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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE: LITHIUM ION BATTERIES ANTITRUST LITIGATION	Case No. 13-MD-02420 YGR (DMR)
	MDL No. 2420
This Document Relates to: *All Direct Purchaser Actions*	**DIRECT PURCHASER PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF FINAL APPROVAL OF CLASS ACTION SETTLEMENT WITH SONY DEFENDANTS** Date: September 6, 2016 Time: 2:00 p.m. Judge: Hon. Yvonne Gonzalez Rogers Courtroom: 1, 4th Floor

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 23(e) and the Court's Order granting preliminary approval of the proposed settlement (Dkt. No. 1182), Direct Purchaser Class Plaintiffs ("Plaintiffs") submit this memorandum in support of final approval of the settlement ("Sony Settlement Agreement") reached with Sony Corporation, Sony Energy Devices Corporation, and Sony Electronics, Inc. (collectively "Sony," "Sony Defendants," or "Settling Defendants").

To give notice to the class, the settlement administrator in this matter mailed over one million class notice forms through the United States Postal Service, published notice in the *Wall Street Journal*, and established and maintained a dedicated website and toll-free phone number. Declaration of Guy J. Thompson in Support of Final Approval of Class Action Settlement with Sony Defendants ("Thompson Decl.") ¶¶ 6–9. The reaction of the class was overwhelmingly positive. Only two objections were filed, apparently by the same individual (on his own behalf and on behalf of his company), expressing displeasure with class actions and lawyers generally, but providing no specific criticisms of the Sony Settlement Agreement. Thompson Decl. Ex. D. (The objections can also be found on the docket at Dkt. Nos. 1250, 1251.) No class member filed a notice of intent to appear at the final approval hearing. Thompson Decl. ¶ 11.

As explained in more detail below, the Sony Settlement Agreement provides a substantial benefit to the class and should be finally approved as fair, reasonable, and adequate. Among other things, the Sony Settlement Agreement provides for payment to the class of $19,000,000 for a complete release of all class members' claims. Declaration of R. Alexander Saveri in Support of Final Approval of Class Action Settlement with Sony Defendants ("Saveri Decl.") ¶ 9; Sony Settlement Agreement ¶¶ 1(z), (dd), included herewith as Exhibit 1 to the Saveri Decl. The Sony Defendants have also agreed to cooperate with Plaintiffs in the prosecution of the case against the remaining defendants. Saveri Decl. ¶ 11; Sony Settlement Agreement ¶ 27. Sony's sales also remain in the case for the purpose of computing damages against the remaining defendants. Saveri Decl. ¶ 10; Sony Settlement Agreement ¶ 1(z).

The Sony Settlement Agreement is the first settlement in this MDL proceeding. Saveri

Decl. ¶ 3.

The Court preliminarily approved the Sony Settlement Agreement on March 25, 2016. Dkt. No. 1182. On that date, the Court also certified a class for the purposes of settlement ("Settlement Class"), appointed Plaintiffs' Interim Co-Lead Counsel as Settlement Class counsel, approved the manner and form of providing notice of the Sony Settlement Agreement to class members, established a timetable for publishing class notice, and set a hearing for final approval. *Id.*

Plaintiffs have given notice to the Settlement Class as ordered by the Court. Thompson Decl. ¶¶ 6–9.

Plaintiffs request that the Court grant final approval of the Sony Settlement Agreement on the grounds that it is fair, reasonable, and adequate to the class. Plaintiffs also ask that the Court approve the plan of distribution of the settlement proceeds to the class.

