

1 R. Alexander Saveri (Bar No. 173102)
2 Geoffrey C. Rushing (Bar No. 126910)
3 Matthew D. Heaphy (Bar No. 227224)
4 **SAVERI & SAVERI, INC.**
5 706 Sansome Street
6 San Francisco, CA 94111
7 Telephone: (415) 217-6810
8 Facsimile: (415) 217-6813

5 Bruce L. Simon (Bar No. 96241)
6 Benjamin E. Shiftan (Bar No. 265767)
7 **PEARSON, SIMON & WARSHAW, LLP**
8 44 Montgomery Street, Suite 2450
9 San Francisco, CA 94104
10 Telephone: (415) 433-9000
11 Facsimile: (415) 433-9008

9 Joseph J. Tabacco, Jr. (Bar No. 75484)
10 Todd A. Seaver (Bar No. 271067)
11 Jessica Moy (Bar No. 272941)
12 **BERMAN TABACCO**
13 44 Montgomery Street, Suite 650
14 San Francisco, CA 94104
15 Telephone: (415) 433-3200
16 Facsimile: (415) 433-6382

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

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

17 IN RE: LITHIUM ION BATTERIES
18 ANTITRUST LITIGATION

Case No. 13-md-02420-YGR

MDL No. 2420

19 _____
20 This Document Relates To:

21 ALL DIRECT PURCHASER ACTIONS

**DIRECT PURCHASER PLAINTIFFS’
NOTICE OF MOTION AND MOTION
FOR:**

- 22 **1) CERTIFICATION OF SETTLEMENT CLASSES;**
- 23 **2) PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS WITH LG CHEM, SAMSUNG SDI, AND TOKIN DEFENDANTS;**
- 24 **3) DIRECTING NOTICE TO CLASS; AND**
- 25 **4) MEMORANDUM IN SUPPORT THEREOF.**

26 Date: December 19, 2017

27 Time: 2:00 p.m.

28 Judge: Hon. Yvonne Gonzalez Rogers

Location: Courtroom 1

TABLE OF CONTENTS

1

2 TABLE OF CONTENTS i

3 TABLE OF AUTHORITIES..... iii

4 NOTICE OF MOTION AND MOTION..... 1

5 MEMORANDUM OF POINTS AND AUTHORITIES..... 2

6 I. INTRODUCTION..... 2

7 II. FACTUAL AND PROCEDURAL HISTORY..... 4

8 III. THE TERMS OF THE SETTLEMENTS..... 5

9 IV. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENTS 7

10 A. Approval of Class Action Settlements 7

11 B. Standard for Settlement Approval 7

12 C. The Proposed Settlements Are Within the Range of Possible Approval 8

13 1. The Settlements Are the Product of Serious, Informed, Non-Collusive Negotiations..... 8

14 2. The Settlements Have No Obvious Deficiencies 9

15 3. The Settlements Treat All Class Members Fairly 10

16 4. The Settlements Are Within the Range of Possible Approval 10

17 a. LG Chem Settlement 11

18 b. Samsung SDI Settlement..... 11

19 c. TOKIN Settlement..... 12

20 5. The Risk, Expense and Delay of Continued Litigation Support Approval of the

21 Settlements 12

22 V. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASSES 13

23 A. The Requirements of Rule 23 in the Context of the Settlement Classes..... 14

24 B. The Requirements of Rule 23(a) Are Satisfied in this Case..... 15

25 1. Each Class Is so Numerous that Joinder of All Members Is Impracticable 15

26 2. This Case Involves Questions of Law and Fact Common to Each Class..... 15

27 3. Representative Plaintiffs’ Claims Are Typical of Each Class’s Claims..... 16

28 4. The Representative Plaintiffs Will Fairly and Adequately Protect the Interests of
Each Class 17

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

C. Each Proposed Class Satisfies the Requirements of Rule 23(b)(3)..... 18

 1. Common Questions of Law and Fact Predominate Over Individual Questions 18

 2. A Class Action Is Superior to Other Available Methods for the Fair and Efficient
 Adjudication of this Case 19

D. The Court Should Appoint Saveri & Saveri, Inc.; Pearson, Simon & Warshaw, LLP;
 and Berman Tabacco as Settlement Class Counsel..... 20

VI. PROPOSED PLAN OF NOTICE 21

VII. PROPOSED PLAN OF ALLOCATION 23

VIII. THE COURT SHOULD SET A FINAL APPROVAL SCHEDULE..... 24

IX. CONCLUSION 25

TABLE OF AUTHORITIES

Cases

1

2

3 *Amchem Prods., Inc. v. Windsor*,

4 521 U.S. 591 (1997) 15, 18, 19, 21

5 *Amgen Inc. v. Conn. Ret. Plans and Trust Funds*,

6 568 U.S. 455 (2013) 19

7 *Carnegie v. Household Int’l, Inc.*,

8 376 F.3d 656 (7th Cir. 2004)..... 15, 19

9 *Cifuentes v. Red Robin Int’l, Inc.*,

10 No. C-11-5635-EMC, 2012 WL 693930 (N.D. Cal. Mar. 1, 2012)..... 16

11 *Civil Rights Educ. and Enforcement Ctr. v. RLJ Lodging Trust*,

12 Case No. 15-cv-0224-YGR, 2016 WL 314400 (N.D. Cal. Jan. 25, 2016) 8

13 *Farley v. Baird, Patrick & Co.*,

14 No. 90 Civ. 2168 (MBM), 1992 WL 321632 (S.D.N.Y. Oct. 28, 1992) 20

15 *Fisher Bros. v. Mueller Brass Co.*,

16 630 F. Supp. 493 (E.D. Pa. 1985) 11

17 *Fraley ex rel. Duval v. Facebook, Inc.*,

18 No. CV-11-01726 RS, 2012 WL 6013427 (N.D. Cal. Dec. 3, 2012) 23

19 *Gaudin v. Saxon Mortg. Servs., Inc.*,

20 Case No. 11-cv-01663-JST, 2015 WL 4463650 (N.D. Cal. July 21, 2015) 13

21 *Hanlon v. Chrysler Corp.*,

22 150 F.3d 1011 (9th Cir. 1988)..... 12, 16, 20

23 *Harrington v. City of Albuquerque*,

24 222 F.R.D. 505 (D.N.M. 2004) 20

25 *In re Aftermarket Auto. Lighting Prods. Antitrust Litig.*,

26 276 F.R.D. 364 (C.D. Cal. 2011) 17

27 *In re Apple iPod iTunes Antitrust Litig.*,

28 No. C 05-00037 JW, 2008 WL 5574487 (N.D. Cal. Dec. 22, 2008), *amended by* No. C 05-00037 JW, 2009 WL 249234 (N.D. Cal. Jan. 15, 2009)..... 14

In re Apple iPod iTunes Antitrust Litig.,

No. C 05-00037 JW, 2011 WL 5864036 (N.D. Cal. Nov. 22, 2011)..... 14

In re Bluetooth Headset Prods. Liab. Litig.,

654 F.3d 935 (9th Cir. 2011)..... 7–9

In re Cathode Ray Tube (CRT) Antitrust Litig.,

308 F.R.D. 606 (N.D. Cal. 2015) 14, 16

In re Cathode Ray Tube (CRT) Antitrust Litig.,

MDL No. 1917, Case No. C-07-05944, 2016 WL 3648478 (N.D. Cal. July 7, 2016) 11

1 *In re Cathode Ray Tube (CRT) Antitrust Litig.*,
 MDL No. 1917, Master Case No. C-07-5944 JST, Case No. 14-cv-2058 JST, 2015 WL
 2 9266493 (N.D. Cal. Dec. 17, 2015) 11, 13, 23, 24

3 *In re Cathode Ray Tube (CRT) Antitrust Litig.*,
 MDL No. 1917, Master Case No. C-07-5944 JST, Case No. 14-cv-2058 JST, 2017 WL
 4 565003 (N.D. Cal. Feb. 13, 2017)..... 13

5 *In re Citric Acid Antitrust Litig.*,
 145 F. Supp. 2d 1152 (N.D. Cal. 2001) 23

6 *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*,
 No. M 02-1486 PJH, 2006 WL 1530166 (N.D. Cal. June 5, 2006)..... 15, 16, 19

7 *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*,
 No. M 02-1486 PJH, ECF No. 2093 (N.D. Cal. Oct. 27, 2010) 23

8 *In re Exxon Valdez*,
 229 F.3d 790 (9th Cir. 2000)..... 7

9 *In re High-Tech Emp. Antitrust Litig.*,
 Case No. 11-CV-02509-LHK, 2015 WL 5158730 (N.D. Cal. Sept. 2, 2015) 10

10 *In re High-Tech Emp. Antitrust Litig.*,
 985 F. Supp. 2d 1167 (N.D. Cal. 2013) 14

11 *In re Initial Pub. Offering Sec. Litig.*,
 226 F.R.D. 186 (S.D.N.Y. 2005)..... 15, 19

12 *In re LIBOR-Based Fin. Instruments Antitrust Litig.*,
 Nos. 11 MDL 2262(NRB), 11 Civ. 2613(NRB), 2014 WL 6851096 (S.D.N.Y. Dec. 2,
 13 2014)..... 8

14 *In re Linerboard Antitrust Litig.*,
 296 F. Supp. 2d 568 (E.D. Pa. 2003) 7, 12

15 *In re Lithium Ion Batteries Antitrust Litig.*,
 Case No. 13-MD-2420 YGR, 2014 WL 4955377 (N.D. Cal. Oct. 2, 2014)..... 4

16 *In re Lithium Ion Batteries Antitrust Litig.*,
 Case No. 13-MD-2420 YGR, 2017 WL 1391491 (N.D. Cal. Apr. 12, 2017) 4

17 *In re Lloyd’s Am. Trust Fund Litig.*,
 No. 96 Civ.1262 RWS, 2002 WL 31663577 (S.D.N.Y. Nov. 26, 2002)..... 23

18 *In re Mego Fin. Corp. Sec. Litig.*,
 213 F.3d 454 (9th Cir. 2000)..... 10

19 *In re Mercury Interactive Corp. Sec. Litig.*,
 618 F.3d 988 (9th Cir. 2010)..... 22, 24

