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18 *Co-Lead Counsel for Direct Purchaser Plaintiffs*

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

DECLARATION OF JAMES PAGE, ESQ.
IN SUPPORT OF MOTION FOR ORDER
AUTHORIZING DISTRIBUTION OF
SETTLEMENT FUNDS

22
 23 This Document Relates to:

24 *All Direct Purchaser Actions*

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

1 I, James E. Page, hereby declare as follows:

2 1. I am a Senior Project Manager employed by Epiq Class Actions & Claims
3 Solutions, Inc. (“Epiq”), the Settlement Administrator for the above-captioned case. I have
4 worked for Epiq and GCG, a company acquired by Epiq in 2018, since 2013. I am a licensed
5 attorney in Washington. I received my Juris Doctor degree from the University of Oklahoma
6 Law School in 2006 and my Bachelor of Arts degree from the University of Oklahoma in 2003.
7 The following statements are based on my personal knowledge and information provided by
8 other Epiq employees working under my supervision, and if called on to do so, I could and
9 would testify competently thereto.

10 2. Epiq was established in 1968 as a client services and data processing company.
11 Epiq has been administering bankruptcies since 1985 and settlements since 1993, including
12 settlements of class actions, mass tort litigations, Securities and Exchange Commission
13 enforcement actions, Federal Trade Commission disgorgement actions, insurance disputes,
14 bankruptcies, and other major litigation. Epiq has administered more than 1,000 settlements,
15 including some of the largest and most complex cases ever settled. Epiq’s class action case
16 administration services include coordination of all notice requirements, design of direct-mail
17 notices, establishment and implementation of notice fulfillment services, coordination with the
18 United States Postal Service (“USPS”), notice website development and maintenance, dedicated
19 phone lines with recorded information and/or live operators, receipt and processing of opt-outs,
20 claims database management, claim adjudication, funds management, and award calculations
21 and distribution services. Epiq works with settling parties, courts, and class members in a neutral
22 facilitation role to implement settlement administration services based on the negotiated terms of
23 a settlement.

24 **Overview of Epiq’s Responsibilities in this Matter**

25 3. Epiq’s responsibilities in connection with these settlements include:
26 a. Researching addresses and printing and mailing Court-approved Notices
27 and Proof of Claim forms;
28

- 1 b. Establishing and maintaining a toll-free number ((844) 778-5952) with a
2 recorded phone line and phone agents;
- 3 c. Establishing and maintaining an informational website
4 (www.BatteriesDirectPurchaserAntitrustSettlement.com) that contains important case
5 materials and an online Proof of Claim form;
- 6 d. Handling claims processing and database management;
- 7 e. Reviewing and processing extensive correspondence from claimants;
- 8 f. Analyzing claimant data, addressing inaccuracies in data, and reviewing
9 data; and
- 10 g. Determining awards calculations and the forthcoming distribution of
11 settlement funds.

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

13 4. Epiq has previously submitted declarations detailing the Notices provided to class
14 members in this case regarding the settlements. *See* ECF Nos. 1357-3 (Declaration of Guy J.
15 Thompson in Support of Final Approval of Class Action Settlements with Sony Defendants);
16 1888-1 (Declaration of Guy J. Thompson in Support of Final Approval of Class Action
17 Settlements with Maxell, NEC, Panasonic, and Toshiba Defendants); 2210 (Declaration of
18 Charles Marr, Esq. Re Dissemination of LG Chem, Samsung SDI, and TOKIN Notice and Proof
19 of Claim Form to Class Members, and Requests for Exclusions); and 2249-2 (Declaration of
20 Charles Marr, Esq. in Support of Final Approval of Class Action Settlements with LG Chem,
21 Samsung SDI, and TOKIN Defendants).

