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

18 IN RE: LITHIUM ION BATTERIES
19 ANTITRUST LITIGATION

Case No. 13-md-02420-YGR
MDL No. 2420

21 This Document Relates To:
22 ALL DIRECT PURCHASER ACTIONS

**DIRECT PURCHASER PLAINTIFFS’
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF FINAL
APPROVAL OF CLASS ACTION
SETTLEMENTS WITH LG CHEM,
SAMSUNG SDI, AND TOKIN
DEFENDANTS**

25 Date: May 8, 2018
26 Time: 2:00 p.m.
27 Judge: Hon. Yvonne Gonzalez Rogers
28 Location: Courtroom 1, 4th Floor

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ISSUES TO BE DECIDED

1. Whether the settlements between Direct Purchaser Plaintiffs and Defendants LG Chem, Samsung SDI, and TOKIN are fair, adequate and reasonable, and should be finally approved.
2. Whether the objections to the settlements should be overruled.
3. Whether the plan of allocation is fair, adequate and reasonable, and should be finally approved.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure and the Court’s Orders granting preliminary approval of proposed settlements with the last three defendants in the direct purchaser case—1) Defendants LG Chem, Ltd. and LG Chem America, Inc. (together “LG Chem”), ECF No. 2104; 2) Defendants Samsung SDI Co. Ltd. and Samsung SDI America, Inc. (together “Samsung SDI”), ECF No. 2105; and 3) Defendant TOKIN Corporation (“TOKIN”), formerly known as NEC TOKIN Corporation, ECF No. 2106 (collectively “Settling Defendants”)—Direct Purchaser Plaintiffs (“Plaintiffs”) submit this Memorandum in support of final approval of the settlements.¹ Approval of the Settlements will effectively resolve the direct purchaser actions.

As explained in Plaintiffs’ motion for preliminary approval, ECF No. 2029 (“Motion”), the Settlements are excellent recoveries for the class. Each obtains more than the damages attributable to the settling defendant, or a substantially above average recovery. The other factors described in the Motion also continue to support final approval.

Events since the Motion was filed also support final approval. Notice has been provided to the class as ordered by the Court, and the reaction of class members strongly supports final approval. Fewer than 0.01% of potential class members—74 out of over 800,000 to whom notice was mailed—requested to be excluded from the Settlements. There are only two objections to the Settlements and one objection to the Proof of Claim form. All lack merit and should be overruled.

¹ The LG Chem, Samsung SDI, and TOKIN settlements (collectively, the “Settlements”) are, respectively, Exhibits 1–3 to the Saveri Declaration.

1 There are no objections to the proposed plan of allocation. Furthermore, Plaintiffs expect that class
2 members accounting for a substantial majority of the commerce at issue will submit claims.

3 Plaintiffs therefore request that the Court grant final approval of the Settlements on the
4 grounds that they are fair, reasonable, and adequate. Plaintiffs also ask that the Court finally
5 approve the plan of allocation for distributing the proceeds of the Settlements.

6 This Memorandum is supported by the accompanying Declaration of R. Alexander Saveri,
7 Declaration of Charles Marr, Proposed Orders Granting Final Approval, and Proposed Final
8 Judgments of Dismissal with Prejudice.

9 **II. STATEMENT OF RELEVANT FACTS**

10 **A. Factual and Procedural Background**

11 This Multi-District Litigation arises from an alleged conspiracy to fix the prices of Lithium
12 Ion Battery Cells (“Li-Ion Cells”). The procedural history of this action is set forth in the Motion, at
13 4–5, which Plaintiffs will not repeat here.

14 **B. Terms of the Settlements**

15 As explained in the Motion, the Settling Defendants have agreed to pay a total of
16 \$70,450,000 in exchange for a dismissal with prejudice and a release of all claims asserted in the
17 Second Consolidated Amended Complaint, ECF No. 415 (Apr. 8, 2014) (“SCAC”). The Court has
18 provisionally certified settlement classes for each of the three Settlements. ECF Nos. 2104 ¶ 4,
19 2105 ¶ 4, 2106 ¶ 4. The following chart summarizes all of the Settlements in the case, including
20 those now before the Court:

