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19 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
 20 **OAKLAND DIVISION**

21 IN RE: LITHIUM ION BATTERIES
 ANTITRUST LITIGATION

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

22
 23 This Document Relates to:
 24 *All Direct Purchaser Actions*
 25

**DIRECT PURCHASER PLAINTIFFS’
 NOTICE OF MOTION AND MOTION
 FOR ORDER AUTHORIZING
 DISTRIBUTION OF SETTLEMENT
 FUNDS; MEMORANDUM OF POINTS
 AND AUTHORITIES IN SUPPORT
 THEREOF**

26 Date: April 7, 2020
 27 Time: 2:00 p.m.
 Judge: Hon. Yvonne Gonzalez Rogers
 28 Courtroom: 1

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on April 7, 2020, at 2:00 p.m., or as soon thereafter as counsel can be heard, before the Honorable Yvonne Gonzalez Rogers, United States District Judge, at the United States Courthouse, 1301 Clay Street, Courtroom 1, Oakland, California, Direct Purchaser Plaintiffs (“Plaintiffs”) will move this Court for an Order authorizing the distribution of settlement proceeds obtained in the Direct Purchaser Action to class members who submitted valid claims.

Plaintiffs request that the Court enter an Order authorizing payment of all claims approved by the Settlement Administrator Epiq Class Actions & Claims Solutions, Inc. (“Settlement Administrator”)—less funds reserved for claims administration costs, taxes and other issues—from the settlement funds according to the *pro rata* Plan of Allocation previously approved by the Court. Plaintiffs further request that the Court enter an Order authorizing payment to the Settlement Administrator for claims administration costs incurred but not yet paid.

This Motion is based upon this Notice of Motion and Motion, the Memorandum of Points and Authorities in Support Thereof, the Declaration of James Page, Esq. in Support of Motion for Order Authorizing Distribution of Settlement Funds (“Page Declaration” or “Page Decl.”), as well as the complete files and records in this case, and upon such argument at the hearing on this motion and in further pleadings as may be presented to the Court.¹

¹ After Plaintiffs file this Motion, it will be posted, with all supporting materials, on the Lithium Ion Batteries settlement website (www.BatteriesDirectPurchaserAntitrustSettlement.com) maintained by the Settlement Administrator.

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STATEMENT OF ISSUES TO BE DECIDED

1. Whether to adopt and approve the Settlement Administrator’s recommendations regarding the ineligibility of the claims, as set forth in **Exhibit A** to the Page Declaration.
2. Whether to authorize payment of all claims approved by the Settlement Administrator from the settlement funds according to the *pro rata* Plan of Allocation previously approved by the Court, as set forth in **Exhibit E** to the Page Declaration.
3. Whether the Settlement Administrator shall be reimbursed for costs and expenses incurred in the amount of \$673,964.94.
4. Whether to reserve \$136,968.96 for the payment of additional claims administration costs and expenses, and \$250,000.00 for potential tax liability or other issues.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Direct Purchaser Plaintiffs (“Plaintiffs”) are poised to deliver payments to all class members who submitted valid claims to the settlement proceeds. The Settlement Administrator has completed an extensive review of each submitted claim. This administration was time-consuming and successfully screened out fraudulent, erroneous, and otherwise unmeritorious claims. Without this audit, such flawed claims, had they been paid, would have substantially reduced approved claimants’ *pro rata* recovery.

As set forth in the *pro rata* Plan of Allocation previously approved by the Court, payments to class members will be based on the relative value of their purchases, determined by the type and number of lithium-ion cells they purchased, either as standalone cells or contained in batteries or in products such as cameras. Over 99% of the proceeds will be distributed to the top 54 claimants. The class will also benefit from Plaintiffs’ proposal to make a minimum payment to every eligible class member of \$10.00, even if those class members purchased only a few cells worth less than that amount.

Plaintiffs request that the Court enter the Proposed Order, submitted herewith, which authorizes payment of all claims approved by the Settlement Administrator—less funds reserved

1 for claims administration costs, taxes, and other issues—from the settlement funds according to
2 the *pro rata* Plan of Allocation previously approved by the Court.