II. FACTUAL AND PROCEDURAL HISTORY

This Multi-District Litigation arises from an alleged conspiracy to fix the prices of Lithium Ion Battery Cells ("Li-Ion Cells"). Li-Ion Cells are the main components in Lithium Ion Batteries ("Li-Ion Batteries"). Li-Ion Batteries are the predominant form of rechargeable batteries used in portable consumer electronics, powering devices including smartphones, laptop computers, digital cameras, and cordless power tools. Plaintiffs' complaint alleges that defendants' price-fixing conspiracy began at least as early as January 1, 2000 and continued until at least May 31, 2011. Direct Purchaser Plaintiffs' Second Consolidated Amended Complaint ("SCAC") (Apr. 8, 2014) (Dkt. No. 415) ¶¶ 110–80. Plaintiffs allege that the conspiracy has been carried out through agreements to fix prices and restrict output and has been facilitated in a variety of ways, including face-to-face meetings and other communications, customer allocation, and the use of trade associations. Saveri Decl. ¶ 4. Two defendants—LG Chem and Sanyo—pled guilty to criminal price fixing of Li-Ion Cells. *Id.* This is the first settlement in Plaintiffs' action. *Id.* ¶ 3.

This litigation has progressed substantially. Plaintiffs filed a motion for class certification on January 22, 2016. Dkt. No. 1038. Plaintiffs' class motion was supported by a detailed expert analysis of the Li-Ion industry, evidence of the conspiracy produced to date, and a preliminary damage study. Plaintiffs have reviewed millions of pages of defendants' documents, obtained

responses to interrogatories, and taken numerous depositions. Plaintiffs have also survived two rounds of motions to dismiss. *See* Omnibus Order re: Motions to Dismiss the Second Consolidated Amended Complaints of Direct and Indirect Purchaser Plaintiffs (Oct. 2, 2014) (Dkt. No. 512). Although much discovery remains, Plaintiffs have a solid grasp of the factual and legal issues in the case.

III. THE TERMS OF THE SETTLEMENT

In exchange for dismissal with prejudice and a release of all claims asserted in the SCAC, Sony has agreed to pay $19,000,000 in cash to settle all direct purchaser claims against it. Saveri Decl. ¶ 9; Sony Settlement Agreement ¶¶ 1(z), 1(dd).

In addition, Sony has agreed to cooperate with Plaintiffs in the prosecution of this action by, *inter alia*, producing employees for interviews, depositions, and/or testimony at trial and additional discovery. Sony Settlement Agreement ¶ 27. In addition, Plaintiffs may participate in discovery propounded by other parties against Sony.

Moreover, Sony's sales remain in the case for the purpose of computing Plaintiffs' claims against the remaining non-settling defendants. Saveri Decl. ¶ 10; Sony Settlement Agreement ¶ 1(z).

The Sony Settlement Agreement between Plaintiffs and Sony resolves all claims related to Li-Ion Batteries and Li-Ion Battery Products ("Li-Ion Products") from January 1, 2000 until May 31, 2011, consistent with the class allegations in the SCAC. Sony Settlement Agreement ¶ 1(d).

Upon the Sony Settlement Agreement being finally approved, Plaintiffs and Class Members will relinquish any claims they have against Sony relating to any conduct, act, or omission by Sony that was or could have been alleged in the SCAC or preceding direct purchaser complaints relating to their purchases of Li-Ion Cells, Batteries, and/or Products during the class period from defendants or their subsidiaries and affiliates. Sony Settlement Agreement ¶¶ 1(z), 6(e), 8. The release excludes claims for product defects or personal injury, breach of contract in the ordinary course of business that do not relate to the conduct at issue here, or foreign antitrust or competition law claims that relate to or arise from sales outside the United States, and claims against parties other than Sony for sales by those parties, or their alleged co-conspirators, of Li-Ion Products

which contain Sony's Li-Ion Cells or Sony's Li-Ion Battery Packs. *Id.* ¶ 1(z). The release is thus limited to the subject matter of this lawsuit. *See Procedural Guidance for Class Action Settlements*, U.S.D.C., N.D. Cal. (Feb. 11, 2016) ¶ 1(c).[1]

Li-Ion Batteries are defined to mean a cylindrical, prismatic, or polymer battery that is rechargeable and uses lithium ion technology. Li-Ion Products are defined to mean "products manufactured, marketed and/or sold by defendants, their divisions, subsidiaries or Affiliates, or their alleged co-conspirators that contain one or more [Li-Ion] Cells manufactured by defendants or their alleged co-conspirators. [Li-Ion] Products include, but are not limited to, notebook computers, cellular (mobile) phones, digital cameras, camcorders and power tools." Sony Settlement Agreement ¶ 1(u).