22 5. As indicated in the previously submitted declarations, for each settlement, Epiq
23 (1) mailed a long-form Notice to potential class members, (2) made the toll-free telephone
24 number available to potential class members, (3) published a summary, short-form Notice in the
25 national edition of the *Wall Street Journal*, (4) posted materials on the settlement website
26 regarding the settlements, including the settlement agreements, the Preliminary and Final
27 Approval Orders, the Final Judgments, the Notices, summary, short-form Notices, and a
28

1 downloadable Proof of Claim form, and (5) processed the requests for exclusion (as discussed
2 below).

3 **Requests for Exclusion**

4 6. Class Members were provided the opportunity to request exclusion from one or
5 more individual settlements. Epiq received requests for exclusion from one or more settlements
6 from 227 unique entities which are listed in one or more exhibits to the Final Judgments entered
7 in this matter. Of these, four also filed a claim for payment from the settlement funds (“Opt-Out
8 Claimants”). The Opt-Out Claimants and their requests for exclusion are:

9 a. Costco Wholesale Corp. (master tracking number 709521), which opted
10 out of the Sony settlement;

11 b. Flextronics (master tracking number 634450), which opted out of the LG
12 Chem, Samsung SDI, Sony, and TOKIN settlements;

13 c. Office Depot (master tracking number 898871; subsidiary Office Depot
14 Inc. tracking number 98527), which opted out of the Sony settlement; and

15 d. Mary Schmidt (master tracking number 1182653), who opted out of the
16 Hitachi Maxell, NEC, Panasonic/SANYO, and Toshiba settlements.

17 **The Claims Process**

18 7. As explained in prior Epiq declarations, Epiq provided Proof of Claim forms to
19 potential class members by mail and through the settlement website. *See* ECF Nos. 2210 ¶ 3,
20 Ex. B; 2249-2 ¶ 7. Class members could submit paper forms by mail or electronically through
21 the settlement website.

22 8. In total, Epiq initially mailed 809,612 Proof of Claim forms to potential class
23 members, 39,022 of which were returned as undeliverable. Epiq was able to retrieve updated
24 address information for 20,171 potential class members from the National Change of Address
25 (NCOA) database and subsequently re-mailed Proof of Claim forms to these 20,171 potential
26 class members. In total, Epiq has caused 829,783 Proof of Claim forms to be printed and mailed
27 to date. Proof of Claim forms have been returned as undeliverable as to 14,681 unique potential
28 class members following queries to the NCOA database, or 1.8% of the potential class members

1 to whom Proof of Claim forms were initially sent. In addition, as mentioned above, Epiq posted
2 a downloadable Proof of Claim form on the settlement website and activated an online Proof of
3 Claim form. The format of the Proof of Claim form was designed to be clear and simple so that
4 potential claimants could easily fill out the form and provide information required in support of
5 their claims.

6 9. Epiq responded to inquiries from claimants, including letters sent to the
7 established post office box, emails sent to a monitored account, and calls to a dedicated toll-free
8 telephone number. Furthermore, as noted, Epiq also maintained a settlement website
9 (www.BatteriesDirectPurchaserAntitrustSettlement.com), which made available the settlement
10 agreements, the Preliminary and Final Approval Orders, the Final Judgments, the Notices,
11 Summary Notices, and a downloadable Proof of Claim form.

12 10. As of the date of this declaration, Epiq has received and processed 9,892 Proof of
13 Claim forms, including 69 received after the April 26, 2018 deadline. At the instruction of Co-
14 Lead Counsel, and to facilitate the greatest number of claims possible and maximize the benefit
15 to class members, any otherwise eligible claims postmarked or submitted online after April 26,
16 2018 were processed and considered for distribution. Controlling for duplication, a total of
17 9,826 claims were received, of which 57 unique claims were postmarked or submitted online
18 after the April 26, 2018 deadline. To facilitate the greatest number of claims possible and
19 maximize the benefit to the Class, Epiq recommends approving all late claims which are
20 otherwise valid, a total of 39 unique claims representing 10.1% of the approved Cylindrical Units
21 (81,011,813 of 800,838,259 total approved Cylindrical Units). For quality control purposes, each
22 Proof of Claim form submitted was given a unique Tracking Number and entered into a
23 database.

