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*Interim Co-Lead Counsel for Direct Purchaser Plaintiffs*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

IN RE: LITHIUM ION BATTERIES  
ANTITRUST LITIGATION

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

This Document Relates To:  
  
ALL DIRECT PURCHASER ACTIONS

**DECLARATION OF R. ALEXANDER  
SAVERI IN SUPPORT OF FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENTS WITH LG CHEM,  
SAMSUNG SDI, AND TOKIN  
DEFENDANTS**

Date: May 8, 2018  
Time: 2:00 p.m.  
Judge: Hon. Yvonne Gonzalez Rogers  
Location: Courtroom 1

1 I, R. ALEXANDER SAVERI, declare:

2 1. I am the managing partner of Saveri & Saveri, Inc. and Interim Co-Lead Counsel for  
3 the Direct Purchaser Plaintiffs (“Plaintiffs”) in this litigation. I am a member of the State Bar of  
4 California and an attorney admitted to practice in the Northern District of California. I make this  
5 Declaration in Support of Final Approval of Class Action Settlements with the LG Chem, Samsung  
6 SDI, and TOKIN Defendants. Except as otherwise stated, I have personal knowledge of the facts  
7 stated below.

8 2. Attached hereto as Exhibit 1 is a true and correct copy of the Settlement Agreement  
9 between Plaintiffs and Defendants LG Chem, Ltd. and LG Chem America, Inc. (together “LG  
10 Chem”), dated October 2, 2017. Paragraph D.20(a) of the LG Chem Settlement Agreement permits  
11 LG Chem to terminate the settlement agreement if purchasers exceeding thirty-five percent (35%)  
12 of its sales request exclusion from the settlement class. To date, I have not received any notice of  
13 termination from LG Chem.

14 3. Attached hereto as Exhibit 2 is a true and correct copy of the Settlement Agreement  
15 between Plaintiffs and Defendants Samsung SDI Co. Ltd. and Samsung SDI America, Inc.  
16 (together “Samsung SDI”), dated August 2, 2017. Paragraph D.20(a) of the of the Samsung SDI  
17 Settlement Agreement permits Samsung SDI to terminate the settlement agreement if purchasers  
18 exceeding thirty-five percent (35%) of its sales request exclusion from the settlement class. To  
19 date, I have not received any notice of termination from Samsung SDI.

20 4. Attached hereto as Exhibit 3 is a true and correct copy of the Settlement Agreement  
21 between Plaintiffs and Defendant TOKIN Corporation (“TOKIN”), formerly known as NEC  
22 TOKIN Corporation, dated August 30, 2017.

23 5. On March 9, 2018, Plaintiffs provided notice of class members’ requests for  
24 exclusion by filing the Declaration of Charles Marr, Esq. re Dissemination of LG Chem, Samsung  
25 SDI, and TOKIN Notice and Proof of Claim Form to Class Members and Requests for Exclusion.  
26 ECF No. 2210. On March 21, 2018, Epiq, the settlement administrator, informed me that it had  
27 received an additional timely request for exclusion that was previously determined to be untimely.  
28

1 On March 27, 2018, I caused the additional request for exclusion to be transmitted to counsel for  
2 LG Chem, Samsung SDI and TOKIN.

3 6. Based on information provided to me from Defendants' transactional data, the two  
4 objectors to the Settlements—Edward Maybury (ECF No. 2159) and Shirley Petrak (ECF No.  
5 2170)—are individuals without significant purchases: Mr. Maybury purchased one rechargeable  
6 battery pack from Sony, and Ms. Petrak purchased one laptop computer from Sony.

7 7. Class Counsel will provide and have provided assistance to class members with  
8 their claims, including providing information from the transactional data in their possession.

9 8. Based on my experience overseeing claims administration and auditing in similar  
10 actions, individually quantifying claims for over 800,000 individuals and entities on the notice lists  
11 would be expensive and, in many cases, difficult or impossible.

12 9. Based on my review of the lists of purchasers Defendants provided Plaintiffs for  
13 notice as well as expert analysis thereof, those lists include members of the indirect purchaser  
14 class. These parties are not entitled to make a claim in this case, and attempting to create a Proof of  
15 Claim form for them would be wasteful and counterproductive.

16 10. Based on my review of the sales data Defendants produced to Plaintiffs as well as  
17 expert analysis thereof, those sales data are incomplete.

18 11. My office attempted, without success, to contact Leonard Davis by telephone  
19 regarding his letter to the Court (ECF No. 2229). I subsequently sent him a letter informing him  
20 that—based on the sales data Defendants produced to Plaintiffs—he purchased one Sony  
21 rechargeable battery, and offering to help him prepare a Proof of Claim form.

22 I declare under the penalty of perjury under the laws of the United States of America that  
23 the foregoing is true and correct.

24 Executed on March 29, 2018, in San Francisco, California.

25 /s/ R. Alexander Saveri  
26 R. Alexander Saveri

# **EXHIBIT 1**

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

IN RE LITHIUM ION BATTERIES  
ANTITRUST LITIGATION

Case No. 13-MD-2420-YGR

MDL No. 2420

This Document Relates to:

ALL DIRECT PURCHASER  
PLAINTIFF ACTIONS

**SETTLEMENT AGREEMENT**

**SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is made and entered into this 2nd day of October, 2017 (the “Execution Date”) by and between LG Chem, Ltd. and LG Chem America, Inc. (collectively “LG Chem”), and the direct-purchaser plaintiff class representatives (individually, “Plaintiff” and collectively, “Plaintiffs”), both individually and on behalf of the “Class”, as more particularly defined in Paragraph 2 below. This Agreement is intended to fully, finally, and forever resolve, discharge and settle the Released Claims (as defined below), upon and subject to the conditions hereof.

WHEREAS, Plaintiffs are prosecuting the above *In Re Lithium Ion Batteries Antitrust Litigation*, Case No. 13-MD-2420-YGR (N.D. Cal.) (the “Action”) on their own behalf and on behalf of the Class against, among others, LG Chem;

WHEREAS, Plaintiffs allege that LG Chem participated in an unlawful conspiracy to raise, fix, maintain, or stabilize the price of Lithium Ion Battery Cells at artificially high levels in violation of Section 1 of the Sherman Act;

WHEREAS, LG Chem admits some of Plaintiffs’ allegations and denies all of the

remaining allegations and has asserted defenses to Plaintiffs' claims;

WHEREAS, Plaintiffs have conducted an investigation into the facts and the law regarding the Action and have concluded that resolving their claims against LG Chem according to the terms set forth below is in the best interest of Plaintiffs and the Class;

WHEREAS, LG Chem, despite its belief that it is not liable for the claims asserted and has good defenses thereto, has nevertheless agreed to enter into this Agreement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, and to obtain the releases, orders, and judgment contemplated by this Agreement, and to put to rest with finality all claims that have been or could have been asserted against LG Chem, based on the allegations of the Action, as more particularly set out below;

WHEREAS, arms' length settlement negotiations have taken place among LG Chem and Interim Co-Lead Counsel, as defined below, and this Agreement, which embodies all the terms of conditions of the settlement between LG Chem, Plaintiffs, and the Class has been reached as provided herein;

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, it is agreed by and among the undersigned that (subject to the approval of the Court) the Action be settled, compromised, and dismissed on the merits with prejudice as to Releasees, as defined below, and except as hereinafter provided, without costs as to Plaintiffs, the Class, or Releasees, on the following terms and conditions:

A. Definitions.

1. For purposes of this Agreement, "Plaintiffs" means Automation Engineering LLC; Charles Carte; Alfred H. Siegel, acting in his representative capacity as the Liquidating

Trustee of Circuit City Stores, Inc. Liquidating Trust; First Choice Marketing, Inc.; James O'Neil; Alfred T. Giuliano, acting in his representative capacity as the Chapter 7 Trustee of Ritz Camera & Image, LLC; The Stereo Shop; Univisons-Crimson Holding, Inc.; and Terri Walner, as well as any other person or entity added as a Plaintiff in the Action.

2. For purposes of this Agreement, "the Class" is defined as

All persons and entities that purchased a Lithium Ion Battery or Lithium Ion Battery Product from any Defendant, or any division, subsidiary or affiliate thereof, or any co-conspirator in the United States during the Class Period, from January 1, 2000 through May 31, 2011. Excluded from the Class are Defendants, their parent companies, subsidiaries and affiliates, any co-conspirators, federal governmental entities and instrumentalities of the federal government, states and their subdivisions, agencies and instrumentalities, and any judge or jurors assigned to this case.

3. For purposes of this agreement, "Defendants" means LG Chem, Ltd.; LG Chem America, Inc.; Samsung SDI Co. Ltd.; Samsung SDI America, Inc.; Panasonic Corporation; Panasonic Corporation of North America; SANYO Electric Co., Ltd.; SANYO North America Corporation; Sony Corporation; Sony Energy Devices Corporation; Sony Electronics Inc.; Hitachi Maxell, Ltd.; Maxell Corporation of America; NEC Corporation; NEC Tokin Corporation; and Toshiba Corporation. The parties to this Agreement hereby stipulate for purposes of this settlement only that the requirements of Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure are satisfied.

4. For purposes of this Agreement, "Lithium Ion Battery" ("Li-Ion Batteries"), "Lithium Ion Battery Cell(s)" ("Li-Ion Cells"), and "Lithium Ion Battery Products" ("Li-Ion Products") shall have the meanings as defined or otherwise referenced in the Direct Purchaser Plaintiffs' Second Consolidated Amended Complaint (Apr. 8, 2014) (ECF No. 415) (the "Complaint").

5. “Releasees” shall refer to LG Chem, and to all of its respective past and present, direct and indirect, parent companies, subsidiaries, and affiliates, and all of their respective past and present, direct and indirect, parent companies, subsidiaries, and affiliates; the predecessors, successors, and assigns of any of the above; and each and all of the present and former principals, partners, officers, directors, supervisors, employees, agents, representatives, insurers, attorneys, heirs, executors, administrators, and assigns of each of the foregoing. “Releasees” does not include any Defendant in the Action other than LG Chem.

6. “Class Member” means each member of the Class who has not timely elected to be excluded from the Class.

7. “Releasers” shall refer to the Plaintiffs and Class Members, and to their past and present officers, directors, employees, agents, stockholders, attorneys, servants, representatives, parent companies, subsidiaries, affiliates, partners, insurers, and all other persons, partnerships, corporations, receivers, and bankruptcy trustees with whom any of the former have been, or are now, affiliated, and the predecessors, successors, heirs, executives, administrators, and assigns of any of the foregoing.

8. “The Settlement Fund” shall be \$41,000,000 US dollars specified in Paragraph 18 plus accrued interest on said deposits once in escrow as set forth in Paragraph 19.

9. “Interim Co-Lead Counsel” or “Class Counsel” shall refer to the law firms of:

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Facsimile: (415) 433-6382  
jtabacco@bermandevalerio.com

**B. Approval of this Agreement and Dismissal of Claims Against LG Chem.**

10. Plaintiffs and LG Chem shall use their best efforts to effectuate this Agreement, including cooperating in seeking the Court's approval for the establishment of procedures (including the giving of class notice under Federal Rules of Civil Procedure 23(c) and (e)) to secure the benefits of the Agreement to both parties, including the prompt, complete, and final dismissal with prejudice of the Action as to LG Chem.