3 Plaintiffs obtained settlement proceeds of \$139,300,000 plus accrued interest.² This
4 Court has granted final approval of each of the settlement agreements and the time for appeals
5 has expired. All settlement payments have been made and were placed in interest-earning
6 escrow accounts. Notice of the settlements was sent to class members, certain class members
7 opted out, and potential class members submitted claims to the settlement proceeds.

8 As of December 31, 2019, the available settlement funds—which include the settlement
9 proceeds plus interest, less Court-ordered attorneys’ fees, costs and expenses, incentive awards
10 to Class Representatives, and already-paid costs and expenses incurred by the Settlement
11 Administrator—total \$92,581,422.23. Page Decl. ¶ 24. After payment of unreimbursed claims
12 administration costs of \$673,964.94, reserving \$136,968.96 for additional estimated
13 administration costs and \$250,000.00 for potential tax liability or other issues, and taking into
14 account that \$24.59 cannot be distributed at this time due to divisibility issues,³ Plaintiffs
15 propose distribution now of \$91,520,463.74. Page Decl. ¶¶ 25–26, 30 & Ex. E.

16 **II. STATEMENT OF RELEVANT FACTS**

17 **A. Background of the Settlements**

18 Plaintiffs brought this action alleging that Defendants participated in a conspiracy from
19 January 1, 2000 through May 31, 2011 to fix, raise, maintain, and stabilize the prices of
20 Lithium Ion Battery Cells (“Li-Ion Cells”), which inflated the prices of Lithium Ion Batteries
21 (“Li-Ion Batteries”) and finished products containing those batteries (“Li-Ion Products”), sold
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23
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25 ² The “Settling Defendants” are LG Chem, Ltd.; LG Chem America, Inc.; Samsung SDI
26 Co., Ltd.; Samsung SDI America, Inc.; Panasonic Corporation; Panasonic Corporation of North
27 America; SANYO Electric Co., Ltd.; SANYO North America Corporation; Sony Corporation;
28 Sony Energy Devices Corporation; Sony Electronics, Inc.; Hitachi Maxell, Ltd.; Maxell
Plaintiffs voluntarily dismissed the only non-settling defendant, GS Yuasa, early in the
litigation. ECF No. 920.

³ See *infra* note 12.

1 in the United States.⁴ Defendants denied Plaintiffs' allegations and asserted numerous
 2 affirmative defenses. In exchange for the release of Plaintiffs' claims, Plaintiffs reached eight
 3 separate settlement agreements with Settling Defendants totaling \$139,300,000. The Court
 4 determined that each settlement was fair, adequate, and reasonable; approved each settlement;
 5 approved a *pro rata* (*i.e.*, proportional based on purchases) Plan of Allocation; and dismissed
 6 the litigation with prejudice against Settling Defendants.⁵ The Court also found that the notice
 7 given to the class regarding the settlements was the best notice practicable under the
 8 circumstances, and that such notice provided due and adequate notice of the proceedings and
 9 satisfied the requirements of due process. *See id.* The Final Approval Orders and the Final
 10 Judgments entered provide that the Court retains jurisdiction over distribution of the settlement
 11 funds. *See id.*

12 **B. Notice to Class Members Regarding the Settlements**

13 The Settlement Administrator provided notice to potential class members regarding the
 14 settlements. For each settlement, the Settlement Administrator (1) mailed a long-form Notice to
 15 potential class members, (2) made a toll-free telephone number available to potential class
 16 members, (3) published a summary, short-form Notice in the national edition of the *Wall Street*
 17 *Journal*, (4) posted materials on the settlement website regarding the settlements, including the
 18 settlement agreements, the Preliminary and Final Approval Orders, the Final Judgments, the
 19 Notices, summary short-form Notices, and a downloadable Proof of Claim form, and
 20 (5) processed the requests for exclusion. Page Decl. ¶¶ 4–5; *see also* ECF Nos. 1357-3
 21 (Declaration of Guy J. Thompson in Support of Final Approval of Class Action Settlements

22 _____
 23 ⁴ Li-Ion Cells are the main components of Li-Ion Batteries. Li-Ion Batteries are cylindrical,
 24 prismatic, and polymer batteries that are rechargeable and use lithium ion technology.
 Examples of Li-Ion Products are notebook computers, cellular phones, and digital cameras.