20 *In re NVIDIA Corp. Derivative Litig.*,
 Master File No. C-06-06110-SBA (JCS), 2008 WL 5382544 (N.D. Cal. Dec. 22, 2008) 7

21 *In re Omnivision Techs., Inc.*,
 559 F. Supp. 2d 1036 (N.D. Cal. 2008) 13, 23

22 *In re Online DVD Rental Antitrust Litig.*,
 No. M 09-2029 PJH, 2010 WL 5396064 (N.D. Cal. Dec. 23, 2010)..... 14–17

23
 24
 25
 26
 27
 28

1	<i>In re Rite Aid Corp. Sec. Litig.</i> ,	
	146 F. Supp. 2d 706 (E.D. Pa. 2001)	11
2	<i>In re Rubber Chems. Antitrust Litig.</i> ,	
3	232 F.R.D. 346 (N.D. Cal. 2005)	15
4	<i>In re Static Random Access Memory (SRAM) Antitrust Litig.</i> ,	
	No. C 07-01819 CW, 2008 WL 4447592 (N.D. Cal. Sept. 29, 2008)	14–17, 19
5	<i>In re Tableware Antitrust Litig.</i> ,	
6	484 F. Supp. 2d 1078 (N.D. Cal. 2007)	8, 21
7	<i>In re TFT-LCD (Flat Panel) Antitrust Litig.</i> ,	
	267 F.R.D. 291 (N.D. Cal. 2010), <i>abrogated in part on other grounds by In re ATM Fee</i>	
8	<i>Antitrust Litig.</i> , 686 F.3d 741 (9th Cir. 2012)	14, 16, 19
9	<i>In re Vitamins Antitrust Litig.</i> ,	
	No. 99-197 TFH, 2000 WL 1737867 (D.D.C. Mar. 31, 2000)	23
10	<i>In re Zynga Inc. Sec. Litig.</i> ,	
	Case No. 12-cv-04007-JSC, 2015 WL 6471171 (N.D. Cal. Oct. 27, 2015)	3, 8–11
11	<i>Messner v. Northshore Univ. HealthSystem</i> ,	
12	669 F.3d 802 (7th Cir. 2012)	18, 19
13	<i>MWS Wire Indus., Inc. v. Cal. Fine Wire Co.</i> ,	
	797 F.2d 799 (9th Cir. 1986)	7
14	<i>Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.</i> ,	
15	221 F.R.D. 523 (C.D. Cal. 2004)	9
16	<i>Officers for Justice v. Civil Serv. Comm’n of City and Cnty. of S.F.</i> ,	
	688 F.2d 615 (9th Cir. 1982)	9, 10
17	<i>Pecover v. Elec. Arts Inc.</i> ,	
	No. C 08-2820 VRW, 2010 WL 8742757 (N.D. Cal. Dec. 21, 2010)	14
18	<i>Rodriguez v. West Publ’g Corp.</i> ,	
19	563 F.3d 948 (9th Cir. 2009)	9, 17
20	<i>Sullivan v. DB Invs., Inc.</i> ,	
	667 F.3d 273 (3d Cir. 2011)	18
21	<i>Thomas & Thomas Rodmakers, Inc. v. Newport Adhesives & Composites, Inc.</i> ,	
22	209 F.R.D. 159 (C.D. Cal. 2002)	18
23	<i>Wal-Mart Stores, Inc. v. Dukes</i> ,	
	564 U.S. 338 (2011)	15
24	<i>Wolin v. Jaguar Land Rover N. Am., LLC</i> ,	
	617 F.3d 1168 (9th Cir. 2010)	15
25	<u>Other Authorities</u>	
26	Alba Conte & Herbert B. Newberg,	
27	<i>Newberg on Class Actions</i> (4th ed. 2002)	15
28	Charles Alan Wright, Arthur R. Miller & Mary Kay Kane,	
	<i>Federal Practice and Procedure</i> (3d ed. 2005)	22

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

John M. Connor & Robert H. Lande,
Not Treble Damages: Cartel Recoveries Are Mostly Less Than Single Damages, 100 Iowa
 L. Rev. 1997 (2015) 11

Procedural Guidance for Class Action Settlements,
 U.S.D.C., N.D. Cal. (undated),
<http://www.cand.uscourts.gov/ClassActionSettlementGuidance>..... 6, 10, 14, 22

William B. Rubenstein,
Newberg on Class Actions (5th ed. 2014) 7

Rules

Civil Local Rules,
 U.S.D.C., N.D. Cal. (Jan. 17, 2017) 1

Federal Rules of Civil Procedure,
 Rule 23 1, 6, 7, 14–22

Statutes

Antitrust Criminal Penalty Enhancement and Reform Act of 2004,
 Pub. L. No. 108-237, tit. II, 118 Stat. 665 12

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 19, at 2:00 p.m., or as soon thereafter as counsel can be heard, before the Honorable Yvonne Gonzalez Rogers, United States District Courthouse, 1301 Clay Street, Courtroom 1, 4th Floor, Oakland, California, Direct Purchaser Plaintiffs (“Plaintiffs”) will move this Court, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for entry of orders:

- (i) granting preliminary approval of the settlement agreements Plaintiffs have executed with 1) LG Chem, Ltd. and LG Chem America, Inc. (together “LG Chem”); 2) Samsung SDI Co. Ltd. and Samsung SDI America, Inc. (together “Samsung SDI”); and 3) TOKIN Corporation (“TOKIN”), formerly known as NEC TOKIN Corporation (collectively “Settling Defendants”);
- (ii) certifying a settlement class with respect to each settlement;
- (iii) appointing Saveri & Saveri, Inc.; Pearson, Simon & Warshaw, LLP; and Berman Tobacco as Settlement Class Counsel with respect to each settlement class;
- (iv) approving the manner and form of giving notice of the settlements to class members as well as the plan of allocation with respect to the settlements;
- (v) establishing a timetable for publishing class notice and lodging objections to the terms of the settlements;
- (vi) setting a date for a hearing regarding final approval of the settlements;
- (vii) establishing a briefing schedule for Plaintiffs’ application for an award of attorneys’ fees and expenses and setting a hearing date therefor; and
- (viii) approving a Proof of Claim form and process for class members to submit claims against the settlement proceeds.

Plaintiffs seek to have the motion heard on a shortened schedule, *see* Civil L.R. 7-2(a), as permitted by the Court. Hr’g Tr. 13:20–14:3, Aug. 29, 2017.

The grounds for this motion are that: (a) the settlements are in the range of possible approval to justify issuing notice of the settlements to members of the proposed settlement classes and to schedule final approval proceedings; (b) the form and manner of providing notice regarding the matters set forth above satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process; and (c) because final approval of these settlements will resolve the action, it is appropriate to establish a claims procedure and to consider an award of attorneys’ fees and expenses, and class plaintiff incentive awards.

1 This motion is based upon this Notice of Motion and Motion, the following Memorandum of
2 Points and Authorities, the Declaration of R. Alexander Saveri (“Saveri Declaration” or “Saveri
3 Decl.”), the Proposed Orders, the complete files and records in this action, and such other written or
4 oral arguments that may be presented to the Court. The settlement agreements are attached to the
5 Saveri Declaration as Exhibit 1 (LG Chem), Exhibit 2 (Samsung SDI), and Exhibit 3 (TOKIN). The
6 proposed long-form notice is Exhibit 4. The proposed short-form notice is Exhibit 5. The proposed
7 Proof of Claim form is Exhibit 6.

8 **ISSUES TO BE DECIDED**

- 9 1. Whether Direct Purchaser Plaintiffs’ settlement agreements with the LG Chem, Samsung
10 SDI, and TOKIN Defendants should be preliminarily approved.
- 11 2. Whether a settlement class should be certified with respect to each settlement.
- 12 3. Whether Saveri & Saveri, Inc.; Pearson, Simon & Warshaw, LLP; and Berman Tabacco
13 should be appointed as Settlement Class Counsel with respect to each settlement.
- 14 4. Whether the manner and form of notice of the settlements to class members as well as the
15 plan of allocation should be approved.
- 16 5. Whether a timetable for publishing class notice and lodging objections to the terms of the
17 settlements should be established.
- 18 6. Whether a date for a final approval hearing should be set.
- 19 7. Whether the proposed Proof of Claim form and claims procedure should be approved.
- 20 8. Whether the Court should set a schedule for the briefing and hearing of Plaintiffs’
21 application for an award of attorneys’ fees and expenses, and for class plaintiff incentive awards.

22 **MEMORANDUM OF POINTS AND AUTHORITIES**

23 **I. INTRODUCTION**

24 Direct Purchaser Plaintiffs (“Plaintiffs”) have reached settlements with: 1) LG Chem, Ltd.
25 and LG Chem America, Inc. (together “LG Chem”); 2) Samsung SDI Co. Ltd. and Samsung SDI
26 America, Inc. (together “Samsung SDI”); and 3) TOKIN Corporation (“TOKIN”), formerly known
27 as NEC TOKIN Corporation (collectively “Settling Defendants”). These Defendants are the last
28 remaining; apart from settlement administration, attorneys’ fees and expenses and similar issues,

1 these settlements, if approved, will effectively resolve the direct purchaser actions.

2 Settling Defendants will pay the proposed settlement classes a total of \$70,450,000: LG
3 Chem will pay \$41 million; Samsung SDI will pay \$24.5 million; and TOKIN will pay \$4.95
4 million. The settlements (Saveri Decl., Exs. 1–3) (“Settlements”) were the product of thorough and
5 hard-fought negotiations between experienced and informed counsel and constitute excellent
6 recoveries for the proposed classes. Plaintiffs now move the Court for orders preliminarily approving
7 the Settlements, provisionally certifying settlement classes, approving the form and manner of notice
8 to the settlement classes, appointing counsel for the settlement classes, preliminarily approving a
9 plan of allocation, and establishing a schedule for final approval.