11. Plaintiffs shall, in a reasonable period of time, submit to the Court a motion for preliminary approval of the settlement and for authorization to disseminate notice of the settlement and final judgment contemplated by this Agreement to all Class Members (the "Motion"). If notice to the Class is given jointly with notice of any other class settlement, for purposes of Paragraph 21 below, the costs of notice and claims administration shall be prorated among the settlement funds established for other such settling defendants based on their respective settlement amounts. The Motion shall include: (i) a proposed form of, method for, and date of dissemination of notice; and (ii) a proposed form of order and final judgment. Interim Co-Lead Counsel shall provide LG Chem with the text of the foregoing items (i) and (ii) before

submission of the Motion and shall cooperate with LG Chem with respect to the contents of both documents, with the understanding that, among other things, individual notice of the settlement shall be mailed by regular mail or email, with appropriate notice by publication (in the event required by the Court), with all expenses paid from the Settlement Fund subject to Paragraph 21(a). The proposed form of order shall include such provisions as are typical in such orders, including finding that the proposed plan of notice complies with Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process. Plaintiffs acknowledge that LG Chem has previously supplied Co-Lead Counsel with the names and addresses of potential Class Members reasonably available in LG Chem's sales database. The Motion shall recite and ask the Court to find that the mailing of the notice of settlement to all members of the Class who can be identified upon reasonable effort constitutes valid, due, and sufficient notice to the Class, constitutes the best notice practicable under the circumstances, and complies fully with the requirements of Federal Rules of Civil Procedure 23.

12. Plaintiffs shall seek, and LG Chem will not object unreasonably to the entry of, an order and final judgment, the text of which Plaintiffs and LG Chem shall agree upon. The terms of that order and final judgment will include, at a minimum, the substance of the following provisions:

(a) certifying the Class described in Paragraph 2, pursuant to Rule 23 of the Federal Rules of Civil Procedure, solely for purposes of this settlement as a settlement class;

(b) as to the Action, approving finally this settlement and its terms as being a fair, reasonable and adequate settlement as to the Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation

according to its terms;

(c) finding that all Class Members shall be bound by this Agreement, including the release provisions and covenant not to sue set forth in this Agreement;

(d) as to LG Chem, directing that the Action be dismissed with prejudice and, except as provided for in this Agreement, without provision that LG Chem pay any separate attorneys' fees or costs;

(e) finding that the notice given constitutes due, adequate and sufficient notice and meets the requirements of due process and the Federal Rules of Civil Procedure;

(f) reserving exclusive jurisdiction over the settlement and this Agreement, including the administration and consummation of this settlement, to the United States District Court for the Northern District of California; and

(g) determining under Rule 54(b) of the Federal Rules of Civil Procedure that there is no just reason for delay and directing that the judgment of dismissal with prejudice as to LG Chem shall be final.

13. This Agreement shall become final when: (i) the Court has entered a final order certifying the Class described in Paragraph 2 and approving this Agreement under Rule 23(e) of the Federal Rules of Civil Procedure and a final judgment dismissing the Action with prejudice as to LG Chem against all Class Members and without attorneys' fees or costs other than those provided for in this Agreement; and (ii) the time for appeal or to seek permission to appeal from the Court's approval of this Agreement and entry of a final judgment as to LG Chem described in (i) hereof has expired without appeal, or, if appealed, approval of this Agreement and the final judgment as to LG Chem have been affirmed in their entirety, or the appeal has otherwise been finally dismissed, by the court of last resort to which such appeal has been taken and such

affirmance or dismissal has become no longer subject to further appeal or review. It is agreed that the provisions of Rule 6 of the Federal Rules of Civil Procedure shall not be taken into account in determining the above-stated times. On the date that Plaintiffs and LG Chem have executed this Agreement, Plaintiffs and LG Chem shall be bound by its terms and this Agreement shall not be terminated or otherwise rescinded except in accordance with Paragraphs 19(h), 20 or 30 of this Agreement.

14. Neither this Agreement (whether or not it should become final) nor the final judgment, nor any and all negotiations, documents, and discussions associated with them, shall be deemed or construed to be an admission by LG Chem (or the other Releasees) or evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by LG Chem (or the other Releasees), or of the truth of any of the claims or allegations contained in any complaint or any other pleading filed in the Action, and evidence thereof shall not be discoverable or used directly or indirectly, in any way, whether in the Action or in any other action or proceeding. Neither this Agreement, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any other action taken to carry out this Agreement by any of the settling parties shall be referred to, offered as evidence or received in evidence in any pending or future civil, criminal, or administrative action or proceedings, except in a proceeding to enforce this Agreement, or to defend against the assertion of Released Claims, as defined in Paragraph 15, or as otherwise required by law. This Paragraph 14 shall survive the termination or rescission of this Agreement.

C. Release, Discharge, and Covenant Not to Sue.

15. In addition to the preclusive effect of any final judgment entered in accordance with this Agreement, upon this Agreement becoming final as set out in Paragraph 13 of this

Agreement, and in consideration of payment of the Settlement Amount, as specified in Paragraph 18 of this Agreement, into the Settlement Fund, and for other valuable consideration, the Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, judgments, actions, suits, causes of action, obligations, promises, rights and liabilities whether class, individual, joint, or otherwise in nature (whether or not any Class Member has objected to the settlement or makes a claim upon or participates in the Settlement Fund, whether directly, representatively, derivatively or in any other capacity) that Releasers, or each or any of them, ever had, now has, or hereafter can, shall, or may have on account of, or in any way arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated, asserted or unasserted, concealed or hidden, claims, causes of action, injuries, damages, and the consequences thereof in any way arising out of or relating in any way to the allegations in the Complaint or any act or omission of the Releasees (or any of them) that is alleged in the Complaint from the beginning of time up to the date of the execution of this Agreement, or that could have been alleged in the Complaint or in any other complaint filed in the Action, such as those arising under common law or in equity or any federal, state or foreign antitrust, unfair competition, unfair practices, price discrimination, unitary pricing, civil conspiracy, consumer protection, RICO, or deceptive trade practice law (the "Released Claims"). The Released Claims do not include claims for product defect or personal injury or breach of contract (unless based on the allegations in the Complaint) arising in the ordinary course of business or indirect purchaser claims for Li-Ion Cells, Li-Ion Batteries or Li-Ion Products that were not purchased directly from Defendants or their subsidiaries, affiliates, or alleged co-conspirators. Releasers shall not, after the date of this Agreement, sue or otherwise seek to establish liability against any Releasee based, in whole or in

part, upon any of the Released Claims or conduct at issue in the Released Claims. For purposes of clarity, the Released Claims include any claims under foreign antitrust or competition laws or state antitrust or competition laws that relate to or arise out of the subject of the Complaint, but do not include any foreign antitrust or competition law claims or any state law indirect-purchaser claims that relate to or arise out of the sale of Li-Ion Cells, Li-Ion Batteries or Li-Ion Products that: (a) were not purchased from a Defendant, a subsidiary or affiliate of a Defendant, or an alleged co-conspirator in the Action; or (b) were not billed to or shipped to the United States.

16. In addition to the provisions of Paragraph 15 of this Agreement, Releasors hereby expressly waive and release, upon this Agreement becoming final, any and all provisions, rights, and benefits conferred by § 1542 of the California Civil Code, which states:

**CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR;**

or by any law or common law principle of any state or territory of the United States, or any other jurisdiction, which is similar, comparable, or equivalent to § 1542 of the California Civil Code.

Each Releasor may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the Released Claims, but each Releasor hereby expressly waives and fully, finally, and forever settles and releases, upon this Agreement becoming final, any known or unknown, suspected or unsuspected, contingent or non-contingent claim with respect to the subject matter of the provisions of Paragraph 15 of this Agreement, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

17. The release, discharge, and covenant not to sue set forth in Paragraph 15 of this

Agreement does not include claims by any of the Class Members other than the Released Claims and does not preclude Class Members from pursuing claims based on indirect sales or foreign sales of Li-Ion Cells, Li-Ion Batteries or Li-Ion Products so long as such claims are not based on the same purchases included as part of the Released Claims defined in Paragraph 15. The Releasers hereby covenant and agree that they shall not, hereafter, sue or otherwise seek to establish liability against any of the Releasees based, in whole or in part, upon any of the Released Claims.

**D. Settlement Amount.**

18. Subject to the provisions hereof, and in full, complete and final settlement of the Action as provided herein, LG Chem shall pay the Settlement Amount of \$41,000,000 (the “Settlement Amount”), and no additional amount at any time, whether for wire transfer fees or bank fees of any kind associated with the wire transfer of funds, interest, notice, administration costs, attorneys’ fees, or otherwise. The Settlement Amount shall be paid into an escrow account in United States Dollars to be administered in accordance with the provisions of Paragraph 19 of this Agreement (the “Escrow Account”) within thirty (30) days after execution of this Agreement.

**19. Escrow Account.**

(a) The Escrow Account will be established at Citibank N.A.— Citi Private Bank, San Francisco, California, with such Bank serving as escrow agent (“Escrow Agent”), such escrow to be administered under the Court’s continuing supervision and control.

(b) The Escrow Agent shall cause the funds deposited in the Escrow Account to be invested in instruments backed by the full faith and credit of the United States Government or fully insured in writing by the United States Government, or money market funds, invested

substantially in such instruments, and shall reinvest any income from these instruments and the proceeds of these instruments as they mature in similar instruments at their then current market rates.

(c) All funds held in the Escrow Account shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Agreement and/or further order(s) of the Court.

(d) Plaintiffs and LG Chem agree to treat the Settlement Fund as being at all times a qualified settlement fund within the meaning of Treas. Reg. §1.468B-1. In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph 19, including the “relation-back election” (as defined in Treas. Reg. §1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

(e) For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the Escrow Agent. The Escrow Agent or its designee shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitation the returns described in Treas. Reg. § 1.468B-2(k)(1)). Such returns (as well as the election described in Paragraph 19(d)) shall be consistent with Paragraph 19(d) and in all events shall reflect that all Taxes, as defined below (including any estimated taxes, interest or penalties), on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as



provided in Paragraph 19(f) hereof.

(f) All of the following shall be paid out of the Settlement Fund: (i) taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon LG Chem or any other Releasee with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes (“Taxes”); and (ii) expenses and costs incurred in connection with the operation and implementation of Paragraphs 19(a), 19(b) and 19(d) through 19(f) (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this Paragraph 19(f) (“Tax Expenses”)).

(g) Neither LG Chem nor any other Releasee nor their respective counsel shall have any liability or responsibility for the Taxes or the Tax Expenses or for obtaining or maintaining the tax status desired for the Settlement Fund. Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall be timely paid by the Escrow Agent out of the Settlement Fund without prior order from the Court, and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to any claimants authorized by the Court any funds necessary to pay such amounts including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)). Neither LG Chem nor any other Releasee is responsible nor shall they have any liability therefor. Plaintiffs and LG Chem agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the

provisions of Paragraphs 19(d) through 19(f).

(h) If this Agreement does not receive final Court approval, including final approval of “the Class” as defined in Paragraph 2 above or if the Action is not certified as a class action for settlement purposes, or if this Agreement is terminated as provided herein, or the Judgment is overturned on appeal or by writ, then all amounts paid by LG Chem into the Settlement Fund (other than notice costs expended in accordance with Paragraph 21(a)) shall within thirty (30) calendar days be returned to LG Chem from the Escrow Account by the Escrow Agent along with any interest accrued thereon.

20. Exclusions

(a) Within ten (10) business days after the end of the period to request exclusion from the Class, Interim Co-Lead Counsel will cause copies of timely requests for exclusion from the Class to be provided to counsel for LG Chem. To the extent that LG Chem determines in good faith that valid and timely requests for exclusion or to opt out from the Class have been made by potential members of the Class who in the aggregate account for purchases of Li-Ion Cells, Li-Ion Batteries and Li-Ion Products in an amount equivalent to or greater than thirty-five percent (35%) of Defendants’ total sales in the United States of such products between May 1, 2002 through May 31, 2011, then LG Chem may at its sole discretion terminate this Agreement or proceed with this Agreement. If LG Chem elects to terminate this Agreement, it shall do so within 15 calendar days after receiving the final list of members of the Class seeking to be excluded from the Class.

(b) If LG Chem terminates this Agreement pursuant to Paragraph 20(a), then (i) this Agreement shall be null and void as to LG Chem, and shall have no force or effect and shall be without prejudice to the rights and contentions of Releasees and Releasors in this or any

other litigation; and (ii) all amounts paid by LG Chem into the Settlement Fund (other than notice costs expended in accordance with Paragraph 21(a)) shall be returned to LG Chem from the Escrow Account by the Escrow Agent along with any interest accrued thereon within thirty (30) calendar days from the date of termination of this Agreement.

