiliates, and any judge, justice, or judicial officer presiding over this matter and
the members of her or his immediate families and judicial staff.

28 ECF No. 1714 at ¶ 3.

1 The Court designated the following individuals and entities as representatives of the
2 Settlement Class:

3 Christopher Hunt; Piya Robert Rojanasathit; Steve Bugge, Tom Pham, Bradley
4 Seldin, Patrick McGuinness, John Kopp, Drew Fennelly, Jason Ames, William
5 Cabral, Donna Shawn, Joseph O’Daniel, Cindy Booze, Matthew Ence, David
6 Tolchin, Matt Bryant, Sheri Harmon, Christopher Besette, Caleb Batey, Linda
7 Lincoln, Bradley Van Patten, The City of Palo Alto, and The City of Richmond.

8 *Id.* at ¶ 4

9 The certified nationwide Settlement Class is consistent with the proposed class set forth in
10 the FCAC. The scope of the release is appropriate, because it is limited to the subject matter of
11 this lawsuit.

12 **2. Definitions**

The following definitions, among others, are set forth in the Settlements:

- 13 • “Lithium Ion Battery” means a Lithium Ion Battery Cell or Lithium Ion
14 Battery Pack.
- 15 • “Lithium Ion Battery Cell” means a cylindrical, prismatic, or polymer cell
16 used for the storage of power that is rechargeable and uses lithium ion
17 technology.
- 18 • “Lithium Ion Battery Pack” means Lithium Ion Cells that have been
19 assembled into a pack, regardless of the number of Lithium Ion Cells
20 contained in such packs.
- 21 • “Finished Product” means any product and/or electronic device containing a
22 Lithium Ion Battery or Lithium Ion Battery Pack, including but not limited to
23 laptop PCs, notebook PCs, netbook computers, tablet computers, mobile
24 phones, smart phones, cameras, camcorders, digital video cameras, digital
25 audio players, and power tools.

26 *See, e.g.*, Exs. 1-3 at ¶ A(m, and q-s).

27 **3. Release of Claims**

28 Once the Settlement becomes final, the Settlement Class will relinquish any claims they
have against the Settling Defendants based, in whole or in part, on matters alleged in the FCAC.
The releases exclude claims for product liability, breach of contract, breach of warranty, personal
injury, or any other claim unrelated to the allegations in this litigation. Exs. 1-3 at ¶ 11. The

1 Settlements do not release claims arising from restraints of competition directed at goods other
2 than (a) LIBs or (b) LIBs contained in Finished Products. *Ibid.*

3 **4. Gross Settlement Fund**

4 Once the Settlements become final and the Court enters a final judgment of dismissal with
5 prejudice as to the Settling Defendants, the Gross Settlement Fund, consisting of \$44.95 million
6 plus accrued interest thereon, will be used to do the following:

- 7 (a) Pay all costs and expenses reasonably and actually incurred in connection
8 with providing notice to the Class in connection with administering and
9 distributing the Net Settlement Fund to Authorized Claimants, and in
10 connection with paying escrow fees and costs, if any;
- 11 (b) Pay all costs and expenses, if any, reasonably and actually incurred in
12 soliciting claims and assisting with the filing and processing of such
13 claims;
- 14 (c) Pay the Taxes and Tax Expenses as defined herein;
- 15 (d) Pay any Fee and Expense Award that is allowed by the Court, subject to
16 and in accordance with the Agreement;
- 17 (e) Distribute the balance of the Net Settlement Fund to Authorized Claimants
18 as allowed by the Agreement and/or any Distribution Plan or order of the
19 Court; and
- 20 (f) Pay Notice and Administrative Costs as they become due, which may not
21 exceed seven-hundred fifty thousand U.S. dollars (\$750,000).

22 Exs. 1-3 at ¶¶ E.19 (a)-(e).

23 **5. Net Settlement Fund**

24 Subject to the approval and direction of the Court, the Net Settlement Fund, plus accrued
25 interest thereon, will be used to make a distribution to the Settlement Class. Exs. 1-3 ¶ E. 20. As
26 set forth below, Plaintiffs propose a *pro rata* distribution to class members based upon the
27 number of approved purchases of LIBs per class member during the Settlement Class Period.
28 Unused funds allocated to settlement administration fees will be distributed to the class *pro rata*.
In no event shall any Settlement consideration revert to the Settling Defendants. Exs. 1-3 ¶ E. 22.

