R. Alexander Saveri (Bar No. 173102)
Geoffrey C. Rushing (Bar No. 126910)
Cadio Zirpoli (Bar No. 179108)
SAVERI & SAVERI, INC.
706 Sansome Street
San Francisco, CA 94111
Telephone: (415) 217-6810
Facsimile: (415) 217-6813

Bruce L. Simon (Bar No. 96241)
Benjamin E. Shiftan (Bar No. 265767)
PEARSON, SIMON & WARSHAW, LLP
44 Montgomery Street, Suite 2450
San Francisco, CA 94104
Telephone: (415) 433-9000
Facsimile: (415) 433-9008

Joseph J. Tabacco, Jr. (Bar No. 75484)
Todd A. Seaver (Bar No. 271067)
Jessica Moy (Bar No. 272941)
BERMAN DEVALERIO
44 Montgomery Street, Suite 650
San Francisco, CA 94104
Telephone: (415) 433-3200
Facsimile: (415) 433-6382

Interim Co-Lead Counsel for Direct Purchaser Plaintiffs
[Additional Counsel on Signature Page]

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

IN RE: LITHIUM ION BATTERIES ANTITRUST LITIGATION	Case No. 13-md-02420-YGR MDL No. 2420
This Document Relates To: ALL DIRECT PURCHASER ACTIONS	**DIRECT PURCHASER PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF FINAL APPROVAL OF CLASS ACTION SETTLEMENTS WITH MAXELL, NEC, PANASONIC AND TOSHIBA DEFENDANTS** Date: August 29, 2017 Time: 2:00 p.m. Judge: Hon. Yvonne Gonzalez Rogers Location: Courtroom 1, 4th Floor

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

Rules

ISSUES TO BE DECIDED

1. Whether the settlements between Direct Purchaser Plaintiffs and Defendants Maxell, NEC, Panasonic, and Toshiba are fair, adequate and reasonable, and should be finally approved.

2. 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 the proposed settlements with 1) Defendants Hitachi Maxell, Ltd., and Maxell Corporation of America (collectively "Maxell") (ECF No. 1756); 2) Defendant NEC Corporation ("NEC") (ECF No. 1757); 3) Defendant Panasonic Corporation ("Panasonic") (ECF No. 1758); and 4) Defendant Toshiba Corporation ("Toshiba") (ECF No. 1759) (collectively "Settling Defendants"), Direct Purchaser Plaintiffs ("Plaintiffs") submit this Memorandum in support of final approval of the settlements.[1]

As explained in Plaintiffs' motion for preliminary approval, ECF No. 1707 ("Motion"), the Settlements are excellent recoveries for the class and should be finally approved as fair, adequate and reasonable. The factors described in the Motion continue to support final approval. Events since the Motion was filed also support final approval.

In addition, the reaction of the class to the Settlements strongly favors final approval. Notice has been provided to the class pursuant to the Court's orders of preliminary approval and there are no objections to any aspect of any of the Settlements or the proposed plan of allocation. Nor has any class member filed a notice of intent to appear at the final approval hearing.

Plaintiffs therefore request that the Court grant final approval of the Settlements on the grounds that they are fair, reasonable, and adequate. Plaintiffs also ask that the Court finally approve the plan of distribution of the proceeds of the Settlements.

This Memorandum is supported by the accompanying Declaration of Guy J. Thompson,

[1] The Maxell, NEC, Panasonic and Toshiba settlements (collectively, the "Settlements") are, respectively, Exhibits 1–4 to ECF No. 1707-1 and Exhibit A to ECF Nos. 1756, 1757, 1758, 1759.

Proposed Orders Granting Final Approval, and Proposed Final Judgments of Dismissal with Prejudice.

II. STATEMENT OF RELEVANT FACTS

A. Factual and Procedural Background

This Multi-District Litigation arises from an alleged conspiracy to fix the prices of Lithium Ion Battery Cells ("Li-Ion Cells"). The procedural history of this action is set forth in the Motion, which Plaintiffs will not repeat here. Motion at 3–4. Several events have occurred since the Motion was filed which warrant notice.