(c) With respect to any potential Class Member who requests exclusion from the Class, LG Chem reserves all of its legal rights and defenses, including, but not limited to, any defenses relating to whether the excluded Class Member is a direct purchaser of any allegedly price-fixed product and/or has standing to bring any claim.

21. Payment of Expenses.

(a) LG Chem agrees to permit use of a maximum of \$500,000 of the Settlement Fund towards notice to the Class and the costs of administration of the Settlement Fund. The \$500,000 in notice and administration expenses are not recoverable if this settlement does not become final to the extent such funds are expended for notice and administration costs. Other than as set forth in this Paragraph 21(a), neither LG Chem nor any of the other Releasees under this Agreement shall be liable for any of the costs or expenses of the litigation of the Action, including attorneys' fees; fees and expenses of expert witnesses and consultants; and costs and expenses associated with discovery, motion practice, hearings before the Court or any Special Master, appeals, trials or the negotiation of other settlements, or for Class administration and costs.

(b) If Interim Co-Lead Counsel enters into any other settlements on behalf of the Class before notice of this Agreement is given to the Class, Interim Co-Lead Counsel shall use its reasonable best efforts to provide a single notice to prospective members of the Class of all of the settlements.

**E. The Settlement Fund.**

22. Releasors shall look solely to the Settlement Fund for settlement and satisfaction against the Releasees of all Released Claims, and shall have no other recovery against LG Chem or any other Releasee.

23. After this Agreement becomes final within the meaning of Paragraph 13, the Settlement Fund shall be distributed in accordance with a plan to be submitted at the appropriate time by Plaintiffs, subject to approval by the Court. In no event shall any Releasee have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution, or administration of the Settlement Fund, including, but not limited to, the allocation of settlement amounts among Class Members or the costs and expenses of such distribution and administration, with the sole exception of the provisions set forth in Paragraph 21(a) of this Agreement. The Releasors hereby fully, finally and forever release, relinquish and discharge the Releasees and their counsel from any and all such liability.

24. Plaintiffs and Class Counsel shall be reimbursed and indemnified solely out of the Settlement Fund for all expenses. Neither LG Chem nor any of the other Releasees under this Agreement shall be liable for any costs, attorneys' fees, or expenses of any of Plaintiffs' or the Class' respective attorneys, experts, advisors, agents, or representatives, but all such costs, fees, and expenses as approved by the Court shall be paid out of the Settlement Fund.

25. **Class Counsel's Attorneys' Fees And Reimbursement of Expenses.**

(a) Class Counsel may submit an application or applications to the Court (the "Fee and Expense Application") for distribution to them from the Settlement Fund and LG Chem shall not oppose such application for: (i) an award of attorneys' fees not in excess of one-third of the Settlement Fund; plus (ii) reimbursement of expenses and costs incurred in connection with

prosecuting the Action, plus interest on such attorneys' fees, costs, and expenses at the same rate and for the same period as earned by the Settlement Fund (until paid) as may be awarded by the Court (the "Fee and Expense Award"). Class Counsel reserve the right to make additional applications for fees and expenses incurred, but in no event shall Releasees be responsible to pay any such additional fees and expenses except to the extent they are paid out of the Settlement Fund.

(b) The Fee and Expense Award, as approved by the Court, shall be paid solely from the Settlement Fund.

(c) The procedure for and the allowance or disallowance by the Court of the application by Class Counsel for attorneys' fees, costs, and expenses to be paid out of the Settlement Fund are not part of this Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement, and any order or proceeding relating to the Fee and Expense Application, or any appeal from any such order shall not operate to terminate or cancel this Agreement, or affect or delay the finality of the judgment approving the settlement.

(d) Neither LG Chem nor any other Releasee under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to any payment to Class Counsel of any Fee or Expense Award in the Action.

(e) Neither LG Chem nor any other Releasee under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to the allocation among Class Counsel, or any other person who may assert some claim thereto, of any Fee or Expense Award that the Court may make in the Action.

**F. Cooperation.**

26. LG Chem shall reasonably cooperate with Interim Co-Lead Counsel as set forth specifically below:

(a) Any documents LG Chem produces to any other party in the Action, LG Chem shall produce to Interim Co-Lead Counsel within ten (10) days of the production to such other party.

(b) LG Chem agrees to use reasonable efforts to make available for interview and/or deposition, via videoconference or at a mutually agreed upon location, not less than four (4) persons, who may consist of current employees of LG Chem (or former employees of LG Chem, if such former employees agree to cooperate) whom Interim Co-Lead Counsel, in consultation with counsel for LG Chem, reasonably and in good faith believe to have knowledge regarding the conduct alleged in the Complaint. Interviews shall be limited to a total of six (6) hours over one day per interview and can be conducted telephonically from overseas at the witness's choice. Depositions shall be administered according to the rules and limitations of the Federal Rules of Civil Procedure, regardless of the location at which they take place or the citizenship of the deponent. LG Chem also agrees to use good faith efforts to obtain the cooperation of former directors, officers and/or employees, as part of the four (4) witnesses identified above, if Interim Co-Lead Counsel asks LG Chem to include such individuals within the list of four (4). Any LG Chem witness who already has been deposed in the Action may not be interviewed pursuant to this Paragraph and may not be deposed again.

(c) LG Chem agrees to use reasonable efforts to make available for testimony at trial, which shall be at the United States Courthouse of the United States District Court

for the Northern District of California, not less than two (2) persons, who may consist of current employees of LG Chem (or former employees of LG Chem, if such former employees agree to cooperate) whom Interim Co-Lead Counsel, in consultation with counsel for LG Chem, reasonably and in good faith believe to have knowledge regarding the conduct alleged in the Complaint.

(d) LG Chem agrees to provide to the extent it is reasonably practicable declarations, affidavits, or other evidence to provide information with respect to LG Chem's purchases, sales, pricing, production, capacity and cost of its Li-Ion Cell, Li-Ion Battery, Li-Ion Battery Pack, and/or Li-Ion Products.

(e) LG Chem agrees to authenticate and lay a foundation, through affidavits or declarations, for admission into evidence any of LG Chem's produced documents and data and/or documents or data produced pursuant to subparagraph (d) above. If the affidavits or declarations previously identified are insufficient to authenticate and lay the foundation into evidence of any LG Chem produced documents or data and/or documents or data produced pursuant to subparagraph (d) above, to the extent reasonably practicable, LG Chem shall provide one witness who will authenticate to the best of his or her ability and lay the foundation for admission into evidence any LG Chem produced documents or data and/or documents or data produced pursuant to subparagraph (d) above.

(f) If any document protected by the attorney-client privilege, attorney work-product protection, joint defense or any other protection, privilege, or immunity is accidentally or inadvertently produced under this Paragraph, the document shall promptly

be destroyed and/or returned to LG Chem, and its production shall in no way be construed to have waived any privilege or protection attached to such document.

(g) Plaintiffs and Interim Co-Lead Counsel agree they will not use the information provided by LG Chem or their representatives under this Paragraph for any purpose other than the pursuit of the Action, and will not publicize the information beyond what is reasonably necessary for the prosecution of the Action or as otherwise required by law. Any documents and other information provided will be deemed “Highly Confidential” and subject to the protective order entered in the Action as if they had been produced in response to discovery requests and so designated. Plaintiffs and LG Chem will make reasonable efforts to accommodate the other’s efforts to minimize duplication in the providing of any cooperation.

27. In the event that this Agreement fails to receive final approval by the Court as contemplated in Paragraphs 10–13 hereof, including final approval of the “Class” as defined in Paragraph 2 above, or in the event that it is terminated by either party under any provision herein, the parties agree that neither Plaintiffs nor Plaintiffs’ counsel shall be permitted to introduce into evidence, at any hearing, or in support of any motion, opposition or other pleading in the Action or in any other federal or state or foreign action alleging a violation of any law relating to the subject matter of this Action, any deposition testimony or any documents provided by the Releasees, their counsel, or any individual made available by the Releasees pursuant to the cooperation provisions of Paragraph 26.

28. Except as provided in Paragraph 26 of this Agreement, LG Chem need not respond to formal discovery from Plaintiffs, or supplement prior responses to formal discovery that has been previously propounded by Plaintiffs or otherwise participate in the Action during



the pendency of this Agreement. LG Chem agrees to withdraw all outstanding discovery served on Plaintiffs to the extent such discovery was not served concurrently with another Defendant who remains in the Action, and neither LG Chem nor Plaintiffs shall file motions against the other during the pendency of the Agreement.

29. LG Chem and Plaintiffs agree not to disclose publicly or to any other Defendant the terms of this Agreement until this Agreement is submitted to the Court for approval.

G. Rescission if this Agreement is Not Approved or Final Judgment is Not Entered.

30. If the Court refuses to approve this Agreement or any part hereof, including if the Court does not certify a settlement class in accordance with the specific class definition set forth in Paragraph 2 above, or if such approval is modified or set aside on appeal, or if the Court does not enter the final judgment provided for in Paragraph 12 of this Agreement, or if the Court enters the final judgment and appellate review is sought, and on such review, such final judgment is not affirmed in its entirety, then LG Chem and the Plaintiffs, shall each, in their sole discretion, have the option to rescind this Agreement in its entirety. Written notice of the exercise of any such right to rescind shall be made according to the terms of Paragraph 40 within thirty days of the event triggering the right to rescind. A modification or reversal on appeal of any amount of Class Counsel's fees and expenses awarded by the Court from the Settlement Fund, or the allocation of the Settlement Fund as between Class Members, shall not be deemed a modification of all or a part of the terms of this Agreement or such final judgment.

31. In the event that this Agreement does not become final or is rescinded or terminated in accordance with Paragraph 29, then this Agreement shall be of no force or effect and all parts of the Settlement Fund caused to be deposited in the Escrow Account (including interest earned thereon) shall be returned forthwith to LG Chem less only disbursements made in

accordance with Paragraph 21(a) of this Agreement. LG Chem expressly reserves all of its rights and defenses if this Agreement does not become final.

32. Further, and in any event, Plaintiffs and LG Chem agree that this Agreement, whether or not it shall become final, and any and all negotiations, documents, and discussions associated with it, shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by LG Chem or the Releasees, or of the truth of any of the claims or allegations contained in the Complaint or any other pleading filed in the Action, or by any person or entity in any other action, and evidence thereof shall not be discoverable or used directly or indirectly, in any way, whether in the Action or in any other action or proceeding.

33. This Agreement shall be construed and interpreted to effectuate the intent of the parties, which is to provide, through this Agreement, for a complete resolution of the Released Claims with respect to each Releasee as provided in this Agreement.

34. The parties to this Agreement contemplate and agree that, prior to final approval of the settlement as provided for in Paragraphs 10–13 hereof, appropriate notice of: (1) the settlement; and (2) a hearing at which the Court will consider the approval of this Agreement will be given to Class Members.

H. Miscellaneous.

35. This Agreement does not settle or compromise any claim by Plaintiffs or any Class Member asserted in the Complaint or, if amended, any subsequent complaint, against any Defendant or alleged co-conspirator other than the Releasees. All rights against such other Defendants or alleged co-conspirators are specifically reserved by Plaintiffs and the Class. LG Chem's sales to the Class shall not be removed from the Action.

36. The United States District Court for the Northern District of California shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of this Agreement that cannot be resolved by negotiation and agreement by Plaintiffs and LG Chem. This Agreement shall be governed by and interpreted according to the substantive laws of the state of California without regard to its choice of law or conflict of laws principles.

37. This Agreement constitutes the entire, complete, and integrated agreement among Plaintiffs and LG Chem pertaining to the settlement of the Action against LG Chem, and supersedes all prior and contemporaneous undertakings of Plaintiffs and LG Chem in connection herewith. This Agreement may not be modified or amended except in writing executed by Plaintiffs and LG Chem, and approved by the Court. The Parties further agree that in entering into this Agreement, they have not relied on any representation or promise not contained in this agreement.

38. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Plaintiffs and LG Chem. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by Plaintiffs, Interim Co-Lead Counsel or Class Counsel shall be binding upon all Class Members and Releasers. The Releasees (other than LG Chem, which is a party hereto) are third-party beneficiaries of this Agreement and are authorized to enforce its terms applicable to them.


39. This Agreement may be executed in counterparts by Plaintiffs and LG Chem, and a .pdf signature via email shall be deemed an original signature for purposes of executing this Agreement.


40. Neither Plaintiffs nor LG Chem shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

41. Where this Agreement requires either party to provide notice or any other communication or document to the other, such notice shall be in writing, and such notice, communication, or document shall be provided by email or letter by overnight delivery to the undersigned counsel of record for the party to whom notice is being provided.

42. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement, subject to Court approval.

Dated: October 2, 2017

  
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Telephone: (415) 433-9000  
Facsimile: (415) 433-9008

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JOSEPH J. TABACCO, JR.

40. Neither Plaintiffs nor LG Chem shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

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42. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement, subject to Court approval.


Dated: October 2, 2017



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*Interim Co-Lead Counsel for the  
Direct Purchaser Plaintiffs*

By: 

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*Counsel for LG Chem, Ltd. and LG Chem America, Inc.*

# **EXHIBIT 2**

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

IN RE LITHIUM ION BATTERIES  
ANTITRUST LITIGATION

Case No. 13-MD-2420-YGR

MDL No. 2420

This Document Relates to:

ALL DIRECT PURCHASER  
PLAINTIFF ACTIONS

**SETTLEMENT AGREEMENT**

**SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is made and entered into this 2nd day of August, 2017 by and between Samsung SDI Co. Ltd. and Samsung SDI America, Inc. (collectively “Samsung SDI”), and the direct-purchaser plaintiff class representatives (individually, “Plaintiff” and collectively, “Plaintiffs”), both individually and on behalf of the “Class”, as more particularly defined in Paragraph 2 below. This Agreement is intended to fully, finally, and forever resolve, discharge and settle the Released Claims (as defined below), upon and subject to the conditions hereof.

WHEREAS, Plaintiffs are prosecuting the above *In Re Lithium Ion Batteries Antitrust Litigation*, Case No. 13-MD-2420-YGR (N.D. Cal.) (the “Action”) on their own behalf and on behalf of the Class against, among others, Samsung SDI;

WHEREAS, Plaintiffs allege that Samsung SDI participated in an unlawful conspiracy to raise, fix, maintain, or stabilize the price of Lithium Ion Battery Cells at artificially high levels in violation of Section 1 of the Sherman Act;

WHEREAS, Samsung SDI admits certain of Plaintiffs’ allegations, as well as denies



certain of Plaintiffs' allegations, and has asserted defenses to Plaintiffs' claims;

WHEREAS, Plaintiffs have conducted an investigation into the facts and the law regarding the Action and have concluded that resolving their claims against Samsung SDI according to the terms set forth below is in the best interest of Plaintiffs and the Class;

WHEREAS, Samsung SDI, despite its belief that it is not liable for some or all of the claims asserted and has good defenses thereto, has nevertheless agreed to enter into this Agreement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, and to obtain the releases, orders, and judgment contemplated by this Agreement, and to put to rest with finality all claims that have been or could have been asserted against Samsung SDI, based on the allegations of the Action, as more particularly set out below;

WHEREAS, arms' length settlement negotiations have taken place among Samsung SDI and Interim Co-Lead Counsel, as defined below, and this Agreement, which embodies all the terms of conditions of the settlement between Samsung SDI, Plaintiffs, and the Class has been reached as provided herein;

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, it is agreed by and among the undersigned that (subject to the approval of the Court) the Action be settled, compromised, and dismissed on the merits with prejudice as to Releasees, as defined below, and except as hereinafter provided, without costs as to Plaintiffs, the Class, or Releasees, on the following terms and conditions:

A. Definitions.

1. For purposes of this Agreement, "Plaintiffs" means Automation Engineering LLC; Charles Carte; Alfred H. Siegel, acting in his representative capacity as the Liquidating

Trustee of Circuit City Stores, Inc. Liquidating Trust; First Choice Marketing, Inc.; James O'Neil; Alfred T. Giuliano, acting in his representative capacity as the Chapter 7 Trustee of Ritz Camera & Image, LLC; The Stereo Shop; Univisions-Crimson Holding, Inc.; and Terri Walner, as well as any other person or entity added as a Plaintiff in the Action.

2. For purposes of this Agreement, "the Class" is defined as

All persons and entities that purchased a Lithium Ion Battery or Lithium Ion Battery Product from any Defendant, or any division, subsidiary or affiliate thereof, or any co-conspirator in the United States during the Class Period, from January 1, 2000 through May 31, 2011. Excluded from the Class are Defendants, their parent companies, subsidiaries and affiliates, any co-conspirators, federal governmental entities and instrumentalities of the federal government, states and their subdivisions, agencies and instrumentalities, and any judge or jurors assigned to this case.

3. For purposes of this agreement, "Defendants" means LG Chem, Ltd.; LG Chem America, Inc.; Samsung SDI Co. Ltd.; Samsung SDI America, Inc.; Panasonic Corporation; Panasonic Corporation of North America; SANYO Electric Co., Ltd.; SANYO North America Corporation; Sony Corporation; Sony Energy Devices Corporation; Sony Electronics Inc.; Hitachi Maxell, Ltd.; Maxell Corporation of America; NEC Corporation; NEC Tokin Corporation; and Toshiba Corporation. The parties to this Agreement hereby stipulate for purposes of this settlement only that the requirements of Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure are satisfied.

4. For purposes of this Agreement, "Lithium Ion Battery" ("Li-Ion Batteries"), "Lithium Ion Battery Cell(s)" ("Li-Ion Cells"), and "Lithium Ion Battery Products" ("Li-Ion Products") shall have the meanings as defined or otherwise referenced in the Direct Purchaser Plaintiffs' Second Consolidated Amended Complaint (Apr. 8, 2014) (ECF No. 415) (the "Complaint").

5. “Releasees” shall refer to Samsung SDI, and to all of its respective past and present, direct and indirect, parent companies, subsidiaries, and affiliates, and all of their respective past and present, direct and indirect, parent companies, subsidiaries, and affiliates; the predecessors, successors, and assigns of any of the above; and each and all of the present and former principals, partners, officers, directors, supervisors, employees, agents, representatives, insurers, attorneys, heirs, executors, administrators, and assigns of each of the foregoing and shall explicitly include all Samsung entities and their former and successor entities that sold Lithium Ion Batteries and Lithium Ion Battery Products. “Releasees” does not include any Defendant in the Action other than Samsung SDI.

6. “Class Member” means each member of the Class who has not timely elected to be excluded from the Class.

7. “Releasers” shall refer to the Plaintiffs and Class Members, and to their past and present officers, directors, employees, agents, stockholders, attorneys, servants, representatives, parent companies, subsidiaries, affiliates, partners, insurers, and all other persons, partnerships, corporations, receivers, and bankruptcy trustees with whom any of the former have been, or are now, affiliated, and the predecessors, successors, heirs, executives, administrators, and assigns of any of the foregoing.

8. “The Settlement Fund” shall be \$24,500,000 US dollars specified in Paragraph 18 plus accrued interest on said deposits once in escrow as set forth in Paragraph 19.

9. “Interim Co-Lead Counsel” or “Class Counsel” shall refer to the law firms of:

SAVERI & SAVERI, INC.  
R. Alexander Saveri  
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B. Approval of this Agreement and Dismissal of Claims Against Samsung SDI.

10. Plaintiffs and Samsung SDI shall use their best efforts to effectuate this Agreement, including cooperating in seeking the Court's approval for the establishment of procedures (including the giving of class notice under Federal Rules of Civil Procedure 23(c) and (e)) to secure the prompt, complete, and final dismissal with prejudice of the Action as to Samsung SDI.

11. Plaintiffs shall submit to the Court a motion for preliminary approval of the settlement and for authorization to disseminate notice of the settlement and final judgment contemplated by this Agreement to all Class Members (the "Motion"). If notice to the Class is given jointly with notice of any other class settlement, for purposes of Paragraph 21 below, the costs of notice and claims administration shall be prorated among the settlement funds

established for other such settling defendants based on their respective settlement amounts. The Motion shall include: (i) a proposed form of, method for, and date of dissemination of notice; and (ii) a proposed form of order and final judgment. Interim Co-Lead Counsel shall provide Samsung SDI with the text of the foregoing items (i) and (ii) before submission of the Motion and shall cooperate with Samsung SDI with respect to the contents of both documents, with the understanding that, among other things, individual notice of the settlement shall be mailed by regular mail or email, with appropriate notice by publication (in the event required by the Court), with all expenses paid from the Settlement Fund subject to Paragraph 21(a). The proposed form of order shall include such provisions as are typical in such orders, including finding that the proposed plan of notice complies with Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process. Plaintiffs acknowledge that Samsung SDI has previously supplied Co-Lead Counsel with the names and addresses of potential Class Members reasonably available in Samsung SDI's sales database. The Motion shall recite and ask the Court to find that the mailing of the notice of settlement to all members of the Class who can be identified upon reasonable effort constitutes valid, due, and sufficient notice to the Class, constitutes the best notice practicable under the circumstances, and complies fully with the requirements of Federal Rules of Civil Procedure 23.

12. Plaintiffs shall seek, and Samsung SDI will not object unreasonably to the entry of, an order and final judgment, the text of which Plaintiffs and Samsung SDI shall agree upon. The terms of that order and final judgment will include, at a minimum, the substance of the following provisions:

- (a) certifying the Class described in Paragraph 2, pursuant to Rule 23 of the Federal Rules of Civil Procedure, solely for purposes of this settlement as a settlement

class;

(b) as to the Action, approving finally this settlement and its terms as being a fair, reasonable and adequate settlement as to the Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to its terms;

(c) finding that all Class Members shall be bound by this Agreement, including the release provisions and covenant not to sue set forth in this Agreement;

(d) as to Samsung SDI, directing that the Action be dismissed with prejudice and, except as provided for in this Agreement, without provision that Samsung SDI pay any separate attorneys' fees or costs;

(e) finding that the notice given constitutes due, adequate and sufficient notice and meets the requirements of due process and the Federal Rules of Civil Procedure;

(f) reserving exclusive jurisdiction over the settlement and this Agreement, including the administration and consummation of this settlement, to the United States District Court for the Northern District of California; and

(g) determining under Rule 54(b) of the Federal Rules of Civil Procedure that there is no just reason for delay and directing that the judgment of dismissal with prejudice as to Samsung SDI shall be final.

13. This Agreement shall become final when: (i) the Court has entered a final order certifying the Class described in Paragraph 2 and approving this Agreement under Rule 23(e) of the Federal Rules of Civil Procedure and a final judgment dismissing the Action with prejudice as to Samsung SDI against all Class Members and without attorneys' fees or costs other than those provided for in this Agreement; and (ii) the time for appeal or to seek permission to appeal

from the Court's approval of this Agreement and entry of a final judgment as to Samsung SDI described in (i) hereof has expired without appeal, or, if appealed, approval of this Agreement and the final judgment as to Samsung SDI have been affirmed in their entirety, or the appeal has otherwise been finally dismissed, by the court of last resort to which such appeal has been taken and such affirmance or dismissal has become no longer subject to further appeal or review. It is agreed that the provisions of Rule 6 of the Federal Rules of Civil Procedure shall not be taken into account in determining the above-stated times. On the date that Plaintiffs and Samsung SDI have executed this Agreement, Plaintiffs and Samsung SDI shall be bound by its terms and this Agreement shall not be terminated or otherwise rescinded except in accordance with Paragraphs 19(h) or 30 of this Agreement.