6. Settling Defendants Option to Terminate

The Settling Defendants retained the option to terminate the Settlements only if the purchases of LIBs, LIB Packs, and/or Finished Products made by class members who timely and validly requested exclusion equaled or exceeded five percent (5%) of the total volume of purchases made by the Class. Exs. 1-3 ¶ E.38. After meeting and conferring with Co-Lead Counsel, the Settling Defendants may elect to terminate the Settlements by serving written notice by email and overnight courier, and by filing a copy of such notice with the Court no later than thirty (30) days before the date for the final approval hearing of this Settlement. *Ibid.* Such defendants would have a minimum of ten (10) days to decide whether to terminate the Agreement after receiving the final opt-out list. *Ibid.* No Settling Defendants has exercised this option.

7. Provision Regarding Class Action Fairness Act (“CAFA”) Notice

The Settlements state that the Settling Defendants will provide the notices required by CAFA. Exs. 1-3 at ¶ B. 4. Each Settling Defendant has provided such notice. Exs. 4-6.

D. IPPs’ Proposed Notice Program

The selection of Gilardi and Sipree as the notice program administrators was done through competitive bidding by qualified service providers. Their proposals were deemed to be the most suitable notice program at the most competitive price. Based upon their experiences in other class action cases and the competitive bidding process used here, Co-Lead Counsel believe this sum to be reasonable in relation to the value of the Settlements.

The notice program provided the following: (1) direct notice to potential Class Members whose email addresses could be reasonably obtained once preliminary approval was granted; (2) printed publication notice in *USA Today*; (3) online publication on a settlement website and through internet banner advertisements Collective, Inc., Facebook, and Twitter; (4) publication of a nationwide press release in PR Newswire; and (5) the maintenance of a settlement website. Second Vasquez Declaration ¶ 15-22. To date 7.3 million people have received email noticed, 1.92 million people have visited the Settlement website, and 557,551 people have filed claims. Mendelson Declaration ¶¶ 5-7.

1 **E. IPPs’ Proposed Plan of Distribution**

2 IPPs propose to distribute the funds *pro rata* to Class Members based upon the number of
3 qualifying purchases each submits through their claim forms. Under this plan, each Class
4 Member receives the same treatment regardless of the state in which person or entity resides in.

5 **IV. ARGUMENT**

6 **A. The Settlements Are Fair, Adequate, and Reasonable**

7 The law favors the settlement of class action suits. *See, e.g., Churchill Vill., L.L.C. v. GE*,
8 361 F.3d 566, 576 (9th Cir. 2004) (“*Churchill Village*”); *Class Plaintiffs v. City of Seattle*, 955
9 F.2d 1268, 1276 (9th Cir. 1992). “[T]he decision to approve or reject a settlement is committed
10 to the sound discretion of the trial judge because he is exposed to the litigants, and their strategies,
11 positions and proof.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (internal
12 quotations omitted) (quoting *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 626 (9th
13 Cir. 1982) (“*Officers for Justice*”)) (“*Hanlon*”). A proposed class action settlement reached after
14 meaningful discovery and arm’s length negotiation, when conducted by capable counsel, is
15 presumed to be fair. *See M. Berenson Co. v. Faneuil Hall Marketplace, Inc.*, 671 F. Supp. 819,
16 822 (D. Mass. 1987).

17 Courts are empowered to exercise discretion when deciding whether to grant final
18 approval. *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff’d*, 661 F.2d
19 939 (9th Cir. 1981); *Torrise v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993)
20 (“*Torrise*”). In doing so, however, courts are advised to defer to the “private consensual decision
21 of the parties.” *Hanlon*, 150 F.3d at 1027 (citation omitted). In the Ninth Circuit, voluntary
22 conciliation and settlement are the preferred means of dispute resolution. *See Officers for Justice*,
23 688 F.2d at 625; *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976); *Utility*
24 *Reform Project v. Bonneville Power Admin.*, 869 F.2d 437, 443 (9th Cir. 1989).

25 In determining whether a settlement is fair, reasonable, and adequate, district courts
26 consider the following factors:

27 (1) the strength of the plaintiff’s case; (2) the risk, expense, complexity, and likely
28 duration of further litigation; (3) the risk of maintaining class action status
 throughout the trial; (4) the amount offered in settlement; (5) the extent of
 discovery completed and the stage of the proceedings; (6) the experience and

1 views of counsel; (7) the presence of a governmental participant; and (8) the
2 reaction of the class members of the proposed settlement.

3 *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011) (citing *Churchill*
4 *Village*, 361 F.3d at 575 and *Torrison*, 8 F.3d at 1375).