On April 12, 2017, the Court denied Plaintiffs' class certification motion. The denial was without prejudice and invited Plaintiffs to supplement their motion. *In re Lithium Ion Batteries Antitrust Litig.*, Case No. 13-MD-2420 YGR, 2017 WL 1391491, at *18–19 (N.D. Cal. Apr. 12, 2017).

At the status conference on July 14, 2014, the Court set the schedule for Plaintiffs' renewed class certification motion as well as trial. ECF No. 1870. Plaintiffs' renewed motion is due on October 31, 2017. Trial is set for September 10, 2018. *Id.*

Finally, Plaintiffs have reached settlements with defendants Samsung SDI and LG Chem. If the Court approves the Settlements before the Court now, and these new settlements, only a single defendant—TOKIN[2]—will remain in the case.

B. Terms of the Settlements

As explained in the Motion, the Settling Defendants have agreed to pay a total of $49,850,000 in exchange for a dismissal with prejudice and a release of all claims asserted in the Second Consolidated Amended Complaint, ECF No. 415 (Apr. 8, 2014) ("SCAC"). The Court has provisionally certified settlement classes for each of the four Settlements. ECF Nos. 1756 ¶ 4, 1757 ¶ 4, 1758 ¶ 4, 1759 ¶ 4. The following chart summarizes the Settlements:

[2] On July 7, 2017, Defendant NEC TOKIN Corporation provided notice that it changed its name to TOKIN Corporation on or around April 19, 2017. ECF No. 1857.

Defendant	Amount	Class Period	Li-Ion Cells / Batteries / Products included in Class	Class Definition
Sony *previously approved*	$19,000,000	January 1, 2000–May 31, 2011	Cylindrical, prismatic, polymer	SCAC class (slightly altered; *see* Motion at 14 n.6)
Maxell	$3,450,000	January 1, 2000–May 31, 2011	Cylindrical, prismatic, polymer	SCAC class
NEC	$1,000,000	January 1, 2000–May 31, 2011	Cylindrical, prismatic, polymer	SCAC class
Panasonic	$42,500,000	May 1, 2002–May 31, 2011	Cylindrical, prismatic	Proposed litigated class
Toshiba	$2,900,000	January 1, 2000–May 31, 2011	Cylindrical, prismatic, polymer	SCAC class
Total	**$68,850,000**			

The terms of the Settlements are described in detail in the Motion, at 4–6.

Three of the four Settlements—Maxell, Panasonic and Toshiba—permit the Settling Defendant to terminate the Settlement if purchasers exceeding a certain percentage of their sales request exclusion from the settlement class. Maxell Settlement ¶ D.18(a) (35%); Panasonic Settlement ¶ D.18(a) (35%); Toshiba Settlement ¶ D.20(a) (50%). To date, Plaintiffs have not received any notice of termination of the Maxell, Panasonic or Toshiba Settlements, however the deadlines for the exercise of these clauses have not passed.[3]

C. Notice and the Response of the Class

The notice plan was implemented by the settlement administrator Epiq Systems, Inc. ("Epiq"). Thompson Decl. ¶ 1. Specifically, Epiq printed and mailed 856,721 notices to potential class members through the U.S. Mail. *Id*. ¶ 5. A total of 111,121 notices were returned as undeliverable. Epiq attempted to locate updated addresses by processing the names and addresses through the National Change of Address Database. Epiq located updated addresses for and re-

[3] The deadlines are determined from the date Plaintiffs provide notice of the class members requesting exclusion. Maxell has 15 days from such notice, Maxell Settlement ¶ 18(a); Panasonic has 20 days, Panasonic Settlement ¶ 18(a); Toshiba has 30 days, Toshiba Settlement ¶ 20(a). Plaintiffs provided the notice by filing the Declaration of Guy J. Thompson re Dissemination of Maxell, NEC, Panasonic, and Toshiba Notice to Class Members and Requests for Exclusion on July 10, 2017. ECF No. 1860. Plaintiffs will notify the Court promptly if any of these Settling Defendants give notice of termination. Plaintiffs do not concede that the prerequisites for termination set forth in the Settlements have been met.

mailed 940 of these records. *Id. See also Procedural Guidance for Class Action Settlements*, Final Approval ¶ 1, U.S.D.C., N.D. Cal. (undated), http://www.cand.uscourts.gov/ClassActionSettlementGuidance ("*Guidelines*") (requiring information about the number of undelivered notices).