14. Neither this Agreement (whether or not it should become final) nor the final judgment, nor any and all negotiations, documents, and discussions associated with them, shall be deemed or construed to be an admission by Samsung SDI (or the other Releasees) or evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by Samsung SDI (or the other Releasees), or of the truth of any of the claims or allegations contained in any complaint or any other pleading filed in the Action, and evidence thereof shall not be discoverable or used directly or indirectly, in any way, whether in the Action or in any other action or proceeding. Neither this Agreement, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any other action taken to carry out this Agreement by any of the settling parties shall be referred to, offered as evidence or received in evidence in any pending or future civil, criminal, or administrative action or proceedings, except in a proceeding to enforce this Agreement, or to defend against the assertion of Released Claims, as defined in Paragraph 15, or as otherwise required by law. This Paragraph 14 shall survive the

termination or rescission of this Agreement.

C. Release, Discharge, and Covenant Not to Sue.

15. In addition to the preclusive effect of any final judgment entered in accordance with this Agreement, upon this Agreement becoming final as set out in Paragraph 13 of this Agreement, and in consideration of payment of the Settlement Amount, as specified in Paragraph 18 of this Agreement, into the Settlement Fund, and for other valuable consideration, the Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, judgments, actions, suits, causes of action, whether class, individual, or otherwise in nature (whether or not any Class Member has objected to the settlement or makes a claim upon or participates in the Settlement Fund, whether directly, representatively, derivatively or in any other capacity) that Releasers, or each of them, ever had, now has, or hereafter can, shall, or may have on account of, or in any way arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated, claims, causes of action, injuries, damages, and the consequences thereof in any way arising out of or relating in any way to the allegations in the Complaint and any act or omission of the Releasees (or any of them) that is alleged in the Complaint up to the date of the execution of this Agreement, or that could have been alleged in the Complaint or in any other complaint filed in the Action, such as those arising under common law or any federal, state or foreign antitrust, unfair competition, unfair practices, price discrimination, unitary pricing, consumer protection or deceptive trade practice law (the "Released Claims"). The Released Claims do not include claims for product defect or personal injury or breach of contract (unless based on the allegations in the Complaint) arising in the ordinary course of business or indirect purchaser claims for Li-Ion Cells, Li-Ion Batteries or Li-Ion Products that were not purchased



directly from Defendants or their subsidiaries, affiliates, or alleged co-conspirators. Releasors shall not, after the date of this Agreement, sue or otherwise seek to establish liability against any Releasee based, in whole or in part, upon any of the Released Claims or conduct at issue in the Released Claims. For purposes of clarity, the Released Claims include any claims under foreign antitrust or competition laws or state antitrust or competition laws that relate to or arise out of the subject of the Complaint, but do not include any foreign antitrust or competition law claims or any state law indirect-purchaser claims that relate to or arise out of the sale of Li-Ion Cells, Li-Ion Batteries or Li-Ion Products that: (a) were not purchased from a Defendant, a subsidiary or affiliate of a Defendant, any of the Releasees or an alleged co-conspirator in the Action; or (b) were not billed to or shipped to or through the United States, or would otherwise not fall within the jurisdictional reach of the Sherman Act as amended by the Foreign Trade Antitrust Improvements Act of 1982.

16. In addition to the provisions of Paragraph 15 of this Agreement, Releasors hereby expressly waive and release, upon this Agreement becoming final, any and all provisions, rights, and benefits conferred by § 1542 of the California Civil Code, which states:

CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR;

or by any law or common law principle of any state or territory of the United States, or any other jurisdiction, which is similar, comparable, or equivalent to § 1542 of the California Civil Code. Each Releasor may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the Released Claims, but each Releasor hereby expressly waives and fully, finally, and forever settles and releases, upon this Agreement

becoming final, any known or unknown, suspected or unsuspected, contingent or non-contingent claim with respect to the subject matter of the provisions of Paragraph 15 of this Agreement, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

17. The release, discharge, and covenant not to sue set forth in Paragraph 15 of this Agreement does not include claims by any of the Class Members other than the Released Claims and does not preclude Class Members from pursuing claims based on indirect sales or foreign sales of Li-Ion Cells, Li-Ion Batteries or Li-Ion Products so long as such claims are not based on the same purchases included as part of the Released Claims defined in Paragraph 15. The Releasors hereby covenant and agree that they shall not, hereafter, sue or otherwise seek to establish liability against any of the Releasees based, in whole or in part, upon any of the Released Claims.

D. Settlement Amount.

18. Subject to the provisions hereof, and in full, complete and final settlement of the Action as provided herein, Samsung SDI shall pay the Settlement Amount of \$24,500,000 (the "Settlement Amount"), and no additional amount at any time, whether for wire transfer fees or bank fees of any kind associated with the wire transfer of funds, interest, notice, administration costs, attorneys' fees, or otherwise. The Settlement Amount shall be paid into an escrow account in United States Dollars to be administered in accordance with the provisions of Paragraph 19 of this Agreement (the "Escrow Account") within forty-five (45) days after execution of this Agreement.

19. Escrow Account.

(a) The Escrow Account will be established at Citibank N.A.— Citi Private

Bank, San Francisco, California, with such Bank serving as escrow agent (“Escrow Agent”), such escrow to be administered under the Court’s continuing supervision and control.

(b) The Escrow Agent shall cause the funds deposited in the Escrow Account to be invested in instruments backed by the full faith and credit of the United States Government or fully insured in writing by the United States Government, or money market funds, invested substantially in such instruments, and shall reinvest any income from these instruments and the proceeds of these instruments as they mature in similar instruments at their then current market rates.

(c) All funds held in the Escrow Account shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Agreement and/or further order(s) of the Court.

(d) Plaintiffs and Samsung SDI agree to treat the Settlement Fund as being at all times a qualified settlement fund within the meaning of Treas. Reg. §1.468B-1. In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph 19, including the “relation-back election” (as defined in Treas. Reg. §1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

(e) For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the Escrow Agent. The Escrow Agent or its designee shall timely and properly file all informational and

other tax returns necessary or advisable with respect to the Settlement Fund (including without limitation the returns described in Treas. Reg. § 1.468B-2(k)(1)). Such returns (as well as the election described in Paragraph 19(d)) shall be consistent with Paragraph 19(d) and in all events shall reflect that all Taxes, as defined below (including any estimated taxes, interest or penalties), on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in Paragraph 19(f) hereof.

(f) All of the following shall be paid out of the Settlement Fund: (i) taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon Samsung SDI or any other Releasee with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes (“Taxes”); and (ii) expenses and costs incurred in connection with the operation and implementation of Paragraphs 19(a)–19(b) and 19(d) through 19(f) (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this Paragraph 19(f) (“Tax Expenses”)).

(g) Neither Samsung SDI nor any other Releasee nor their respective counsel shall have any liability or responsibility for the Taxes or the Tax Expenses or for obtaining or maintaining the tax status desired for the Settlement Fund. Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall be timely paid by the Escrow Agent out of the Settlement Fund without prior order from the Court, and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to any claimants authorized by the Court any funds necessary to

pay such amounts including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)). Plaintiffs and Samsung SDI agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of Paragraphs 19(d) through 19(f).

(h) If this Agreement does not receive final Court approval, including final approval of “the Class” as defined in Paragraph 2 above or if the Action is not certified as a class action for settlement purposes, or if this Agreement is terminated as provided herein, or the Judgment is overturned on appeal or by writ, then all amounts paid by Samsung SDI into the Settlement Fund (other than notice costs expended in accordance with Paragraph 21(a)) shall within thirty (30) calendar days be returned to Samsung SDI from the Escrow Account by the Escrow Agent along with any interest accrued thereon.

20. Exclusions

(a) Within ten (10) business days after the end of the period to request exclusion from the Class, Interim Co-Lead Counsel will cause copies of timely requests for exclusion from the Class to be provided to counsel for Samsung SDI. To the extent that Samsung SDI determines in good faith that valid and timely requests for exclusion or to opt out from the Class have been made by potential members of the Class who in the aggregate account for purchases of Li-Ion Cells, Li-Ion Batteries and Li-Ion Products in an amount equivalent to or greater than thirty-five percent (35%) of Defendants’ total sales in the United States of such products between May 1, 2002 through May 31, 2011, then Samsung SDI may at its sole discretion terminate this Agreement or proceed with this Agreement. If Samsung SDI elects to terminate this Agreement, it shall do so within twenty (20) calendar days after receiving the final list of members of the Class seeking to be excluded from the Class.

(b) If Samsung SDI terminates this Agreement pursuant to Paragraph 18(a), then (i) this Agreement shall be null and void as to Samsung SDI and shall have no force or effect and shall be without prejudice to the rights and contentions of Releasees and Releasers in this or any other litigation; and (ii) all amounts paid by Samsung SDI into the Settlement Fund (other than notice costs expended in accordance with Paragraph 19(a)) shall be returned to Samsung SDI from the Escrow Account by the Escrow Agent along with any interest accrued thereon within thirty (30) calendar days from the date of termination of this Agreement.

(c) With respect to any potential Class Member who requests exclusion from the Class, Samsung SDI reserves all of its legal rights and defenses, including, but not limited to, any defenses relating to whether the excluded Class Member is a direct purchaser of any allegedly price-fixed product and/or has standing to bring any claim.

21. Payment of Expenses.

(a) Samsung SDI agrees to permit use of a maximum of \$500,000 of the Settlement Fund towards notice to the Class and the costs of administration of the Settlement Fund. The \$500,000 in notice and administration expenses are not refundable if this settlement does not become final to the extent such funds are expended for notice and administration costs. Other than as set forth in this Paragraph 21(a), neither Samsung SDI nor any of the other Releasees under this Agreement shall be liable for any of the costs or expenses of the litigation of the Action, including attorneys' fees; fees and expenses of expert witnesses and consultants; and costs and expenses associated with discovery, motion practice, hearings before the Court or any Special Master, appeals, trials or the negotiation of other settlements, or for Class administration and costs.

(b) If Interim Co-Lead Counsel enters into any other settlements on behalf of the Class before notice of this Agreement is given to the Class, Interim Co-Lead Counsel shall

use its reasonable best efforts to provide a single notice to prospective members of the Class of all of the settlements.

E. The Settlement Fund.

22. Releasors shall look solely to the Settlement Fund for settlement and satisfaction against the Releasees of all Released Claims, and shall have no other recovery against Samsung SDI or any other Releasee.

23. After this Agreement becomes final within the meaning of Paragraph 13, the Settlement Fund shall be distributed in accordance with a plan to be submitted at the appropriate time by Plaintiffs, subject to approval by the Court. In no event shall any Releasee have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution, or administration of the Settlement Fund, including, but not limited to, the allocation of settlement amounts among Class Members or the costs and expenses of such distribution and administration, with the sole exception of the provisions set forth in Paragraph 21(a) of this Agreement. The Releasors hereby fully, finally and forever release, relinquish and discharge the Releasees and their counsel from any and all such liability.

24. Plaintiffs and Class Counsel shall be reimbursed and indemnified solely out of the Settlement Fund for all expenses. Neither Samsung SDI nor any of the other Releasees under this Agreement shall be liable for any costs, attorneys' fees, or expenses of any of Plaintiffs' or the Class' respective attorneys, experts, advisors, agents, or representatives, but all such costs, fees, and expenses as approved by the Court shall be paid out of the Settlement Fund.

25. Class Counsel's Attorneys' Fees And Reimbursement of Expenses.

(a) Class Counsel may submit an application or applications to the Court (the "Fee and Expense Application") for distribution to them from the Settlement Fund and Samsung

SDI shall not oppose such application for: (i) an award of attorneys' fees not in excess of one-third of the Settlement Fund; plus (ii) reimbursement of expenses and costs incurred in connection with prosecuting the Action, plus interest on such attorneys' fees, costs, and expenses at the same rate and for the same period as earned by the Settlement Fund (until paid) as may be awarded by the Court (the "Fee and Expense Award"). Class Counsel reserve the right to make additional applications for fees and expenses incurred, but in no event shall Releasees be responsible to pay any such additional fees and expenses except to the extent they are paid out of the Settlement Fund.

(b) The Fee and Expense Award, as approved by the Court, shall be paid solely from the Settlement Fund.