The Sony Settlement Agreement becomes final upon: (1) the Court's approval pursuant to Rule 23(e) and the entry of a final judgment of dismissal with prejudice as to Sony; and (ii) the expiration of the time for appeal or, if an appeal is taken, the affirmance of the judgment with no further possibility of appeal. Sony Settlement Agreement ¶¶ 1(l), 1(o).

Subject to the approval and direction of the Court, the Sony Settlement Agreement proceeds, plus accrued interest, will be used to: (1) pay notice costs and costs incurred in the administration and distribution of the Sony Settlement Agreement (*id.* ¶ 20(a–b)) of up to $500,000 (*id.* ¶ 14); (2) pay taxes associated with any interest earned on the escrow account (*id.* ¶ 20(c)); (3) pay Settlement Class counsel's attorneys' fees, costs, and expenses as may be awarded by the Court (*id.* ¶¶ 20(d)); and (4) make a distribution to Settlement Class members in accordance with a proposed plan of allocation (*id.* ¶¶ 20(e)).

The Sony Settlement Agreement also allowed the Sony Defendants, within a specified time, to terminate it if purchasers amounting to 35% or more of Sony's sales opted out of the Sony Settlement Agreement. Sony Settlement Agreement ¶ 33. Sony cannot terminate the Sony Settlement Agreement because the opt-outs received did not reach the 35% threshold, and, in any event, the time to do so has expired. Saveri Decl. ¶ 16.

[1] http://www.cand.uscourts.gov/ClassActionSettlementGuidance.

IV. ARGUMENT

A class action may not be dismissed, compromised, or settled without the approval of the Court. Judicial proceedings under Federal Rule of Civil Procedure 23 have led to a defined procedure and specific criteria for class action settlement approval. The Rule 23(e) settlement approval procedure includes: certification of a settlement class and preliminary approval of the proposed settlement; dissemination of notice of the settlement to all affected class members; and a fairness hearing at which class members may be heard regarding the settlement, and at which counsel may introduce evidence and present argument concerning the fairness, adequacy, and reasonableness of the settlement. *See* 4 William B. Rubenstein, Albert Conte & Herbert Newberg, *Newberg on Class Actions* §§ 13:39 *et seq.* (5th ed. 2014). This procedure safeguards class members' due process rights and enables the Court to fulfill its role as the guardian of class interests. *Id.*

A. The Settlement Class

The Court here completed the first step in the settlement approval process when it granted preliminary approval of the Sony Settlement Agreement. With respect to the Sony Settlement Agreement, the Court certified a Settlement Class consisting of:

> 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 alleged co-conspirator in the United States from January 1, 2000 through May 31, 2011. Excluded from the Class are Defendants, their parent companies, subsidiaries and Affiliates, any alleged 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.

Dkt. No. 1182 ¶ 4.

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

The Court-approved notice plan has been successfully implemented and class members have been notified of the Sony Settlement Agreement.

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

> [T]he best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

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

A settlement notice is a summary, not a complete source, of information. *See, e.g.*, *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1153 (8th Cir. 1999); *In re "Agent Orange" Prod. Liability Litig.*, 818 F.2d 145, 170 (2d Cir. 1987), *cert. denied*, 484 U.S. 1004 (1988); *Mangone v. First USA Bank*, 206 F.R.D. 222, 233 (S.D. Ill. 2001). This circuit requires a general description of the proposed settlement in such a notice. *Churchill Vill. L.L.C. v. Gen. Elec. Co.*, 361 F.3d 566, 575 (9th Cir. 2004); *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1374–75 (9th Cir. 1993); *Mendoza v. United States*, 623 F.2d 1338, 1351 (9th Cir. 1980), *cert. denied sub nom. Sanchez v. Tuscon Unified Sch. Dist.*, 450 U.S. 912 (1981).