24 11. Epiq spent substantial time and resources constructing a database to process and
25 evaluate all of the submitted claims. Once that database was built, Epiq calculated the initial total
26 number of Cylindrical Units claimed—prior to any review or audit by Epiq—to be
27 1,624,309,485 Cylindrical Units.
28

1 **Review of Proof of Claim Forms and Outreach Regarding Defective Claims**

2 12. Epiq reviewed each submitted Proof of Claim form, including late submissions,
3 on a rolling basis to determine whether it was valid and included all required information. Epiq’s
4 initial review revealed the following common defects (or potential defects):

- 5 a. Proof of Claim forms that were not signed and certified;
- 6 b. Proof of Claim forms that lacked sufficient proof of authorization to file;
- 7 c. Proof of Claim forms that did not reflect any eligible purchases;
- 8 d. Proof of Claim forms that appeared potentially duplicative; and
- 9 e. Proof of Claim forms that appeared potentially fraudulent.

10 13. Regarding the potentially duplicative claims mentioned in Paragraph 12 above,
11 such possibly duplicative claims included multiple claim submissions from a single source for a
12 single entity (where it was unclear if claims were cumulative or if later claims replaced earlier
13 submissions), or multiple claim submissions from multiple sources for a single entity (where it
14 was unclear which representative was authorized or if the claims were from distinct entities,
15 thereby giving rise to potentially conflicting claims).

16 14. Regarding the potentially fraudulent claims mentioned in Paragraph 12 above,
17 Epiq flagged claims where certain criteria were met, including: (1) “Patterned Claims” involving
18 claimed figures that followed suspicious patterns casting doubt on the authenticity of the claim;
19 and (2) claims with other facial indicia of fraud, such as potentially fabricated Social Security
20 numbers.

21 15. In every instance in which Epiq identified these types of defects or potential
22 defects, it sent letters to the claimants advising them of defects or potential defects and
23 requesting that they provide information or documentation to cure the defects. Epiq mailed one
24 or more letters regarding defective claims to claimants addressing 1,624 claims, or 16.5% of all
25 9,826 unique claims. Whenever Epiq requested additional information from claimants to cure
26 potential defects in a claim, Epiq provided claimants with a reasonable deadline (usually 21
27 days) to provide additional information or documentation to cure those defects. Epiq also granted
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1 extensions upon request. Furthermore, Epiq considered late responses to requests for information
2 if they resolved the defects or provided necessary documentation for a claim.

3 16. Epiq reviewed the submitted information and documentation, updated its records
4 where the defects were corrected, and performed further outreach to insufficient responses when
5 requested by the claimant. All deadlines for claimants to respond to Epiq's outreach efforts have
6 passed.

7 **Claims Review and High-Value Claim Audit**

8 17. All claims were subject to review and/or audit by Epiq. In addition, in
9 collaboration with Co-Lead Counsel, Epiq evaluated all filed claims to establish a threshold at
10 which claimants would be required to submit documentation to support their claimed purchases.
11 The threshold for "High-Value Claims" was set as the top 75 claims, each of which had claimed
12 purchases equivalent to greater than 0.01% of all initially claimed Cylindrical Units and together
13 represented 99.7% of all claimed Cylindrical Units (1,620,141,128 Cylindrical Units out of
14 1,624,309,485 initial total claimed Cylindrical Units).

15 18. As part of this audit, claimants who submitted High-Value Claims were asked to
16 provide documentation to support the claimed purchase values and to address any of the issues
17 described in Paragraph 12 above.

18 19. The High-Value Claims review involved detailed analyses of supporting claims
19 data and, where necessary, follow-up emails and phone calls (including communications with
20 claimants' counsel and/or third-party representatives), and additional requests for data, affidavits,
21 or other information necessary to support the claimed amounts. Additionally, where available,
22 Epiq referred to data produced by Defendants to help substantiate certain claims. The High-
23 Value Claims review was a major undertaking that required significant resources and time as
24 well as regular consultation with Co-Lead Counsel.

