

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE LITHIUM ION BATTERIES
ANTITRUST LITIGATION

Case No. 13-MD-2420-YGR

MDL No. 2420

This Document Relates to:

SETTLEMENT AGREEMENT

ALL DIRECT
PURCHASER PLAINTIFF
ACTIONS

This Settlement Agreement (hereinafter, "Agreement") is made and entered into as of the first day of February, 2016, by and between Defendants Sony Corporation, Sony Energy Devices Corporation and Sony Electronics Inc. (collectively "Sony"), and Direct Purchaser Plaintiffs, both individually and on behalf of the Class in the above-captioned class actions. This Agreement is intended by the Settling Parties to fully, finally and forever resolve, discharge and settle the Released Claims, upon and subject to the terms and conditions hereof.

RECITALS

WHEREAS, Direct Purchaser Plaintiffs are prosecuting the above-captioned litigation on their own behalf and on behalf of a Class against, among others, Sony;

WHEREAS, Direct Purchaser Plaintiffs have alleged, among other things, that Sony conspired to fix, raise, maintain or stabilize the prices of Lithium Ion Batteries in violation of Section 1 of the Sherman Antitrust Act and that these acts caused the Class to incur significant damages;

WHEREAS, Sony has denied and continues to deny each and all of the claims and allegations of wrongdoing made by the Direct Purchaser Plaintiffs in the Actions; all charges of wrongdoing or liability against Sony arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Actions; and the allegations that the Direct Purchaser Plaintiffs or any member of the Class were harmed by any conduct by Sony alleged in the Actions or otherwise;

WHEREAS, Direct Purchaser Plaintiffs and Sony agree that neither this Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by Sony or of the truth of any of the claims or allegations alleged in the Actions;

WHEREAS, arm's length settlement negotiations have taken place between Sony and Class Counsel, including negotiations conducted pursuant to mediation with Judge Vaughn R. Walker (ret.), and this Agreement, which embodies all of the terms and conditions of the Settlement between the Settling Parties, has been reached (subject to the approval of the Court) as provided herein and is intended to supersede any prior agreements between the Settling Parties;

WHEREAS, Class Counsel have concluded, after due investigation and after carefully considering the relevant circumstances, including, without limitation, the claims asserted in the Direct Purchaser Plaintiffs' Second Consolidated Amended Complaint filed in MDL Docket No. 2420, the legal and factual defenses thereto and the applicable law, that it is in the best interests of the Direct Purchaser Plaintiffs and the Class to enter into this Agreement to avoid the uncertainties of litigation and to assure that the benefits reflected herein are obtained for the Direct Purchaser Plaintiffs and the Class, and, further, that Class Counsel consider the Settlement set forth herein to be fair, reasonable and adequate and in the best interests of the Direct Purchaser Plaintiffs and the Class; and

WHEREAS, Sony, despite its belief that it is not liable for the claims asserted against it in the Actions and that it 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 thereby to put to rest this controversy with respect to the Direct Purchaser Plaintiffs and the Class and to avoid the risks inherent in complex litigation;

A G R E E M E N T

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Settling Parties, by and through their attorneys of record, that, subject to the approval of the

Court, the Actions and the Released Claims as against Sony shall be finally and fully settled, compromised and dismissed on the merits and with prejudice upon and subject to the terms and conditions of this Agreement, as follows:

A. Definitions

1. As used in this Agreement the following terms have the meanings specified below:

- (a) “Actions” means *In re Lithium Ion Batteries Antitrust Litigation – All Direct Purchaser Actions*, Case No. 13-MD-02420-YGR, and each of the cases brought on behalf of direct purchasers previously consolidated and/or included as part of MDL Docket No. 2420.
- (b) “Affiliates” means entities controlling, controlled by or under common control with a Releasee or Releasor.
- (c) “Authorized Claimant” means any Direct Purchaser Plaintiff who, in accordance with the terms of this Agreement, is entitled to a distribution consistent with any Distribution Plan or order of the Court.
- (d) “Class” means 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.

- (e) “Class Counsel” means the law firms of Berman DeValerio; Pearson, Simon & Warshaw, LLP; and Saveri & Saveri, Inc.
- (f) “Class Member” means a Person who falls within the definition of the Class and who does not timely and validly elect to be excluded from the Class in accordance with the procedure to be established by the Court.
- (g) “Complaint” means Direct Purchaser Plaintiffs’ Second Consolidated Amended Complaint that was filed on April 8, 2014 at ECF No. 415.
- (h) “Court” means the United States District Court for the Northern District of California.
- (i) “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.
- (j) “Direct Purchaser Plaintiffs” means Automation Engineering, LLC; Charles Carte; Alfred H. Siegel, acting in his representative capacity as the Liquidating Trustee of Circuit City Stores, Inc.; 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 added as a Direct Purchaser Plaintiff in the Actions.

- (k) “Distribution Plan” means any plan or formula of allocation of the Gross Settlement Fund, to be approved by the Court, whereby the Net Settlement Fund shall in the future be distributed to Authorized Claimants. Any Distribution Plan is not part of this Agreement.
- (l) “Effective Date” means the first date by which the Court has finally approved the Settlement as described herein, following notice to the Class and a hearing, as prescribed by Federal Rule of Civil Procedure 23; the Court has entered the Judgment; and the Judgment has become Final.
- (m) “Escrow Agent” means Citibank N.A. – Citi Private Bank, San Francisco, California and any successor agent.
- (n) “Execution Date” means the date of the last signature set forth on the signature pages below.
- (o) “Final” means, with respect to any order of court, including, without limitation, the Judgment, that such order represents a final and binding determination of all issues within its scope and is not subject to further review on appeal or otherwise. Without limitation, an order becomes “Final” when: (a) no appeal has been filed and the prescribed time for commencing any appeal has expired; or (b) an appeal has been filed and either (i) the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired, or (ii) the order has been affirmed in its entirety and the prescribed time, if any, for commencing

any further appeal has expired. For purposes of this Agreement, an “appeal” includes appeals as of right, discretionary appeals, interlocutory appeals, proceedings involving writs of certiorari or mandamus, and any other proceedings of like kind. Any appeal or other proceeding pertaining solely to any order adopting or approving a Distribution Plan, and/or to any order issued with respect to an application for attorneys’ fees and expenses consistent with this Agreement, shall not in any way delay or preclude the Judgment from becoming Final.

- (p) “Gross Settlement Fund” means the Settlement Amount plus any interest that may accrue.
- (q) “Judgment” means the order of judgment and dismissal of the Actions with prejudice.
- (r) “Lithium Ion Battery” means a cylindrical, prismatic or polymer battery that is rechargeable and uses lithium ion technology.
- (s) “Lithium Ion Battery Cell(s)” means the main components of Lithium Ion Batteries. A cell includes the cathode, anode and electrolyte.
- (t) “Lithium Ion Battery Pack” means Lithium Ion Cells that have been assembled into a pack, regardless of the number of Lithium Ion Cells contained in such packs.
- (u) “Lithium Ion Battery Products” means products manufactured, marketed and/or sold by Defendants, their divisions, subsidiaries or Affiliates, or their alleged co-conspirators that contain one or more Lithium Ion Battery Cells manufactured by Defendants or their alleged co-conspirators.