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Defendant	Amount	Class Period	Li-Ion Cells / Batteries / Products included in Class	Class Definition
Sony <i>approved</i>	\$19,000,000	January 1, 2000– May 31, 2011	Cylindrical, prismatic, polymer	SCAC class (slightly altered; <i>see</i> Motion at 13– 14 n.6)
Maxell <i>approved</i>	\$3,450,000	January 1, 2000– May 31, 2011	Cylindrical, prismatic, polymer	SCAC class
NEC <i>approved</i>	\$1,000,000	January 1, 2000– May 31, 2011	Cylindrical, prismatic, polymer	SCAC class
Panasonic and Sanyo <i>approved</i>	\$42,500,000	May 1, 2002– May 31, 2011	Cylindrical, prismatic	Proposed litigated class
Toshiba <i>approved</i>	\$2,900,000	January 1, 2000– May 31, 2011	Cylindrical, prismatic, polymer	SCAC class
LG Chem <i>before Court</i>	\$41,000,000	January 1, 2000– May 31, 2011	Cylindrical, prismatic, polymer	SCAC class
Samsung SDI <i>before Court</i>	\$24,500,000	January 1, 2000– May 31, 2011	Cylindrical, prismatic, polymer	SCAC class
TOKIN <i>before Court</i>	\$4,950,000	January 1, 2000– May 31, 2011	Cylindrical, prismatic, polymer	SCAC class
Total	\$139,300,000			

The terms of the Settlements are very similar to previous settlements and are described in detail in the Motion, at 5–7.

Two of the three Settlements—LG Chem and Samsung SDI—permit the Settling Defendant to terminate the settlement agreement if purchasers exceeding thirty-five percent (35%) of its sales request exclusion from the settlement class. LG Chem Settlement ¶ D.20(a); Samsung SDI Settlement ¶ D.20(a). Plaintiffs believe that the prerequisites for termination set forth in the Settlements have not been met. The deadline for LG Chem to terminate its settlement agreement has passed and Plaintiffs have not received any notice of termination. Saveri Decl. ¶ 2. Plaintiffs have not received any notice of termination from Samsung SDI, however the deadline for its exercise of the clause has not passed. *Id.* ¶ 3. Plaintiffs will notify the Court promptly if Samsung SDI gives notice of termination. The TOKIN Settlement does not allow for termination based on opt-outs.

C. Notice and the Response of the Class

The notice plan was implemented by the settlement administrator Epiq Systems, Inc. (“Epiq”). Notice & Opt-Out Decl. ¶ 1. Specifically, Epiq initially printed and mailed 809,590

1 Long-Form Notices and Proof of Claim forms (“Notice and Claim Packets”) to potential class
 2 members through the U.S. Mail. *Id.* ¶ 3. For Notice and Claim Packets that were returned as
 3 undeliverable, Epiq attempted to locate updated addresses by processing the names and addresses
 4 through the National Change of Address Database. *Id.* Epiq located updated addresses for and re-
 5 mailed 19,983 records that were returned as undeliverable. Marr Decl. ¶ 7. In total, Epiq caused a
 6 total of 829,575 Notice and Claim Packets to be printed and mailed. *Id.* Of these, a total of 52,044
 7 Notice and Claim Packets were returned as undeliverable. *Id.* See also *Procedural Guidance for*
 8 *Class Action Settlements*, Final Approval ¶ 1, U.S.D.C., N.D. Cal. (undated),
 9 <http://www.cand.uscourts.gov/ClassActionSettlementGuidance> (“*Guidelines*”) (requiring
 10 information about the number of undeliverable notices and claim packets).²

11 Epiq also published notice in the January 18, 2018 edition of the *Wall Street Journal*.
 12 Notice & Opt-Out Decl. ¶ 6, Ex. C. Epiq also maintains the case website, where class members can
 13 view and print the class notice, the Settlements, the motion for and orders granting preliminary
 14 approval of the Settlements, and the Proof of Claim form. *Id.* ¶ 4. Class members can also complete
 15 the Proof of Claim form on the website. *Id.* Epiq also established a toll-free telephone number to
 16 answer class members’ questions. *Id.* ¶ 5.

17 As noted, only two timely objections to the Settlements were received. ECF Nos. 2159,
 18 2170. A third objection purports to object to the Proof of Claim form. ECF No. 2144. There were
 19 no timely objections to the proposed plan of allocation. After the deadline for objection, one
 20 individual requested that the Court provide equitable relief to consumer class members who lacked
 21 records of their purchases. ECF No. 2229 (postmarked March 16, 2018, ECF No. 2229-1).