(c) The procedure for and the allowance or disallowance by the Court of the application by Class Counsel for attorneys' fees, costs, and expenses to be paid out of the Settlement Fund are not part of this Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement, and any order or proceeding relating to the Fee and Expense Application, or any appeal from any such order shall not operate to terminate or cancel this Agreement, or affect or delay the finality of the judgment approving the settlement.

(d) Neither Samsung SDI nor any other Releasee under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to any payment to Class Counsel of any Fee or Expense Award in the Action.

(e) Neither Samsung SDI nor any other Releasee under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to the allocation among Class Counsel, or any other person who may assert some claim thereto, of any Fee or



Expense Award that the Court may make in the Action.

F. Cooperation.

26. SDI has provided cooperation to date under the Antitrust Criminal Penalty Enhancement and Reform Act of 2004, Pub. L. No. 108-237, 118 Stat. 666 (“ACPERA”). In addition to its obligations under ACPERA, which shall continue until this Action is finally dismissed against all Defendants, Samsung SDI shall make its best effort to cooperate with Interim Co-Lead Counsel as follows:

(a) To the extent not already produced, Samsung SDI shall produce all English translations of any documents that it provided to the United States Department of Justice in connection with its investigation of potential collusion concerning Lithium Ion Batteries, to the extent they exist, within fifteen (15) business days after Preliminary Approval by the Court of this Agreement.

(b) Samsung SDI shall respond to reasonable requests (including, if necessary, by providing reasonable telephonic access to appropriate employees) for clarification of the transactional, production and cost data that Samsung SDI has produced or will produce in the Action.

(c) Any documents Samsung SDI produces to any other party in the Action, Samsung SDI shall produce to Interim Co-Lead Counsel within ten (10) days of the production to such other party. Samsung SDI shall also notify Interim Co-Lead Counsel of any proffers or other cooperation under ACPERA or otherwise it provides in any action relating to the alleged conspiracy, and allow Interim Co-Lead Counsel to participate in or otherwise receive the benefit of such cooperation.

(d) Samsung SDI agrees to use reasonable efforts to make available for a single interview and/or a single deposition, via videoconference or at a mutually agreed upon location, not less than four (4) persons, who may consist of current directors, officers, and/or employees of Samsung SDI (or former directors, officers and/or employees of Samsung SDI, if such former employees agree to cooperate) whom Interim Co-Lead Counsel, in consultation with counsel for Samsung SDI, reasonably and in good faith believe to have knowledge regarding the conduct alleged in the Complaint. Interviews shall be limited to a total of six (6) hours over one day per interview and can be conducted telephonically from overseas at the witness's choice. Depositions shall be administered according to the rules and limitations of the Federal Rules of Civil Procedure, regardless of the location at which they take place or the citizenship of the deponent. Samsung SDI also agrees to use good faith efforts to obtain the cooperation of former directors, officers and/or employees, as part of the four (4) witnesses identified above, if Interim Co-Lead Counsel asks Samsung SDI to include such individuals within the list of four (4). Plaintiffs and Samsung SDI shall meet and confer on the allocation for reimbursement of reasonable travel expenses incurred by witnesses pursuant to this Paragraph, consistent with the Guidelines for Limiting Costs and Expenses, Including Attorneys' Fees (Exhibit A to ECF No. 202). Plaintiffs may continue to participate in, and ask questions during, any depositions of Samsung SDI witnesses noticed by other parties in the Action, and such participation will not count against the four (4) individuals identified pursuant to this Paragraph. Any Samsung SDI witness who has already been deposed in the Action may only be interviewed pursuant to this Paragraph and may not be deposed again.

(e) Samsung SDI agrees to use reasonable efforts to make available for testimony at trial, which shall be at the United States Courthouse of the United States District Court for the Northern District of California, not less than three (3) persons, who may consist of current directors, officers, and/or employees of Samsung SDI (or former directors, officers and/or employees of Samsung SDI, if such former employees agree to cooperate) whom Interim Co-Lead Counsel, in consultation with counsel for Samsung SDI, reasonably and in good faith believe to have knowledge regarding the conduct alleged in the Complaint.

(f) Samsung SDI agrees to provide to the extent it is reasonably practicable declarations, affidavits, or other evidence to provide information with respect to Samsung SDI's purchases, sales, pricing, production, capacity and cost of its Li-Ion Cell, Li-Ion Battery, Li-Ion Battery Pack, and/or Li-Ion Products, as well as documents (if any) related to the conduct alleged in the Complaint. Both parties agree that Samsung SDI has already made substantial and reasonable productions related to this matter. Upon additional reasonable request, Samsung SDI agrees to provide Interim Co-Lead Counsel with supplemental productions of documents or data to the extent reasonably available.

(g) To the extent reasonably practicable, Samsung SDI agrees to authenticate and lay a foundation, through affidavits or declarations, for admission into evidence any of Samsung SDI's produced documents and data and/or documents or data produced pursuant to subparagraph (h) above. If the affidavits or declarations previously identified are insufficient to authenticate and lay the foundation into evidence of any Samsung SDI produced documents or data and/or documents or data produced pursuant to subparagraph (h) above, to the extent reasonably practicable, Samsung SDI shall provide

one witness who will authenticate to the best of their ability and lay the foundation for admission into evidence any Samsung SDI produced documents or data and/or documents or data produced pursuant to subparagraph (h) above. Should both parties agree that additional witnesses may be necessary, the parties will meet and confer to discuss the necessity and logistics of obtaining such additional witnesses.

(h) If any document protected by the attorney-client privilege, attorney work-product protection, joint defense or any other protection, privilege, or immunity is accidentally or inadvertently produced under this Paragraph, the document shall promptly be destroyed and/or returned to Samsung SDI, and its production shall in no way be construed to have waived any privilege or protection attached to such document.

(i) Plaintiffs and Interim Co-Lead Counsel agree they will not use the information provided by Samsung SDI or their representatives under this Paragraph for any purpose other than the pursuit of the Action, and will not publicize the information beyond what is reasonably necessary for the prosecution of the Action or as otherwise required by law. Any documents and other information provided will be deemed “Highly Confidential” and subject to the protective order entered in the Action as if they had been produced in response to discovery requests and so designated. Plaintiffs and Samsung SDI will take reasonable efforts to accommodate the other’s efforts to minimize duplication in the providing of any cooperation.

27. In the event that this Agreement fails to receive final approval by the Court as contemplated in Paragraphs 10–13 hereof, including final approval of the “Class” as defined in Paragraph 2 above, or in the event that it is terminated by either party under any provision herein, the parties agree that neither Plaintiffs nor Plaintiffs’ counsel shall be permitted to

introduce into evidence, at any hearing, or in support of any motion, opposition or other pleading in the Action or in any other federal or state or foreign action alleging a violation of any law relating to the subject matter of this Action, any deposition testimony or any documents provided by the Releasees, their counsel, or any individual made available by the Releasees pursuant to the cooperation provisions of Paragraph 26,

28. Except as provided in Paragraph 26 of this Agreement, Samsung SDI need not respond to formal discovery from Plaintiffs, or supplement prior responses to formal discovery that has been previously propounded by Plaintiffs or otherwise participate in the Action during the pendency of this Agreement. Samsung SDI agrees to withdraw all outstanding discovery served on Plaintiffs to the extent such discovery was not served concurrently with another Defendant who remains in the Action, and neither Samsung SDI nor Plaintiffs shall file motions against the other during the pendency of the Agreement.

29. Samsung SDI and Plaintiffs agree not to disclose publicly or to any other Defendant the terms of this Agreement until this Agreement is submitted to the Court for approval.

G. Rescission if this Agreement is Not Approved or Final Judgment is Not Entered.

30. If the Court refuses to approve this Agreement or any part hereof, including if the Court does not certify a settlement class in accordance with the specific class definition set forth in Paragraph 2 above, or if such approval is modified or set aside on appeal, or if the Court does not enter the final judgment provided for in Paragraph 12 of this Agreement, or if the Court enters the final judgment and appellate review is sought, and on such review, such final judgment is not affirmed in its entirety, then Samsung SDI and the Plaintiffs, shall each, in their sole discretion, exercised in good faith, have the option to rescind this Agreement in its entirety.

Written notice of the exercise of any such right to rescind shall be made according to the terms of Paragraph 40 within thirty days of the event triggering the right to rescind. A modification or reversal on appeal of any amount of Class Counsel's fees and expenses awarded by the Court from the Settlement Fund, or the allocation of the Settlement Fund as between Class Members, shall not be deemed a modification of all or a part of the terms of this Agreement or such final judgment.

31. In the event that this Agreement does not become final or is rescinded or terminated in accordance with Paragraph 30, then this Agreement shall be of no force or effect and all parts of the Settlement Fund caused to be deposited in the Escrow Account (including interest earned thereon) shall be returned forthwith to Samsung SDI less only disbursements made in accordance with Paragraph 21(a) of this Agreement. Samsung SDI expressly reserves all of its rights and defenses if this Agreement does not become final.

32. Further, and in any event, Plaintiffs and Samsung SDI agree that this Agreement, whether or not it shall become final, and any and all negotiations, documents, and discussions associated with it, shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by Samsung SDI or the Releasees, or of the truth of any of the claims or allegations contained in the Complaint or any other pleading filed in the Action, or by any person or entity in any other action, and evidence thereof shall not be discoverable or used directly or indirectly, in any way, whether in the Action or in any other action or proceeding.

33. This Agreement shall be construed and interpreted to effectuate the intent of the parties, which is to provide, through this Agreement, for a complete resolution of the Released Claims with respect to each Releasee as provided in this Agreement.

34. The parties to this Agreement contemplate and agree that, prior to final approval of the settlement as provided for in Paragraphs 10–13 hereof, appropriate notice of: (1) the settlement; and (2) a hearing at which the Court will consider the approval of this Agreement will be given to Class Members.

H. Miscellaneous.

35. This Agreement does not settle or compromise any claim by Plaintiffs or any Class Member asserted in the Complaint or, if amended, any subsequent complaint, against any Defendant or alleged co-conspirator other than the Releasees. All rights against such other Defendants or alleged co-conspirators are specifically reserved by Plaintiffs and the Class. Neither Samsung SDI's sales, nor the sales of any related entity, to the Class shall be removed from the Action.

36. The United States District Court for the Northern District of California shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of this Agreement that cannot be resolved by negotiation and agreement by Plaintiffs and Samsung SDI. This Agreement shall be governed by and interpreted according to the substantive laws of the state of California without regard to its choice of law or conflict of laws principles.

37. This Agreement constitutes the entire, complete, and integrated agreement among Plaintiffs and Samsung SDI pertaining to the settlement of the Action against Samsung SDI, and supersedes all prior and contemporaneous undertakings of Plaintiffs and Samsung SDI in connection herewith. This Agreement may not be modified or amended except in writing executed by Plaintiffs and Samsung SDI, and approved by the Court.

38. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Plaintiffs and Samsung SDI. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by Plaintiffs, Interim Co-Lead Counsel or Class Counsel shall be binding upon all Class Members and Releasers. The Releasees (other than Samsung SDI, which is a party hereto) are third-party beneficiaries of this Agreement and are authorized to enforce its terms applicable to them.

39. This Agreement may be executed in counterparts by Plaintiffs and Samsung SDI, and a .pdf signature via email shall be deemed an original signature for purposes of executing this Agreement.

40. Neither Plaintiffs nor Samsung SDI shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

41. Where this Agreement requires either party to provide notice or any other communication or document to the other, such notice shall be in writing, and such notice, communication, or document shall be provided by email or letter by overnight delivery to the undersigned counsel of record for the party to whom notice is being provided.

42. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement, subject to Court approval.