25 ⁵ *See* ECF Nos. 1438 (Sony Final Approval Order), 1940 (Hitachi Maxell Final Approval
 26 Order), 1942 (NEC Final Approval Order), 1944 (Panasonic/SANYO Final Approval Order),
 27 1946 (Toshiba Final Approval Order), 2316 (TOKIN Final Approval Order), 2317 (Samsung
 28 SDI Final Approval Order), 2318 (LG Chem Final Approval Order) (together, "Final Approval
 Orders"); ECF Nos. 1439 (Sony Final Judgment of Dismissal), 1941 (Hitachi Maxell Final
 Judgment of Dismissal), 1943 (NEC Final Judgment of Dismissal), 1945 (Panasonic/SANYO
 Final Judgment of Dismissal), 1947 (Toshiba Final Judgment of Dismissal), 2319 (TOKIN
 Final Judgment of Dismissal) 2320 (Samsung SDI Final Judgment of Dismissal), 2321 (LG
 Chem Final Judgment of Dismissal) (together, "Final Judgments").

1 with Sony Defendants); 1888-1 (Declaration of Guy J. Thompson in Support of Final Approval
2 of Class Action Settlements with Maxell, NEC, Panasonic and Toshiba Defendants); 2210
3 (Declaration of Charles Marr, Esq. re Dissemination of LG Chem, Samsung SDI, and TOKIN
4 Notice and Proof of Claim Form to Class Members, and Requests for Exclusion) (“Marr 2210
5 Decl.”); and 2249-2 (Declaration of Charles Marr, Esq. in Support of Final Approval of Class
6 Action Settlements with LG Chem, Samsung SDI, and TOKIN Defendants).

7 All the Notices informed class members that the Plan of Allocation provides for
8 distribution of the settlement funds on a *pro rata* basis.

9 **C. Notice of Proof of Claim Form to Potential Class Members**

10 Following preliminary approval of the LG Chem, Samsung SDI, and TOKIN
11 settlements in December 2017 (ECF Nos. 2104, 2105, 2106), the Settlement Administrator
12 initially mailed 809,612 Proof of Claim forms to potential class members, 39,022 of which
13 were returned as undeliverable. Page Decl. ¶ 8. The Settlement Administrator was able to
14 retrieve updated address information for 20,171 potential class members from the National
15 Change of Address (NCOA) database and subsequently re-mailed Proof of Claim forms to
16 these 20,171 potential class members. *Id.* In total, the Settlement Administrator has caused
17 829,783 Proof of Claim forms to be printed and mailed. *Id.*⁶

18 The Proof of Claim form directed potential class members to the settlement website—
19 www.BatteriesDirectPurchaserAntitrustSettlement.com—where they could submit a claim
20 electronically or download a printable copy of the Proof of Claim form. Marr 2210 Decl. Ex. A,
21 at 4. Potential class members were notified that the deadline to submit a Proof of Claim form
22 was April 26, 2018. *Id.* at Ex. B, at 1, 7. The format of the Proof of Claim form was designed to
23 be clear and simple so that potential claimants could easily fill out the form and provide
24 information required in support of their claims. Page Decl. ¶ 8.

25 The Settlement Administrator responded to inquiries from claimants, including letters
26 sent to the established post office box, emails sent to a monitored account, and calls to a

27 ⁶ Proof of Claim forms were returned as undeliverable as to 14,681 unique potential class
28 members following queries to the NCOA database, or 1.8% of the potential class members to
whom Proof of Claim forms were initially sent. Page Decl. ¶ 8.

1 dedicated toll-free telephone number. Page Decl. ¶ 9. Furthermore, as noted, the Settlement
 2 Administrator also maintained the settlement website, which made available the settlement
 3 agreements, the Preliminary and Final Approval Orders, the Final Judgments, the Notices,
 4 Summary Notices, and a downloadable Proof of Claim form. *Id.*

5 **D. The Settlement Administrator’s Review of Claims**

6 The Settlement Administrator received and processed 9,892 Proof of Claim forms,
 7 including 69 received after the April 26, 2018 deadline. Page Decl. ¶ 10. The total number of
 8 Cylindrical Units⁷ claimed—prior to any review or audit by the Settlement Administrator—was
 9 1,624,309,485 Cylindrical Units. *Id.* ¶ 11. For quality control purposes, each Proof of Claim
 10 form submitted was given a unique claim number and entered into a database. *Id.* ¶ 10.