10 Apart from the amount of the settlement payments, the Settlements are substantially similar
11 to those already approved by the Court. *See* ECF Nos. 1182, 1438 (\$19,000,000 settlement with
12 Sony Corporation, Sony Energy Devices Corporation, and Sony Electronics, Inc. (together “Sony”));
13 ECF Nos. 1756, 1940 (\$3,450,000 settlement with Defendants Hitachi Maxell, Ltd. and Maxell
14 Corporation of America (together “Maxell”)); ECF Nos. 1757, 1942 (\$1,000,000 settlement with
15 Defendant NEC Corporation (“NEC”)); ECF Nos. 1758, 1944 (\$42,500,000 settlement with
16 Defendant Panasonic Corporation (“Panasonic”)¹; ECF Nos. 1759, 1946 (\$2,900,000 settlement with
17 Defendant Toshiba Corporation (“Toshiba”).

18 At this time, the Court is not being asked to determine whether the Settlements and plan of
19 allocation are fair, reasonable, and adequate. *In re Zynga Inc. Sec. Litig.*, Case No. 12-cv-04007-
20 JSC, 2015 WL 6471171, at *8 (N.D. Cal. Oct. 27, 2015) (“*Zynga*”). Rather, the question is whether
21 they are sufficiently within the range of possible approval to justify sending and publishing notice to
22 members of the settlement classes and to schedule a final approval hearing. Plaintiffs submit that
23 they are well within that range, and, therefore, that the Court should grant this motion.

24 Plaintiffs also ask the Court to approve a claims procedure, including the Proof of Claim
25 form (Saveri Decl, Ex. 6), so that the settlement proceeds may be distributed to class members.

26 Finally, Plaintiffs ask the Court to set a schedule for Plaintiffs’ application for attorneys’ fees

27 ¹ The Panasonic Settlement also resolved claims against Defendants Panasonic Corporation of
28 North America, SANYO Electric. Co., Ltd., and SANYO North America Corporation.

1 and expenses, and for class plaintiff incentive awards.

2 **II. FACTUAL AND PROCEDURAL HISTORY**

3 This Multi-District Litigation arises from an alleged conspiracy to fix the prices of Lithium
4 Ion Battery Cells (“Li-Ion Cells”). Li-Ion Cells are the main components in Lithium Ion Batteries
5 (“Li-Ion Batteries”). Li-Ion Batteries are the predominant form of rechargeable batteries used in
6 portable consumer electronics, powering devices including smartphones, laptop computers, digital
7 cameras, and cordless power tools. Plaintiffs’ complaint alleges that Defendants’ price-fixing
8 conspiracy began at least as early as January 1, 2000 and continued until at least May 31, 2011.
9 Second Consolidated Amended Complaint ¶¶ 110, 112–180, ECF No. 415 (Apr. 8, 2014) (“SCAC”).
10 Plaintiffs allege that the conspiracy has been carried out through agreements to fix prices and restrict
11 output and has been facilitated in a variety of ways, including face-to-face meetings and other
12 communications, customer allocation, and trade associations. Saveri Decl. ¶ 8. Two Defendants—LG
13 Chem, Ltd. and SANYO Electric. Co., Ltd.—pleaded guilty to criminal price fixing of cylindrical Li-
14 Ion Cells for use in notebook computer battery packs. *Id.*

15 As the Court is aware, and as explained in Plaintiffs’ briefs in support of approval of previous
16 settlements, this litigation has progressed significantly. Among other things, Plaintiffs have survived
17 two rounds of motions to dismiss, and have completed extensive factual discovery through their
18 review of millions of pages of documents, extensive responses to interrogatories, and dozens of
19 depositions. *See* Omnibus Order re: Motions to Dismiss the Second Consolidated Amended
20 Complaints of Direct and Indirect Purchaser Plaintiffs, *In re Lithium Ion Batteries Antitrust Litig.*,
21 Case No. 13-MD-2420 YGR, 2014 WL 4955377, at *42 (N.D. Cal. Oct. 2, 2014); Saveri Decl. ¶ 9.

22 Plaintiffs filed a motion for class certification on January 22, 2016. ECF No. 1038. Among
23 other things, Plaintiffs’ motion was supported by expert analysis of the Lithium Ion industry,
24 evidence of the conspiracy produced to date, and a preliminary damage study. Saveri Decl. ¶ 10. On
25 April 12, 2017, the Court denied Plaintiffs’ class certification motion. The denial was without
26 prejudice and invited Plaintiffs to supplement their motion. *In re Lithium Ion Batteries Antitrust*
27 *Litig.*, Case No. 13-MD-2420 YGR, 2017 WL 1391491, at *18–19 (N.D. Cal. Apr. 12, 2017).

28 On July 14, 2014, the Court set a schedule for Plaintiffs’ renewed class certification motion as

well as trial: Plaintiffs’ renewed motion would have been due on October 31, 2017; trial was set for September 10, 2018. ECF No. 1870. On September 5, 2017, the Court finally approved four additional settlements with Maxell, NEC, Panasonic, and Toshiba settlements. ECF Nos. 1940–1947.

III. THE TERMS OF THE SETTLEMENTS

Like the previously approved settlements with the Sony, Maxell, NEC, and Toshiba, each Settlement requires certification of the nationwide class of direct purchasers of Li-Ion Cells, Li-Ion Batteries and Lithium Ion Battery Products (“Li-Ion Products”) set forth in the operative complaint. SCAC ¶ 287; LG Chem Settlement ¶ A.2; Samsung SDI Settlement ¶ A.2; TOKIN Settlement ¶ A.1. The following chart summarizes the settlements in the action:

Defendant	Amount	Class Period	<u>Li-Ion Cells / Batteries / Products included in Class</u>	<u>Class Definition</u>
Sony <i>approved</i>	\$19,000,000	January 1, 2000– May 31, 2011	Cylindrical, prismatic, polymer	SCAC class (slightly altered; <i>see</i> n.6, <i>infra</i>)
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 <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			

For the purposes of the Settlements, Li-Ion Batteries, Li-Ion Cells and Li-Ion Products have the meanings as defined in the SCAC. LG Chem Settlement ¶ A.4; Samsung SDI Settlement ¶ A.4; TOKIN Settlement ¶ A.2. In return for the settlement payments, Plaintiffs and members of the settlement classes will relinquish any claims they have against Settling Defendants relating to any conduct, act, or omission by Settling Defendants that was or could have been alleged in the SCAC or preceding direct purchaser complaints relating to their purchases of Li-Ion Cells, Batteries,

1 and/or Products during the settlement class periods from Defendants or their subsidiaries and
2 affiliates. LG Chem Settlement ¶ C.15; Samsung SDI Settlement ¶ C.15; TOKIN Settlement
3 ¶ C.13. The releases exclude indirect purchaser claims, as well as claims for product defects or
4 personal injury, breach of contract, foreign purchases, and claims against parties other than Settling
5 Defendants. LG Chem Settlement ¶ C.15; Samsung SDI Settlement ¶ C.15; TOKIN Settlement
6 ¶ C.13. The releases are thus limited to the subject matter of this lawsuit. *See Procedural Guidance*
7 *for Class Action Settlements*, Preliminary Approval ¶ 1(c), U.S.D.C., N.D. Cal. (undated),
8 <http://www.cand.uscourts.gov/ClassActionSettlementGuidance> (“*Guidelines*”).²

9 Each Settlement becomes final upon: (1) the Court’s approval pursuant to Rule 23(e) and
10 entry of a final judgment of dismissal with prejudice; and (ii) the expiration of the time for appeal or,
11 if an appeal is taken, the affirmance of each of the judgments with no possibility of appeal. LG
12 Chem Settlement ¶ B.13; Samsung SDI Settlement ¶ B.13; TOKIN Settlement ¶ B.11.

13 Subject to the approval and direction of the Court, the proceeds of the Settlements, plus
14 accrued interest, will be used to: (1) make a distribution to members of the settlement classes in
15 accordance with a proposed plan of allocation (LG Chem Settlement ¶ E.23; Samsung SDI
16 Settlement ¶ E.23; TOKIN Settlement ¶ E.21); (2) pay notice costs and costs incurred in the
17 administration and distribution of the Settlements (LG Chem Settlement ¶ D.21(a); Samsung SDI
18 Settlement ¶ D.21(a); TOKIN Settlement ¶ D.19(a); (3) pay Class Counsel’s attorneys’ fees, costs,
19 and expenses as awarded by the Court (LG Chem Settlement ¶ E.25; Samsung SDI Settlement
20 ¶ E.25; TOKIN Settlement ¶ E.23); and (4) pay taxes on any interest earned on the escrow account
21 (LG Chem Settlement ¶ D.19(f); Samsung SDI Settlement ¶ D.19(f); TOKIN Settlement ¶ D.17(f)).

22 LG Chem has the right to terminate its settlement within fifteen (15) days of receipt of
23 requests for exclusion if purchasers amounting to thirty-five percent (35%) or more of its sales
24 request exclusion from the settlement class. LG Chem Settlement ¶ D.20(a). Samsung SDI has the
25 right to terminate its settlement within twenty (20) days of receipt of requests for exclusion if

26 ² LG Chem and Samsung SDI also agree to cooperate in the prosecution of the case against non-
27 settling Defendants. LG Chem Settlement ¶ F.26; Samsung SDI Settlement ¶ F.26. Settling
28 Defendants’ sales remain in the case for purposes of computing damages. LG Chem Settlement
¶ H.35; Samsung SDI Settlement ¶ H.35; TOKIN Settlement ¶ H.31.

1 purchasers amounting to thirty-five percent (35%) or more of its sales request exclusion from the
 2 settlement class. Samsung SDI Settlement ¶ D.20(a). TOKIN has no option to terminate.

3 **IV. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENTS**

4 **A. Approval of Class Action Settlements**

5 Rule 23(e) requires court approval of class action settlements. Settlement approval is a three
 6 step process: preliminary approval, notice, and final approval. 4 William B. Rubenstein, *Newberg*
 7 *on Class Actions* § 13:10 (5th ed. 2014). This motion concerns the first two steps:

- 8 • *First*, the parties present a proposed settlement to the court for so-called
 9 “preliminary approval.” If a class has not yet been certified, typically the parties
 10 will simultaneously ask the court to “conditionally” certify a settlement class.
 11 . . .
- 12 • *Second*, if the court does preliminarily approve the settlement (and conditionally
 13 certify the class), notice is sent to the class describing the terms of the proposed
 14 settlement, class members are given an opportunity to object or, in Rule 23(b)(3)
 15 class actions, to opt out of the settlement, and the court holds a fairness hearing
 16 at which class members may appear and support or object to the settlement.