Dated: August 2, 2017



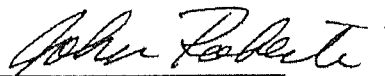
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Dated: August 2, 2017

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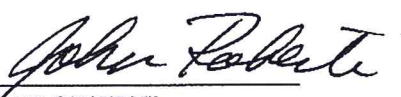
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*Counsel for Samsung SDI Co. Ltd. and Samsung SDI  
America, Inc.*

# **EXHIBIT 3**

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

IN RE LITHIUM ION BATTERIES  
ANTITRUST LITIGATION

This Document Relates to:

ALL DIRECT PURCHASER  
PLAINTIFF ACTIONS

Case No. 13-MD-2420-YGR

MDL No. 2420

**SETTLEMENT AGREEMENT**

**SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is made and entered into this 30th day of August, 2017 by and between TOKIN Corporation (“TOKIN”), formerly known as NEC TOKIN Corporation, and the direct-purchaser plaintiff class representatives (“Plaintiffs”), both individually and on behalf of the direct purchaser class in the above-captioned class actions (“the Class”) as more particularly defined in Paragraph 1 below.

WHEREAS, Plaintiffs are prosecuting the above *In Re Lithium Ion Batteries Antitrust Litigation*, Case No. 13-MD-2420-YGR (N.D. Cal.) (the “Action”) on their own behalf and on behalf of the Class against, among others, TOKIN;

WHEREAS, Plaintiffs allege that TOKIN participated in an unlawful conspiracy to raise, fix, maintain, or stabilize the price of Lithium Ion Battery Cells at artificially high levels in violation of Section 1 of the Sherman Act;

WHEREAS, TOKIN denies Plaintiffs’ allegations and has asserted defenses to Plaintiffs’ claims;

WHEREAS, Plaintiffs have conducted an investigation into the facts and the law

regarding the Action and have concluded that resolving claims against TOKIN according to the terms set forth below is in the best interest of Plaintiffs and the Class;

WHEREAS, TOKIN, despite its belief that it is not liable for the claims asserted and has good defenses thereto, has nevertheless agreed to enter into this Agreement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, and to obtain the releases, orders, and judgment contemplated by this Agreement, and to put to rest with finality all claims that have been or could have been asserted against TOKIN based on the allegations of the Action, as more particularly set out below;

WHEREAS, arms' length settlement negotiations have taken place among TOKIN and Interim Co-Lead Counsel, as defined below, including negotiations conducted pursuant to mediation before Judge Vaughn R. Walker (ret.), and this Agreement, which embodies all the terms of conditions of the settlement between TOKIN and Plaintiffs, has been reached (subject to the approval of the Court) as provided herein;

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, it is agreed by and among the undersigned that the Action be settled, compromised, and dismissed on the merits with prejudice as to Releasees, as defined below, and except as hereinafter provided, without costs as to Plaintiffs, the Class, or TOKIN subject to the approval of the Court, on the following terms and conditions:

A. Definitions.

1. For purposes of this Agreement, "the Class" and "Class Period" are defined in Direct Purchaser Plaintiffs' Second Consolidated Amended Complaint (Apr. 8, 2014) (ECF No. 415) (the "Complaint"). The parties to this Agreement hereby stipulate for purposes of this

settlement only that the requirements of Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure are satisfied.

2. For purposes of this Agreement, “Lithium Ion Battery” (“Li-Ion Batteries”), “Lithium Ion Battery Cell(s)” (“Li-Ion Cells”), “Lithium Ion Battery Packs” (“Li-Ion Packs”), and “Lithium Ion Battery Products” (“Li-Ion Products”) shall have the meanings as defined or otherwise referenced in the Complaint.

3. “Releasees” shall refer to TOKIN and to all of its respective past and present, direct and indirect, parents, subsidiaries, and affiliates; the predecessors, successors, and assigns of any of the above; and each and all of the present and former principals, partners, officers, directors, supervisors, employees, agents, representatives, insurers, attorneys, heirs, executors, administrators, and assigns of each of the foregoing. “Releasees” does not include any defendant in the Action other than TOKIN.

4. “Class Member” means each member of the Class who has not timely elected to be excluded from the Class.

5. “Releasers” shall refer to the direct-purchaser plaintiff Class representatives and the direct-purchaser plaintiff Class Members, and to their past and present officers, directors, employees, agents, stockholders, attorneys, servants, representatives, parents, subsidiaries, affiliates, partners, insurers, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and the predecessors, successors, heirs, executives, administrators, and assigns of any of the foregoing.

6. “The Settlement Fund” shall be \$4,950,000 US dollars specified in Paragraph 16 plus accrued interest on said deposits set forth in Paragraph 17.

7. “Interim Co-Lead Counsel” shall refer to the law firms of:

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B. Approval of this Agreement and Dismissal of Claims Against TOKIN.

8. Plaintiffs and TOKIN shall use their best efforts to effectuate this Agreement, including cooperating in seeking the Court's approval for the establishment of procedures (including the giving of class notice under Federal Rules of Civil Procedure 23(c) and (e)) to secure the prompt, complete, and final dismissal with prejudice of the Action as to TOKIN only.

9. At a time mutually agreed upon by the parties, Plaintiffs shall submit to the Court a motion for authorization to disseminate notice of the settlement and final judgment contemplated by this Agreement to all Class members identified by Plaintiffs and TOKIN (the "Motion"). If notice to the Class is given jointly with any other settling defendant, for purposes of Paragraph 19 below, the costs of notice and claims administration shall be prorated with any other such defendant based on their respective settlement amounts. The Motion shall include: (i)



a proposed form of, method for, and date of dissemination of notice; and (ii) a proposed form of order and final judgment. The text of the foregoing items (i) and (ii) shall be agreed upon by Plaintiffs and TOKIN before submission of the Motion, with the understanding that, among other things, individual notice of the settlement shall be mailed by regular mail or email, with appropriate notice by publication (in the event required by the Court), with all expenses paid from the Settlement Fund subject to Paragraph 19(a). To the extent not already provided, TOKIN will supply to Interim Co-Lead Counsel the names and addresses of putative Class members to the extent reasonably available in TOKIN's records. TOKIN, however, shall not be required to bear any undue burden or expense in providing such list. The Motion shall recite and ask the Court to find that the mailing of the notice of settlement to all members of the Class who can be identified upon reasonable effort constitutes valid, due, and sufficient notice to the Class, constitutes the best notice practicable under the circumstances, and complies fully with the requirements of Federal Rule of Civil Procedure 23.

10. Plaintiffs shall seek, and TOKIN will not object unreasonably to the entry of, an order and final judgment, the text of which Plaintiffs and TOKIN shall agree upon. The terms of that order and final judgment will include, at a minimum, the substance of the following provisions:

(a) certifying the Class described in Paragraph 1, pursuant to Rule 23 of the Federal Rules of Civil Procedure, solely for purposes of this settlement as a settlement class;

(b) as to the Action, approving finally this settlement and its terms as being a fair, reasonable and adequate settlement as to the Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation

according to its terms;

(c) as to TOKIN, directing that the Action be dismissed with prejudice and, except as provided for in this Agreement, without costs;

(d) reserving exclusive jurisdiction over the settlement and this Agreement, including the administration and consummation of this settlement, to the United States District Court for the Northern District of California; and

(e) determining under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing that the judgment of dismissal with prejudice as to TOKIN shall be final.

11. This Agreement shall become final when: (i) the Court has entered a final order certifying the Class described in Paragraph 1 and approving this Agreement under Federal Rule of Civil Procedure 23(e) and a final judgment dismissing the Action with prejudice as to TOKIN against all Class Members and without costs other than those provided for in this Agreement; and (ii) the time for appeal or to seek permission to appeal from the Court's approval of this Agreement and entry of a final judgment as to TOKIN described in (i) hereof has expired or, if appealed, approval of this Agreement and the final judgment as to TOKIN have been affirmed in their entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review. It is agreed that the provisions of Rule 60 of the Federal Rules of Civil Procedure shall not be taken into account in determining the above-stated times. On the date that Plaintiffs and TOKIN have executed this Agreement, Plaintiffs and TOKIN shall be bound by its terms and this Agreement shall not be rescinded except in accordance with Paragraphs 17(h) or 26 of this Agreement.

12. Neither this Agreement (whether or not it should become final) nor the final

judgment, nor any and all negotiations, documents, and discussions associated with them, shall be deemed or construed to be an admission by TOKIN or evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by TOKIN, or of the truth of any of the claims or allegations contained in any complaint or any other pleading filed in the Action, and evidence thereof shall not be discoverable or used directly or indirectly, in any way, whether in the Action or in any other action or proceeding. Neither this Agreement, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any other action taken to carry out this Agreement by any of the settling parties shall be referred to, offered as evidence or received in evidence in any pending or future civil, criminal, or administrative action or proceedings, except in a proceeding to enforce this Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law.

C. Release, Discharge, and Covenant Not to Sue.

13. In addition to the effect of any final judgment entered in accordance with this Agreement, upon this Agreement becoming final as set out in Paragraph 11 of this Agreement, and in consideration of payment of the Settlement Amount, as specified in Paragraph 16 of this Agreement, into the Settlement Fund, and for other valuable consideration, the Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits, causes of action, whether class, individual, or otherwise in nature (whether or not any Class Member has objected to the settlement or makes a claim upon or participates in the Settlement Fund, whether directly, representatively, derivatively or in any other capacity) that Releasers, or each of them, ever had, now has, or hereafter can, shall, or may have on account of, or in any way arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated, claims, causes of

action, injuries, damages, and the consequences thereof in any way arising out of or relating in any way to any act or omission of the Releasees (or any of them) that is alleged in the Complaint up to the date of the execution of this Agreement or that could have been alleged in the Complaint or in any other complaint filed in the Action (the "Released Claims"). The Released Claims do not include claims for product defect or personal injury or breach of contract arising in the ordinary course of business or indirect purchaser claims for Li-Ion Cells, Li-Ion Batteries or Li-Ion Products that were not purchased directly from Defendants or their subsidiaries, affiliates, or alleged co-conspirators. Releasers shall not, after the date of this Agreement, sue or otherwise seek to establish liability against any Releasee based, in whole or in part, upon any of the Released Claims or conduct at issue in the Released Claims. For purposes of clarity, the Released Claims include any claims under foreign antitrust or competition laws or state antitrust or competition laws (including indirect purchaser claims) that relate to or arise out of the subject of the Plaintiffs' Complaint, but do not include any foreign antitrust or competition law claims or any state law indirect purchaser claims that relate to or arise out of the sale of Li-Ion Cells Li-Ion Batteries or Li-Ion Products that: (a) were not purchased from a Defendant or alleged co-conspirator in the Action; or (b) were not sold in the United States.

14. In addition to the provisions of Paragraph 13 of this Agreement, Releasers hereby expressly waive and release, upon this Agreement becoming final, any and all provisions, rights, and benefits conferred by § 1542 of the California Civil Code, which states:

CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR;

or by any law of any state or territory of the United States, or principle of common law, which is

similar, comparable, or equivalent to § 1542 of the California Civil Code. Each Releasor may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the Released Claims which are the subject matter of the provisions of Paragraph 13 of this Agreement, but each Releasor hereby expressly waives and fully, finally, and forever settles and releases, upon this Agreement becoming final, any known or unknown, suspected or unsuspected, contingent or non-contingent claim with respect to the subject matter of the provisions of Paragraph 13 of this Agreement, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

15. The release, discharge, and covenant not to sue set forth in Paragraph 13 of this Agreement does not include claims by any of the Class Members other than the Released Claims and does not preclude Class Members from pursuing claims based on indirect sales or foreign sales of Li-Ion Cells, Li-Ion Batteries or Li-Ion Products so long as such claims are not based on the same purchases included as part of the Released Claims defined in Paragraph 13. The Releasors hereby covenant and agree that they shall not, hereafter, sue or otherwise seek to establish liability against any of the Releasees based, in whole or in part, upon any of the Released Claims.

D. Settlement Amount.

16. Subject to the provisions hereof, and in full, complete and final settlement of the Action as provided herein, defendant TOKIN shall pay the Settlement Amount of \$4,950,000 (the "Settlement Amount"). The Settlement Amount shall be paid into an escrow account in United States Dollars to be administered in accordance with the provisions of Paragraph 17 of this Agreement (the "Escrow Account") within twenty-one (21) days after preliminary approval of this Agreement.