Epiq also published notice in the May 15, 2017 edition of the *Wall Street Journal*. Thompson Decl. ¶ 8, Ex. B. Epiq also maintains the case website, where class members can view and print the class notice, the Settlements, and the motion for and orders granting preliminary approval of the Settlements. *Id*. ¶ 6. Epiq also established a toll-free telephone number to answer class members' questions. *Id*. ¶ 7.

As noted, the reaction of the class supports approval. First, there are no objections to the Settlements or the proposed plan of allocation.[4]

Second, similar to the Sony settlement, ninety-four requests for exclusion were received from members of the settlement classes. Thompson Decl. ¶ 9, Exs. C–F.[5] *See also Guidelines*, Final Approval ¶ 1 (requiring information about the number of class members who elected to opt out of the class).

III. ARGUMENT

As explained in the Motion, a class action may not be dismissed, compromised, or settled without the approval of the Court. The Rule 23(e) settlement approval procedure includes: certification of a settlement class and preliminary approval of the proposed settlement; dissemination of notice of the settlement to all affected class members; and a fairness hearing at which class members may be heard regarding the settlement, and at which counsel may introduce evidence and present argument concerning the fairness, adequacy, and reasonableness of the settlement. *See* William B. Rubenstein, 4 *Newberg on Class Actions* §§ 13:39 *et seq.* (5th ed. 2014)

[4] One objection from a purported class member was received. ECF Nos. 1843, 1844. It was withdrawn on July 18, 2017. ECF Nos. 1867, 1886.

[5] Ninety-three class members opted out of the Maxell Settlement; 92 class members opted out of the NEC Settlement; 93 class members opted out of the Panasonic Settlement; and 94 class members opted out of the Toshiba Settlement. *Id.* Ninety-eight class members opted out of the Sony settlement. ECF No. 1330 ¶ 6, Ex. C; ECF Nos. 1357-3 ¶ 10, 1357-6.

("*Newberg*"). This procedure safeguards class members' due process rights and enables the Court to fulfill its role as the guardian of class interests. *Id.*

A. The Settlement Classes

The Court completed the first step in the settlement approval process when it granted preliminary approval of the four Settlements and provisionally certified four corresponding settlement classes for the purposes of the Motion. ECF Nos. 1756 ¶ 4, 1757 ¶ 4, 1758 ¶ 4, 1759 ¶ 4.

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

As noted, the Court-approved notice plan has been implemented. *See* Section II.C, *supra*. It satisfies due process.

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

> the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or 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).

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

A settlement notice is a summary, not a complete source, of information. *See, e.g.*, *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1153 (8th Cir. 1999); *In re "Agent Orange" Prod. Liab. Litig.*, 818 F.2d 145, 170 (2d Cir. 1987), *cert. denied*, 484 U.S. 1004 (1988); *Mangone v. First USA Bank*, 206 F.R.D. 222, 233 (S.D. Ill. 2001). This circuit requires a general description of the proposed settlement in such a notice. *Churchill Vill. L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004); *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1374–75 (9th Cir. 1993); *Mendoza v. Tucson Sch. Dist. No. 1*, 623 F.2d 1338, 1351–52 (9th Cir. 1980), *cert. denied*, 450 U.S. 912 (1981).

As noted in the Motion, the notice plan approved and implemented here is commonly used in class actions like this one. Motion at 23. The Court has already approved the notices and the notice plan as compliant with the requirements of Rule 23(c)(2)(B). ECF Nos. 1756 ¶ 8, 1757 ¶ 8,

1758 ¶ 8, 1759 ¶ 8. The notices provided a clear description of who is a member of the class and the binding effects of class membership. They explained how to exclude oneself from the class, how to object to the Settlements, how to obtain copies of papers filed in the case, and how to contact Settlement Class Counsel. *See* Thompson Decl., Exs. A, B. The notices also explained that they provided only a summary of the Settlements, that the Settlements were on file with the District Court, and that the Settlements were available online at www.batteriesdirectpurchaserantitrustsettlement.com. *Id.* Consequently, every provision of the Settlements was available to settlement class members. There is no question that the notice provided to the class constitutes valid, due, and sufficient notice to class members, and is the best notice practicable under the circumstances.