Lithium Ion Battery Products include, but are not limited to, notebook computers, cellular (mobile) phones, digital cameras, camcorders and power tools.

- (v) “Net Settlement Fund” means the Gross Settlement Fund, less the payments set forth in ¶ 20(a)-(d).
- (w) “Notice and Administrative Costs” means the reasonable sum of money not in excess of five-hundred thousand U.S. dollars (\$500,000) to be paid out of the Gross Settlement Fund to pay for notice to the Class and related administrative costs.
- (x) “Notice and Claims Administrator” means the claims administrator(s) to be selected by Class Counsel and approved by the Court.
- (y) “Person” means an individual, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and any spouses, heirs, predecessors, successors, representatives or assignees of any of the foregoing.
- (z) “Released Claims” means any and all manner of claims, demands, rights, actions, suits, causes of action, whether class, individual or otherwise in nature 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 based on, arising out of, or relating to any conduct, act, or omission that is alleged in the Complaint up to the Execution Date or that could have been alleged in the Complaint or in any other class action complaint filed in the Actions. The Released Claims do not include (i) claims for product defect or personal injury, (ii) claims for breach of contract in the ordinary course of business that do not relate to conduct alleged in the Complaint or to competition in the sale of Lithium Ion Battery Cells or Lithium Ion Battery Packs (including Lithium Ion Battery Cells and Lithium Ion Battery Packs within Lithium Ion Battery Products), (iii) foreign antitrust or competition law claims that relate to or arise out of the sale of Lithium Ion Battery Cells or Lithium Ion Battery Packs (including Lithium Ion Battery Cells and Lithium Ion Battery Packs within Lithium Ion Battery Products) that were not purchased or sold in the United States, or (iv) claims against parties other than Releasees for sales by those parties, or their alleged co-conspirators, of Lithium Ion Battery Products which contain Sony's Lithium Ion Battery Cells or Sony's Lithium Ion Battery Packs. The Released Claims also do not include claims relating to the enforcement of the Agreement.

- (aa) "Releasees" means Sony and their former, present and future direct and indirect parents, subsidiaries and Affiliates, and their respective former, present and future officers, directors, employees, managers, members,

partners, agents, shareholders (in their capacity as shareholders), attorneys and legal representatives, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing.

(bb) “Releasers” means the Direct Purchaser Plaintiffs and each and every Class Member on their own behalf and on behalf of their respective direct and indirect parents, subsidiaries and Affiliates, their former, present and future officers, directors, employees, agents and legal representatives, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing.

(cc) “Settlement” means the settlement of the Released Claims set forth herein.

(dd) “Settlement Amount” means nineteen million U.S. dollars (\$19,000,000).

(ee) “Settling Parties” means, collectively, Sony and the Direct Purchaser Plaintiffs (on behalf of themselves and the Class).

B. Preliminary Approval Order, Notice Order and Settlement Hearing

2. Reasonable Best Efforts to Effectuate This Settlement. The Settling Parties:

(a) acknowledge that it is their intent to consummate this Agreement, and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement the terms and conditions of this Agreement and to exercise their best efforts to accomplish the terms and conditions of this Agreement.

3. Stipulation. In light of this Agreement, within five (5) calendar days of the Execution Date, the Settling Parties agree to submit a proposed stipulation to the Court vacating all court deadlines as to the Settling Parties only.

4. Motion for Preliminary Approval. No later than fifteen (15) calendar days after the Execution Date, Class Counsel shall submit this Agreement to the Court and shall apply for entry of a preliminary approval order (“Preliminary Approval Order”), requesting, *inter alia*, preliminary approval (“Preliminary Approval”) of the Settlement. The motion shall be set for hearing at the earliest available Court date and shall include (a) the proposed Preliminary Approval Order, and (b) a definition of the proposed settlement Class pursuant to Federal Rule of Civil Procedure 23. The text of the foregoing items (a)-(b) shall be agreed upon by the Settling Parties.

5. Proposed Form of Notice. As part of the motion for Preliminary Approval, Class Counsel shall submit to the Court for approval a proposed form of, method for and schedule for dissemination of notice to the Class. The Parties agree that the motion for Preliminary Approval will request that notice be disseminated to the Class no later than twenty-eight (28) calendar days after the Preliminary Approval Order. The text of the notice shall be agreed upon by the Settling Parties. To the extent practicable and to the extent consistent with this paragraph, Class Counsel may seek to coordinate this notice program with other settlements that may be reached in the Actions in order to reduce the combined expense of such notice. The motion for Preliminary Approval shall recite and ask the Court to find that the proposed form of and method for dissemination of notice to the Class 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. Sony shall be responsible for providing all notices required by the Class Action Fairness Act of 2005 to be provided to state attorneys general or to the attorney general of the United States of America.

6. Motion for Final Approval and Entry of Final Judgment. Not less than thirty-five (35) calendar days prior to the date set by the Court to consider whether this Settlement should be finally approved, Class Counsel shall submit a motion for final approval (“Final Approval”) of the Settlement by the Court. The Settling Parties shall jointly seek entry of the final approval order (“Final Approval Order”) and Judgment:

- (a) Certifying the Class, pursuant to Federal Rule of Civil Procedure 23, solely for purposes of this Settlement;
- (b) Fully and finally approving the Settlement contemplated by this Agreement and its terms as being fair, reasonable and adequate within the meaning of Federal Rule of Civil Procedure 23 and directing its consummation pursuant to its terms and conditions;
- (c) Finding that the notice given to the members of the Class constituted the best notice practicable under the circumstances and complies in all respects with the requirements of Federal Rule of Civil Procedure 23 and due process;
- (d) Directing that the Actions be dismissed with prejudice as to Sony and, except as provided for herein, without costs;
- (e) Discharging and releasing the Releasees from all Released Claims;
- (f) Providing that any member of the Class who fails to timely and validly request to be excluded from the Class shall be subject to and bound by the provisions of this Agreement, the releases contained herein, and the Judgment with respect to all Released Claims, regardless of whether such

members of the Class seek or obtain any distribution from the Gross Settlement Fund or the Net Settlement Fund;

- (g) Reserving continuing and exclusive jurisdiction over the Settlement, including all future proceedings concerning the administration, consummation and enforcement of this Agreement;
- (h) Determining pursuant to Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing entry of a final judgment as to Sony; and
- (i) Containing such other and further provisions consistent with the terms of this Agreement to which the Settling Parties expressly consent in writing.

Class Counsel also will request that the Court approve the proposed Distribution Plan and application for attorneys' fees and reimbursement of expenses (as described below).

7. **Stay Order.** Upon the date that the Court enters an order preliminarily approving the Settlement, the Action shall be stayed only as to Sony pending further order of the Court.