The notice plan approved by this Court is commonly used in class actions like this one. It constitutes valid, due, and sufficient notice to class members, and is the best notice practicable under the circumstances. The content of the court-approved notice, which incorporated edits made by this Court, complies with the requirements of Rule 23(c)(2)(b). As the Court acknowledged at the preliminary approval motion hearing, both the summary and long-form notices clearly and concisely explained in plain English the nature of the action and the terms of the Sony Settlement Agreement. Mar. 22, 2016 Mot. Hr'g Tr. 11:12–15 (Dkt. No. 1201) (THE COURT: "I get a lot of these notices that I think are all legalese and no one can really understand them. Yours was not that way.") The notices provided a clear description of who is a member of the class and the binding effects of class membership. They explained how to exclude oneself from the class, how to object to the Sony Settlement Agreement, how to obtain copies of papers filed in the case, and how to contact Settlement Class counsel. *See* Thompson Decl. Exs. A, B. The notices also explained that they provided only a summary of the Sony Settlement Agreement, that the Sony Settlement Agreement was on file with the District Court, and that the Sony Settlement Agreement was

1 available online at www.batteriesdirectpurchaserantitrustsettlement.com. *Id.*¶ 7. Consequently,
2 every provision of the Sony Settlement Agreement was available to each class member.
3 The notice plan was implemented by the settlement administrator Epiq Systems ("Epiq").
4 *Id.* ¶ 1. Specifically, Epiq printed and mailed 1,135,079 notices to potential class members through
5 the U.S. Mail. *Id.* ¶¶ 5–6. Epiq also published notice in the April 30, 2016 edition of the *Wall Street*
6 *Journal*. *Id.* ¶ 9, Ex. B. Epiq also maintains the case website, where class members can view and
7 print the class notice, the Sony Settlement Agreement, and the preliminary approval order. *Id.* ¶ 7.
8 Epiq also established a toll-free telephone number to answer class members' questions. *Id.* ¶ 8.
9
10 **C. The Settlement Is "Fair, Adequate and Reasonable" and Should Be Granted Final Approval.**
11 The law favors the compromise and settlement of class action suits. *See, e.g.*, *Churchill*
12 *Village*, 361 F.3d at 576; *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).
13 "[T]he decision to approve or reject a settlement is committed to the sound discretion of the trial
14 judge because he is 'exposed to the litigation and their strategies, positions and proof.'" *Hanlon v.*
15 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (quoting *Officers for Justice v. Civil Serv.*
16 *Comm'n*, 688 F.2d 615, 626 (9th Cir. 1982)). In exercising such discretion, courts should give
17 proper deference to the private consensual decision of the parties . . . . "[T]he
18 court's intrusion upon what is otherwise a private consensual agreement negotiated
19 between the parties to a lawsuit must be limited to the extent necessary to reach a
reasoned judgment that the agreement is not the product of fraud or overreaching
20 by, or collusion between, the negotiating parties, and that the settlement, taken as a
whole, is fair, reasonable and adequate to all concerned."
21 *Hanlon*, 150 F.3d at 1027 (citation omitted).
22 It is well established in the Ninth Circuit that "voluntary conciliation and settlement are the
23 preferred means of dispute resolution." *Officers for Justice*, 688 F.2d at 625. "[T]here is an
24 overriding public interest in settling and quieting litigation" and this is "particularly true in class
25 action suits. . . ." *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976); *see also*
26 *Utility Reform Project v. Bonneville Power Admin.*, 869 F.2d 437, 443 (9th Cir. 1989). In
27 evaluating a proposed class action settlement, the Ninth Circuit has recognized that:
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> [T]he universally applied standard is whether the settlement is fundamentally fair, adequate and reasonable. The district court's ultimate determination will necessarily involve a balancing of several factors which may include, among others, some or all of the following: the strength of plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed, and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement.

Officers for Justice, 688 F.2d at 625 (citations omitted); *accord Torrisi*, 8 F.3d at 1375.