C. The Settlements Are "Fair, Adequate and Reasonable" and Should Be Finally Approved

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

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

> proper deference to the private consensual decision of the parties. . . . "[T]he court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned 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."

Hanlon, 150 F.3d at 1027 (quoting *Officers for Justice*, 688 F.2d at 626).

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

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

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

1. Settlement Class Members' Positive Reaction Favors Final Approval

The class notices explained the material provisions of the Settlements and class members' rights in relation to them. It is well-established that where, as here, there are no objections to a settlement, this factor supports final approval. *In re Cathode Ray Tube (CRT) Antitrust Litig.*, Case No. 14-cv-2058 JST, 2015 WL 9266493, at *7 (N.D. Cal. Dec. 17, 2015) ("*CRT I*"); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008) ("the lack of objection of the Class Members favors approval of the Settlement"); *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) ("It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members."); *Georgino v. Sur la Table, Inc.*, Case No. CV 11-03522 MMM (JEMx), 2013 WL 12122430, at *14 (C.D. Cal. May 9, 2013) ("the absence of objections indicate that class members overwhelmingly favor the proposed settlement and find it fair").

The inference of the settlement classes' approval of the Settlements is especially strong where, as here, "much of the class consists of sophisticated business entities." *CRT I*, 2015 WL 9266493, at *7 (citing *In re Linerboard Antitrust Litig.*, 321 F. Supp. 2d 619, 629 (E.D. Pa. 2004)).

2. The Settlements Eliminate Significant Risk to the Class

First, while Plaintiffs believe their case is strong, there are substantial risks involved with further litigation. As noted, class action antitrust litigation is complex and uncertain and this case is no exception. *See In re Linerboard Antitrust Litig.*, 296 F. Supp. 2d 568, 577 (E.D. Pa. 2003). For example, the Court has denied Plaintiffs' motion for class certification. While the denial was without prejudice, and Plaintiffs believe they can satisfy the Court's concerns in a renewed motion, a denial of class certification could preclude any meaningful recovery. Similarly, Plaintiffs will bear the burden of establishing liability, impact, and damages at trial. While, as the Court has noted, the guilty pleas establish that a conspiracy existed at least for a short period, the duration of the conspiracy, its participants, and the products it embraced are all hotly contested. A result contrary to Plaintiffs' allegations on any of these issues could substantially reduce the value of their case. In addition, even if Plaintiffs prove their liability case in full, there is no guarantee that the jury will agree with their damage analysis. In the *LCD* case, for example, the plaintiffs' expert concluded that class wide single damages were $870 million; the jury awarded $87 million. Motion at 13. *See also In re Cathode Ray Tube (CRT) Antitrust Litig.*, Case No. 14-cv-2058-JST, 2017 WL 565003, at *4 (N.D. Cal. Feb. 13, 2017) ("*CRT II*"); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 118 (2d Cir. 2005) ("'Indeed, the history of antitrust litigation is replete with cases in which antitrust plaintiffs succeeded at trial on liability, but recovered no damages, or only negligible damages, at trial, or on appeal.'" (quoting *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 476 (S.D.N.Y. 1998))).

Second, further litigation against these Defendants will involve substantial delay and expense. *Larsen v. Trader Joe's Co.*, Case No. 11-cv-05188-WHO, 2014 WL 3404531, at *4 (N.D. Cal. July 11, 2014) ("Avoiding such unnecessary and unwarranted expenditure of resources and time would benefit all parties, as well as conserve judicial resources. Accordingly, the high risk, expense, and complex nature of the case weigh in favor of approving the settlement." (citation omitted)). Because any judgment in favor of Plaintiffs is almost certain to be appealed, a litigated recovery is likely years away. And further litigation against these Defendants will be expensive. For these reasons as well, the Settlements represent excellent recoveries for the class and should be