C. Releases

8. **Released Claims.** In addition to the effect of any final judgment entered in accordance with this Agreement, upon the Effective Date, the Releasors (regardless of whether any such Releasor ever seeks or obtains any recovery by any means, including, without limitation, by seeking any distribution from the Gross Settlement Fund) for themselves and on behalf of each of their respective spouses, beneficiaries and any other Person claiming (now or in the future) through or on behalf of any of them directly or indirectly shall be deemed to have, and by operation of the Judgment shall have fully, finally and forever released, relinquished and discharged all Released Claims against the Releasees and the members of each Releasee's

immediate family, any entity in which any member of any Releasees' immediate family has or had a controlling interest (directly or indirectly), any estate or trust of which any Releasee is the settlor or which is for the benefit of any Releasee and/or members of his or her family.

9. Waiver of California Civil Code § 1542 and Similar Laws. The Releasors acknowledge that, by executing this Agreement, and for the consideration received hereunder, it is their intention to release, and they are releasing, all Released Claims, even Unknown Claims. "Unknown Claims" means, collectively, any and all Released Claims that the Releasors do not know or suspect to exist in his, her or its favor at the time of the release of the Released Claims, and any Released Claims that the Releasees do not know or suspect to exist in his, her or its favor at the time of the release of the Released Claims which, if known by him, her or it, might have affected its decision to enter into this Agreement or might have affected his, her or its decision not to object to this Agreement. Unknown Claims include, without limitation, those Released Claims in which some or all of the facts composing the claim may be unsuspected, undisclosed, concealed or hidden. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, Releasors and Releasees shall have expressly waived and relinquished, to the fullest extent permitted by law, any and all provisions, rights and benefits conferred by California Civil Code § 1542, which provides:

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.

Releasors and Releasees shall further expressly waive and relinquish, to the fullest extent permitted by law, any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law or of international or foreign law, that

is similar, comparable or equivalent in effect to California Civil Code § 1542. It is understood that Releasors and Releasees, or any of them, may hereafter discover facts in addition to or different from those that he, she or it now knows or believes to be true with respect to the subject matter of the Released Claims (including Unknown Claims), but Releasors and Releasees, shall expressly fully, finally and forever discharge, settle and release, and upon the Effective Date, shall be deemed to have expressly fully, finally and forever discharged, settled and released any and all Released Claims known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, that now exist or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, grossly negligent, reckless, deliberately reckless or intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. Releasors and Releasees acknowledge that the foregoing waiver of Released Claims that are Unknown Claims, including the provisions, rights and benefits of § 1542 of the California Civil Code, was separately bargained for and is a material element of the Settlement.

10. Releasees' Release Concerning Action. Upon the Effective Date, Releasees shall be deemed to have, fully, finally and forever released, relinquished, waived and discharged each and all claims whether directly, representatively, derivatively or in any other capacity that Releasees ever had, now have, or hereafter shall, or may have, on account of, related to, or in any way arising out of any act or omission of Releasors (or any of them) concerning the institution, prosecution, assertion, settlement or resolution of the Actions or the Released Claims against Releasors.

11. Releasors' Release Concerning Action. Upon the Effective Date, Releasors shall be deemed to have, fully, finally and forever released, relinquished, waived and discharged each and all claims whether directly, representatively, derivatively or in any other capacity that Releasors ever had, now have, or hereafter shall, or may have, on account of, related to, or in any way arising out of any act or omission of Releasees (or any of them) concerning the institution, prosecution, assertion, settlement or resolution of the Actions or the Released Claims against Releasees.

12. No Future Actions; Covenant Not to Sue. The Releasees and Releasors, whether on their own behalf or as part of any putative, purported or certified class of purchasers or consumers, hereby covenant and agree that they shall not, after the Effective Date, sue or otherwise seek to establish liability against the other based, in whole or in part, upon the Released Claims. The Settling Parties contemplate and agree that this Agreement may be pleaded as a bar to a lawsuit, and an injunction may be obtained, preventing any action from being initiated or maintained in any case sought to be prosecuted on behalf of any Releasees or Releasors based, in whole or in part, upon the Released Claims.

D. Settlement Fund

13. Settlement Payment. Sony shall pay by wire transfer the Settlement Amount to the Escrow Agent pursuant to mutually agreeable escrow instructions within thirty (30) calendar days after the Execution Date. This amount constitutes the total amount of payment that Sony is required to make in connection with this Settlement Agreement. This amount shall not be subject to reduction, and upon the occurrence of the Effective Date, no funds may be returned to Sony. The Escrow Agent shall only act in accordance with the mutually agreed escrow instructions.

14. Disbursements Prior to Effective Date. No amount may be disbursed from the Gross Settlement Fund unless and until the Effective Date, except that: (a) Notice and Administrative Costs, which may not exceed five-hundred thousand U.S. dollars (\$500,000) may be paid from the Gross Settlement Fund as they become due; and (b) Taxes and Tax Expenses (as defined in ¶ 18(b) below) may be paid from the Gross Settlement Fund as they become due; and (c) attorneys' fees and reimbursement of litigation costs, as may be ordered by the Court, may be disbursed during the pendency of any appeals which may be taken from the judgment to be entered by the Court finally approving this Settlement. Class Counsel will attempt in good faith to minimize the amount of Notice and Administrative Costs and may seek to coordinate the notice described herein with other settlements in these Actions, to the extent practicable and consistent with the terms herein.

15. Refund by Escrow Agent. If the Settlement as described herein is finally disapproved by any court or it is terminated as provided herein, or the Judgment is overturned on appeal or by writ, the Gross Settlement Fund, including the Settlement Amount and all interest earned on the Settlement Amount while held in escrow, excluding only Notice and Administrative Costs, Taxes and Tax Expenses (as defined herein), shall be refunded, reimbursed and repaid by the Escrow Agent to Sony within five (5) business days after receiving notice pursuant to ¶ 36 below.

16. Refund by Class Counsel. If the Settlement as described herein is finally disapproved by any court, or it is terminated as provided herein, or the Judgment is overturned on appeal or by writ, any attorneys' fees and costs previously paid pursuant to this Agreement (as well as interest on such amounts) shall be refunded, reimbursed and repaid by Class Counsel to Sony within twenty (20) business days after receiving notice pursuant to ¶ 36 below.

17. No Additional Payments by Sony. Under no circumstances will Sony be required to pay more or less than the Settlement Amount pursuant to this Agreement and the Settlement set forth herein. For purposes of clarification, the payment of any Fee and Expense Award (as defined in ¶ 24(a)), the Notice and Administrative Costs, and any other costs associated with the implementation of this Settlement Agreement shall be exclusively paid from the Settlement Amount.