17 *Id.*

18 **B. Standard for Settlement Approval**

19 As explained in Plaintiffs’ previous motions for preliminary approval, the standards for
 20 settlement approval are well established. ECF No. 1707 at 7–8. “There is a strong policy favoring
 21 compromises that resolve litigation, and case law in the Ninth Circuit reflects that strong policy.
 22 ‘There is an overriding public interest in settling and quieting litigation.’” *In re NVIDIA Corp.*
 23 *Derivative Litig.*, Master File No. C-06-06110-SBA (JCS), 2008 WL 5382544, at *2 (N.D. Cal. Dec.
 24 22, 2008) (quoting *MWS Wire Indus., Inc. v. Cal. Fine Wire Co.*, 797 F.2d 799, 802 (9th Cir. 1986)).
 25 “[T]he general policy of federal courts to promote settlement before trial is even stronger in the
 26 context of large-scale class actions.” *In re Exxon Valdez*, 229 F.3d 790, 795 (9th Cir. 2000).
 27 Compromise is particularly favored in antitrust litigation, which is notoriously difficult and
 28 unpredictable. *See In re Linerboard Antitrust Litig.*, 296 F. Supp. 2d 568, 577 (E.D. Pa. 2003).

Final approval “may be granted only after a fairness hearing and a determination that the
 settlement taken as a whole is fair, reasonable, and adequate.” *In re Bluetooth Headset Prods. Liab.*
Litig., 654 F.3d 935, 946 (9th Cir. 2011). While the inquiry in different cases may vary, in general a

1 court must weigh eight factors in making a fairness determination:

2 (1) the strength of the plaintiff’s case; (2) the risk, expense, complexity, and likely
3 duration of further litigation; (3) the risk of maintaining class action status
4 throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery
5 completed and the stage of the proceedings; (6) the experience and views of
6 counsel; (7) the presence of a governmental participant; and (8) the reaction of the
7 class members of the proposed settlement.

8 *Id.* As explained in *Bluetooth*, if the settlement is reached before class certification, it “must
9 withstand an even higher level of scrutiny for evidence of collusion or other conflicts of interest than
10 is ordinarily required” *Id.* Final approval is entrusted to the court’s discretion. *Id.* at 940 (“we
11 review a district court’s approval of a class action settlement for clear abuse of discretion”).

12 The question at preliminary approval, however, is simply whether the settlement is within the
13 range of possible approval. *Zynga*, 2015 WL 6471171, at *8; *see also In re LIBOR-Based Fin.*
14 *Instruments Antitrust Litig.*, Nos. 11 MDL 2262(NRB), 11 Civ. 2613(NRB), 2014 WL 6851096, at *2
15 (S.D.N.Y. Dec. 2, 2014) (question is “whether the terms of the Proposed Settlement are ‘at least
16 sufficiently fair, reasonable and adequate to justify notice to those affected and an opportunity to be
17 heard’”). “Preliminary approval of a settlement and notice to the proposed class is appropriate: ‘[i]f
18 [1] the proposed settlement appears to be the product of serious, informed, non-collusive
19 negotiations, [2] has no obvious deficiencies, [3] does not improperly grant preferential treatment to
20 class representatives or segments of the class, and [4] falls with[in] the range of possible approval.’”
21 *Civil Rights Educ. and Enforcement Ctr. v. RLJ Lodging Trust*, Case No. 15-cv-0224-YGR, 2016 WL
22 314400, at *11 (N.D. Cal. Jan. 25, 2016) (quoting *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d
23 1078, 1079 (N.D. Cal. 2007) (“*Tableware*”)); *Zynga*, 2015 WL 6471171, at *8.

24 Like previous settlements, these factors support granting preliminary approval here.

25 **C. The Proposed Settlements Are Within the Range of Possible Approval**

26 **1. The Settlements Are the Product of Serious, Informed, Non-Collusive 27 Negotiations**

28 The Settlements were the product of good faith, arm’s-length negotiations among
experienced and well-informed counsel. Negotiations with each of the Settling Defendants occurred
over a span of months and involved face-to-face mediations. Saveri Decl. ¶ 11. For each, the parties

1 exchanged written mediation statements and were guided by an experienced and effective mediator,
 2 the Honorable Vaughn R. Walker (retired). *Id.* The parties were informed by two rounds of motions
 3 to dismiss and the fruits of years of discovery as well as the impact and damages analysis of Dr.
 4 Roger Noll, Plaintiffs’ econometric expert. Each negotiation was conducted in the utmost good faith.
 5 *Id.* These circumstances support the conclusion that the Settlements were reached in an informed and
 6 non-collusive fashion. *See Zynga*, 2015 WL 6471171, at *9 (although not conclusive, use of
 7 mediator and fact that some discovery had occurred indicate procedural fairness); *Rodriguez v. West*
 8 *Publ’g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (“*Rodriguez*”) (“[w]e put a good deal of stock in the
 9 product of an arms-length, non-collusive, negotiated resolution”). Counsel’s judgment that the
 10 settlements are fair and reasonable, Saveri Decl. ¶ 12, is also entitled to significant weight. *See Nat’l*
 11 *Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) (“‘Great weight’
 12 is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the
 13 underlying litigation.”); *Officers for Justice v. Civil Serv. Comm’n of City and Cnty. of S.F.*, 688
 14 F.2d 615, 625 (9th Cir. 1982) (“*Officers for Justice*”).

15 2. The Settlements Have No Obvious Deficiencies

16 The second factor addresses whether there are any deficiencies precluding preliminary
 17 approval. As detailed below, the consideration for the Settlements amounts to a substantial portion
 18 or more of the damages attributable to each Settling Defendants’ sales. The Settlements provide
 19 substantial economic benefits to the class members, particularly given the risks faced by the class
 20 of no recovery. There are also no obvious deficiencies in the scope of the releases.

21 Furthermore, none of the warning signs that the Ninth Circuit cautioned against in
 22 *Bluetooth* are present. *Bluetooth*, 654 F.3d at 947. The Settlements do not provide that Class
 23 Counsel receive a disproportionate amount of the settlement consideration. *Id.* Rather, they specify
 24 that the Court will determine the amount of attorneys’ fees, and that that determination shall have
 25 no bearing on the Settlements. LG Chem Settlement ¶ E.25; Samsung SDI Settlement ¶ E.25;
 26 TOKIN Settlement ¶ E.23. Second, the Settlements do not allow any part of the \$70,450,000
 27 consideration to revert to any of the Settling Defendants. *See* LG Chem Settlement ¶¶ E.23–25;
 28 Samsung SDI Settlement ¶¶ E.23–25; TOKIN Settlement ¶¶ E.21–23. Third, the Settlements

1 contain no “clear sailing” provision of the kind condemned in *Bluetooth*. See LG Chem Settlement
 2 ¶ E.25; Samsung SDI Settlement ¶ E.25; TOKIN Settlement ¶ E.23; see also *In re High-Tech Emp.*
 3 *Antitrust Litig.*, Case No. 11-CV-02509-LHK, 2015 WL 5158730, at *14 (N.D. Cal. Sept. 2, 2015)
 4 (“a ‘clear sailing’ provision ‘does not signal the possibility of collusion’ where, as here, Class
 5 Counsel’s fee will be awarded by the Court from the same common fund as the recovery to the
 6 class”). The absence of these warning signs further indicates that the Settlements are fair. See
 7 *Zynga*, 2015 WL 6471171, at *9. Nor are there other indications that the Settlements are anything
 8 but the product of informed, arm’s-length negotiations.

9 **3. The Settlements Treat All Class Members Fairly**

10 The proposed settlements do not provide preferential treatment to any class members or
 11 group of class members. Like previous settlements, Plaintiffs propose a *pro rata* distribution of the
 12 Settlement funds (see Section VII) according to the value of the Li-Ion Cells class members
 13 purchased, or that were contained in the products they purchased.³ Plaintiffs’ claims will be paid on
 14 the same *pro rata* basis as other class members. Saveri Decl. ¶ 13; see also *Guidelines*, Preliminary
 15 Approval ¶ 1(e). This factor supports preliminary approval. See *Zynga*, 2015 WL 6471171, at *10.

16 **4. The Settlements Are Within the Range of Possible Approval**

17 For this factor, courts generally focus on how the settlement consideration compares to the
 18 expected recovery at trial. See *id.* However, “a cash settlement amounting to only a fraction of the
 19 potential recovery does not per se render the settlement inadequate or unfair.” *In re Mego Fin. Corp.*
 20 *Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (quoting *Officers for Justice*, 688 F.2d at 628). Settling
 21 Defendants’ payments are well within the range of possible approval when compared to other cases,
 22 and when the risk, expense, complexity, and likely duration of further litigation are considered.

23 The cash consideration for each Settlement justifies preliminary approval. Each settlement
 24 provides a recovery substantially higher than amounts other courts have found sufficient for final
 25 approval in comparable antitrust cases. See John M. Connor & Robert H. Lande, *Not Treble*
 26 *Damages: Cartel Recoveries Are Mostly Less Than Single Damages*, 100 Iowa L. Rev. 1997, 1998

27 ³ The recovery per plaintiff under the terms of the settlements will be determined by the claims
 28 submitted. See *Guidelines*, Preliminary Approval ¶ 1(d).