11 The Settlement Administrator reviewed each submitted Proof of Claim form, including
 12 late submissions,⁸ to determine whether it was valid and included all required information.
 13 Page Decl. ¶ 12. The Settlement Administrator’s initial review revealed the following common
 14 defects (or potential defects):

- 15 • Proof of Claim forms that were not signed and certified;
- 16 • Proof of Claim forms that lacked sufficient proof of authorization to file;
- 17 • Proof of Claim forms that did not reflect any eligible purchases;
- 18 • Proof of Claim forms that appeared potentially duplicative; and
- 19 • Proof of Claim forms that appeared potentially fraudulent.

20 *Id.*

21 _____
 22 ⁷ “Cylindrical Unit” refers to the value of a qualifying purchase attributable to a cylindrical
 23 Li-Ion Cell or its equivalent. For example, a standalone cylindrical Li-Ion Cell is valued as one
 24 Cylindrical Unit. A prismatic Li-Ion Cell has half the capacity and price of a cylindrical Li-Ion
 25 Cell and is therefore valued at half a Cylindrical Unit. A typical camcorder, a type of Li-Ion
 26 Product, contained four cylindrical cells and is therefore valued at four Cylindrical Units. A
 typical cell phone, another type of Li-Ion Product, contained one prismatic cell and is therefore
 valued at half a Cylindrical Unit, the same as a standalone prismatic Li-Ion Cell. Marr 2210
 Decl. Ex. B, at 7–8; *see also* ECF No. 2029 (Direct Purchaser Plaintiffs’ Motion for
 Preliminary Approval of Class Action Settlements with LG Chem, Samsung SDI, and TOKIN
 Defendants) at 23–24.

27 ⁸ Any otherwise eligible claims postmarked or submitted online after April 26, 2018 were
 28 processed and considered for distribution. Page Decl. ¶ 10. To facilitate the greatest number of
 claims possible and maximize the benefit to the Class, the Settlement Administrator
 recommends approving all late claims which are otherwise valid. *Id.*

1 In every instance in which the Settlement Administrator identified these types of defects
2 or potential defects, it sent letters to the claimants advising them of defects or potential defects
3 and requesting that they provide information or documentation to cure the defects. Page Decl.
4 ¶ 15. Whenever the Settlement Administrator requested additional information from claimants
5 to cure potential defects in a claim, the Settlement Administrator provided claimants with a
6 reasonable deadline (usually 21 days) to provide additional information or documentation to
7 cure those defects. *Id.* The Settlement Administrator also granted extensions upon request. *Id.*
8 Furthermore, the Settlement Administrator considered late responses to requests for
9 information if they resolved the defects or provided necessary documentation for a claim. *Id.*

10 The Settlement Administrator reviewed the submitted information and documentation,
11 updated its records where the defects were corrected, and performed further outreach to
12 insufficient responses when requested by the claimant. Page Decl. ¶ 16. All deadlines for
13 claimants to respond to the Settlement Administrator’s outreach efforts have passed. *Id.*

14 All claims were subject to review and/or audit by the Settlement Administrator. Page
15 Decl. ¶ 17. In addition, in collaboration with Co-Lead Counsel, the Settlement Administrator
16 evaluated all filed claims to establish a threshold at which claimants would be required to
17 submit documentation to support their claimed purchases. *Id.* The threshold for “High-Value
18 Claims” was set as the top 75 claims which together represented 99.7% of all claimed
19 Cylindrical Units (1,620,141,128 Cylindrical Units out of 1,624,309,485 initial total claimed
20 Cylindrical Units). *Id.* In addition, each of these 75 claimants’ purchases represented greater
21 than 0.01% of all initially claimed Cylindrical Units. *Id.*

22 As part of this audit, claimants who submitted High-Value Claims were asked to
23 provide documentation to support the claimed purchase values and to address any of the issues
24 described above on page 6. Page Decl. ¶ 18. The High-Value Claims review involved detailed
25 analyses of supporting claims data and, where necessary, follow-up emails and phone calls
26 (including communications with claimants’ counsel and/or third-party representatives), and
27 additional requests for data, affidavits, or other information necessary to support the claimed
28 amounts. *Id.* ¶ 19. Additionally, where available, the Settlement Administrator referred to data