25 20. After auditing the 75 High-Value Claims, Epiq made the following
26 determinations:

- 27 a. 44 High-Value Claims were fully supported and accepted in full;

28

1 b. 16 High-Value Claims were fully supported after revisions or corrections
2 by claimants;

3 c. 6 High-Value Claims were reduced due to insufficient supporting data,
4 explanation, or lack of a response from the claimants;

5 d. 8 High-Value Claims were ultimately withdrawn by the claimants or
6 denied in whole due to failure to provide an adequate response to support claimed values;
7 and

8 e. 1 High-Value Claim was re-categorized as a non-High-Value Claim and
9 approved.

10 After the audit, the remaining 66 High-Value Claims are recommended for approval at the
11 audited amount. These claims represent 796,616,389.5 of the total approved Cylindrical Units.
12 Epiq has sent letters to all High-Value Claimants notifying them of its determination regarding
13 approved Cylindrical Units.

14 **Claims Processing Results**

15 21. In total, after the completion of audits, document and data review,
16 communications with claimants, and processing of late claims, the final status of claims received
17 by Epiq is as follows:

18 a. Full payments for complete claims: As a result of information submitted
19 by claimants and the verification processes described above, Epiq recommends issuing
20 full payments to 8,718 claimants. No defects were identified for these claimants, or they
21 cured all defects in a timely manner. The total number of Cylindrical Units approved as
22 part of these complete claims is 334,151,175.

23 b. Partial payments for partially complete claims: As a result of information
24 submitted by claimants and the verification processes described above, Epiq recommends
25 partial payment to 22 claimants. These claimants voluntarily reduced their claims, or
26 claim amounts were reduced to those that were sufficiently substantiated following
27 insufficient responses to one or more requests for information. The total number of
28 Cylindrical Units approved as part of these partially complete claims is 466,687,084.

1 c. No payments for withdrawn claims: Epiq recommends no payment to 142
2 claimants who withdrew their claims.

3 d. No payments for ineligible claims: As a result of information submitted by
4 claimants and the verification processes described above, Epiq recommends claims filed
5 by 944 claimants be denied in their entirety. These claimants failed to timely cure one or
6 more fatal deficiencies and thus are ineligible for one or more of the following reasons:

7 i. 879 claims: Proof of Claim forms did not reflect any eligible
8 purchases;

9 ii. 124 claims: Proof of Claim forms were not signed and certified;

10 iii. 37 claims: Proof of Claim forms lacked sufficient proof of
11 authorization to file; and

12 iv. 15 claims: Proof of Claim forms were deemed invalid after
13 claimants did not provide sufficient responses to requests for further information
14 or documentation to support their claim.

15 As noted above, the claimants who submitted ineligible claims were notified of any deficiencies,
16 were given the opportunity to cure the deficiencies, and failed to cure the deficiencies.

17 22. Note that because some claims in Paragraph 21 are ineligible for multiple reasons,
18 the total number of ineligible claims is less than the total of the above list. A list of the ineligible
19 claims specified in Paragraph 21(d) above, identifying the reason(s) for ineligibility, is attached
20 hereto as **Exhibit A**. Epiq has sent letters to all ineligible claimants notifying them of its
21 determination.

22 23. As explained above, the total purchases by all approved claimants is valued at
23 800,838,259 Cylindrical Units, which is 50.7% less than the total 1,624,309,485 Cylindrical
24 Units claimed in the Proof of Claim forms as initially submitted (total of 1,624,309,485 minus
25 800,838,259, divided by 1,624,309,485).