1 (2015) (survey of 71 settled cartel cases revealed the weighted mean—weighting settlement
 2 according to their sales—was 19% of single damages recovery), *noted in In re Cathode Ray Tube*
 3 *(CRT) Antitrust Litig.*, MDL No. 1917, Case No. C-07-05944, 2016 WL 3648478, at *7 n.19 (N.D.
 4 Cal. July 7, 2016) and *In re Cathode Ray Tube (CRT) Antitrust Litig.*, MDL No. 1917, Master Case
 5 No. C-07-5944 JST, Case No. 14-cv-2058 JST, 2015 WL 9266493, at *5 n.9 (N.D. Cal. Dec. 17,
 6 2015) (“*CRT I*”). *See also Zynga*, 2015 WL 6471171, at *11 (approving settlement of 14% of
 7 estimated damages in securities class action, because, *inter alia*, it exceeded average recovery in
 8 securities actions); *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 715 (E.D. Pa. 2001) (citing
 9 studies noting that the average securities fraud class action settlement between 1995 and 2001
 10 resulted in recovery between 5.5% and 6.2% of estimated losses). *See also CRT I*, 2015 WL
 11 9266493, at *5 (citing *Fisher Bros. v. Mueller Brass Co.*, 630 F. Supp. 493, 498 (E.D. Pa. 1985)
 12 (also determining that settlements equal to .1%, .2%, .3%, .65%, .88%, and 2.4% of defendants’ total
 13 sales were reasonable)).

14 These settlement amounts are well within the range of final approval. As discussed below,
 15 the risk, expense and delay of continued litigation compel the conclusion that they represent
 16 excellent recoveries for the class members and should be approved. *See* Section IV.C.5, *infra*.⁴

17 **a. LG Chem Settlement**

18 The LG Chem Settlement is extraordinary. The \$41,000,000 Settlement value is multiples
 19 of the single damages attributable to LG Chem’s U.S. sales. *See* Saveri Decl. ¶ 14. Unquestionably,
 20 the settlement represents an excellent recovery and should be approved.

21 **b. Samsung SDI Settlement**

22 The \$24,500,000 Samsung SDI Settlement is also excellent. It represents a recovery of
 23 approximately 25% to 33% of the single damages attributable to Samsung SDI’s U.S. sales of cells,
 24

25 ⁴ As noted above, each Settlement also preserves Plaintiffs’ ability to recover for damages for
 26 Settling Defendants’ sales from any remaining Defendants based on joint and several liability. LG
 27 Chem Settlement ¶ H.35; Samsung SDI Settlement ¶ H.35; TOKIN Settlement ¶ H.31. The LG
 28 Chem and Samsung SDI Settlements require those Defendants to cooperate with Plaintiffs in their
 case against any remaining Defendants. LG Chem Settlement ¶ F.26; Samsung SDI Settlement
 ¶ F.26.

1 batteries and finished products. *See id.* ¶ 15. It is well above the weighted average of 19% even
 2 though Samsung SDI is the ACPERA applicant in this case⁵ and, consequently, has less exposure
 3 than other defendants because it will not be subject to treble damages or joint and several liability.
 4 *See* ACPERA § 213(a). This settlement is also well within the range of possible final approval.

5 **c. TOKIN Settlement**

6 Finally, the \$4,950,000 TOKIN Settlement is also well above average. While TOKIN’s
 7 U.S. sales data is incomplete, Plaintiffs’ counsel estimate that TOKIN’s payment substantially
 8 exceeds single damages attributable to its U.S. sales. *See* Saveri Decl. ¶ 16. TOKIN made only
 9 prismatic cells, and its worldwide market share was less than 5%. *Id.* Discovery to date indicates
 10 that TOKIN had few, if any, U.S. sales. *Id.*

11 **5. The Risk, Expense and Delay of Continued Litigation Support Approval**
 12 **of the Settlements**

13 The “risk, expense, complexity, and likely duration of further litigation” are also relevant to
 14 the Court’s preliminary approval analysis and support preliminary approval. *See Hanlon v.*
 15 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1988) (“*Hanlon*”). First, while Plaintiffs believe
 16 their case has merit, substantial risks exist with further litigation. Antitrust class litigation is
 17 complex and uncertain and this case is no exception. *See Linerboard*, 296 F. Supp. 2d at 577. For
 18 example, the Court has denied Plaintiffs’ motion for class certification. While the denial was
 19 without prejudice, and Plaintiffs believe they can satisfy the Court’s concerns in a renewed motion,
 20 a denial of class certification is a real risk—and is one that could preclude any meaningful
 21 recovery. Similarly, to prevail, Plaintiffs must establish liability, impact, and damages at trial.
 22 While, as the Court has noted, the guilty pleas establish that a conspiracy existed at least for a short
 23 period, the duration of the conspiracy, its participants, and the products it embraced are all hotly
 24 contested. A result contrary to Plaintiffs’ allegations on any of these issues could substantially
 25 reduce the value of their case. In addition, even if Plaintiffs prove their liability case in full, there is
 26 no guarantee that the jury will accept their damage analysis. In the *LCD* case, for example, the

27 ⁵ *See* Antitrust Criminal Penalty Enhancement and Reform Act of 2004, Pub. L. No. 108-237, tit.
 28 II, 118 Stat. 665 (“ACPERA”).

1 plaintiffs' expert concluded that class wide single damages were \$870 million; the jury awarded
 2 \$87 million. Saveri Decl. ¶ 17. *See also In re Cathode Ray Tube (CRT) Antitrust Litig.*, MDL No.
 3 1917, Master Case No. C-07-5944 JST, Case No. 14-cv-2058 JST, 2017 WL 565003, at *4 (N.D.
 4 Cal. Feb. 13, 2017).

5 Second, further litigation against the Settling Defendants will involve substantial delay and
 6 expense. Because any judgment in favor of Plaintiffs is almost certain to be appealed, a litigated
 7 recovery is likely years away. And further litigation against the Settling Defendants will be
 8 expensive. For these reasons, as well, the Settlements represent excellent recoveries for the class
 9 and should be approved. As courts in this district have observed:

10 [I]t is not unreasonable for a plaintiff to receive less in settlement than her total
 11 potential recovery at trial. *In re Omnivision Techs., Inc.*, 559 F.Supp.2d 1036, 1042
 12 (N.D.Cal. 2008). The lesser amount reflects the risk associated with trial, and also
 the time and effort that must be invested to go to trial.

13 *Gaudin v. Saxon Mortg. Servs., Inc.*, Case No. 11-cv-01663-JST, 2015 WL 4463650, at *5 (N.D.
 14 Cal. July 21, 2015); *see also CRT I*, 2015 WL 9266493, at *4–5 (risk of continued litigation
 15 “strongly favors granting final approval”).

16 For all of these reasons, Plaintiffs respectfully submit that the Settlements are well within
 17 the range of possible approval and, therefore, worthy of preliminary approval.

18 **V. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASSES**

19 As it did with respect to the previous five settlements, the Court should provisionally certify
 20 the proposed settlement classes. *See* ECF Nos. 1182 ¶ 4 (Sony); 1756 ¶ 4 (Maxell); 1757 ¶ 4 (NEC);
 21 1758 ¶ 4 (Panasonic); 1759 ¶ 4 (Toshiba). Each Settling Defendant has agreed that the class defined
 22 in, and required by, its settlement should be certified. LG Chem Settlement at 2, ¶ A.2; Samsung
 23 SDI Settlement at 2, ¶ A.2; TOKIN Settlement at 2, ¶ A.1. The LG Chem, Samsung SDI, and
 24 TOKIN settlement classes are materially identical to the Sony, Maxell, NEC and Toshiba settlement
 25 classes which the Court has finally approved: each uses the SCAC class definition. SCAC ¶ 287.⁶

26 ⁶ As Plaintiffs noted in previous motions, the Sony settlement made slight alterations to the SCAC
 27 language: the class definition in the Sony settlement twice refers to “any *alleged* co-conspirator”
 28 (emphasis added), as opposed to “any co-conspirator” in the SCAC; and deletes the phrase “during
 the Class Period” before the specified date range. *See* ECF No. 1438 ¶ 4. Also as Plaintiffs have

1 It is well-established that price-fixing actions like this one are appropriate for class
 2 certification and many courts have so held. *See, e.g., In re Cathode Ray Tube (CRT) Antitrust Litig.*,
 3 308 F.R.D. 606, 630 (N.D. Cal. 2015) (“*CRT IP*”); *In re High-Tech Emp. Antitrust Litig.*, 985 F.
 4 Supp. 2d 1167, 1229 (N.D. Cal. 2013); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 267 F.R.D. 291,
 5 315 (N.D. Cal. 2010) (“*LCD*”), *abrogated in part on other grounds by In re ATM Fee Antitrust*
 6 *Litig.*, 686 F.3d 741, 755 & n.7 (9th Cir. 2012); *In re Apple iPod iTunes Antitrust Litig.*, No. C 05-
 7 00037 JW, 2011 WL 5864036, at *4–5 (N.D. Cal. Nov. 22, 2011); *In re Online DVD Rental*
 8 *Antitrust Litig.*, No. M 09-2029 PJH, 2010 WL 5396064, at *12 (N.D. Cal. Dec. 23, 2010) (“*Online*
 9 *DVD*”); *Pecover v. Elec. Arts Inc.*, No. C 08-2820 VRW, 2010 WL 8742757, at *26 (N.D. Cal. Dec.
 10 21, 2010); *In re Apple iPod iTunes Antitrust Litig.*, No. C 05-00037 JW, 2008 WL 5574487, at *8–9
 11 (N.D. Cal. Dec. 22, 2008), *amended by* No. C 05-00037 JW, 2009 WL 249234, at *1 (N.D. Cal. Jan.
 12 15, 2009); *In re Static Random Access Memory (SRAM) Antitrust Litig.*, No. C 07-01819 CW, 2008
 13 WL 4447592, at *7 (N.D. Cal. Sept. 29, 2008) (“*SRAM*”).

14 **A. The Requirements of Rule 23 in the Context of the Settlement Classes**

15 Rule 23 provides that a court must certify a class where, as here, plaintiffs satisfy the four
 16 prerequisites of Rule 23(a) (numerosity, commonality, typicality, and adequacy), and one of the
 17 three criteria set forth in Rule 23(b). Rule 23(b)(3) provides that “a class action may be maintained”
 18 if “the court finds that the questions of law or fact common to class members predominate over any
 19 questions affecting only individual members, and that a class action is superior to other available
 20 methods for fairly and efficiently adjudicating the controversy.” As with previous settlements, each
 21 requirement is satisfied here. *See* ECF Nos. 1438 ¶ 5, 1756 ¶ 5, 1757 ¶ 5, 1758 ¶ 5, 1759 ¶ 5.