22 Second, 74 requests for exclusion were received from members of the settlement classes.
 23 Marr Decl. ¶¶ 3–6, Exs. A–C.³ See also *Guidelines*, Final Approval ¶ 1 (requiring information

24 ² 14,052 additional Notice and Claim Packets sent to potential class members have been returned as
 25 undeliverable since the filing of the Notice & Opt-Out Declaration. Notice & Opt-Out Decl. ¶ 3;
 Marr Decl. ¶ 7. A total of 360 Notice and Claim Packets were re-mailed during the same period. *Id.*

26 ³ Since the filing of the Notice & Opt-Out Declaration, Epiq identified one additional timely
 27 request for exclusion. It was received on March 5, 2018, and was initially determined to be
 28 untimely. Therefore, it was not included in the Notice & Opt-Out Declaration. However, Epiq
 reviewed it and determined that the postmark was timely. Marr Decl. ¶ 2. Class Counsel

1 about the number of class members who elected to opt out of the class).

2 In addition, as directed by the Court's orders granting preliminary approval, ECF Nos. 2104
3 ¶ 18, 2105 ¶ 18, 2106 ¶ 18, and consistent with *In re Mercury Interactive Corp. Securities*
4 *Litigation*, 618 F.3d 988, 994–95 (9th Cir. 2010), Epiq caused Co-Lead Counsel for Direct
5 Purchaser Plaintiffs' Notice of Motion and Motion for an Award of Attorneys' Fees,
6 Reimbursement of Expenses and Service Awards ("Fee Motion"); the proposed order granting the
7 same; and the compendium of declarations in support of the same to be posted on the settlement
8 website on February 8, 2018. Notice & Opt-Out Decl. ¶ 12. Two timely objections to the Fee
9 Motion were received. ECF Nos. 2161, 2196. Plaintiffs' address these objections in their Fee
10 Motion reply brief, filed concurrently herewith.

11 **III. ARGUMENT**

12 As explained in the Motion, a class action may not be dismissed, compromised, or settled
13 without the approval of the Court. The Rule 23(e) settlement approval procedure includes:
14 certification of a settlement class and preliminary approval of the proposed settlement;
15 dissemination of notice of the settlement to all affected class members; and a fairness hearing at
16 which class members may be heard regarding the settlement, and at which counsel may introduce
17 evidence and present argument concerning the fairness, adequacy, and reasonableness of the
18 settlement. *See* William B. Rubenstein, 4 *Newberg on Class Actions* §§ 13:39 *et seq.* (5th ed.
19 2014). This procedure safeguards class members' due process rights and enables the Court to fulfill
20 its role as the guardian of class interests. *Id.*

21
22
23 subsequently transmitted this additional opt-out to counsel for LG Chem, Samsung SDI and
24 TOKIN. Saveri Decl. ¶ 5. Including the additional request for exclusion, a total of 74 class
25 members opted out of the LG Chem Settlement; 72 class members opted out of the Samsung SDI
26 Settlement; and 74 class members opted out of the TOKIN Settlement. Marr Decl. ¶¶ 3–6, Exs. A–
27 C. Ninety-eight class members opted out of the Sony settlement, ECF Nos. 1438-2, 1439-2; 96
28 class members opted out of the Maxell Settlement, ECF Nos. 1940, Ex. 2, 1941, Ex. 2; 95 class
members opted out of the NEC Settlement, ECF Nos. 1942, Ex. 2, 1943, Ex. 2; 96 class members
opted out of the Panasonic/Sanyo Settlement, ECF Nos. 1944, Ex. 2, 1945, Ex. 2; and 97 class
members opted out of the Toshiba Settlement, ECF Nos. 1946, Ex. 2, 1947, Ex. 2.

1 **A. The Settlement Classes**

2 The Court completed the first step in the settlement approval process when it granted
3 preliminary approval of the three Settlements and provisionally certified three corresponding
4 settlement classes for the purposes of the Motion. ECF Nos. 2104 ¶ 4, 2105 ¶ 4, 2106 ¶ 4.

5 **B. The Court-Approved Notice Program Satisfies Due Process and Has Been**
6 **Fully Implemented**

7 The Court-approved notice plan satisfies due process. *See* Section II.C, *supra*.

8 When a proposed class action settlement is presented for court approval, the Federal Rules
9 require

10 the best notice that is practicable under the circumstances, including individual
11 notice to all members who can be identified through reasonable effort. The notice
12 must clearly and concisely state in plain, easily understood language: (i) the nature
13 of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or
14 defenses; (iv) that a class member may enter an appearance through an attorney if
the member so desires; (v) that the court will exclude from the class any member
who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii)
the binding effect of a class judgment on members under Rule 23(c)(3).