18. Taxes. The Settling Parties and the Escrow Agent agree to treat the Gross Settlement Fund as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. §1.468B-1. The Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this paragraph, 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 prepare and deliver timely and properly the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

- (a) 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 shall satisfy the administrative requirements imposed by Treas. Reg. §1.468B-2 by, *e.g.*,
- (i) obtaining a taxpayer identification number, (ii) satisfying any information reporting or withholding requirements imposed on distributions from the Gross Settlement Fund, and (iii) timely and properly filing applicable federal, state and local tax returns necessary or advisable

with respect to the Gross Settlement Fund (including, without limitation, the returns described in Treas. Reg. §1.468B-2(k)) and paying any taxes reported thereon. Such returns (as well as the election described in this paragraph) shall be consistent with the provisions of this paragraph and in all events shall reflect that all Taxes as defined in ¶ 18(b) below on the income earned by the Gross Settlement Fund shall be paid out of the Gross Settlement Fund as provided in ¶ 20 hereof;

- (b) The following shall be paid out of the Gross Settlement Fund: (i) all taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Gross Settlement Fund, including, without limitation, any taxes or tax detriments that may be imposed upon Sony or its counsel with respect to any income earned by the Gross Settlement Fund for any period during which the Gross Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes (collectively, “Taxes”); and (ii) all expenses and costs incurred in connection with the operation and implementation of this paragraph, 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 (collectively, “Tax Expenses”). Neither Sony nor its counsel shall have any liability or responsibility for the Taxes, the Tax Expenses or any other matters set forth in this paragraph. With funds from the Gross Settlement Fund, the Escrow Agent shall indemnify and hold harmless Sony and its counsel for

Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Gross Settlement Fund and shall timely be paid by the Escrow Agent out of the Gross 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 Authorized Claimants 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 Sony nor its counsel is responsible therefor, nor shall they have any liability therefor. The Settling Parties agree to cooperate with the Escrow Agent, each other, their tax attorneys and their accountants to the extent reasonably necessary to carry out the provisions of this paragraph.

E. Administration and Distribution of Gross Settlement Fund

19. Time to Appeal. The time to appeal from an approval of the Settlement shall commence upon the Court's entry of the Judgment, as consistent with the Federal Rules.

20. Distribution of Gross Settlement Fund. Upon further orders of the Court, the Notice and Claims Administrator, subject to such supervision and direction of the Court and/or Class Counsel as may be necessary or as circumstances may require, shall administer the claims submitted by members of the Class and shall oversee distribution of the Gross Settlement Fund to Authorized Claimants pursuant to the Distribution Plan. Subject to the terms of this Agreement and any order(s) of the Court, the Gross Settlement Fund shall be applied as follows:

- (a) To pay all costs and expenses reasonably and actually incurred in connection with providing notice to the Class, in connection with administering and distributing the Net Settlement Fund to Authorized Claimants, and in connection with paying escrow fees and costs, if any;
- (b) To pay all costs and expenses, if any, reasonably and actually incurred in administering claims and assisting with the filing and processing of such claims by Class Counsel;
- (c) To pay the Taxes and Tax Expenses as defined herein;
- (d) To pay any Fee and Expense Award that is allowed by the Court, subject to and in accordance with the Agreement; and
- (e) To distribute the balance of the Net Settlement Fund to Authorized Claimants as allowed by the Agreement, any Distribution Plan or order of the Court.

21. Distribution of Net Settlement Fund. Upon the Effective Date and thereafter, and in accordance with the terms of this Agreement, the Distribution Plan and such further approval and further order(s) of the Court as may be necessary or as circumstances may require, the Net Settlement Fund shall be distributed pursuant to Court order.

22. No Liability for Distribution of Settlement Funds. Neither the Releasees nor their counsel shall have any responsibility for, interest in or liability whatsoever with respect to the distribution of the Gross Settlement Fund; the Distribution Plan; the determination, administration or calculation of claims; the Settlement Fund's qualification as a "qualified settlement fund"; the payment or withholding of Taxes or Tax Expenses; the distribution of the Net Settlement Fund; or any losses incurred in connection with any such matters. The Releasors

hereby fully, finally and forever release, relinquish and discharge the Releasees and their counsel from any and all such liability. No Person shall have any claim against Class Counsel or the Notice and Claims Administrator based on the distributions made substantially in accordance with the Agreement and the Settlement contained herein, the Distribution Plan or further orders of the Court.

23. Distribution Plan Not Part of Settlement. It is understood and agreed by the Settling Parties that any Distribution Plan, including any adjustments to any Authorized Claimant's claim, is not a part of this Agreement and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement set forth in this Agreement, and any order or proceedings relating to the Distribution Plan shall not operate to terminate or cancel this Agreement or affect the finality of the Judgment, the Final Approval Order or any other orders entered pursuant to this Agreement.

F. Attorneys' Fees and Reimbursement of Expenses

24. Fee and Expense Application.

- (a) Class Counsel may submit an application or applications to the Court (the "Fee and Expense Application") for distribution to them from the Gross Settlement Fund 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 Amount (until paid) as may be awarded by the Court (the "Fee and Expense Award"). Further, Class Counsel reserves the right to make additional applications for fees and expenses

incurred, but in no event shall any Releasees be responsible to pay any such additional fees and expenses except to the extent they are paid out of the Gross Settlement Fund.

- (b) The Fee and Expense Award, as approved by the Court, shall be paid to Class Counsel solely from the Gross Settlement Fund after this Agreement becomes Final within the meaning of ¶ 1(o).
- (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 Gross 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. 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 and the Settlement.
- (d) No Releasee shall have any responsibility for, interest in or liability whatsoever with respect to any payment of any Fee and Expense Award in the Action.
- (e) No Releasee shall have any responsibility for, 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 Expense Award that the Court may make in the Action.

G. Cooperation

25. Cooperation as Consideration. In return for the release and discharge provided herein, Sony agrees to pay the Settlement Amount and agrees to provide cooperation to Direct Purchaser Plaintiffs as set forth specifically below. Except as otherwise specified herein, all cooperation shall commence within ten (10) business days after Preliminary Approval by the Court of this Agreement.

26. Cooperation Subject to and Consistent with Prior Obligations. Sony and the Direct Purchaser Plaintiffs shall not be obligated to provide cooperation that would violate an applicable court order or Sony's commitments to the United States Department of Justice or any other governmental entity. Additionally, Direct Purchaser Plaintiffs and Sony will take reasonable efforts to accommodate the other's efforts to minimize duplication in the providing of any cooperation.

27. Cooperation.

- (a) Within a reasonable period of time (but no more than thirty (30) calendar days) after submission by Class Counsel to the Court of a proposed form of notice to the Class, Sony's counsel shall meet with Class Counsel for the purpose of identifying any Sony documents that have been produced as of that time that relate to and/or support the allegations in the Complaint or that show Sony Lithium Ion Battery sales, pricing, capacity or production; provided, however, that such obligation shall not require Sony to provide information protected by the attorney-client privilege, attorney work-product doctrine and/or other similar privileges and shall not waive any such protections or privileges. Further, such

communications shall be considered privileged settlement discussions pursuant to Federal Rule of Evidence 408 and similar provisions.

- (b) Sony will 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.
- (c) Sony agrees that Class Counsel may ask questions at depositions of Sony witnesses noticed by other plaintiffs in the Actions.
- (d) If Sony produces any declarations, documents, data or other responses to discovery to any other plaintiff in the Actions, Sony will produce the same to Class Counsel.
- (e) Each of the Settling Parties shall cooperate in good faith to authenticate, to the extent possible, documents and/or things produced in the Actions, whether by declarations, affidavits, depositions, hearings and/or trials as may be necessary for the Actions, without the need for the other party to issue any subpoenas, letters rogatory, letters of request or formal discovery requests to the other.
- (f) Sony will 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 Sony produced in the Actions prior to the Execution Date.