22 The “predominance” requirement is relaxed for settlement classes: “Confronted with a request
 23 for settlement-only class certification, a district court need not inquire whether the case, if tried,
 24 would present intractable management problems for the proposal is that there be no trial.” *Amchem*

25 _____
 26 previously noted, the Panasonic Settlement, ECF No. 1758, Ex. A ¶ A.1, adopts the proposed class
 27 definition contained in Plaintiffs’ motion for class certification. ECF No. 1038 at 3. The Panasonic
 28 class does not include purchasers of polymer cells, batteries or products, and the class period
 begins two years and five months later. *See Guidelines*, Preliminary Approval ¶ 1(a).

1 *Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) (“*Amchem*”) (citation omitted). As the Seventh
 2 Circuit has explained, manageability concerns that might preclude certification of a litigated class
 3 may be disregarded “because the settlement might eliminate all the thorny issues that the court would
 4 have to resolve if the parties fought out the case.” *Carnegie v. Household Int’l, Inc.*, 376 F.3d 656,
 5 660 (7th Cir. 2004) (“*Carnegie*”). See also *In re Initial Pub. Offering Sec. Litig.*, 226 F.R.D. 186,
 6 190, 195–96 (S.D.N.Y. 2005) (“*IPO*”) (settlement class may be broader than litigated class because
 7 settlement resolves manageability/predominance concerns).

8 **B. The Requirements of Rule 23(a) Are Satisfied in this Case**

9 **1. Each Class Is so Numerous that Joinder of All Members Is Impracticable**

10 The first requirement is that the class be so numerous that joinder of all members would be
 11 “impracticable.” Fed. R. Civ. P. 23(a)(1). Where the precise size of the class is unknown, but
 12 “general knowledge and common sense indicate that it is large, the numerosity requirement is
 13 satisfied.” *SRAM*, 2008 WL 4447592, at *3 (quoting 1 Alba Conte & Herbert B. Newberg, *Newberg*
 14 *on Class Actions* § 3:3 (4th ed. 2002)). Here, Defendants’ transactional data indicates that each class
 15 contains thousands of members dispersed across the country. Saveri Decl. ¶ 18. It therefore satisfies
 16 this requirement. The Court found that the five settlement classes it certified previously satisfied
 17 “numerosity.” ECF Nos. 1438 ¶ 5, 1756 ¶ 5, 1757 ¶ 5, 1758 ¶ 5, 1759 ¶ 5 (“there are thousands of
 18 geographically dispersed settlement class members, making joinder of all members impracticable”).

19 **2. This Case Involves Questions of Law and Fact Common to Each Class**

20 The second requirement for class certification, Rule 23(a)(2), requires that class members
 21 share common issues of law or fact. Only one significant issue is necessary to satisfy commonality.
 22 *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011); *Wolin v. Jaguar Land Rover N. Am., LLC*,
 23 617 F.3d 1168, 1172 (9th Cir. 2010). It is well established that allegations of a price-fixing
 24 conspiracy satisfy commonality: “the very nature of a conspiracy antitrust action compels a finding
 25 that common questions of law and fact exist.” *In re Dynamic Random Access Memory (DRAM)*
 26 *Antitrust Litig.*, No. M 02-1486 PJH, 2006 WL 1530166, at *3 (N.D. Cal. June 5, 2006) (“*DRAM*”)
 27 (quoting *In re Rubber Chems. Antitrust Litig.*, 232 F.R.D. 346, 351 (N.D. Cal. 2005)). See also
 28 *Online DVD*, 2010 WL 5396064, at *3. Other common questions include whether the conspiracy

1 caused the prices of Li-Ion Cells to be set at supra-competitive levels, the measure of classwide
2 damages, and whether the conspirators concealed the conspiracy. Again, the Court has previously
3 found this requirement satisfied. ECF Nos. 1438 ¶ 5, 1756 ¶ 5, 1757 ¶ 5, 1758 ¶ 5, 1759 ¶ 5.

4 **3. Representative Plaintiffs' Claims Are Typical of Each Class's Claims**

5 The third requirement is that “the claims or defenses of the representative parties [be] typical
6 of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). As with the previous settlement
7 classes, Plaintiffs also satisfy the typicality requirement. Rule 23(a)(3) “does not require that the
8 claims of the representative party be identical to the claims of class members.” *Online DVD*, 2010
9 WL 5396064, at *4. “Rather, typicality results if the representative plaintiffs’ claims arise from the
10 same event, practice or course of conduct that gives rise to the claims of the absent class members
11 and if their claims are based on the same legal or remedial theory.” *Id.* (quotation marks and brackets
12 omitted). *See also SRAM*, 2008 WL 4447592, at *3. Class representatives’ claims “need not be
13 substantially identical” to those of absent class members, as “[s]ome degree of individuality is to be
14 expected in all cases.” *Cifuentes v. Red Robin Int’l, Inc.*, No. C-11-5635-EMC, 2012 WL 693930, at
15 *5 (N.D. Cal. Mar. 1, 2012). *See also Hanlon*, 150 F.3d at 1020.

16 “Typicality requirements are often satisfied wherein it is alleged that the defendants engaged
17 in a common price-fixing scheme relative to all members of the class. In such cases, there is a strong
18 assumption that the claims of the representative parties will be typical of the absent class members.”
19 *CRT II*, 308 F.R.D. at 613 (quotation marks, brackets, and citations omitted). “This is true even
20 where ‘the plaintiff followed different purchasing procedures, purchased in different quantities or at
21 different prices, or purchased a different mix of products than did the members of the class.’” *Id.*
22 (quoting *LCD*, 267 F.R.D. at 300). *See also Online DVD*, 2010 WL 5396064, at *4 (inquiry focuses
23 on the conduct of the defendants, not on their individual dealings or transactions with plaintiffs);
24 *DRAM*, 2006 WL 1530166, at *4–6.

25 Here, each proposed class representative purchased at least one Li-Ion Battery or Product
26 directly from at least one named Defendant or its wholly-owned subsidiary during the relevant
27 settlement class period and allegedly paid higher prices as a result of Defendants’ allegedly unlawful
28 actions. The claims of the proposed class representatives mirror those of the members of the

1 proposed settlement classes. They allege a conspiracy to fix, raise, maintain and stabilize the price of
2 Li-Ion Cells and that the prices of Li-Ion Cells, Batteries and Finished Products were unlawfully
3 increased as a result. Class members' claims are based on the same legal theories and Plaintiffs
4 would have to prove the same elements that absent members would have to prove: the existence,
5 scope, and efficacy of the conspiracy. Plaintiffs submit that the typicality requirement of Rule
6 23(a)(3) is satisfied here, as the Court found with respect to each of the previous settlements.

7 **4. The Representative Plaintiffs Will Fairly and Adequately Protect the**
8 **Interests of Each Class**

9 The fourth requirement, Rule 23(a)(4), mandates that the representative plaintiffs fairly and
10 adequately protect the interests of the class. The Court found that Plaintiffs satisfied Rule 23(a)(4) for
11 the purposes of all five previous settlements. ECF Nos. 1438 ¶ 5, 1756 ¶ 5, 1757 ¶ 5, 1758 ¶ 5, 1759
12 ¶ 5. Plaintiffs continue to satisfy it here. Adequacy requires that Plaintiffs (1) have no interests that
13 are antagonistic to or in conflict with the interests of the class; and (2) retain counsel able to
14 vigorously prosecute the interests of the class. *See SRAM*, 2008 WL 4447592, at *4. “[T]he
15 adequacy-of-representation requirement is satisfied as long as one of the class representatives is an
16 adequate class representative.” *Rodriguez*, 563 F.3d at 961.

17 Courts have regularly found this requirement satisfied in price-fixing cases. *In re Aftermarket*
18 *Auto. Lighting Prods. Antitrust Litig.*, 276 F.R.D. 364, 374 (C.D. Cal. 2011) (where plaintiffs have
19 “alleged a broad conspiracy, courts have not required . . . that the representative ha[s] purchased
20 from all of the defendants or that he ha[s] been adversely affected by all of the means and methods by
21 which the alleged conspiracy was implemented”). Class representatives “will be found to be
22 adequate when the attorneys representing the class are qualified and competent, and the class
23 representatives are not disqualified by interests antagonistic to the remainder of the class.” *Online*
24 *DVD*, 2010 WL 5396064, at *4. Moreover, “[t]he mere potential for a conflict of interest is not
25 sufficient to defeat class certification; the conflict must be actual, not hypothetical.” *SRAM*, 2008 WL
26 4447592, at *4. Here, Plaintiffs' interests do not conflict with those of absent members of the
27 proposed classes. Plaintiffs allege that all class members were injured by the same conspiracy in the
28 same way. All Plaintiffs and members of the proposed settlement classes seek the same relief in the

1 form of overcharge damages, and share an identical interest in proving Defendants’ liability.

2 Plaintiffs have also retained skilled counsel with extensive experience in prosecuting antitrust
3 class actions. The Court has appointed Saveri & Saveri, Inc.; Pearson, Simon & Warshaw, LLP; and
4 Berman Tabacco as Interim Co-Lead Counsel, and as Class Counsel for the five previous settlement
5 classes. ECF Nos. 194 ¶ 1, 1182 ¶ 7, 1756 ¶ 7, 1757 ¶ 7, 1758 ¶ 7, 1759 ¶ 7. Interim Co-Lead
6 Counsel have undertaken the responsibilities assigned to them and—with other able Plaintiffs’
7 counsel—have vigorously prosecuted the case on behalf of Plaintiffs and the members of the
8 proposed settlement classes. Plaintiffs satisfy the adequacy requirement of Rule 23(a)(4).

9 **C. Each Proposed Class Satisfies the Requirements of Rule 23(b)(3)**

10 To be certified under Rule 23(b)(3) a class must meet two additional requirements:
11 “[c]ommon questions must ‘predominate over any questions affecting only individual members’;
12 and class resolution must be ‘superior to other available methods for the fair and efficient
13 adjudication of the controversy.’” *Amchem*, 521 U.S. at 615. As noted by the Supreme Court:
14 “[p]redominance is a test readily met in certain cases alleging . . . violations of the antitrust laws.”
15 *Id.* at 625. Plaintiffs satisfy both requirements here, as they did for the previous settlement classes.
16 See ECF Nos. 1438 ¶ 5, 1756 ¶ 5, 1757 ¶ 5, 1758 ¶ 5, 1759 ¶ 5.