15 Fed. R. Civ. P. 23(c)(2)(B).

16 A settlement notice is a summary, not a complete source, of information. *See, e.g., Petrovic*
17 *v. Amoco Oil Co.*, 200 F.3d 1140, 1153 (8th Cir. 1999); *In re “Agent Orange” Prod. Liab. Litig.*
18 *MDL No. 381*, 818 F.2d 145, 170 (2d Cir. 1987); *Mangone v. First USA Bank*, 206 F.R.D. 222, 233
19 (S.D. Ill. 2001). This circuit requires a general description of the proposed settlement in such a
20 notice. *Churchill Vill. L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004); *Torrisi v. Tucson*
21 *Elec. Power Co.*, 8 F.3d 1370, 1374–75 (9th Cir. 1993); *Mendoza v. Tucson Sch. Dist. No. 1*, 623
22 F.2d 1338, 1351–52 (9th Cir. 1980).

23 As noted in the Motion, the notice plan approved and implemented here is commonly used
24 in class actions like this one. Motion at 21–23. The Court has already approved the notices and the
25 notice plan as compliant with the requirements of Rule 23(c)(2)(B). ECF Nos. 2104 ¶ 8, 2105 ¶ 8,
26 2106 ¶ 8. The notices provided a clear description of who is a member of the class and the binding
27 effects of class membership. They explained how to exclude oneself from the class, how to object
28 to the Settlements, how to submit a claim, how to obtain copies of papers filed in the case, and how

1 to contact Settlement Class Counsel. *See* Notice & Opt-Out Decl., Exs. A, C. The notices also
 2 explained that they provided only a summary of the Settlements, that the Settlements were on file
 3 with the District Court, and that the Settlements were available online at
 4 www.BatteriesDirectPurchaserAntitrustSettlement.com. *Id.* Consequently, every provision of the
 5 Settlements was available to settlement class members. As with previous notice in this case, there
 6 is no question that the notice provided to the class constitutes valid, due, and sufficient notice to
 7 class members, and is the best notice practicable under the circumstances. *See* ECF Nos. 1438 ¶ 9,
 8 1940 ¶ 9, 1942 ¶ 9, 1944 ¶ 9, 1946 ¶ 9.

9
 10 **C. The Settlements Are “Fair, Adequate and Reasonable” and Should Be Finally
 Approved**

11 The standards for approval of class action settlements are well-established. Motion at 7–8.
 12 First, the law favors the compromise and settlement of class action suits. *See, e.g., Churchill Vill.*,
 13 361 F.3d at 576; *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Officers*
 14 *for Justice v. Civil Serv. Comm’n of City & Cnty. of S.F.*, 688 F.2d 615, 625 (9th Cir. 1982)
 15 (“voluntary conciliation and settlement are the preferred means of dispute resolution”). “[T]here is
 16 an overriding public interest in settling and quieting litigation” and this is “particularly true in class
 17 action suits” *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

18 Second, “the decision to approve or reject a settlement is committed to the sound discretion
 19 of the trial judge because he is ‘exposed to the litigants, and their strategies, positions and proof.’”
 20 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (quoting *Officers for Justice*, 688
 21 F.2d at 626). In exercising such discretion, courts should give

22 proper deference to the private consensual decision of the parties. . . . “[T]he court’s
 23 intrusion upon what is otherwise a private consensual agreement negotiated between
 24 the parties to a lawsuit must be limited to the extent necessary to reach a reasoned
 25 judgment that the agreement is not the product of fraud or overreaching by, or
 collusion between, the negotiating parties, and that the settlement, taken as a whole,
 is fair, reasonable and adequate to all concerned.”

26 *Hanlon*, 150 F.3d at 1027 (quoting *Officers for Justice*, 688 F.2d at 625).

1 In evaluating a proposed class action settlement, the Ninth Circuit has recognized that
 2 the universally applied standard is whether the settlement is fundamentally fair,
 3 adequate and reasonable. The district court’s ultimate determination will necessarily
 4 involve a balancing of several factors which may include, among others, some or all
 5 of the following: the strength of plaintiffs’ case; the risk, expense, complexity, and
 6 likely duration of further litigation; the risk of maintaining class action status
 7 throughout the trial; the amount offered in settlement; the extent of discovery
 8 completed, and the stage of the proceedings; the experience and views of counsel;
 9 the presence of a governmental participant; and the reaction of the class members to
 10 the proposed settlement.