1 produced by Defendants to help substantiate certain claims. *Id.* The High-Value Claims review
2 was a major undertaking that required significant resources and time as well as regular
3 consultation with Co-Lead Counsel. *Id.*

4 After auditing the 75 High-Value Claims, the Settlement Administrator made the
5 following determinations:

- 6 • 44 High-Value Claims were fully supported and accepted in full;
- 7 • 16 High-Value Claims were fully supported after revisions or corrections by
8 claimants;
- 9 • 6 High-Value Claims were reduced due to insufficient supporting data,
10 explanation, or lack of a response from the claimants;
- 11 • 8 High-Value Claims were ultimately withdrawn by the claimants or denied in
12 whole due to failure to provide an adequate response to support claimed values;
13 and
- 14 • 1 High-Value Claim was re-categorized as a non-High-Value Claim and
15 approved.

16 Page Decl. ¶ 20. After the audit, the remaining 66 High-Value Claims are recommended for
17 approval at the audited amount. *Id.* These claims represent 796,616,389.5 of the total approved
18 Cylindrical Units and 99.4% of the funds proposed for distribution. *Id.* ¶¶ 20, 31. The
19 Settlement Administrator has sent letters to all High-Value Claimants notifying them of its
20 determination regarding approved Cylindrical Units. *Id.* ¶ 20.

21 In total, after the completion of audits, document and data review, communications with
22 claimants, and processing of late claims, the final status of claims received by the Settlement
23 Administrator is as follows:

- 24 • Full payments for complete claims: the Settlement Administrator recommends
25 issuing full payments to 8,718 claimants. No defects were identified for these
26 claimants, or they cured all defects in a timely manner. These claims represent a
27 total of 334,151,175 approved Cylindrical Units.
- 28 • Partial payments for partially complete claims: the Settlement Administrator

1 recommends partial payment to 22 claimants. These claimants voluntarily
 2 reduced their claims, or claim amounts were reduced to those that were
 3 sufficiently substantiated following insufficient responses to one or more
 4 requests for information. These claims represent a total of 466,687,084 approved
 5 Cylindrical Units.

- 6 • No payments for withdrawn claims: the Settlement Administrator recommends
 7 no payment to 142 claimants who withdrew their claims.
- 8 • No payments for ineligible claims: the Settlement Administrator recommends
 9 claims filed by 944 claimants be denied in their entirety. These claimants failed
 10 to timely cure one or more fatal deficiencies and thus are ineligible for one or
 11 more of the following reasons:
 - 12 ○ 879 claims: Proof of Claim forms did not reflect any eligible purchases;
 - 13 ○ 124 claims: Proof of Claim forms were not signed and certified;
 - 14 ○ 37 claims: Proof of Claim forms lacked sufficient proof of authorization
 15 to file; and
 - 16 ○ 15 claims: Proof of Claim forms were deemed invalid after claimants did
 17 not provide sufficient responses to requests for further information or
 18 documentation to support their claim.

19 Page Decl. ¶ 21.

20 As noted above, the claimants who submitted ineligible claims were notified of any
 21 deficiencies, were given the opportunity to cure the deficiencies, and failed to cure the
 22 deficiencies. Page Decl. ¶ 21. A list of the ineligible claims, identifying the reason(s) for
 23 ineligibility, is attached to the Page Declaration as **Exhibit A**.⁹ Page Decl. ¶ 22. The Settlement
 24 Administrator has sent letters to all ineligible claimants notifying them of its determination. *Id.*

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 28 ⁹ Because some claims are ineligible for multiple reasons, the total number of ineligible
 claims reflected in **Exhibit A** is less than the total of the above list. Page Decl. ¶ 22.

1 The total purchases by all approved claimants is 800,838,259 Cylindrical Units, which
2 is 50.7% less than the total 1,624,309,485 Cylindrical Units claimed in the Proof of Claim
3 forms as initially submitted. Page Decl. ¶ 23.