- (g) Sony will continue to comply with the terms of ¶ I(C) in the Court's Order re Discovery and Deposition Protocol (ECF No. 905) ("Deposition Protocol") relating to employee "watchlists" for as long as these terms are in effect. Sony will inform Class Counsel under the terms of that paragraph if Sony becomes aware that a person on Plaintiffs' (as defined in the Deposition Protocol) watchlist intends to leave, or does leave, his or her employment at Sony, to the extent reasonably possible.
- (h) Upon reasonable notice after Final Approval of this Agreement, Sony shall use its best efforts to make available up to two (2) of its employees identified by Direct Purchaser Plaintiffs for interviews, depositions and/or testimony at trial, via videoconference or at a mutually agreed upon location or locations (except for testimony at trial, which shall be at the United States District Court for the Northern District of California). Unless mutually agreed to by the Settling Parties, any such interviews shall not exceed one six-hour day. Except as specifically provided for herein, any such depositions shall be conducted in accordance with the procedures set forth in the Deposition Protocol and shall count toward the maximum of twelve (12) depositions for Sony as a defendant group as set forth in the Deposition Protocol.

28. Confidentiality. Direct Purchaser Plaintiffs and Class Counsel agree that they will not use the information provided by Sony or its representatives for any purpose other than pursuit of the Actions, and will not publicize the information beyond what is reasonably necessary for the prosecution of the Actions. Any information provided pursuant to this

Agreement shall be subject to the Stipulated Protective Order entered in the Actions on May 17, 2013 (ECF No. 193) (“Protective Order”), including ¶ 11 thereof, as if produced in response to discovery requests and so designated. The Settling Parties further 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.

29. Other Discovery. Except as provided in ¶ 27, upon the Execution Date, Sony, Releasees, Direct Purchaser Plaintiffs and Releasers need not respond to any other formal discovery from each other. Further, neither Sony nor the Direct Purchaser Plaintiffs shall file motions against the other or initiate or participate in any discovery (including third-party discovery), motion or proceeding directly adverse to the other in connection with the Actions, except as specifically provided for herein, and Sony and the Direct Purchaser Plaintiffs shall not be obligated to respond to or supplement prior responses to formal discovery that has been previously propounded by the other in the Actions or otherwise participate in the Actions. Except as provided in ¶ 27, Direct Purchaser Plaintiffs and Sony agree to withdraw all outstanding discovery served on the other.

30. Resolution of Disputes. To the extent the Settling Parties disagree about the interpretation or enforcement of any terms of this Agreement relating to future cooperation by Sony, they agree to submit such disputes for binding resolution by the Judge Vaughn R. Walker (ret.) or another mutually agreed neutral.

31. Final Approval. In the event that this Agreement fails to receive Final Approval by the Court as contemplated herein or in the event that it is terminated by either of the Settling Parties under any provision herein, the Settling Parties agree that neither Direct Purchaser Plaintiffs nor Class Counsel shall be permitted to introduce in evidence, at any hearing, or in

support of any motion, opposition or other pleading in the Actions or in any other federal or state or foreign action alleging a violation of any law relating to the subject matter of the Actions, any information provided by Sony or its counsel pursuant to ¶ 27(a) or ¶ 27(f) or any information obtained during interviews provided pursuant to ¶ 27(h). Further, in such event, Sony and Direct Purchaser Plaintiffs will each be bound by and have the benefit of any rulings made in the Actions to the extent they would have been applicable to Sony or Direct Purchaser Plaintiffs had Sony or Direct Purchaser Plaintiffs been participating in the Actions.

H. Conditions of Settlement, Effect of Disapproval, Cancellation or Termination

32. Failure of Effective Date to Occur. If it becomes clear that the Effective Date will not occur, then this Agreement shall be cancelled and terminated, subject to and in accordance with ¶ 36, unless the Settling Parties mutually agree in writing to proceed with this Agreement.

33. Exclusions. Class Counsel shall cause copies of requests for exclusion from the Class to be provided to Sony's counsel. No later than fourteen (14) calendar days after the final date for mailing requests for exclusion by members of the Class, Class Counsel shall provide Sony's counsel with a complete and final list of class members who have timely filed requests for exclusion, along with all information provided by such class members. With the motion for Final Approval of the Settlement, Class Counsel will file with the Court a complete list of requests for exclusion from the Class, including only the name, city and state of the person or entity requesting exclusion. With respect to any member of the Class who requests exclusion from the Class, Sony makes no admission of liability and reserves all of its legal rights and defenses, including, but not limited to, any defenses relating to whether the member of the Class is a direct purchaser of the allegedly price-fixed product and/or has standing to bring any claim.

If Sony determines that valid and timely requests for exclusion or to opt out from the Class have been made by members of the Class who in the aggregate account for purchases of Lithium Ion Batteries and Lithium Ion Battery Products (calculated based on the value of the Lithium Ion Battery Cells therein) in an amount equivalent to or greater than thirty-five percent (35%) of Sony's sales in the United States of such products between January 1, 2000 through May 31, 2011 (calculated based on the value of the Lithium Ion Battery Cells therein), then Sony may at its sole discretion terminate this Agreement or proceed with this Agreement. If Sony elects to terminate this Agreement, it shall do so within twenty (20) calendar days after receiving the final list of class members seeking to be excluded from the Class. In the event that Sony exercises its option to terminate this Agreement: (i) this Agreement shall be null and void as to Sony, 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) the Settlement Amount paid by Sony, plus interest thereon, shall be refunded promptly to Sony, minus such payment (as set forth in this Agreement) of Notice and Administrative Costs and Taxes and Tax Expenses, consistent with the provisions of ¶ 36.

34. Objections. Members of the Class who wish to object to any aspect of the Settlement must file with the Court a written statement containing their objection by the end of the period to object to the Settlement.

35. Good Faith Attempt to Address Deficiencies. In the event that any court enters an order identifying deficiencies with this Agreement that must be addressed prior to court approval of the Settlement, then the Settling Parties agree to attempt, in good faith, to address such deficiencies.