11 *Officers for Justice*, 688 F.2d at 625 (citations omitted); *accord Torrissi*, 8 F.3d at 1375. “Where, as
 12 here, a proposed class settlement has been reached after meaningful discovery, after arm’s length
 13 negotiation, conducted by capable counsel, it is presumptively fair.” *M. Berenson Co. v. Faneuil*
 14 *Hall Marketplace, Inc.*, 671 F. Supp. 819, 822 (D. Mass. 1987).

15 The relevant factors identified by the Ninth Circuit strongly support final approval.

16 **1. Settlement Class Members’ Positive Reaction Favors Final Approval**

17 The class notices explained the material provisions of the Settlements and class members’
 18 rights in relation to them. It is well-established that where, as here, there are few objections to a
 19 settlement, this factor supports final approval. “It is established that the absence of a large number
 20 of objections to a proposed class action settlement raises a strong presumption that the terms of a
 21 proposed class settlement action are favorable to the class members.” *Nat’l Rural Telecomms.*
 22 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004).

23 Only two class members out of thousands objected to the Settlements. *See Guidelines*, Final
 24 Approval ¶ 1 (requiring information about the number of class members who objected to the
 25 settlement as well as responses to any objections). In addition to the fact that their objections lack
 26 merit, *see* Section III.C.7, *infra*, both objectors are individuals without significant purchases. Saveri
 27 Decl. ¶ 6.

28 In addition, there were only approximately 74 requests for exclusion from each Settlement.⁴
 This is fewer than those received for previous settlements. *See* note 3, *supra*.

⁴ There were 72 requests for exclusion from the Samsung SDI Settlement.

1 Furthermore, as noted, Plaintiffs expect that claims accounting for a substantial majority of
2 the commerce at issue will be submitted. The deadline to mail or submit claims is April 26, 2018.
3 Plaintiffs will submit a report on claims after the deadline. *See Guidelines*, Final Approval ¶ 1
4 (requiring information about the number of class members who submitted valid claims).

5 These facts support a strong inference that class members approve the Settlements,
6 especially where, as here, “much of the class consists of sophisticated business entities.” *In re*
7 *Cathode Ray Tube (CRT) Antitrust Litig.*, Case No. 14-cv-2058 JST, 2015 WL 9266493, at *7
8 (N.D. Cal. Dec. 17, 2015) (“*CRT I*”) (citing *In re Linerboard Antitrust Litig.*, 321 F. Supp. 2d 619,
9 629 (E.D. Pa. 2004)). This factor therefore strongly supports final approval.

10 2. The Settlements Eliminate Significant Risk to the Class

11 First, while Plaintiffs believe their case is strong, there are substantial risks involved with
12 further litigation against the Settling Defendants. As noted, class action antitrust litigation is
13 complex and uncertain and this case is no exception. *See In re Linerboard Antitrust Litig.*, 296 F.
14 Supp. 2d 568, 577 (E.D. Pa. 2003). For example, the Court denied Plaintiffs’ motion for class
15 certification. *In re Lithium Ion Batteries Antitrust Litig.*, Case No. 13-MD-2420 YGR, 2017 WL
16 1391491, at *18–19 (N.D. Cal. Apr. 12, 2017). While the denial was without prejudice, *id.*, and
17 Plaintiffs believe they can satisfy the Court’s concerns in a renewed motion, a denial of class
18 certification could preclude any meaningful recovery. Similarly, Plaintiffs bear the burden of
19 establishing liability, impact, and damages at trial. While, as the Court has noted, the guilty pleas
20 establish that a conspiracy existed at least for a short period, the duration of the conspiracy, its
21 participants, and the products it embraced are all hotly contested. A result contrary to Plaintiffs’
22 allegations on any of these issues could substantially reduce the value of their case. In addition,
23 even if Plaintiffs proved their liability case in full, there is no guarantee that the jury would agree
24 with their damage analysis. In the *LCD* case, for example, the plaintiffs’ expert concluded that
25 class wide single damages were \$870 million; the jury awarded \$87 million. Motion at 12–13. *See*
26 *also In re Cathode Ray Tube (CRT) Antitrust Litig.*, Case No. 14-cv-2058-JST, 2017 WL 565003,
27 at *4 (N.D. Cal. Feb. 13, 2017) (“*CRT II*”); *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96,
28 118 (2d Cir. 2005) (“Indeed, the history of antitrust litigation is replete with cases in which

1 antitrust plaintiffs succeeded at trial on liability, but recovered no damages, or only negligible
 2 damages, at trial, or on appeal.” (quoting *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D.
 3 465, 476 (S.D.N.Y. 1998))).