4 **E. Settlement Funds Available for Distribution**

5 As of December 31, 2019,¹⁰ \$92,581,422.23 is the remaining balance of the total
6 settlement funds, which includes the settlement proceeds plus accrued interest, less Court-
7 ordered attorneys' fees, costs and expenses, and incentive benefits to Class Representatives, as
8 well as those costs and expenses for which the Settlement Administrator already been
9 reimbursed. Page Decl. ¶¶ 24–25. In addition, the Settlement Administrator has incurred claims
10 administration costs in the amount of \$673,964.94 through December 31, 2019 that have not
11 yet been paid. *Id.* ¶ 25 & **Exhibit B**. This figure includes the cost of reviewing claims and
12 conducting the High-Value Claim audit. *Id.*

13 The Settlement Administrator has also submitted an estimated budget of \$136,968.96
14 for all remaining claims administration costs. Page Decl. ¶ 25 & **Exhibit C**. This figure
15 includes the cost of providing reports and materials in support of the instant Motion, printing
16 and mailing distribution checks to eligible claimants by prepaid first-class mail, issuing
17 replacement checks for undeliverable mailings upon request by authorized claimants, and
18 continuing to respond to inquiries from class members. *Id.* Plaintiffs also recommend reserving
19 \$250,000.00 for potential tax liability or other issues that may arise. Page Decl. ¶ 26.¹¹

20 Accordingly, after accounting for administrative costs incurred (\$673,964.94), and
21 reserving for future administrative costs (\$136,968.96), and tax liability or other issues
22 (\$250,000.00), a total of \$91,520,488.33 is available for distribution. Page Decl. ¶ 26.

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26 ¹⁰ December 31, 2019 is the date of the statements used to ascertain the funds available in
the Escrow Accounts. Page Decl. 9 n.1.

27 ¹¹ To the extent this reserve is not required, these funds would be combined with the funds
28 from uncashed checks and interest earned in the accounts (since December 31, 2019), and
distributed in like manner in accordance with the instructions provided by the Court for
uncashed checks. Page Decl. 10 n.2.

1 **F. Calculations of Claimants' Pro Rata Shares**

2 To calculate the amounts payable to approved claimants, the Settlement Administrator
3 followed the Court-approved Plan of Allocation. *Id.* ¶ 27. The Settlement Administrator
4 administered each settlement fund separately in accordance with the class definition of that
5 settlement fund. *Id.* Each claimant's approved number of Cylindrical Units was assigned
6 compensation from each individual settlement fund from which the claimant was entitled to
7 draw upon for those particular Cylindrical Units. *Id.* For example, while purchases during the
8 period of January 1, 2000 to April 30, 2002 from any defendant, subsidiary, or affiliate
9 qualified for payment from all settlement funds except one, such purchases did not qualify for
10 payment from the Panasonic/SANYO Fund because the Class Period for the
11 Panasonic/SANYO Settlement is May 1, 2002 to May 31, 2011, which is shorter than the
12 others. *Id.*

13 Similarly, a claimant that opted out of a particular settlement was not entitled to receive
14 funds from that particular settlement fund, and purchases from those defendants did not count
15 toward that claimant's total qualifying purchases for the purposes of determining that
16 claimant's *pro rata* share of each settlement. Page Decl. ¶ 27. Each claimant's approved
17 number of Cylindrical Units was then divided by the total number of claimed Cylindrical Units
18 eligible to receive funds from that particular settlement fund to calculate each eligible
19 claimant's *pro rata* share (%) of each fund. *Id.*

20 Once these percentages were established for each claimant, they were applied against
21 the corresponding settlement funds to determine the claimant's strict *pro rata* share of each
22 particular settlement fund. Page Decl. ¶ 28; Marr 2210 Decl. Ex. B, at 8. This process was
23 performed for all claimants and across each of the eight settlement funds. Page Decl. ¶ 28.
24 Attached as **Exhibit D** to the Page Declaration is a schedule of all claimants with each
25 approved claimant's strict *pro rata* share of each Settlement Fund.

26 Furthermore, as explained in greater detail below, Co-Lead Counsel recommend that
27 the Court set a payment "floor" such that each approved claimant is paid no less than \$10.00.
28 Accordingly, the Settlement Administrator re-calculated the payment for each of the claims that

1 would have resulted in a payment of less than \$10.00 under a strict *pro rata* distribution. Page
2 Decl. ¶ 29. Attached as **Exhibit E** to the Page Declaration is a schedule of all claimants with
3 each approved claimant’s recommended total *pro rata* share of the total Settlement Funds after
4 accounting for the \$10.00 minimum payment for all approved claimants.¹²

5 **III. ARGUMENT**

6 Plaintiffs request an Order authorizing the distribution of the settlement funds to the
7 approved claimants in the amounts set forth in **Exhibit E** of the Page Declaration.