5 Each of these factors supports final approval of the Settlements.

6 **1. While the Case Is Strong, the Settlements Alleviate Significant Risks**

7 While IPPs' case is compelling, antitrust litigation of this magnitude and complexity is
8 notoriously difficult. The Settlements alleviate certain risks inherent in litigation, while also
9 providing cash to the Settlement Class, valuable cooperation to Class Counsel as they continue to
10 pursue claims against the other Defendants, and the potential for Class Counsel to recoup certain
11 out-of-pocket expenses incurred so far in this litigation. *See* Williams Declaration ¶ 29; IPPs'
12 Mot. for Att'ys' Fees & Reimbursement Expenses (ECF No. 1814); *compare Larsen v. Trader*
13 *Joe's*, No. 11-cv-05188-WHO, 2014 U.S. Dist. LEXIS 95538, at *12 (N.D. Cal. July 21, 2014)
14 (cites omitted) ("*Larsen*").

15 **2. The Settlement Amount Provides Considerable Benefits to the Class**

16 The Settlements' payments totaling \$44,950,000 confer a substantial benefit to the
17 Settlement Class, because—beyond receiving these funds—the Class will avoid the uncertainty,
18 delay, and risk of continued litigation. Williams Declaration ¶ 8. Based on the work done in
19 support of class certification, IPPs estimate that the Settlements represent more than 100% of the
20 single damages attributable to NEC's sales and Hitachi's sales, and 31.9% of the single damages
21 attributable to LG Chem's sales. This represents over 17% of the damages attributable to the
22 Settling Defendants and 4.6% of total single damages attributable to all defendants.

23 These figures reflect the fact that antitrust class action litigation is notoriously risky. *See,*
24 *e.g., In re Shopping Carts Antitrust Litig.*, MDL No. 451-CLB, M-21-29, 1983 U.S. Dist. LEXIS
25 11555 (S.D.N.Y. Nov. 18, 1983). They also reflect the well-recognized benefits to both sides of
26 reaching a settlement before class certification. Further, the Settlements preserve IPPs' right to
27 litigate against the remaining Defendants for the total damage amount based on joint and several
28 liability. Williams Declaration ¶ 28; *compare In re Corrugated Container Antitrust Litig.*,

1 M.D.L. No. 310, 1981 U.S. Dist. LEXIS 9687, at *47-49 (S.D. Tex. June 4, 1981) (“*In re*
2 *Corrugated Container*”).

3 The Settlement amounts are reasonable and well within the range of possible final
4 approval. See *In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. 14-CV-2058 JST, 2015 WL
5 9266493, at *5 (N.D. Cal. Dec. 17, 2015) (citing *Fisher Bros. v. Mueller Brass Co.*, 630 F. Supp.
6 493, 499 (E.D. Pa. 1985)) (holding settlements equal to .1%, .2%, 2%, .3%, .65%, .88%, and
7 2.4% of defendants’ total sales were reasonable); *Four in One Co. v. S.K. Foods, L.P.*, No. 2:08-
8 cv-3017 KJM EFB, 2014 WL 28808, at *9 (E.D. Cal. Jan. 2, 2014) (holding settlement
9 amounting to 1% of defendants’ sales were reasonable). In line with this authority, this Court
10 held at preliminary approval that the Settlements “meet[] the Rule 23 requirements for a
11 settlement class.” ECF No. 1714 ¶ 4.

12 The Settlements also require the Settling Defendants to cooperate with IPPs in the
13 prosecution of the case against the remaining Defendants. Williams Declaration ¶ 28. This is a
14 valuable benefit that will save time, reduce costs, and provide information, witnesses, and
15 documents that IPPs might not otherwise be able to access. Compare *In re Mid-Atlantic Toyota*
16 *Antitrust Litig.*, 564 F. Supp. 1379, 1386 (D. Md. 1983); *In re Linerboard Antitrust Litig.*, 292 F.
17 Supp. 2d 631, 643 (E.D. Pa. 2003); and *In re Corrugated Container*, 1981 U.S. Dist. LEXIS
18 9687, at *47-49.

19 3. The Extensive Discovery Conducted in This Case Favors Final 20 Approval

21 As detailed above (*supra* at 3), there has been extensive discovery in this case.
22 Defendants have produced more than 2.7 million pages of documents as well as voluminous
23 electronic transactional data. Williams Declaration ¶ 6. IPPs have taken thirty-four merits and
24 30(b)(6) depositions, and conducted extensive expert discovery. *Id.* Moreover, IPPs have
25 collected and produced documents from the class representatives, and have prepared them for and
26 defended them in dispositions. *Id.*

27
28 ///

1 **4. The Experience and Views of Counsel Favor Final Approval**

2 Interim Co-Lead Counsel have extensive experience in antitrust and consumer class
3 actions, and have determined—based on the progression of this case—that the Settlements are in
4 the best interests of the Settling Class. Williams Declaration ¶ 35.