The Court is entitled to exercise its "sound discretion" when deciding whether to grant final approval. *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff'd*, 661 F.2d 939 (9th Cir. 1981); *Torrisi*, 8 F.3d at 1375. "Where, as here, a proposed class settlement has been reached after meaningful discovery, after arm's length negotiation, conducted by capable counsel, it is presumptively fair." *M. Berenson Co. v. Faneuil Hall Marketplace, Inc.*, 671 F. Supp. 819, 822 (D. Mass. 1987).

1. The Settlement Provides a Considerable Benefit to the Class

The consideration for the Sony Settlement Agreement is substantial and provides a considerable benefit for the class. The Sony Settlement Agreement provides for a payment of $19,000,000. *See* Saveri Decl. ¶ 9. Along with the other benefits, this amount puts the Sony Settlement Agreement within the range of possible final approval when compared to other cases, and when the risks, expense, and delay of further litigation are considered.

Nineteen million dollars represents approximately 11% of the estimated Sony overcharge after excluding opt-outs. *Id.* ¶ 9. The Sony Settlement Agreement is in line with other settlements finally approved in other price-fixing cases. *See* Order Granting Final Approval of Class Action Settlement with Thomson and TDA Defendants, *In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. 14-CV-2058 JST, 2015 WL 9266493, at *5 (N.D. Cal. Dec. 17, 2015) *("CRT II")* (*citing Fisher Bros. v. Mueller Brass Co.*, 630 F. Supp. 493, 499 (E.D. Pa. 1985) (settlements equal to .1%, .2%, 2%, .3%, .65%, .88%, and 2.4% of defendants' total sales were reasonable); *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 538 (3d Cir. 2004) (settlement amounting to approximately 11% of damages asserted by objector and 33% of maximum recovery estimated by

plaintiffs' expert fair and reasonable); *Four in One Co. v. S.K. Foods, L.P.,* No. 2:08-cv-3017 KJM EFB, 2014 WL 28808, at *9 (E.D. Cal. Jan. 2, 2014) (settlement amounting to 1% of defendants' sales); John M. Connor & Robert H. Lande, *Not Treble Damages: Cartel Recoveries Are Mostly Less Than Single Damages*, 100 Iowa L. Rev. 1997, 1998 (2015) (survey of 71 settled cartel cases revealed the weighted mean—weighting settlement according to their sales—was 19% of single damages recovery), *noted in* Order Granting Final Approval of Indirect Purchaser Settlements, *In re Cathode Ray Tube (CRT) Antitrust Litigation*, Case No. 07-cv-05944, MDL No. 1917, Dkt. No. 4712 at *10 and n.19 (N.D. Cal. July 7, 2016) *and noted in CRT II*, 2015 WL 9266493, at *5 n.9. *See also Zynga*, 2015 WL 6471171, at *11 (approving settlement of 14% of estimated damages in securities class action, because, *inter alia,* it substantially exceeded average recovery in securities actions); *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 715 (E.D. Pa. 2001) (citing studies noting that the average securities fraud class action settlement between 1995 and 2001 resulted in recovery between 5.5 and 6.2% of estimated losses).

Importantly, the Sony Settlement Agreement does not reduce Plaintiffs' potential total recovery because it preserves their ability to recover for damages based on Sony's sales from the remaining defendants based on joint and several liability. *See Corrugated Container*, 1981 WL 2093, at *17; Saveri Decl. ¶ 10 (Released claims do not preclude Plaintiffs from pursuing any and all claims against other non-settling defendants for the sales attributable to Sony). Preserving the right to litigate against the non-settling defendants "provides increased value . . . by creating added incentive for the remaining defendants to settle or allowing greater recovery for the Plaintiffs at trial." *CRT II*, 2015 WL 9266493, at *6.