26 **Net Settlement Fund Amounts**

27 24. Epiq has reviewed the account records of the settlement funds and can confirm
28 that after the proportionate deduction of all court-approved attorneys' fees, expenses, and class

1 representative plaintiff awards and including the interest earned, the total balance of the
2 settlement funds in the escrow account as of December 31, 2019 is \$92,581,422.23.¹ This breaks
3 out to:

- 4 • \$12,402,600.72 from the Sony Settlement (the “Sony Fund”);
- 5 • \$2,164,981.47 from the Maxell Settlement (the “Maxell Fund”);
- 6 • \$646,883.89 from the NEC Settlement (the “NEC Fund”);
- 7 • \$28,372,124.78 from the Panasonic/SANYO Settlement (the
8 “Panasonic/SANYO Fund”);
- 9 • \$1,768,701.49 from the Toshiba Settlement (the “Toshiba Fund”);
- 10 • \$27,533,833.42 from the LG Chem Settlement (the “LG Chem Fund”);
- 11 • \$16,331,879.28 from the Samsung SDI Settlement (the “Samsung SDI
12 Fund”); and
- 13 • \$3,360,417.18 from the TOKIN Settlement (the “TOKIN Fund”).

14 25. The above combined current escrow account balances of \$92,581,422.23 already
15 account for the \$2,083,701.12 in fees and expenses for which Epiq has already been paid.
16 Additionally, Epiq has invoiced a total of \$673,964.94 through December 2019 that remains
17 unpaid. These figures represent the cost of reviewing claims, conducting the High-Value Claim
18 audit, and performing other tasks referenced in this declaration. **Exhibit B** is a list of the
19 outstanding invoices by date and amount due. In addition, Epiq estimates that its remaining
20 responsibilities in this litigation will cost \$136,968.96 in additional fees and expenses. This
21 amount represents the cost of claims review and auditing since January 1, 2020, providing
22 reports and materials in support of the instant Motion, printing and mailing distribution checks to
23 eligible claimants by prepaid first-class mail (including further distributions, if necessary),
24 issuing replacement checks for undeliverable mailings upon request by authorized claimants, and
25 continuing to respond to inquiries from class members. **Exhibit C** is an itemization of these
26 additional fees and expenses.

27
28 ¹ December 31, 2019 is the date of the statements used to ascertain the funds available in the Escrow Accounts.

1 26. Additionally, Co-Lead Counsel recommend holding a reserve of \$250,000.00
2 from the net settlement funds for tax liability or other issues. Should the Court approve the
3 administrative costs incurred (\$673,964.94), the funds remaining for distribution to approved
4 claimants after reserving funds for future administrative costs (\$136,968.96) and tax liability or
5 other issues (\$250,000.00)² will be \$91,520,488.33 (“Distribution Funds”).

6 **Calculation of Approved Claim Amounts**

7 27. To calculate the amounts payable to approved claimants, Epiq followed the Court-
8 approved plan of allocation. Epiq administered each settlement fund separately in accordance
9 with the class definition of that settlement fund. Each claimant’s approved number of
10 Cylindrical Units was assigned compensation from each individual settlement fund from which
11 the claimant was entitled to draw upon for those particular Cylindrical Units. For example, while
12 purchases during the period of January 1, 2000 to April 30, 2002 from any defendant, subsidiary
13 or affiliate qualified for payment from all settlement funds except one, such purchases did not
14 qualify for payment from the Panasonic/SANYO Fund because the Class Period for the
15 Panasonic/SANYO Settlement is May 1, 2002 to May 31, 2011, which is shorter than the others.
16 Likewise, a claimant that opted out of a particular settlement was not entitled to receive funds
17 from that particular settlement fund, and purchases from those defendants did not count toward
18 that claimant’s total qualifying purchases for the purposes of determining that claimant’s *pro*
19 *rata* share of each settlement.³ Each claimant’s approved number of Cylindrical Units was then
20 divided by the total number of claimed Cylindrical Units eligible to receive funds from that
21 particular settlement fund to calculate each eligible claimant’s *pro rata* share (%) of each fund.