8 Entry of an Order permitting a distribution of the settlement funds to all approved
9 claimants is proper and appropriate at this time because final judgment has been entered and
10 the time to appeal the settlement agreements has expired. *See 4 Newberg on Class Actions*,
11 § 11:33 (4th ed.). The Court has already finally approved the *pro rata* Plan of Allocation set
12 forth in the Notices. ECF Nos. 1438 ¶ 11 (Sony); 1940 ¶ 12 (Hitachi Maxell); 1942 ¶ 12
13 (NEC); 1944 ¶ 12 (Panasonic/SANYO); 1946 ¶ 12 (Toshiba); 2316 ¶ 14 (TOKIN); 2317 ¶ 14
14 (Samsung SDI); 2318 ¶ 14 (LG Chem).

15 Distribution of the settlement funds, as set forth in **Exhibit E** to the Page Declaration,
16 will give effect to the approved *pro rata* Plan of Allocation, compensating class members based
17 on the extent of their injuries. *See In re Citric Acid Antitrust Litig.*, 145 F. Supp. 2d 1152, 1154
18 (N.D. Cal. 2001). The proposed plan of distribution provides for a payment to all class
19 members with valid claims, and, as discussed above and further below, sets a payment “floor”
20 such that each approved claimant is paid no less than \$10.00.

21 The Settlement Administrator has completed a fair, reasonable, and adequate review of
22 the claims. Courts typically give “great deference” to decisions of an impartial settlement
23 administrator who facilitates the implementation of a settlement agreement. *See United States*
24 *v. Int’l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers of Am., AFL-CIO*, 905 F.2d
25 610, 616 (2d Cir. 1990). The Settlement Administrator established and followed quality control
26 measures to ensure that each claim was properly tracked and notified claimants of potential

27 ¹² The total award value is \$91,520,463.74, \$24.59 less than the total funds proposed for
28 distribution (\$91,520,488.33) as it is not possible for award values to be calculated at values
less than a full penny. Page Decl. ¶ 30.

1 deficiencies, including Proof of Claim forms that were not signed and certified, Proof of Claim
2 forms that appeared potentially duplicative, and High-Value Claims that lacked supporting
3 information. Page Decl. ¶¶ 10–19.

4 Claimants had adequate opportunity to cure any deficiencies by providing additional
5 information or documentation. *See* Page Decl. ¶ 15. The Settlement Administrator processed
6 late claims, and also considered late responses to requests for information if they resolved the
7 deficiencies or provided necessary documentation for a claim. *Id.* Additionally, where possible,
8 the Settlement Administrator used data provided by Settling Defendants to help substantiate
9 certain claims. *Id.* ¶ 19. The Settlement Administrator and Co-Lead Counsel spent significant
10 time working with claimants and/or their counsel to resolve claim disputes and uncertainties.
11 *See id.* ¶¶ 12–16.

12 The claims administration safeguards resulted in significant refinements so that the
13 monies will go to the proper claimants in the proper amounts. At the start of the claims process,
14 the total number of Cylindrical Units claimed—prior to any review or audit by the Settlement
15 Administrator—was 1,624,309,485 Cylindrical Units. Page Decl. ¶ 11. After the completion of
16 audits, document review, communications with claimants, and processing of late claims, the
17 Settlement Administrator determined that there were only 800,838,259 eligible Cylindrical
18 Units—a 50.7% reduction. *Id.* ¶ 23. Thus, the efforts of the Settlement Administrator and Co-
19 Lead Counsel substantially increased eligible claimants’ *pro rata* recoveries.

20 Finally, Co-Lead Counsel recommend that the Court set a payment “floor” such that
21 each approved claimant is paid no less than \$10.00. Of the 8,740 valid claims submitted, 8,112
22 approved claimants would receive payments of less than \$10.00 under a strict *pro rata*
23 distribution. Page Decl. ¶ 29. Although the proposed \$10.00 payment is greater than the value
24 of some individuals’ claims, such a threshold would conserve administration funds and provide
25 a greater net benefit to the class overall because:

- 26 • Issuing certain checks for amounts less than \$10.00 would result in
27 administrative costs greater than the amount of the payment;
- 28 • Checks of less than \$10.00 are less likely to be cashed;

- Uncashed checks result in additional administrative expenses related to tracking uncashed, expired checks, and reissuing checks to replace them.