36. Termination. Unless otherwise ordered by the Court, in the event that the Effective Date does not occur or this Agreement should terminate, or be cancelled, or otherwise fail to become effective for any reason, including, without limitation, in the event that Sony elects to terminate this Agreement pursuant to ¶ 33, the Settlement as described herein is not finally approved by the Court, or the Judgment is reversed or vacated following any appeal taken therefrom, then:

- (a) Within five (5) business days after written notification of such event is sent by counsel for Sony to the Escrow Agent, the Gross Settlement Fund—including the Settlement Amount and all interest earned on the Settlement Fund while held in escrow excluding only Notice and Administrative Costs that have either been properly disbursed or are due and owing, Taxes and Tax Expenses that have been paid or that have accrued and will be payable at some later date, and attorneys' fees and costs that have been disbursed pursuant to Court Order—will be refunded, reimbursed and repaid by the Escrow Agent to Sony; if said amount or any portion thereof is not returned within such five (5) day period, then interest shall accrue thereon at the Federal Reserve discount rate per annum until the date that said amount is returned;
- (b) Within twenty (20) business days after written notification of such event is sent by counsel for Sony to Class Counsel, all attorneys' fees and costs which have been disbursed to Class Counsel pursuant to Court order shall be refunded, reimbursed and repaid by Class Counsel to Sony;

- (c) The Escrow Agent or its designee shall apply for any tax refund owed to the Gross Settlement Fund and pay the proceeds to Sony, after deduction of any fees or expenses reasonably incurred in connection with such application(s) for refund, pursuant to such written request;
- (d) The Settling Parties shall be restored to their respective positions in the Actions as of the Execution Date, with all of their respective claims and defenses, preserved as they existed on that date;
- (e) The terms and provisions of this Agreement, with the exception of ¶¶ 14-16, 18, 24(d)-(e), 28, 30-32, 36, 38-39, 41-42, 44-51 (which shall continue in full force and effect), shall be null and void and shall have no further force or effect with respect to the Settling Parties, and neither the existence nor the terms of this Agreement (nor any negotiations preceding this Agreement nor any acts performed pursuant to, or in furtherance of, this Agreement) shall be used in the Actions or in any other action or proceeding for any purpose (other than to enforce the terms remaining in effect); and
- (f) Any judgment or order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

I. No Admission of Liability

37. Final and Complete Resolution. The Settling Parties intend the Settlement as described herein to be a final and complete resolution of all disputes between them with respect to the Actions and Released Claims and to compromise claims that are contested, and it shall not

be deemed an admission by any Settling Party as to the merits of any claim or defense or any allegation made in the Actions.

38. Federal Rule of Evidence 408. The Settling Parties agree that this Agreement, its terms and the negotiations surrounding this Agreement shall be governed by Federal Rule of Evidence 408 and shall not be admissible or offered or received into evidence in any suit, action or other proceeding, except upon the written agreement of the Settling Parties hereto, pursuant to an order of a court of competent jurisdiction, or as shall be necessary to give effect to, declare or enforce the rights of the Settling Parties with respect to any provision of this Agreement.

39. Use of Agreement as Evidence. Neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claims, any allegation made in the Actions or any wrongdoing or liability of Defendants; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any liability, fault or omission of the Releasees in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement, shall be admissible in any proceeding for any purpose, except to enforce the terms of the Settlement, and except that the Releasees may file this Agreement and/or the Judgment in any action for any purpose, including, but not limited to, in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim. The limitations described in

this paragraph apply whether or not the Court enters the Preliminary Approval Order, the Final Approval Order or the Judgment.

J. Miscellaneous Provisions

40. Voluntary Settlement. The Settling Parties agree that the Settlement Amount and the other terms of the Settlement as described herein were negotiated in good faith by the Settling Parties, and reflect a settlement that was reached voluntarily following mediation with Judge Vaughn R. Walker (ret.) and after consultation with competent legal counsel.

41. Consent to Jurisdiction. Sony and each Class Member hereby irrevocably submit to the exclusive jurisdiction of the Court only for the specific purpose of any suit, action, proceeding or dispute arising out of or relating to this Agreement or the applicability of this Agreement. Solely for purposes of such suit, action or proceeding, to the fullest extent that they may effectively do so under applicable law, Sony and the Class Members irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of the Court or that the Court is in any way an improper venue or an inconvenient forum.

42. Resolution of Disputes; Retention of Exclusive Jurisdiction. Any disputes between or among Sony and any Class Members concerning matters contained in this Agreement shall, if they cannot be resolved by negotiation and agreement, be submitted to the Court. The Court shall retain exclusive jurisdiction over the implementation and enforcement of this Agreement.

43. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties hereto. Without limiting the generality of

the foregoing, each and every covenant and agreement herein by Direct Purchaser Plaintiffs and Class Counsel shall be binding upon all Class Members.

44. Authorization to Enter Settlement Agreement. The undersigned representatives of Sony represent that they are fully authorized to enter into and to execute this Agreement on behalf of Sony. Class Counsel, on behalf of Direct Purchaser Plaintiffs and the Class, represent that they are, subject to Court approval, expressly authorized to take all action required or permitted to be taken by or on behalf of the Class pursuant to this Agreement to effectuate its terms and to enter into and execute this Agreement and any modifications or amendments to the Agreement on behalf of the Class that they deem appropriate.

45. Notices. All notices under this Agreement shall be in writing. Each such notice shall be given either by (a) e-mail; (b) hand delivery; (c) registered or certified mail, return receipt requested, postage pre-paid; (d) FedEx or similar overnight courier; or (e) facsimile and first class mail, postage pre-paid and, if directed to any Class Member, shall be addressed to Class Counsel at their addresses set forth below, and if directed to Sony, shall be addressed to their attorneys at the addresses set forth below or such other addresses as Class Counsel or Sony may designate, from time to time, by giving notice to all parties hereto in the manner described in this paragraph.

If directed to Direct Purchaser Plaintiffs, address notice to:

PEARSON, SIMON & WARSHAW, LLP
Bruce L. Simon
44 Montgomery Street, Suite 2450
San Francisco, CA 94104
Telephone: (415) 433-9000
Facsimile: (415) 433-9008
bsimon@pswlaw.com

BERMAN DEVALERIO
Joseph J. Tabacco, Jr.
One California Street, Suite 900
San Francisco, CA 94111
Telephone: (415) 433-3200
Facsimile: (415) 433-6382
jtabacco@bermandevalerio.com

SAVERI & SAVERI, INC.
R. Alexander Saveri
706 Sansome Street
San Francisco, CA 94111
Telephone: (415) 217-6810
Facsimile: (415) 217-6813
rick@saveri.com

If directed to Sony, address notice to:

COOLEY LLP
John C. Dwyer
3175 Hanover Street
Palo Alto, CA 94304-1130
Telephone: (650) 843-5000
Facsimile: (650) 849-7400
dwyerjc@cooley.com

COOLEY LLP
Beatriz Mejia
101 California Street, 5th Floor
San Francisco, CA 94111-5800
Telephone: (415) 693-2000
Facsimile: (415) 693-2222
mejiab@cooley.com

SONY ELECTRONICS INC.
General Counsel
16535 Via Esprillo
San Diego, CA 92127
Telephone: (858) 942-7812
Facsimile: (858) 942-2700

46. Headings. The headings used in this Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Agreement.

47. No Party Deemed To Be the Drafter. None of the Settling Parties shall be deemed to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

48. Choice of Law. This Agreement shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of California, and the rights and obligations of the parties to this Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of California without giving effect to that state's choice of law principles.

49. Amendment; Waiver. This Agreement shall not be modified in any respect except by a writing executed by all the Settling Parties, and the waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving party. The waiver by any Settling Party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Agreement.

50. Execution in Counterparts. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the Settling Parties to this Agreement shall exchange among themselves original signed counterparts and a complete set of executed counterparts shall be filed with the Court.