Further, the Sony Settlement Agreement calls for Sony to cooperate with Plaintiffs. Saveri Decl. ¶ 11. This is a valuable benefit because it will "save time, reduce the DPPs' costs, and provide information, witnesses, and documents that the DPPs may otherwise not be able to access" regarding the Li-Ion Battery conspiracy. *CRT II*, 2015 WL 9266493, at *6 (*citing In re Mid-Atlantic Toyota Antitrust Litig.*, 564 F. Supp. 1379, 1386 (D. Md. 1983) (a defendant's agreement to cooperate with plaintiffs "is an appropriate factor for a court to consider in approving a settlement"), *and citing In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 643 (E.D. Pa. 2003)

("The provision of such assistance is a substantial benefit to the classes and strongly militates toward approval of the Settlement Agreement."). *See also In re Corrugated Container Antitrust Litig.*, Case No. M.D.L. 310, 1981 WL 2093, at *16 (S.D. Tex. June 4, 1981) ("*Corrugated Container*") ("The cooperation clauses constituted a substantial benefit to the class."). In addition, "[i]n complex litigation with a plaintiff class, 'partial settlements often play a vital role in resolving class actions.'" *Agretti v. ANR Freight Sys., Inc.*, 982 F.2d 242, 247 (7th Cir. 1992) (quoting Manual for Complex Litigation Second, § 30.46 (1986)).

Finally, because this is the first settlement in the case, it will likely encourage other settlements:

> The Court also notes that this settlement has significant value as an "icebreaker" settlement—it is the first settlement in the litigation—and should increase the likelihood of future settlements. An early settlement with one of many defendants can "break the ice" and bring other defendants to the point of serious negotiations.

In re Linerboard Antitrust Litig., 292 F. Supp. 2d 631, 643 (E.D. Pa. 2003).

2. The Class Members' Positive Reaction Favors Final Approval

The reaction of the class to the Sony Settlement Agreement supports this Court granting final approval. In determining the fairness and adequacy of a proposed settlement, the Court also should consider "the reaction of the class members to the proposed settlement." *Churchill Village*, 361 F.3d at 575; *Hanlon*, 150 F.3d at 1026. "It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members." *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004); *see also In re Fleet/Norstar Sec. Litig.*, 935 F. Supp. 99, 107 (D.R.I. 1996).

Pursuant to the Court's order, approximately 1,135,079 class notices were mailed to potential class members throughout the United States. *See* Thompson Decl. ¶ 6. Publication in the *Wall Street Journal* and on the Internet provided additional notice, information, and documents. After this outreach, when presented with the material financial terms of the proposed Sony Settlement Agreement, only two members of the class expressed opposition to the Sony Settlement Agreement. Both of these nearly identical objections lack substance. They appear to have been

1 prepared by the same individual and neither offers any substantive criticism of the Sony Settlement
2 Agreement.[2] *See id*. Ex. D (objections also found at Dkt. Nos. 1250, 1251).
3 In addition, 98 class members opted out of the class. *See* Thompson Decl. ¶ 9. Certain of
4 the opt-outs are direct action plaintiffs who have already filed complaints in this MDL. The
5 reaction of the class to the proposed Sony Settlement Agreement therefore supports the conclusion
6 that the proposed Sony Settlement Agreement is fair, adequate, and reasonable. *Bynum v. Dist. of*
7 *Columbia*, 412 F. Supp. 2d 73, 77 (D.D.C. 2006) ("The low number of opt outs and objectors (or
8 purported objectors) supports the conclusion that the terms of the settlement were viewed favorably
9 by the overwhelming majority of class members."); *Pallas v. Pac. Bell*, No. C-89-2373 DLJ, 1999
10 WL 1209495, at *8 (N.D. Cal. July 13, 1999) ("The small percentage—less than 1%—of persons
11 raising objections is a factor weighing in favor of approval of the settlement."). *See also Arnold v.*
12 *Arizona Dept. of Pub. Safety*, No. CV-01-1463-PHX-LOA, 2006 WL 2168637, at *10 (D. Ariz.
13 July 31, 2006); *In re Patriot Am. Hospitality Inc. Sec. Litig*., No. MDL C-00-1300 VRW, 2005 WL
14 3801594, at *2 (N.D. Cal. Nov. 30, 2005).
15 The inference of the class's approval of the Sony Settlement Agreement is especially strong
16 where, as here, "much of the class consists of sophisticated business entities." *CRT II*, 2015 WL
17 9266493, at *7 (*citing Linerboard*, 321 F. Supp. 2d at 629).
18 **3. The Settlement Eliminates Significant Risk to the Class.**
19 While Plaintiffs believe their case is strong, the Sony Settlement Agreement eliminates
20 significant risks they would face if the action were to proceed. Plaintiffs would bear the burden of
21 establishing liability, impact, and damages. *See, e.g.*, *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*,
22 396 F.3d 96, 118 (2d Cir. 2005) ("'Indeed, the history of antitrust litigation is replete with cases in
23 which antitrust plaintiffs succeeded at trial on liability, but recovered no damages, or only
24 negligible damages, at trial, or on appeal.'" (quoting *In re NASDAQ Market-Makers Antitrust*
25
26 [2] The two objections bear the same address—488 Lakeshore Parkway, Rock Hill, South Carolina.
27 One is signed "Tim Haake," the other "TH for Goettfert Inc." Mr. Haake's objection reads in full:
"Please deny approval! This law suit only helps lawyers. We the people pay with higher follow-up
28 cost. This is a rip-off!" The language of the Goettfert Inc. objection is slightly different; the
substance is identical. Both are written directly on the notice. *See id*.