22 28. Once these percentages were established for each claimant, they were applied
23 against the corresponding settlement fund to determine the claimant’s strict *pro rata* share of that
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25 ² To the extent this reserve is not required, these funds would be combined with the funds
26 from uncashed checks and future interest earned in the accounts, and distributed in like manner
in accordance with the instructions provided by the Court for uncashed checks.

27 ³ Although certain Claimants indicated they had entered into previous settlements with
28 Defendants, after review and consultation with counsel, Epiq determined that these selections
were very likely made in error and did not reduce award calculations on this basis.

1 particular settlement fund.⁴ This process was performed for all claimants and across each of the
2 eight settlement funds listed above in Paragraph 24. **Exhibit D** is a schedule of all claimants with
3 each approved claimant's strict *pro rata* share of each settlement fund.

4 29. A strict *pro rata* distribution of the Distribution Funds would result in 8,112
5 claimants receiving payments of less than \$10.00, ranging from \$0.02 to \$9.98. Based on Epiq's
6 previous experience, checks of less than \$10.00 are less likely to be cashed. In addition, the value
7 of some checks issued according to a strict *pro rata* distribution would be less than the
8 administration costs to issue and mail the check. Uncashed checks often result in additional
9 delays as well as administration costs related to tracking uncashed, expired checks and reissuing
10 checks to replace them. (The estimated future administration costs set forth in Paragraph 25
11 above are based on the issuance of checks valued at \$10.00 or more; if checks of lesser value are
12 issued, Epiq's estimate for such costs would increase.) Co-Lead Counsel therefore has
13 recommended that each claimant be paid no less than \$10.00. Epiq thus re-calculated the
14 payment for each of the 8,112 claims (92.8% of all 8,740 approved claims) that would have
15 resulted in a payment of less than \$10.00 under a strict *pro rata* distribution. For each settlement
16 fund, the total proposed funds to be distributed and the corresponding approved Cylindrical Units
17 are:

- 18 • \$12,260,473.51 from the Sony Fund – 774,806,613 approved Cylindrical
19 Units;
- 20 • \$2,140,171.93 from the Maxell Fund – 800,838,258 approved Cylindrical
21 Units;
- 22 • \$639,470.94 from the NEC Fund – 800,838,258 approved Cylindrical Units;
- 23 • \$28,046,995.32 from the Panasonic/SANYO Fund – 712,083,382 approved
24 Cylindrical Units;

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27 ⁴ Note that where a claimant's award value calculation resulted in a fraction of a penny, this
28 value was rounded down to ensure that the distribution did not exceed the total amount of the
available Settlement Fund. Therefore, for some claimants their *pro rata* share of a particular
settlement fund may appear to be \$0.00.

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- \$1,748,433.11 from the Toshiba Fund – 800,838,258 approved Cylindrical Units;
- \$27,218,310.32 from the LG Chem Fund – 795,545,951 approved Cylindrical Units;
- \$16,144,724.62 from the Samsung SDI Fund – 795,545,951 approved Cylindrical Units; and
- \$3,321,908.58 from the TOKIN Fund – 795,545,951 approved Cylindrical Units.

These fund amounts total \$91,520,488.33 which is equal to the Distribution Funds referenced in Paragraph 26.

30. **Exhibit E** sets forth each approved claimant’s total recommended payment from all settlement funds.⁵ Note that the total award value is \$91,520,463.74, \$24.59 less than the total Distribution Funds of \$91,520,488.33 as it is not possible for award values to be calculated at values less than a full penny.

31. According to my calculations, the 66 claimants remaining of the top 75 High-Value Claims are due to receive \$90,979,021.87, or 99.4%, of the Distribution Funds.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 2, 2020 at Seattle, Washington.

By: 
JAMES PAGE
Senior Project Manager
Epiq Class Action & Claims Solutions

⁵ Class members who are unable to locate their Tracking Numbers or otherwise have questions may contact Epiq at the toll-free number established for this matter, (844) 778-5952.