4 Second, further litigation against these Defendants will involve substantial delay and
 5 expense. *Larsen v. Trader Joe’s Co.*, Case No. 11-cv-05188-WHO, 2014 WL 3404531, at *4 (N.D.
 6 Cal. July 11, 2014) (“Avoiding such unnecessary and unwarranted expenditure of resources and
 7 time would benefit all parties, as well as conserve judicial resources. Accordingly, the high risk,
 8 expense, and complex nature of the case weigh in favor of approving the settlement.” (citation
 9 omitted)). Because any judgment in favor of Plaintiffs is almost certain to be appealed, a litigated
 10 recovery is likely years away. And further litigation against these Defendants will be expensive.
 11 For these reasons as well, the Settlements represent excellent recoveries for the class and should be
 12 approved. As courts in this district have observed, “it is not unreasonable for a plaintiff to receive
 13 less in settlement than her total potential recovery at trial. The lesser amount reflects the risk
 14 associated with trial, and also the time and effort that must be invested to go to trial.” *Gaudin v.*
 15 *Saxon Mortg. Servs., Inc.*, Case No. 11-cv-01663-JST, 2015 WL 4463650, at *5 (N.D. Cal. July
 16 21, 2015) (citing *In re Omnivision Techs.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008)); *see also*
 17 *CRT I*, 2015 WL 9266493, at *4–5 (risk of continued litigation “strongly favors granting final
 18 approval”). This factor, therefore, also favors final approval.

19 3. The Settlements Provide a Considerable Benefit to the Class

20 As explained in the Motion, the settlement payments represent excellent recoveries. The
 21 payment required by the LG Chem Settlement is a multiple of the single damages attributable to
 22 their U.S. sales during the class period indicated by Plaintiffs’ preliminary damage study. Motion at
 23 11. The TOKIN Settlement also likely recovers more than the damages attributable to its U.S. sales.
 24 *Id.* at 12. The Samsung SDI Settlement represents a recovery of approximately 25% to 33% of the
 25 single damages attributable to Samsung SDI’s U.S. sales of cells, batteries and finished products. *Id.*
 26 at 11–12. Each settlement therefore recovers substantially higher than the average amount other
 27 courts have found sufficient for final approval in antitrust cases. *See* John M. Connor & Robert H.
 28 Lande, *Not Treble Damages: Cartel Recoveries Are Mostly Less Than Single Damages*, 100 Iowa L.

1 Rev. 1997, 1998 (2015) (survey of 71 settled cartel cases revealed the weighted mean—weighting
2 settlement according to their sales—was 19% of single damages recovery), *noted in In re Cathode*
3 *Ray Tube (CRT) Antitrust Litig.*, Case No. C-07-5944 JST, 2016 WL 3648478, at *7 n.19 (N.D. Cal.
4 July 7, 2016) and *CRT I*, 2015 WL 9266493, at *5 n.9.

5 This factor, therefore, strongly supports final approval.

6 **4. The Extent of Discovery Completed and the Stage of the Proceedings**

7 As noted in the Motion (and as the Court is well aware), the case has been intensively
8 litigated in the nearly six years since the first cases were filed. *See* Motion at 4–5. In addition to
9 substantial document and deposition discovery, Plaintiffs also had the benefit of extensive expert
10 analysis, including the damage study included in the expert report submitted in support of their
11 motion for class certification. There is no question that counsel were fully informed about the
12 strengths and weaknesses of the case when the Settlements were negotiated. This factor therefore
13 favors final approval of the Settlements. *See Omnivision*, 559 F. Supp. 2d at 1042.

14 **5. The Experience and Views of Counsel**

15 As noted, Counsel’s judgment in favor of the Settlements was an informed one. *See* Motion
16 at 8–9. “The recommendations of plaintiffs’ counsel should be given a presumption of
17 reasonableness.” *Omnivision*, 559 F. Supp. 2d at 1043 (quoting *Boyd v. Bechtel Corp.*, 485 F.
18 Supp. 610, 622 (N.D. Cal. 1979)). Where, as here, “[t]here is nothing to counter the presumption
19 that Lead Counsel’s recommendation is reasonable,” *Omnivision*, 559 F. Supp. 2d at 1043, its
20 experience and views of the Settlements “weigh[] in favor of [their] approval.” *CRT II*, 2017 WL
21 565003, at *4. This factor also favors final approval.