17 **1. Common Questions of Law and Fact Predominate Over Individual**
18 **Questions**

19 Courts commonly find the “predominance” requirement of Rule 23(b) satisfied in direct
20 purchaser horizontal price-fixing cases. See, e.g., *Messner v. Northshore Univ. HealthSystem*, 669
21 F.3d 802, 814–15 (7th Cir. 2012) (“*Messner*”); *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 300–02 (3d
22 Cir. 2011); *Thomas & Thomas Rodmakers, Inc. v. Newport Adhesives & Composites, Inc.*, 209
23 F.R.D. 159, 167 (C.D. Cal. 2002) (“In price-fixing cases, ‘courts repeatedly have held that the
24 existence of the conspiracy is the predominant issue and warrants certification even where
25 significant individual issues are present.’”).

26 Rule 23(b)(3) “does *not* require a plaintiff seeking class certification to prove that each
27 element of her claim is susceptible to classwide proof. What the rule does require is that common
28 questions *predominate* over any questions affecting only individual class members.” *Amgen Inc. v.*

1 *Conn. Ret. Plans and Trust Funds*, 568 U.S. 455, 469 (2013) (quotation marks, citation, and
 2 brackets omitted). The focus of the inquiry is whether the proposed class is “sufficiently cohesive
 3 to warrant adjudication by representation.” *Id.* (quoting *Amchem*, 521 U.S. at 623).

4 Rule 23(b)(3)’s predominance requirement is satisfied when “common questions
 5 represent a significant aspect of [a] case and . . . can be resolved for all members of
 6 [a] class in a single adjudication.” Or, to put it another way, common questions can
 7 predominate if a “common nucleus of operative facts and issues” underlies the
 8 claims brought by the proposed class. . . . Individual questions need not be absent.
 The text of Rule 23(b)(3) itself contemplates that such individual questions will be
 present. The rule requires only that those questions not predominate over the
 common questions affecting the class as a whole.

9 *Messner*, 669 F.3d at 815 (citations omitted).

10 Here, common issues predominate with respect to Plaintiffs’ proof of the three elements of
 11 their claim: (1) that Defendants participated in a conspiracy to fix prices in violation of the antitrust
 12 laws; (2) that Class members suffered antitrust injury (*i.e.*, “impact”) as a result of the conspiracy;
 13 and (3) the damages they sustained. *See LCD*, 267 F.R.D. at 310; *DRAM*, 2006 WL 1530166, at *7.
 14 Common questions predominate because Plaintiffs will establish each of the above elements through
 15 “generalized proof” applicable to the proposed settlement classes as a whole.

16 Finally, as explained above, the Court need not address questions of manageability, because
 17 the settlement disposes of the need for a trial, along with any “thorny issues” that might arise. *See*
 18 *Amchem*, 521 U.S. at 620; *Carnegie*, 376 F.3d at 660; *IPO*, 226 F.R.D. at 190.

19 **2. A Class Action Is Superior to Other Available Methods for the Fair and** 20 **Efficient Adjudication of this Case**

21 Rule 23(b)(3) requires that a class action be “superior to other available methods for fairly
 22 and efficiently adjudicating the controversy.” If common questions are found to predominate in an
 23 antitrust action, courts generally have ruled that the superiority prerequisite of Rule 23(b)(3) is
 24 satisfied. *LCD*, 267 F.R.D. at 314–15. Here, it would be incredibly inefficient to litigate class
 25 members’ claims in multiple individual proceedings. In addition, “[i]n antitrust cases such as this,
 26 the damages of individual direct purchasers are likely to be too small to justify litigation, but a class
 27 action would offer those with small claims the opportunity for meaningful redress.” *SRAM*, 2008
 28 WL 4447592, at *7. The prosecution of separate actions would also create the risk of inconsistent

1 rulings, and could result in prejudice to the named Plaintiffs and members of the proposed settlement
 2 classes. Most members of the proposed settlement classes would be effectively foreclosed from
 3 pursuing their claims absent class certification. *Hanlon*, 150 F.3d at 1023 (“many claims [that] could
 4 not be successfully asserted individually . . . would not only unnecessarily burden the judiciary, but
 5 would prove uneconomic for potential plaintiffs”). As with previous settlements, the proposed
 6 settlement classes satisfy the requirements of Rule 23(b)(3).

7 **D. The Court Should Appoint Saveri & Saveri, Inc.; Pearson, Simon & Warshaw,**
 8 **LLP; and Berman Tabacco as Settlement Class Counsel**

9 Rule 23(c)(1)(B) states that “[a]n order that certifies a class action . . . must appoint class
 10 counsel under Rule 23(g).” Rule 23(g)(1)(A) states:

11 In appointing class counsel, the court must consider: (i) the work counsel has done
 12 in identifying or investigating potential claims in the action; (ii) counsel’s
 13 experience in handling class actions, other complex litigation, and the types of
 14 claims asserted in the action; (iii) counsel’s knowledge of the applicable law; and
 15 (iv) the resources that counsel will commit to representing the class.

16 The law firms of Saveri & Saveri, Inc.; Pearson, Simon & Warshaw, LLP; and Berman
 17 Tabacco seek to be appointed as Settlement Class Counsel. The firms are willing and able to
 18 vigorously prosecute this action and to devote all necessary resources to obtain the best possible
 19 result. The work done to date supports the conclusion that they should be appointed as Class Counsel
 20 for purposes of the Settlements. *See, e.g., Harrington v. City of Albuquerque*, 222 F.R.D. 505, 520
 21 (D.N.M. 2004). The firms meet the criteria of Rule 23(g)(1)(A). *Cf. Farley v. Baird, Patrick & Co.*,
 22 No. 90 Civ. 2168 (MBM), 1992 WL 321632, at *5 (S.D.N.Y. Oct. 28, 1992) (“Class counsel’s
 23 competency is presumed absent specific proof to the contrary by defendants”).

24 The Court has already appointed Saveri & Saveri, Inc.; Pearson, Simon & Warshaw, LLP;
 25 and Berman Tabacco as Interim Co-Lead Counsel for the Direct Purchaser Plaintiffs, ECF No. 194
 26 ¶ 1, and as Settlement Class Counsel for the purposes of five settlements. ECF Nos. 1182 ¶ 7, 1756
 27 ¶ 7, 1757 ¶ 7, 1758 ¶ 7, 1759 ¶ 7. They also described their work in representing the class in
 28 connection with the motion for class certification. ECF Nos. 1038-9 ¶¶ 3–4, 1038-10 ¶¶ 3–4, 1038-
 11 ¶¶ 3–5. There is no reason not to appoint these same three firms as Settlement Class Counsel.

1 **VI. PROPOSED PLAN OF NOTICE**

2 Rule 23(e)(1) states that “[t]he court must direct notice in a reasonable manner to all class
3 members who would be bound by” a proposed settlement, voluntary dismissal, or compromise. Class
4 members are entitled to the “best notice that is practicable under the circumstances” of any proposed
5 settlement before it is finally approved by the Court. Fed. R. Civ. P. 23(c)(2)(B). The notice must
6 state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class
7 certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance
8 through an attorney if the member so desires; (v) that the court will exclude from the class any
9 member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the
10 binding effect of a class judgment on members under Rule 23(c)(3). *Id.* Notice must be “the best
11 notice practicable under the circumstances, including individual notice to all members who can be
12 identified through reasonable effort.” *Amchem*, 521 U.S. at 617.

13 Plaintiffs propose a notice plan that is substantially identical to those the Court approved for
14 the previous settlements. ECF Nos. 1182 ¶¶ 8, 10; 1438 ¶ 9; 1756 ¶¶ 8–9; 1757 ¶¶ 8–9; 1758 ¶¶ 8–9;
15 1759 ¶¶ 8–9; 1940 ¶ 9; 1942 ¶ 9; 1944 ¶ 9; 1946 ¶ 9. Plaintiffs propose that a long-form notice
16 (Saveri Decl., Ex. 4) be given by mail or email to members of the settlement classes who may, by
17 reasonable efforts, be identified.⁷ In addition, Plaintiffs propose that a short-form notice (Saveri
18 Decl., Ex. 5) be published in the national edition of the *Wall Street Journal*, and that both notices,
19 along with the Settlements, be posted on a website accessible to class members. Publication notice is
20 an acceptable method of providing notice where the identity of specific class members is not
21 reasonably available. *Tableware*, 484 F. Supp. 2d at 1080.

22 The content of the proposed notices is also similar to previous notices and complies with the
23 requirements of Rule 23(c)(2)(B). The long-form notice clearly and concisely explains the nature of
24 the action and the terms of the Settlements. Saveri Decl., Ex. 4 at 3–6. It provides a clear description
25 of who is a member of the settlement classes and the binding effects of class membership. *Id.* at 4–6.

26 _____
27 ⁷ Pursuant to the Court’s order regarding the Sony settlement, Defendants provided lists of their
28 customers to Plaintiffs, and Plaintiffs’ notice provider Epiq Systems, Inc. created a class list for
mailing purposes. *See* ECF No. 1357-3 ¶ 5.

1 It explains how to exclude oneself from the settlement classes, how to object to the Settlements, how
2 to obtain copies of papers filed in the case and how to contact Class Counsel. *Id.* at 5–7.

3 The short-form notice also identifies members of the settlement classes and explains the
4 basic terms of the Settlements and the consequences of class membership. Saveri Decl., Ex. 5. It also
5 explains how to obtain more information about the Settlements. *Id.* The short-form notice will be
6 published after the long-form notice is mailed and e-mailed to members of the settlement classes.

7 The proposed notices explain that Plaintiffs will seek attorneys’ fees and state the amount—
8 30% of the settlement funds, or \$41,790,000—they will seek. The notices also explain that, in
9 accordance with *In re Mercury Interactive Corp. Securities Litigation*, 618 F.3d 988, 994–95 (9th
10 Cir. 2010), the fee application will be posted on the case website in advance of the deadline to
11 object. The notices set forth the procedure for objecting to the fee application and contain
12 information about the hearing.