5 **5. The Class Members’ Positive Reaction Favors Final Approval**

6 The reactions of Class Members are one factor courts consider in determining the fairness
7 and adequacy of a proposed settlement. *See Churchill Village*, 361 F.3d at 575; *Hanlon*, 150 F.3d
8 at 1026. Numerous courts have observed, for example, that “the absence of a large number of
9 objections to a proposed class action settlement raises a strong presumption that the terms of a
10 proposed class settlement action are favorable to the class members.” *Larsen*, 2014 U.S. Dist.
11 LEXIS 95538, at *16 (internal quotes omitted) (citing *Nat’l Rural Telecomms. Coop. v.*
12 *DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004)); *see also Create-A-Card, Inc. v. INTUIT,*
13 *Inc.*, No. CV-07-6452 WHA, 2009 U.S. Dist. LEXIS 93989, at *15 (N.D. Cal. Sep. 22, 2009).

14 Pursuant to the Court’s Preliminary Approval Order, 7.3 million class notices were
15 successfully emailed to potential class members throughout the United States. *See Mendelson*
16 *Declaration* ¶ 5. Notice was also published in national magazines and on the internet. *Second*
17 *Vasquez Declaration* ¶¶ 15-22. Despite this expansive notice program, there were only ten
18 objections (filed by four objectors) and six requests for exclusion. One of these objections has
19 since been withdrawn, and none of them raise any valid reason not to approve the Settlements.
20 *See IPPs’ Response to Objections* (filed herewith). In addition, only six individuals requested to
21 be excluded from the class. *See Mendelson Declaration* ¶ 7.

22 The minute number of objections and exclusions is telling given the extensive notice
23 program, as well as the large number of Class Members. The positive reaction to the Settlement
24 is another factor which supports a finding that the Settlements are fair, adequate, and reasonable.
25 *See, e.g., Pallas v. Pac. Bell*, No. C-89-2373 DLJ, 1999 WL 1209495, at *8 (N.D. Cal. July 13,
26 1999); *Arnold v. Ariz. Dept. of Pub. Safety*, No. CV-01-1463-PHX-LOA, 2006 WL 2168637, at
27 *10 (D. Ariz. July 31, 2006); and *In re Patriot Am. Hospitality Inc. Sec. Litig.*, No. MDL C-00-
28 1300 VRW, 2005 WL 3801594, at *2 (N.D. Cal. Nov. 30, 2005).

1 **B. The Settlements Are the Product of Arm’s-Length Negotiations**

2 The Settlements are the product of good faith, arm’s-length negotiations among
3 experienced and well-informed counsel. IPPs’ negotiations with the Settling Defendants occurred
4 over a span of several months and involved multiple face-to-face meetings, and phone calls.
5 Williams Declaration ¶ 26. In negotiating the Settlements, the parties relied on extensive
6 documentary and other discovery, including expert analysis. Courts evaluating settlements
7 reached in similar circumstances have held them to be non-collusive. *See In re Zynga Inc. Sec.*
8 *Litig.*, No. 12-CV-04007-JSC, 2015 WL 6471171, at *9 (N.D. Cal. Oct. 27, 2015) (the fact that
9 some discovery had occurred, indicated procedural fairness); *Rodriguez v. West Publ’g Corp.*,
10 563 F.3d 948, 965 (9th Cir. 2009) (“We put a good deal of stock in the product of an arms-length,
11 non-collusive, negotiated resolution...”).

12 **C. The Plan of Distribution Is Fair, Adequate, and Reasonable**

13 The plan of distribution is subject to the same “fair, reasonable and adequate” standard
14 that otherwise applies to approval of class settlements. *See In re Omnivision Techs., Inc.*, 559 F.
15 Supp. 2d 1036, 1045 (N.D. Cal. 2008); *In re Citric Acid Antitrust Litig.*, 145 F. Supp. 2d 1152,
16 1154 (N.D. Cal. 2001). As explained above, IPPs propose to distribute the funds *pro rata* to
17 Class Members based upon the number of qualifying purchases each submits through claim
18 forms. The proposed *pro rata* distribution treats all Class Members equally. This type of
19 distribution has often been held to be fair, adequate, and reasonable. *See, e.g., In re Cathode Ray*
20 *Tube (CRT) Antitrust Litig.*, No. 07-5944-JST, 2016 U.S. Dist. LEXIS 5561, at *65 (N.D. Cal.
21 Jan. 13, 2016); *In re Dynamic Random Access Memory (DRAM) Litig.*, No. M-02-1486 PJH,
22 2014 U.S. Dist. LEXIS 89622, at *77 (N.D. Cal. June 27, 2014).