22 **6. The Settlement Is the Product of Arm’s-Length Negotiation by**
23 **Informed and Experienced Counsel**

24 As explained in the Motion, the Settlements were the product of hard fought, arm’s-length
25 negotiation by experienced and well-informed counsel. Motion at 8–9. This factor also supports
26 final approval. *See CRT II*, 2017 WL 565003, at *4.

7. The Objections to the Settlements Lack Merit

In addition to there being few objections, the objections received lack merit. Neither addresses issues relevant to settlement approval. They therefore provide no basis to deny final approval. *See Guidelines*, Final Approval ¶ 1 (requiring response to objections).

The first objection, from Edward Maybury, is based on his assertion that the alleged conspiracy did not exist: “If the plaintiffs [sic] charged a penny more than necessary for their Li batteries then we know another dude would set up his factory in China down the street to pump out batteries and make a killing.” ECF No. 2159 ¶ 3. Mr. Maybury’s assertion is contradicted by the overwhelming evidence in this case, including the guilty pleas. To the extent it is relevant, however, his assertion supports final approval. His objection should be overruled.⁵

The second objection, from Shirley Petrak, also fails to address any issue relevant to final approval. It reads, in full: “I am asking the Court to deny approval of one or more of the settlements because I object to the proposed settlement(s) of [sic] the ‘In re: Lithium Ion Batteries Antitrust Litigation Case No. 13-MD-02420-YGR.’” ECF No. 2170. This objection should also be overruled.

8. Balancing the Factors

Considered together, all of the factors compel the conclusion that the Settlements should be finally approved. All favor approval.

D. The Plan of Allocation Is “Fair, Reasonable and Adequate” and Therefore Should Be Approved

A plan of allocation of class settlement funds is subject to the “fair, reasonable and adequate” standard that applies to approval of class settlements. *Omnivision*, 559 F. Supp. 2d at 1045; *In re Citric Acid Antitrust Litig.*, 145 F. Supp. 2d 1152, 1154 (N.D. Cal. 2001). A plan of allocation that compensates class members based on the type and extent of their injuries is generally considered reasonable. Here the proposed distribution will be on a *pro rata* basis, with no class member being favored over others. In determining the *pro rata* allocation of settlement funds, class members’

⁵ Mr. Maybury’s objection also appears to take issue with the Fee Motion. *Id.* ¶¶ 4–5. Plaintiffs address this part of his objection in their Fee Motion reply brief, filed concurrently herewith.

1 purchases will be valued according to the proportionate value of the Li-Ion Cells contained in the
2 product. The resulting percentages will be multiplied against the net settlement fund (total
3 settlements minus all costs, attorneys' fees, and expenses) to determine each claimant's *pro rata*
4 share of the settlement funds.

5 The Court has approved an identical plan of allocation for the previous settlements. ECF
6 Nos. 1438 ¶ 11 (Sony), 1940 ¶ 12 (Maxell), 1942 ¶ 12 (NEC), 1944 ¶ 12 (Panasonic and Sanyo),
7 1946 ¶ 12 (Toshiba). Other courts have also approved similar distributions. *See, e.g., CRT I*, 2015
8 WL 9266493, at *7–8 (approving *pro rata* plan of allocation based upon proportional value of price-
9 fixed component in finished product); *In re Cathode Ray Tube (CRT) Antitrust Litig.*, Case No. 14-
10 cv-2058 JST, 2017 WL 2481782, at *5 (N.D. Cal. June 8, 2017). *See also In re Dynamic Random*
11 *Access Memory (DRAM) Antitrust Litig.*, No. M-02-1486 PJH, ECF No. 2093 ¶ 3 (Oct. 27, 2010)
12 (final plan of allocation order approving *pro rata* distribution); *In re Heritage Bond Litig.*, No. 02-
13 ML-1475 DT, 2005 WL 1594403, at *11 (C.D. Cal. June 10, 2005) (“The fact that there has been no
14 objection to this [*pro rata*] plan of allocation favors approval of the Settlement.”); *In re Vitamins*
15 *Antitrust Litig.*, No. 99-197 TFH, 2000 WL 1737867, at *6 (D.D.C. Mar. 31, 2000) (“Settlement
16 distributions, such as this one, that apportion[sic] funds according to the relative amount of
17 damages suffered by class members have repeatedly been deemed fair and reasonable.”); *In re*
18 *Lloyd's Am. Trust Fund Litig.*, No. 96 Civ.1262 RWS, 2002 WL 31663577, at *19 (S.D.N.Y. Nov.
19 26, 2002) (“*pro rata* allocations provided in the Stipulation are not only reasonable and rational, but
20 appear to be the fairest method of allocating the settlement benefits”).