approved. As courts in this district have observed, "it is not unreasonable for a plaintiff to receive less in settlement than her total potential recovery at trial.. The lesser amount reflects the risk associated with trial, and also the time and effort that must be invested to go to trial." *Gaudin v. Saxon Mortg. Servs., Inc.*, Case No. 11-cv-01663-JST, 2015 WL 4463650, at *5 (N.D. Cal. July 21, 2015) (citing *Omnivision*, 559 F. Supp. 2d at 1042); *see also CRT I*, 2015 WL 9266493, at *4–5 (risk of continued litigation "strongly favors granting final approval"). This factor, therefore, also favors final approval.

3. The Settlements Provide a Considerable Benefit to the Class

As explained in the Motion, the settlement payments provide an excellent benefit to the class. The payments required by the Maxell, NEC and Panasonic settlements amount to 58%, over 400% and 30% respectively of the single damages attributable to their U.S. sales during the class period indicated by Plaintiffs' preliminary damage study. Motion 10–13. Each is substantially higher than the average amount other courts have found sufficient for final approval in antitrust cases. *See* John M. Connor & Robert H. Lande, *Not Treble Damages: Cartel Recoveries Are Mostly Less Than Single Damages*, 100 Iowa L. Rev. 1997, 1998 (2015) (survey of 71 settled cartel cases revealed the weighted mean—weighting settlement according to their sales—was 19% of single damages recovery), *noted in In re Cathode Ray Tube (CRT) Antitrust Litig.*, Case No. C-07-5944 JST, 2016 WL 3648478, at *7 n.19 (N.D. Cal. July 7, 2016) and *CRT I*, 2015 WL 9266493, at *5 n.9. The Toshiba Settlement provides for a recovery of 30% of the damages attributable to its sales during the time it manufactured Li-Ion Batteries. Motion at 12.

In addition, as also explained in the Motion, the Settlements require Settling Defendants to cooperate with Plaintiffs against the remaining defendants. Motion at 5, 11. This is also a valuable benefit to the class. *CRT I*, 2015 WL 9266493, at *6 (citing *In re Mid-Atl. Toyota Antitrust Litig.*, 564 F. Supp. 1379, 1386 (D. Md. 1983) (a defendant's agreement to cooperate with plaintiffs "is an appropriate factor for a court to consider in approving a settlement") and *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 643 (E.D. Pa. 2003) ("The provision of such assistance is a substantial benefit to the classes and strongly militates toward approval of the Settlement Agreement.")).

This factor, therefore, also supports final approval.

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

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

5. The Experience and Views of Counsel

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

6. The Settlement Is the Product of Arm's-Length Negotiation by Informed and Experienced Counsel

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

7. Balancing the Factors

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

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

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

> In the future, the Settlement Funds will be allocated on a *pro rata* basis based on the dollar value of each Class Member's purchase(s) of Li-Ion Cells, Li-Ion Batteries and/or Li-Ion Products in proportion to the total claims filed. For purposes of determining the *pro rata* allocation of the Settlement Funds, purchases of Li-Ion Batteries and/or Li-Ion Products will be valued according to the proportionate value of the Li-Ion Cells contained in the product. The resulting amounts will be

> multiplied by the Net Settlement Funds (total settlements minus all costs, attorneys' fees and expenses) to determine each claimant's *pro rata* share of the Settlement Fund.

See Thompson Decl., Ex. A ¶ 9. The class notice also informed class members that they "will be notified in the future when and where to send a claim form" and that all class members will share in the settlement funds on a *pro rata* basis after resolution of this case "against the remaining defendants to see if any future settlements or judgments can be obtained in the case and then be distributed together, to reduce expenses." *Id.* As noted, there are no objections to the proposed plan of allocation.