23 **D. The Court-Approved Notice Program Satisfies Due Process**

24 When a proposed class action settlement is presented for court approval, the Federal Rules
25 require “the best notice that is practicable under the circumstances.” Fed. R. Civ. P. 23(c)(2)(B).
26 A class settlement notice satisfies due process if it contains a summary sufficient “to apprise
27 interested parties of the pendency of the action and to afford them an opportunity to present their
28 objections.” *UAW v. GMC*, 497 F.3d 615, 629 (6th Cir. 2007) (quoting *Mullane v. Cent. Hanover*

1 *Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (“*Mullane*”). The notice must clearly and concisely
2 state: (1) the nature of the action; (2) the class definition; (3) the class claims, issues, or defenses;
3 (4) that a class member may enter an appearance through counsel; (5) that the court will exclude
4 from the class any member who requests exclusion; (6) the time and manner for requesting
5 exclusion; and (7) the binding effect of a class judgment on class members. *See* Fed. R. Civ. P.
6 23(c)(2)(B). The Settlement notice satisfies these requirements.

7 Furthermore, a settlement notice need only be a summary, not a complete source, of
8 information. *See, e.g., Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1153 (8th Cir. 1999); *In re*
9 “*Agent Orange*” *Prod. Liability Litig.*, 818 F.2d 145, 170 (2d Cir. 1987); *Mangone v. First USA*
10 *Bank*, 206 F.R.D. 222, 233 (S.D. Ill. 2001). The Ninth Circuit requires a general description of
11 the proposed settlement in such a notice. *Churchill Village*, 361 F.3d at 575; *Torrisi*, 8 F.3d at
12 1374–75; *Mendoza v. United States*, 623 F.2d 1338, 1351 (9th Cir. 1980).

13 Similarly, due process requires that absent class members be provided the best notice
14 practicable, reasonably calculated to apprise them of the pendency of the action, and affording
15 them the opportunity to opt out or object. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812
16 (1985); *see also UAW*, 497 F.3d at 629 (quoting *Mullane*, 339 U.S. at 314). The “best notice
17 practicable” does not mean actual notice, nor does it require individual, mailed notice where there
18 are no readily available records of class members’ individual addresses or where it is otherwise
19 impracticable to send notice by mail. *Fidel v. Farley*, 534 F.3d 508, 513-14 (6th Cir. 2008); *In re*
20 *Domestic Air Transp. Antitrust Litig.*, 141 F.R.D. 534, 548-53 (N.D. Ga. 1992); Manual For
21 Complex Litigation (Fourth) §21.311, at 288 (2004). The mechanics of the notice process “are
22 left to the discretion of the court subject only to the broad ‘reasonableness’ standard imposed by
23 due process.” *Grunin v. Int’l House of Pancakes*, 513 F.2d 114, 121 (8th Cir. 1975). Each class
24 member need not receive actual notice for the due process standard to be met, “so long as class
25 counsel acted reasonably in selecting means likely to inform persons affected.” *In re Prudential*
26 *Sec. Inc. Ltd. P’ships Litig.*, 164 F.R.D. 362, 368 (S.D.N.Y. 1996).

27 The notice program in this case was developed and implemented by Gilardi and Sipree,
28 nationally recognized class action notice and administration firms. To reach potential members

1 of the Settlement Class directly and efficiently, the notice program utilized a multi-layered
2 approach, which included sending emails directly to more than 7.3 million class members,
3 publishing notice in a national magazine, disseminating a nationwide press release, utilizing
4 banner and text ads, and creating and maintaining a website to generate 557,551 claims. Vasquez
5 Declaration ¶¶ 15-22 and Mendelson Declaration ¶¶ 5-7. The notice program clearly satisfies the
6 requirements of due process.

7 **V. CONCLUSION**

8 For the foregoing reasons, the Court should grant final approval of the Settlements, enter
9 final judgment dismissing IPPs' claims against the Settling Defendants with prejudice, and
10 approve IPPs' plan of distribution.

11
12 Dated: August 28, 2017

13 By /s/ Steven N. Williams
14 Steven N. Williams

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