17. Escrow Account.

(a) The Escrow Account will be established at Citibank N.A.— Citi Private Bank, San Francisco, California, with such Bank serving as escrow agent (“Escrow Agent”) subject to escrow instructions mutually acceptable to Interim Co-Lead Counsel and TOKIN, such escrow to be administered under the Court’s continuing supervision and control.

(b) The Escrow Agent shall cause the funds deposited in the Escrow Account to be invested in short-term instruments backed by the full faith and credit of the United States Government or fully insured in writing by the United States Government, or money market funds rated Aaa and AAA, respectively by Moody’s Investor Services and Standard and Poor’s, invested substantially in such instruments, and shall reinvest any income from these instruments and the proceeds of these instruments as they mature in similar instruments at their then current market rates.

(c) All funds held in the Escrow Account shall be deemed and considered to be in custodia legis of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Agreement and/or further order(s) of the Court.

(d) Plaintiffs and TOKIN agree to treat the Settlement Fund as being at all times a qualified settlement fund within the meaning of Treas. Reg. §1.468B-1. In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph 17, including the relation-back election (as defined in Treas. Reg. §1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such

regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

(e) For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the administrator shall be the Escrow Agent. The Escrow Agent or its designee shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitation the returns described in Treas. Reg. § 1.468B-2(k)(l)). Such returns (as well as the election described in Paragraph 17(d)) shall be consistent with Paragraph 17(d) and in all events shall reflect that all Taxes, as defined below (including any estimated Taxes, interest or penalties), on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in Paragraph 17(f) hereof.

(f) All: (i) taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon TOKIN or any other Releasee with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a qualified settlement fund for federal or state income tax purposes (“Taxes”); and (ii) expenses and costs incurred in connection with the operation and implementation of Paragraphs 17(d) through 17(f) (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this Paragraph 17(f) (“Tax Expenses”)), shall be paid out of the Settlement Fund.

(g) Neither TOKIN nor any other Releasee nor their respective counsel shall have any liability or responsibility for the Taxes or the Tax Expenses. Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall be timely paid by the Escrow Agent out of the Settlement Fund without prior order from the Court and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to any claimants authorized by the Court any funds necessary to pay such amounts including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)). Neither TOKIN nor any other Releasee is responsible nor shall they have any liability therefor. Plaintiffs and TOKIN agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of Paragraphs 17(d) through 17(f).

(h) If this Agreement does not receive final Court approval, including final approval of “the Class” as defined in Plaintiffs’ Complaint or, if that complaint is amended, the operative complaint at the time this Agreement is signed, or if the Action is not certified as a class action for settlement purposes, then all amounts paid by TOKIN into the Settlement Fund (other than costs expended in accordance with Paragraph 19(a)) shall within thirty (30) calendar days be returned to TOKIN from the Escrow Account by the Escrow Agent along with any interest accrued thereon.

18. Exclusions.

Within ten (10) business days after the end of the period to request exclusion from the Class, Interim Co-Lead Counsel will cause copies of timely requests for exclusion from the Class



to be provided to counsel for TOKIN. With respect to any potential Class member who requests exclusion from the Class, TOKIN reserves all of its legal rights and defenses, including, but not limited to, any defenses relating to whether the excluded Class Member is a direct purchaser of any allegedly price fixed product and/or has standing to bring any claim.

19. Payment of Expenses.

(a) TOKIN agrees to permit use of a maximum of \$300,000 of the Settlement Fund towards notice to the class and the costs of administration of the Settlement Fund set forth in Paragraph 16. The \$300,000 in notice and administration expenses are not recoverable if this settlement does not become final to the extent such funds are expended for notice and administration costs. Other than as set forth in this Paragraph 19(a), and subject to the joint notice provisions of Paragraph 9 if applicable, TOKIN shall not be liable for any of the costs or expenses of the litigation of the Action, including attorneys' fees; fees and expenses of expert witnesses and consultants; and costs and expenses associated with discovery, motion practice, hearings before the Court or any Special Master, appeals, trials or the negotiation of other settlements, or for Class administration and costs.

(b) If Interim Co-Lead Counsel enters into any other settlements on behalf of the Class before notice of this Agreement is given to the Class, Interim Co-Lead Counsel shall use its reasonable best efforts to provide a single notice to prospective Class members of all of the settlements.

E. The Settlement Fund.

20. Releasors shall look solely to the Settlement Fund for settlement and satisfaction against the Releasees of all Released Claims, and shall have no other recovery against TOKIN or

any other Releasee.

21. After this Agreement becomes final within the meaning of Paragraph 11, the Settlement Fund shall be distributed in accordance with a plan to be submitted at the appropriate time by Plaintiffs, subject to approval by the Court. In no event shall any Releasee have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution, or administration of the Settlement Fund, including, but not limited to, the costs and expenses of such distribution and administration, with the sole exception of the provisions set forth in Paragraph 19(a) of this Agreement.

22. Plaintiffs and Class Counsel shall be reimbursed and indemnified solely out of the Settlement Fund for all expenses. TOKIN shall not be liable for any costs, fees, or expenses of any of Plaintiffs' or the Class' respective attorneys, experts, advisors, agents, or representatives, but all such costs, fees, and expenses as approved by the Court shall be paid out of the Settlement Fund.

23. Class Counsel's Attorneys' Fees And Reimbursement of Expenses.

(a) Class Counsel may submit an application or applications to the Court (the "Fee and Expense Application") for distribution to them from the Settlement Fund and TOKIN shall not oppose such application for: (i) an award of attorneys' fees not in excess of one-third of the settlement fund; plus (ii) reimbursement of expenses and costs incurred in connection with prosecuting the Action, plus interest on such attorneys' fees, costs, and expenses at the same rate and for the same period as earned by the Settlement Fund (until paid) as may be awarded by the Court (the "Fee and Expense Award"). Class Counsel reserve the right to make additional applications for fees and expenses incurred, but in no event shall Releasees be responsible to pay any such additional fees and

expenses except to the extent they are paid out of the Settlement Fund.

(b) The Fee and Expense Award, as approved by the Court, shall be paid solely from the Settlement Fund.

(c) The procedure for and the allowance or disallowance by the Court of the application by Class Counsel for attorneys' fees, costs, and expenses to be paid out of the Settlement Fund are not part of this Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement, and any order or proceeding relating to the Fee and Expense Application, or any appeal from any such order shall not operate to terminate or cancel this Agreement, or affect or delay the finality of the judgment approving the settlement.

(d) Neither TOKIN nor any other Releasee under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to any payment to Class Counsel of any Fee and/or Expense Award in the Action.

(e) Neither TOKIN nor any other Releasee under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to the allocation among Class Counsel, and/or any other person who may assert some claim thereto, of any Fee and/or Expense Award that the Court may make in the Action.

F. Obligations During Pendency of Agreement.

24. TOKIN need not respond to formal discovery from Plaintiffs or otherwise participate in the Action during the pendency of this Agreement. TOKIN agrees to withdraw all outstanding discovery served on Plaintiffs and neither TOKIN nor Plaintiffs shall file motions against the other during the pendency of the Agreement.

25. TOKIN and Plaintiffs agree not to disclose publicly or to any other defendant the

terms of this Agreement until this Agreement is submitted to the Court for approval.

G. Rescission if this Agreement is Not Approved or Final Judgment is Not Entered.

26. If the Court refuses to approve this Agreement or any part hereof, including if the Court does not certify a settlement class in accordance with the specific class definition set forth in Plaintiffs' Complaint, or if such approval is modified or set aside on appeal, or if the Court does not enter the final judgment provided for in Paragraph 10 of this Agreement, or if the Court enters the final judgment and appellate review is sought, and on such review, such final judgment is not affirmed in its entirety, then TOKIN and the Plaintiffs shall each, in their sole discretion, have the option to rescind this Agreement in its entirety. Written notice of the exercise of any such right to rescind shall be made according to the terms of Paragraph 37. A modification or reversal on appeal of any amount of Class Counsel's fees and expenses awarded by the Court from the Settlement Fund shall not be deemed a modification of all or a part of the terms of this Agreement or such final judgment.

27. In the event that this Agreement does not become final or is rescinded or terminated in accordance with Paragraph 26, then this Agreement shall be of no force or effect and the entirety of the Settlement Fund deposited in the Escrow Account (including interest earned thereon) shall be returned forthwith to TOKIN less only disbursements made in accordance with Paragraph 19(a) of this Agreement. TOKIN expressly reserves all of its rights and defenses if this Agreement does not become final.

28. Further, and in any event, Plaintiffs and TOKIN agree that this Agreement, whether or not it shall become final, and any and all negotiations, documents, and discussions associated with it, shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by TOKIN or the

Releasees, or of the truth of any of the claims or allegations contained in the complaint or any other pleading filed in the Action, or by any person or entity in any other action, and evidence thereof shall not be discoverable or used directly or indirectly, in any way, whether in the Action or in any other action or proceeding.

29. This Agreement shall be construed and interpreted to effectuate the intent of the parties, which is to provide, through this Agreement, for a complete resolution of the relevant claims with respect to each Releasee as provided in this Agreement.

30. The parties to this Agreement contemplate and agree that, prior to final approval of the settlement as provided for in Paragraphs 8 through 11 hereof, appropriate notice of: (1) the settlement; and (2) a hearing at which the Court will consider the approval of this Settlement Agreement will be given to Class members.

H. Miscellaneous.

31. This Agreement does not settle or compromise any claim by Plaintiffs or any Class Member asserted in the Complaint or, if amended, any subsequent Complaint, against any defendant or alleged co-conspirator other than the Releasees. All rights against such other defendants or alleged co-conspirators are specifically reserved by Plaintiffs and the Class. TOKIN's sales to the Class shall not be removed from the Action.

32. The United States District Court for the Northern District of California shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of this Agreement that cannot be resolved by negotiation and agreement by Plaintiffs and TOKIN. This Agreement shall be governed by and interpreted according to the substantive laws of the state of California without regard to its choice of law or

conflict of laws principles.

33. This Agreement constitutes the entire, complete, and integrated agreement among Plaintiffs and TOKIN pertaining to the settlement of the Action against TOKIN, and supersedes all prior and contemporaneous undertakings of Plaintiffs and TOKIN in connection herewith. This Agreement may not be modified or amended except in writing executed by Plaintiffs and TOKIN, and approved by the Court.

34. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Plaintiffs and TOKIN. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by Plaintiffs, Interim Co-Lead Counsel or Class Counsel shall be binding upon all Class Members and Releasors. The Releasees (other than TOKIN, which is a party hereto) are third party beneficiaries of this Agreement and are authorized to enforce its terms applicable to them.

35. This Agreement may be executed in counterparts by Plaintiffs and TOKIN, and a .pdf signature via email shall be deemed an original signature for purposes of executing this Agreement.

36. Neither Plaintiffs nor TOKIN shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

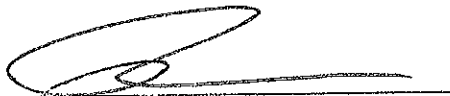
37. Where this Agreement requires either party to provide notice or any other communication or document to the other, such notice shall be in writing, and such notice, communication, or document shall be provided by email or letter by overnight delivery to the undersigned counsel of record for the party to whom notice is being provided.

38. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement, subject to Court approval.

Dated: August 30, 2017



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*Interim Co-Lead Counsel for the  
Direct Purchaser Plaintiffs*

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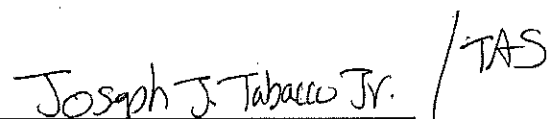
38. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement, subject to Court approval.

Dated: August 30, 2017



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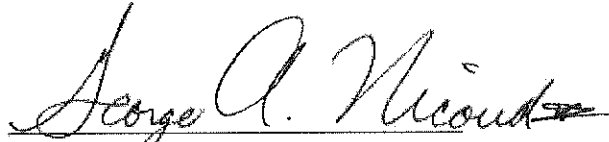
*Interim Co-Lead Counsel for the  
Direct Purchaser Plaintiffs*

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