51. Integrated Agreement. This Agreement constitutes the entire agreement between the Settling Parties and no representations, warranties or inducements have been made to any party concerning this Agreement other than the representations, warranties and covenants contained and memorialized herein. It is understood by the Settling Parties that, except for the

matters expressly represented herein, the facts or law with respect to which this Agreement is entered into may turn out to be other than or different from the facts now known to each party or believed by such party to be true. Each Settling Party therefore expressly assumes the risk of the facts or law turning out to be so different, and agrees that this Agreement shall be in all respects effective and not subject to termination by reason of any such different facts or law. Except as otherwise provided herein, each Settling Party shall bear its own costs and attorneys' fees.

52. Return or Destruction of Confidential Materials. The Settling Parties agree to comply with ¶ 11 of the Protective Order entered in these Actions at the conclusion of these Actions.

IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives, have executed this Agreement as of the date first herein above written.

DIRECT PURCHASER PLAINTIFFS' CLASS
COUNSEL, on behalf of Direct Purchaser Plaintiffs
individually and on behalf of the Class

By: 

Bruce L. Simon
Clifford H. Pearson
PEARSON, SIMON & WARSHAW, LLP
44 Montgomery Street, Suite 2450
San Francisco, CA 94104
Telephone: (415) 433-9000
Facsimile: (415) 433-9008
bsimon@pswlaw.com
cpearson@pswlaw.com

By: 

Joseph J. Tabacco, Jr.
BERMAN DEVALERIO
One California Street, Suite 900
San Francisco, CA 94111
Telephone: (415) 433-3200
Facsimile: (415) 433-6382
jtabacco@bermandevalerio.com

By: 

R. Alexander Saveri
SAVERI & SAVERI, INC.
706 Sansome Street
San Francisco, CA 94111
Telephone: (415) 217-6810
Facsimile: (415) 217-6813
rick@saveri.com

DEFENDANTS SONY CORPORATION, SONY
ENERGY DEVICES CORPORATION AND SONY
ELECTRONICS INC.

By: 

John C. Dwyer
Stephen C. Neal
COOLEY LLP
3175 Hanover Street
Palo Alto, CA 94304
Tel: (415) 495-5000
Fax: (415) 495-7400
dwyerjc@cooley.com
nealsc@cooley.com

Beatriz Mejia
Matthew M. Brown
COOLEY LLP
101 California Street, 5th Floor
San Francisco, CA 94111-5800
Tel: 415-693-2000
Fax: 415-693-2222
mejiab@cooley.com
brownmm@cooley.com

127096648

EXHIBIT 2

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

If You Bought a Lithium Ion Battery or Lithium Ion Battery Product, a Class Action Settlement May Affect You.

A “Lithium Ion Battery” is a cylindrical, prismatic or polymer battery that is rechargeable and uses lithium ion technology. A “Lithium Ion Battery Product” is a product manufactured, marketed and/or sold by Defendants, their divisions, subsidiaries or Affiliates, or their alleged co-conspirators that contain one or more Lithium Ion Battery Cells manufactured by Defendants or their alleged co-conspirators. Lithium Ion Battery Products include, but are not limited to, notebook computers, cellular (mobile) phones, digital cameras, camcorders and power tools.

A Federal Court authorized this Notice. This is not a solicitation from a lawyer.

- A class action lawsuit brought on behalf of direct purchasers of Lithium Ion Batteries (“Li-Ion Batteries”) and Lithium Ion Battery Products (“Li-Ion Products”) is currently pending.
- Plaintiffs claim that Defendants (listed below) and co-conspirators engaged in an unlawful conspiracy to fix, raise, maintain or stabilize the prices of Lithium Ion Battery Cells (“Li-Ion Cells”). Plaintiffs further claim that direct purchasers from the Defendants of Li-Ion Batteries and Li-Ion Products may recover for the effect that the conspiracy had on the prices of these devices. Plaintiffs allege that, as a result of the unlawful conspiracy involving Li-Ion Cells, they and other direct purchasers paid more for Li-Ion Batteries and Li-Ion Products than they would have paid absent the conspiracy. Defendants deny Plaintiffs’ claims.
- A settlement has been reached with Defendants Sony Corporation, Sony Energy Devices Corporation and Sony Electronics Inc. (collectively “Sony”).
- Your legal rights will be affected whether you act or don’t act. This Notice includes information on the settlement and the lawsuit. Please read the entire Notice carefully.

These rights and options—and deadlines to exercise them—are explained in this Notice

You can object to or comment on the settlement *see* Question 10

You may exclude yourself from the settlement *see* Question 10

You may go to a hearing and comment on the settlement *see* Question 12

- The Court in charge of this case still has to decide whether to approve the settlement.

**For More Information: Call 1-888-XXX-XXX
or Visit www.BatteriesDirectPurchaserAntitrustSettlement.com**

WHAT THIS NOTICE CONTAINS

Basic Information..... Page 3

1. Why did I get this Notice?
2. Who are the Defendant companies?
3. What is this lawsuit about?
4. Why is there a settlement but the litigation is continuing?
5. What are Li-Ion Cells, Li-Ion Batteries, and Li-Ion Products?
6. What is a class action?

The Settlement Class Page 4

7. How do I know if I'm part of the Settlement Class?
8. What does the settlement provide?
9. When can I get a payment?
10. What are my rights in the Settlement Class?
11. What am I giving up to stay in the Settlement Class?

The Settlement Approval Hearing Page 5

12. When and where will the Court decide whether to approve the settlement?
13. Do I have attend the hearing?

The Lawyers Representing You Page 6

14. Do I have a lawyer in the case?
15. How will the lawyers be paid?

Getting More Information Page 6

16. How do I get more information?

BASIC INFORMATION

1. Why did I get this Notice?

You or your company may have directly purchased Li-Ion Batteries and/or Li-Ion Products from January 1, 2000 through May 31, 2011. For purposes of this settlement, a direct purchaser is a person or business who bought a Li-Ion Battery and/or Li-Ion Product directly from one or more of the Defendants, or any division, subsidiary or Affiliate thereof, or any alleged co-conspirator (as opposed to an intermediary, such as a retail store) in the United States.

You have the right to know about the litigation and about your legal rights and options before the Court decides whether to approve the settlement.

The Notice explains the litigation, the settlement, and your legal rights.

The Court in charge of the case is the United States District Court for the Northern District of California, and the case is called *In re Lithium Ion Batteries Antitrust Litigation*, Case No. 13-MD-02420-YGR. The people who sued are called Plaintiffs and the companies they sued are called Defendants.

2. Who are the Defendant companies?

The Defendant companies include: 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.

3. What is this lawsuit about?

The lawsuit alleges that Defendants and co-conspirators conspired to raise and fix the prices of Li-Ion Cells for over ten years, resulting in overcharges to direct purchasers of Li-Ion Batteries and Li-Ion Products. The complaint describes how the Defendants and co-conspirators allegedly violated the U.S. antitrust laws by agreeing to fix prices and restrict output of Li-Ion Cells by, among other things, face-to-face meetings and other communications, customer allocation, and the use of trade associations. Defendants deny Plaintiffs' allegations. The Court has not decided who is right.