1 *Litig.*, 187 F.R.D. 465, 475 (S.D.N.Y. 1998))); *In re Sumitomo Copper Litig.*, 189 F.R.D. 274, 283
2 (S.D.N.Y. 1999). This is an important consideration because defendants have aggressively
3 defended this action and have vowed to continue to do so. Thus, the Sony Settlement Agreement is
4 in the best interest of the Settlement Class because it eliminates the risks of continued litigation,
5 while at the same time creating a substantial cash recovery and obtaining cooperation from Sony in
6 the ongoing litigation.

7 Continued litigation against the Sony Defendants would also involve significant additional
8 expenses and protracted legal battles, which are avoided through the Sony Settlement Agreement.
9 *Larsen v. Trader Joe's Co.,* No. 11-cv-05188-WHO, 2014 WL 3404531, at *4 (N.D. Cal. July 11,
10 2014) ("Avoiding such unnecessary and unwarranted expenditure of resources and time would
11 benefit all parties, as well as conserve judicial resources . . . . Accordingly, the high risk, expense,
12 and complex nature of the case weigh in favor of approving the settlement.") (cited authority
13 omitted); *In re Visa Check/Mastermoney Antitrust Litig.*, 297 F. Supp. 2d 503, 510 (E.D.N.Y.
14 2003), *aff'd* 396 F.3d 96 (2d Cir. 2005) ("The potential for this complex litigation to result in
15 enormous expense, and to continue for a long time, was great."); *In re Austrian and German Bank*
16 *Holocaust Litig.*, 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000), *aff'd sub nom. D'Amato v. Deutsche*
17 *Bank*, 236 F.3d 8 (2d Cir. 2001) ("Most class actions are inherently complex and settlement avoids
18 the costs, delays and multitude of other problems associated with them."); *Marisol A. ex rel.*
19 *Forbes v. Giuliani*, 185 F.R.D. 152, 163 (S.D.N.Y. 1999), *aff'd sub nom. Joel A. v. Giuliani*, 218
20 F.3d 132 (2d Cir. 2000) (noting that trial would last at least five months and require testimony from
21 numerous witnesses and experts).

22 **4. The Settlement Is the Product of Arm's-Length Negotiations Between**
23 **the Parties and the Recommendation of Experienced Counsel Favors Approval.**

24 The Sony Settlement Agreement was the product of good faith, arm's-length negotiations
25 among experienced and well-informed counsel. Plaintiffs' negotiations with Sony occurred over a
26 span of several months and involved face-to-face meetings. The parties exchanged written briefs
27 and were guided by an experienced and effective mediator, Hon. Vaughn R. Walker (retired).
28 Saveri Decl. ¶ 8. Further, the parties were informed by extensive documentary and other discovery,

as well as expert analysis. These circumstances support the conclusion that the Sony Settlement Agreement was reached in an informed and non-collusive fashion. *See Zynga*, 2015 WL 6471171, at *9 (although not conclusive, use of mediator and fact that some discovery had occurred, indicates procedural fairness); *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) ("We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution.").