21 Finally, the proposed plan of allocation was explained in the class notice:

22 The settlement funds will be allocated on a *pro rata* basis based on the dollar value
23 of each class member's purchase(s) of Li-Ion Cells, Li-Ion Batteries, and/or Li-Ion
24 Products in proportion to the total claims filed. For purposes of determining the *pro*
25 *rata* allocation of the settlement funds, purchases of Li-Ion Batteries and/or Li-Ion
26 Products will be valued according to the proportionate value of the Li-Ion Cells
27 contained in the product. This will be determined by the number of cylindrical cells,
28 or equivalent (by capacity) prismatic or polymer cell, typically contained in
particular finished products or battery packs. For example, laptop computers
typically contained six (6) cylindrical cells. Camcorders typically contained four (4)
cylindrical cells. Cell phones and digital cameras typically contained one (1)
prismatic cell of approximately one half the capacity and price of a typical

1 cylindrical cell. These will count as one half of a cylindrical cell. If a class member
2 purchased batteries or packs, or other products, they will be valued according to the
3 number of cylindrical cells, or equivalent (by capacity) prismatic or polymer cell,
4 they contained. The resulting amounts will be multiplied by the net settlement funds
(total settlements plus accrued interest minus attorneys' fees, expenses, and class
representative incentive awards) to determine each claimant's *pro rata* share of the
Settlement Fund.

5 *See* Notice & Opt-Out Decl., Ex. A at 4. The class notice also informed class members about the
6 claims procedure, including the deadline to mail or submit a Proof of Claim form. *Id.* As noted, there
7 are no objections to the proposed plan of allocation.

8 There was one objection to the Proof of Claim form on the ground that it should set forth “the
9 probable qualifying purchas(es) [sic].” ECF No. 2144.⁶ This objection also lacks merit. First, Class
10 Counsel and the settlement administrator will provide and have provided assistance to class
11 members who lack full information regarding their claims, including providing information from the
12 transactional data in their possession. Saveri Decl. ¶ 7; Notice & Opt-Out Decl. ¶ 5 (telephone
13 support). Plaintiffs believe that this is the best and most cost effective way to manage claims in this
14 case. Second, individually quantifying claims for the over 800,000 individuals and entities on the
15 notice lists would be expensive and, in many cases, difficult or impossible. Saveri Decl. ¶ 8. For
16 example, the lists of purchasers Defendants provided Plaintiffs for notice include members of the
17 indirect purchaser class. These parties are not entitled to make a claim in this case, and attempting to
18 create a Proof of Claim form for them would be wasteful and counterproductive. *Id.* ¶ 9. Similarly,
19 the sales data in the possession of Plaintiffs is incomplete. *Id.* ¶ 10. Many of the calculations the
20 objector seeks would therefore be inaccurate. This objection should therefore be overruled.

21 One class member—Leonard Davis—also submitted “a request for some form of equitable
22 payment” because he believed he had purchased batteries during the class period but lacked records
23 of any purchases. ECF No. 2229. This request should also be denied. Plaintiffs have written to Mr.
24 Davis and offered to help him prepare a Proof of Claim form based on sales data showing his
25 purchase of one Sony rechargeable battery. Saveri Decl. ¶ 11. While he claims purchases of
26

27 ⁶ The Court previously approved the Proof of Claim form in its orders granting preliminary
28 approval. ECF Nos. 2104 ¶ 9, Ex. D; 2105 ¶ 9, Ex. D; 2106 ¶ 9, Ex. D.

1 “hundreds” of batteries, he does not identify them as Li-Ion Battery purchases. They also may be
2 indirect purchases, and therefore not a basis for a claim in this case. Mr. Davis’ request was also
3 submitted after the objection deadline and therefore untimely. *See* ECF No. 2229-1 (postmarked
4 March 16, 2018).

5 For these reasons, the proposed plan of allocation here is “fair, reasonable and adequate” to
6 the settlement classes and final approval of the plan of allocation should be granted.

7 **IV. CONCLUSION**

8 For the foregoing reasons set forth herein, Plaintiffs respectfully submit that the Court
9 should enter the orders granting final approval of the Settlements and final judgments of dismissal
10 with prejudice as to the Settling Defendants submitted herewith.

11 Dated: March 29, 2018

Respectfully submitted,

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