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

IV. CONCLUSION

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

Dated: July 24, 2017

Respectfully submitted,

/s/Bruce L. Simon
Bruce L. Simon
Benjamin E. Shiftan
PEARSON SIMON & WARSHAW, LLP
44 Montgomery Street, Suite 2450
San Francisco, CA 94104
Telephone: (415) 433-9000
Facsimile: (415) 433-9008
bsimon@pswlaw.com
bshiftan@pswlaw.com

Clifford H. Pearson
PEARSON SIMON & WARSHAW, LLP
15165 Ventura Boulevard, Suite 400
Sherman Oaks, CA 91403
Telephone: (818) 788-8300
Facsimile: (818) 788-8104
cpearson@pswlaw.com

Interim Co-Lead Counsel for Direct Purchaser Plaintiffs

/s/R. Alexander Saveri
R. Alexander Saveri
Geoffrey C. Rushing
Cadio Zirpoli
SAVERI & SAVERI INC.
706 Sansome Street
San Francisco, CA 94111
Telephone: (415) 217-6810
Facsimile: (415) 217-6813
rick@saveri.com
geoff@saveri.com
cadio@saveri.com

Interim Co-Lead Counsel for Direct Purchaser Plaintiffs

/s/Joseph J. Tabacco, Jr.
Joseph J. Tabacco, Jr.
Todd A. Seaver
Jessica Moy
BERMAN DEVALERIO
44 Montgomery Street, Suite 650
San Francisco, CA 94104
Telephone: (415) 433-3200
Facsimile: (415) 433-6382
jtabacco@bermandevalerio.com
tseaver@bermandevalerio.com
jmoy@bermandevalerio.com

Interim Co-Lead Counsel for Direct Purchaser Plaintiffs

/s/Judith A. Zahid
Judith A. Zahid
Qianwei Fu
Heather T. Rankie
ZELLE LLP
44 Montgomery Street, Suite 3400
San Francisco, CA 94104
Telephone: (415) 693-0700
Facsimile: (415) 693-0770
jzahid@zelle.com
qfu@zelle.com
hrankie@zelle.com

Interim Liaison Counsel for Direct Purchaser Plaintiffs

DIRECT PURCHASER PLAINTIFFS' STEERING COMMITTEE

Jeffrey B. Gittleman
Beth T. Seltzer
BARRACK, RODOS & BACINE
One Gateway Center, Suite 2600
Newark, NJ 07102
Telephone: (973) 297-1484
Facsimile: (973) 297-1485
jgittleman@barrack.com
bseltzer@barrack.com

Douglas A. Millen
FREED KANNER LONDON & MILLEN LLC
2201 Waukegan Road, Suite 130
Bannockburn, IL 60015
Telephone: (224) 632-4500
Facsimile: (224) 632-4521
dmillen@fklmlaw.com

Gerald J. Rodos
William J. Ban
BARRACK, RODOS & BACINE
3300 Two Commerce Square
2001 Market Street
Philadelphia, PA 19103
Telephone: (215) 963-0600
Facsimile: (215) 963-0838
grodos@barrack.com
wban@barrack.com

Susan G. Kupfer
GLANCY PRONGAY & MURRAY LLP
1808 Sixth Street
Berkeley, CA 94710
Telephone: (415) 972-8160
Facsimile: (415) 972-8166
skupfer@glancylaw.com

Jay Eisenhofer
Peter Barile III
GRANT & EISENHOFER P.A.
485 Lexington Avenue, 29th Floor
New York, NY 10017
Telephone: (646) 722-8500
Facsimile: (646) 722-8501
jeisenhofer@gelaw.com
pbarile@gelaw.com

Lee Albert
Brian P. Murray
Gregory Linkh
GLANCY PRONGAY & MURRAY LLP
122 E. 42nd Street
New York, NY 10168
Telephone: (212) 682-5340
lalbert@glancylaw.com
bmurray@glancylaw.com
glinkh@glancylaw.com

Jack Brady
Daniel D. Owen
G. Gabriel Zorogastua
POLSINELLI PC
900 W. 48th Place, Suite 900
Kansas City, MO 64112
Telephone: (816) 753-1000
Facsimile: (816) 753-1536
jbrady@polsinelli.com
dowen@polsinelli.com
gzorogastua@polsinelli.com

Elizabeth C. Pritzker
PRITZKER LEVINE LLP
180 Grand Avenue, Suite 1390
Oakland, CA 94612
Telephone: (415) 692-0772
Facsimile: (415) 366-6110
ecp@pritzkerlevine.com