Id.

Courts in this District and elsewhere have set minimum distribution payments for all approved claimants, thereby adjusting the *pro rata* plan of allocation, in order to ensure meaningful participation in the settlements and conserve administration costs. For example, in the *ODD* direct purchaser action, Judge Seeborg authorized minimum payments of \$10.00 to all class members who submitted valid claims. Order Granting Direct Purchaser Plaintiffs’ Motion for Order Authorizing Distribution of Settlement Funds ¶ 8, Attachment 2, *In re Optical Disk Drive Antitrust Litig.*, No. 3:10-md-02143 RS (N.D. Cal. Sept. 16, 2019), ECF Nos. 2906, 2906-1.

Similarly, in the *DRAM* indirect purchaser action, Judge Hamilton approved a \$10.00 “floor” payment for small claimants. *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, No. C 06-4333 PJH, 2013 WL 12333442, at *13–14, 80–81, 91 n.250 (N.D. Cal. Jan. 8, 2013) (noting the court’s broad powers in ensuring an equitable distribution of settlement proceeds and affirming the fairness, reasonableness and adequacy of plan of distribution that “adjusts all claimants’ *pro rata* ‘payments’ by raising all of the claims . . . of less than \$10.00 up to \$10.00”), *report and recommendation adopted by* 2014 WL 12879520 (N.D. Cal. June 27, 2014); *see also In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D. 136, 143 (D.N.J. 2013) (“as a matter of administrative efficiency, all Settlement Class members will receive a minimum payment of at least \$10, and the payments to Settlement Class members that would otherwise receive less than \$10 on a straight *pro rata* basis will be increased to \$10”); *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 498 (S.D.N.Y. 2009) (“Each Authorized Claimant with a valid Recognized Claim will receive—at a minimum—ten dollars no matter how small his, her, or its Recognized Claim. . . . [A] minimum claim amount is required to enable class members with relatively small claims to participate meaningfully.”) (footnote omitted); *Standard Iron Works v. ArcelorMittal*, No. 08 C 5214, 2015 WL 6165024, at *2 (N.D. Ill. Oct. 20, 2015) (\$100 minimum); *In re Auto. Parts Antitrust Litig.*, No. 12-MD-02311, 2019 WL

1 7877812, at *2 (E.D. Mich. Dec. 20, 2019) (\$100 minimum); *Mehling v. New York Life Ins.*
 2 *Co.*, 248 F.R.D. 455, 463 (E.D. Pa. 2008) (\$50 minimum); *Slipchenko v. Brunel Energy, Inc.*,
 3 No. CIV.A. H-11-1465, 2015 WL 338358, at *3 (S.D. Tex. Jan. 23, 2015) (\$100 minimum);
 4 *Downes v. Wisconsin Energy Corp. Ret. Account Plan*, No. 09-C-0637, 2012 WL 1410023, at
 5 *3 (E.D. Wis. Apr. 20, 2012) (\$250 minimum).

6 In sum, distributing the settlement funds to all approved claimants, as set forth above
 7 and in **Exhibit E** to the Page Declaration, gives effect to the Plan of Allocation previously
 8 approved by the Court and is fair, reasonable, and adequate.

9 **IV. CONCLUSION**

10 For the foregoing reasons, Plaintiffs respectfully request that the Court enter an Order
 11 (1) approving the Settlement Administrator's recommendations regarding the ineligibility of
 12 claims set forth in **Exhibit A** to the Page Declaration, (2) authorizing payment of all claims
 13 approved by the Settlement Administrator according to the *pro rata* Plan of Allocation, as set
 14 forth in **Exhibit E** to the Page Declaration, (3) authorizing payment to the Settlement
 15 Administrator for unreimbursed costs and expenses incurred in the amount of \$673,964.94, and
 16 (4) authorizing Plaintiffs to reserve in escrow \$136,968.96 for the payment of additional claims
 17 administration costs, as well as \$250,000 for potential tax liability or other issues.

19 DATED: March 2, 2020

Respectfully submitted,

20 /s/ Todd A. Seaver

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