13 The notices explain the procedure for submitting claims, either by mail or online. Class
14 members will use a Proof of Claim form (Saveri Decl., Ex. 6) to be approved by the Court. The
15 settlement administrator will mail the Proof of Claim form to class members along with the long-
16 form notice, via first-class mail. Class members will also be able to download the form from the
17 case-dedicated website or complete the Proof of Claim form online. The proposed notices also
18 explain the proposed plan of allocation, discussed below.

19 The content of the notices fulfills the requirements of Rule 23 and due process. *See* ECF Nos.
20 1438 ¶ 9, 1940 ¶ 9, 1942 ¶ 9, 1944 ¶ 9, 1946 ¶ 9. Accordingly, the Court should preliminarily
21 approve them. They also satisfy the District’s *Procedural Guidance for Class Action Settlements*.
22 *See Guidelines*, Preliminary Approval ¶¶ 3–5. Plaintiffs have chosen Epiq Systems, Inc. to act as
23 settlement administrator. *See id.* ¶ 2.

24 Such notice plans are commonly used in class actions like this one and constitute valid, due,
25 and sufficient notice to class members, and constitute the best notice practicable under the
26 circumstances. *See* 7AA Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice*
27 *and Procedure* § 1786 (3d ed. 2005) (“Wright & Miller”); 7B Wright & Miller § 1797.6; *Fraley ex*
28 *rel. Duval v. Facebook, Inc.*, No. CV-11-01726 RS, 2012 WL 6013427, at *2 (N.D. Cal. Dec. 3,

2012). Similar notice plans have been recently approved by several courts in the Northern District of California. *See, e.g., CRT I*, 2015 WL 9266493, at *3–4; Saveri Decl. ¶ 19 (*ODD, CRT, and LCD*).

VII. PROPOSED PLAN OF ALLOCATION

Plaintiffs propose a plan of allocation identical to that already approved by the Court for the previous settlements. *See* ECF Nos. 1438 ¶ 11, 1940 ¶ 12, 1942 ¶ 12, 1944 ¶ 12, 1946 ¶ 12. Plaintiffs propose that distribution of the proceeds of the Settlements be made on a *pro rata* basis. A plan of allocation of class settlement funds is subject to the “fair, reasonable and adequate” standard that applies to approval of class settlements. *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1045 (N.D. Cal. 2008); *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. This type of distribution has frequently been determined to be fair, adequate, and reasonable. *CRT I*, 2015 WL 9266493, at *8. *See also* Order Granting Final Approval of Plan of Allocation of Settlement Proceeds, *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, No. M 02-1486 PJH, ECF No. 2093 (N.D. Cal. Oct. 27, 2010); *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 apportion[sic] 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”).

As with previous settlements, Plaintiffs propose that settlement funds be allocated on a *pro rata* basis based on the dollar value of each class member’s purchase(s) of Li-Ion Cell, Li-Ion Batteries or Li-Ion Products in proportion to the total claims filed. In determining the *pro rata* allocation of the settlement funds, class members’ purchases will be valued according to the number of cylindrical Li-Ion Cells they purchased. Purchases of battery packs or finished product will be valued according the number of cylindrical cells typically contained in the particular products purchased by class members. For example, laptop computers typically contained six (6) cylindrical

1 cells. Camcorders typically contained four (4) cylindrical cells. Cell phones and digital cameras
 2 typically contained one prismatic cell of approximately one half the capacity and price of a typical
 3 cylindrical cell. These will count as one-half of a cylindrical cell. If a class member purchased
 4 batteries or packs, they will be valued according to the number of cylindrical cells, or equivalent (by
 5 capacity) prismatic or polymer cell, they contained. To the extent class members purchased
 6 substantial quantities of products containing material different amounts of cells than “typical,” the
 7 Settlement Administrator will have the ability to adjust the claim valuation. The resulting amounts
 8 will be multiplied against the net settlement fund (total settlements minus all costs, attorneys’ fees,
 9 and expenses) to determine each claimant’s *pro rata* share of the settlement funds.

10 The proposed plan of allocation is similar to recently approved plans in this District. *See,*
 11 *e.g., CRT I*, 2015 WL 9266493, at *7–8 (approving *pro rata* plan of allocation based upon
 12 proportional value of price-fixed component in finished product; purchases of CRT televisions
 13 valued at 50% of CRT purchases, monitor purchases valued at 75% of CRT purchases).

14 Plaintiffs propose the use of the Proof of Claim form attached to the Saveri Declaration as
 15 Exhibit 6. The Proof of Claim form was drafted in consultation with Plaintiffs’ experienced
 16 settlement administrator. Saveri Decl. ¶ 7. The Proof of Claim form requires class members to detail
 17 their purchases by product type—i.e., notebook computers, cellular (mobile) phones, digital
 18 cameras, camcorders, etc.—so that the number of cells purchased by each class member can be
 19 calculated. Plaintiffs request that the Court approve the proposed Proof of Claim form.

20 **VIII. THE COURT SHOULD SET A FINAL APPROVAL SCHEDULE**

21 The last step in the approval process is the final approval hearing. Plaintiffs also propose that
 22 their application for attorneys’ fees and expenses and incentive awards, be heard at final approval.
 23 Plaintiffs propose that their fee and expense application be filed with the Court and posted on the
 24 class website twenty-one (21) days in advance of the deadline for Class members to object, in
 25 compliance with *Mercury Interactive*, 618 F.3d at 994–95.

26 Plaintiffs propose the following schedule:

27 ///

28 ///

<u>Days from Entry of Preliminary Approval Orders</u>	<u>Event</u>
14 Days	Long-form notice sent by U.S. mail or e-mail and published on website; activation of updated telephone information system.
18 Days	Short-form notice published in <i>Wall Street Journal</i> .
38 Days (<i>21 days before objection deadline</i>)	Deadline to file and publish on website Plaintiffs' application for attorneys' fees and expenses, plaintiff incentive awards.
59 Days (<i>at least 45 days after mailing notice</i>)	Deadline to request exclusion from the settlement classes, object to Settlements, object to Plaintiffs' application for an award of attorneys' fees and expenses and incentive awards, and/or file a notice of intention to appear at fairness hearing.
73 Days	Deadline to file list of requests for exclusion.
87 Days	Deadline to file memorandum in support of final approval of Settlements, reply brief in support of Plaintiffs' application for an award of attorneys' fees and expenses and incentive awards.
90 Days	Deadline to postmark Proof of Claim form or submit online.
122 Days	Hearing on final approval of Settlements, application for attorneys' fees, expenses and incentive awards.

IX. CONCLUSION

Plaintiffs respectfully submit that the Court should enter orders granting the relief requested herein: (i) granting preliminary approval of the Settlements and the plan of allocation; (ii) certifying a settlement class for each Settlement; (iii) appointing Saveri & Saveri, Inc.; Pearson, Simon & Warshaw, LLP; and Berman Tabacco as Settlement Class Counsel for each Settlement; (iv) approving the manner and form of giving notice to members of the Settlement classes, (v) establishing a timetable for issuing such notice, filing objections, requesting exclusion, and filing briefs in support of final approval and Plaintiffs' application for attorneys' fees and expenses and incentive awards; and (vi) setting a date for a hearing on final approval of the Settlements and Plaintiffs' application for attorney' fees and expenses and incentive awards.

///

///

///

///

///

1 Dated: November 17, 2017

Respectfully submitted,

2 /s/Bruce L. Simon

/s/R. Alexander Saveri

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

R. Alexander Saveri
Geoffrey C. Rushing
Matthew D. Heaphy
7 **SAVERI & SAVERI INC.**
706 Sansome Street
San Francisco, CA 94111
8 Telephone: (415) 217-6810
Facsimile: (415) 217-6813
rick@saveri.com
geoff@saveri.com
cadio@saveri.com

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

*Interim Co-Lead Counsel for Direct Purchaser
Plaintiffs*

11 *Interim Co-Lead Counsel for Direct Purchaser
12 Plaintiffs*

13 /s/Joseph J. Tabacco, Jr.

/s/Judith A. Zahid

14 Joseph J. Tabacco, Jr.
Todd A. Seaver
15 Jessica Moy
BERMAN TABACCO
44 Montgomery Street, Suite 650
16 San Francisco, CA 94104
Telephone: (415) 433-3200
17 Facsimile: (415) 433-6382
jtabacco@bermantabacco.com
18 tseaver@bermantabacco.com
jmoy@bermantabacco.com

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

21 *Interim Co-Lead Counsel for Direct Purchaser
22 Plaintiffs*

*Interim Liaison Counsel for Direct Purchaser
23 Plaintiffs*

DIRECT PURCHASER PLAINTIFFS'
STEERING COMMITTEE

1
2
3 Jeffrey B. Gittleman
Beth T. Seltzer
BARRACK, RODOS & BACINE
4 One Gateway Center, Suite 2600
Newark, NJ 07102
5 Telephone: (973) 297-1484
Facsimile: (973) 297-1485
6 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

7
8 Gerald J. Rodos
William J. Ban
BARRACK, RODOS & BACINE
9 3300 Two Commerce Square
2001 Market Street
10 Philadelphia, PA 19103
Telephone: (215) 963-0600
11 Facsimile: (215) 963-0838
grodos@barrack.com
12 wban@barrack.com

13 Susan G. Kupfer
GLANCY PRONGAY & MURRAY LLP
14 1808 Sixth Street
Berkeley, CA 94710
15 Telephone: (415) 972-8160
Facsimile: (415) 972-8166
16 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

17 Lee Albert
Brian P. Murray
18 Gregory Linkh
GLANCY PRONGAY & MURRAY LLP
19 122 E. 42nd Street
New York, NY 10168
20 Telephone: (212) 682-5340
lalbert@glancylaw.com
21 bmurray@glancylaw.com
glinkh@glancylaw.com

22
23 Jack Brady
Daniel D. Owen
24 G. Gabriel Zorogastua
POLSINELLI PC
900 W. 48th Place, Suite 900
25 Kansas City, MO 64112
Telephone: (816) 753-1000
26 Facsimile: (816) 753-1536
jbrady@polsinelli.com
27 downen@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