Counsel's judgment that the Sony Settlement Agreement is fair and reasonable should also be taken into account. "The recommendations of plaintiffs' counsel should be given a presumption of reasonableness." *CRT II*, 2015 WL 9266493, at *6 (*quoting In re Omnivision*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2007)).

For all of these reasons, the Sony Settlement Agreement represents an excellent recovery and is fair, adequate, and reasonable to the Settlement Class. Final approval should be granted.

D. The Plan of Allocation Is "Fair, Adequate and Reasonable" and Therefore Should Be Approved.

The class notice, which was disseminated in accordance with the preliminary approval order, outlined the following proposed plan for allocating the settlement proceeds:

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

See Thompson Decl. Ex. A ¶ 9. The class notice also informed class members that they "will be notified in the future when and where to send a claims form" and that all class members will share in the settlement funds on a *pro rata* basis after "lawyers will pursue the lawsuit against the remaining defendants to see if any future settlements or judgments can be obtained in the case and then be distributed together, to reduce expenses." *Id.* Plaintiffs received no objection to the plan of allocation. Thompson Decl. ¶ 11.

A plan of allocation of class settlement funds is subject to the "fair, reasonable and adequate" standard that applies to approval of class settlements. *In re Citric Acid Antitrust Litig*., 145 F. Supp. 2d 1152, 1154 (N.D. Cal. 2001). A plan of allocation that compensates class members based on the type and extent of their injuries is generally considered reasonable. *In re Computron Software, Inc*., 6 F. Supp. 2d 313, 321 (D.N.J. 1998). Here the proposed distribution will be on a *pro rata* basis, with no class member being favored over others. This type of distribution has frequently been determined to be fair, adequate, and reasonable. *See CRT II*, 2015 WL 9266493, at *7–8 (approving *pro rata* plan of allocation based upon proportional value of price-fixed component in finished product); *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, No. M-02-1486 PJH, Dkt. No. 2093, at *2 (Oct. 27, 2010) (Order Approving Pro Rata Distribution); *In re Vitamins Antitrust Litig.*, No. 99-197 TFH, 2000 WL 1737867, at *6 (D.D.C. Mar. 31, 2000) ("Settlement distributions, such as this one, that apportions funds according to the relative amount of damages suffered by class members, have repeatedly been deemed fair and reasonable."); *In re Lloyds' Am. Trust Fund Litig.*, No. 96 Civ.1262 RWS, 2002 WL 31663577, at *19 (S.D.N.Y. Nov. 26, 2002) ("*pro rata* allocations provided in the Stipulation are not only reasonable and rational, but appear to be the fairest method of allocating the settlement benefits."); *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 135 (S.D.N.Y. 1997), *aff'd* 117 F.3d 721 (2d Cir. 1997) ("*pro rata* distribution of the Settlement on the basis of Recognized Loss will provide a straightforward and equitable nexus for allocation and will avoid a costly, speculative and bootless comparison of the merits of the Class Members' claims").

The plan of allocation done on a *pro rata* basis here is "fair, adequate and reasonable" to the Settlement Class and final approval of the plan of allocation should be granted.

V. OBJECTIONS BY CLASS MEMBERS

As indicated above, there were two objections to the Sony Settlement Agreement. Thompson Decl. ¶ 10, Ex. D; Dkt. Nos. 1250, 1251.

VI. EXCLUSIONS

Settlement Class members were advised of the right to be excluded from the Settlement Class, which could be accomplished through mailing a request for exclusion to the settlement

1 administrator postmarked no later than June 10, 2016. Ninety-eight requests for exclusion were
2 received from Settlement Class members. Thompson Decl. ¶ 10, Ex. C.

3 **VII. CONCLUSION**

4 For the foregoing reasons set forth herein, Plaintiffs respectfully submit that the Court
5 should enter an order granting final approval of the Settlement and final judgments of dismissal
6 with prejudice as to the Sony Defendants.

7

8 Dated: July 29, 2016 Respectfully submitted,

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