4. Why is there a settlement but the litigation is continuing?

Only one group of Defendants has agreed to settle the lawsuit—Sony Corporation, Sony Energy Devices Corporation and Sony Electronics Inc. (collectively “Sony”). The case is continuing against the remaining Non-Released Defendants. Additional money may become available in the future as a result of a trial or future settlements, but there is no guarantee that this will happen.

5. What are Li-Ion Cells, Li-Ion Batteries, and Li-Ion Products?

For the purposes of the settlement:

- “Lithium Ion Battery Cell(s)” or “Li-Ion Cells” means the main components of Lithium Ion Batteries. A cell includes the cathode, anode, and electrolyte.
- “Lithium Ion Battery” or “Li-Ion Battery” means a cylindrical, prismatic or polymer battery that is rechargeable and uses lithium ion technology.
- “Lithium Ion Battery Products” or “Li-Ion Products” means products manufactured, marketed and/or sold by Defendants, their divisions, subsidiaries or Affiliates, or their alleged co-conspirators that contain one or more Lithium Ion Battery Cells manufactured by Defendants or their alleged co-

**For More Information: Call 1-888-XXX-XXX
or Visit www.BatteriesDirectPurchaserAntitrustSettlement.com**

conspirators. Lithium Ion Battery Products include, but are not limited to, notebook computers, cellular (mobile) phones, digital cameras, camcorders and power tools.

6. What is a class action?

In a class action, one or more people, called class representatives, sue on behalf of people who have similar claims. All these people are members of the class, except for those who exclude themselves from the class.

Important information about the case will be posted on the website, **www.BatteriesDirectPurchaserAntitrustSettlement.com** as it becomes available. Please check the website to be kept informed about any future developments.

THE SETTLEMENT CLASS

7. How do I know if I'm part of the Settlement Class?

The settlement class includes Persons and entities who, from January 1, 2000 through May 31, 2011, bought a Li-Ion Battery and/or Li-Ion Product directly from one or more of the Defendants, or any division, subsidiary or Affiliate thereof, or any alleged co-conspirator (as opposed to an intermediary, such as a retail store) in the United States ("Settlement Class").

8. What does the settlement provide?

The settlement provides for a payment of \$19,000,000 in cash, plus interest. The settlement also provides for continuing cooperation, including the production of witnesses. In addition, Sony's sales remain in the case for the purpose of computing damages against the remaining defendants.

More details are in the Settlement Agreement, available at
www.BatteriesDirectPurchaserAntitrustSettlement.com

9. When can I get a payment?

No money will be distributed to any settlement class member yet. The 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.

You will be notified in the future when and where to send a claim form. **DO NOT SEND ANY CLAIMS NOW.**

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.

10. What are my rights in the Settlement Class?

Remain in the Settlement Class: If you wish to remain a member of the Settlement Class you do not need to take any action at this time.

Get out of the Settlement Class: If you wish to keep any of your rights to sue Sony about claims concerning the manufacture, supply, distribution, sale or pricing of Li-Ion Cells, other than claims for

**For More Information: Call 1-888-XXX-XXX
or Visit www.BatteriesDirectPurchaserAntitrustSettlement.com**

product liability, personal injury, or breach of contract claims not related to the allegations in this case, you must exclude yourself from the Settlement Class. You will not get any money from the settlement.

To exclude yourself from the Settlement Class, you must send a letter that includes the following:

- Your name, address and telephone number (include trade or business names, and address, and telephone numbers);
- A statement saying that you want to be excluded from *In re Lithium Ion Batteries Antitrust Litigation*, Case No. 13-MD-02420-YGR, Sony Settlement.
- Your signature.

You must mail your exclusion request, postmarked no later than _____, to:

Batteries Claims Administrator
c/o Epiq Systems
P.O. Box XXXX
[City], [State] XXXXX-XXXX

Remain in the Settlement Class and Object: You can ask the Court to deny approval by filing an objection. You can't ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

You may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number (*In re Lithium Ion Batteries Antitrust Litigation*, Case No. 13-MD-02420-YGR), (b) be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 1301 Clay Street, Oakland, CA 94612, or by filing them in person at any location of the United States District Court for the Northern District of California, and (c) be filed or postmarked on or before _____.

11. What am I giving up to stay in the Settlement Class?

Unless you exclude yourself from the Settlement Class, you can't sue Sony, or be part of any other lawsuit against Sony, about the legal issues in this case. It also means that all of the decisions by the Court will bind you. The "Release of Claims" includes any causes of actions asserted or that could have been asserted in the lawsuit, as described more fully in the Settlement Agreement. The Settlement Agreement is available at www.BatteriesDirectPurchaserAntitrustSettlement.com.

THE SETTLEMENT APPROVAL HEARING

12. When and where will the Court decide whether to approve the settlement?

The Court will hold a Fairness Hearing at _____ on _____, at United States District Courthouse, 1301 Clay Street, Courtroom 1, 4th Floor, Oakland, CA 94612. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check the Settlement Class website for information. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are objections, the Court will consider them at that time. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

13. Do I have to attend the hearing?

No. Interim Co-Lead Counsel will answer any questions the Court may have. But, you are welcome to come at your own expense. If you file or mail an objection, you don't have to come to Court to talk about

**For More Information: Call 1-888-XXX-XXX
or Visit www.BatteriesDirectPurchaserAntitrustSettlement.com**

it. As long as you filed or mailed your written objection on time, the Court will consider it. You may also pay another lawyer to attend, but it's not required.

THE LAWYERS REPRESENTING YOU

14. Do I have a lawyer in the case?

Yes. The Court has appointed the law firms of Saveri & Saveri, Inc.; Pearson, Simon & Warshaw, LLP; and Berman DeValerio to represent you as "Class Counsel." You do not have to pay Class Counsel. If you want to be represented by your own lawyer, and have that lawyer appear in court for you in this case, you may hire one at your own expense. The contact information for Class Counsel is as follows:

CLASS COUNSEL		
R. Alexander Saveri Geoffrey C. Rushing SAVERI & SAVERI, INC. 706 Sansome Street San Francisco, CA 94111	Bruce L. Simon PEARSON, SIMON & WARSHAW, LLP 44 Montgomery Street, Suite 2450 San Francisco, CA 94104	Joseph J. Tabacco, Jr. BERMAN DEVALERIO One California Street, Suite 900 San Francisco, CA 94111

15. How will the lawyers be paid?

Class Counsel are not asking for attorneys' fees at this time. At a future time, Class Counsel will ask the Court for attorneys' fees not to exceed one-third (33.3%) of this or any future Settlement Fund plus reimbursement of their costs and expenses, in accordance with the provisions of the Settlement Agreement. Class Counsel may also request that an amount be paid to each of the Class Representatives who helped the lawyers on behalf of the whole Class (known as an "incentive award").

GETTING MORE INFORMATION

16. How do I get more information?

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement available at **www.BatteriesDirectPurchaserAntitrustSettlement.com**, by contacting class counsel at the addresses listed above under Question 14, by accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov> (using the instructions provided here: www.cand.uscourts.gov/existcasefaq and here: www.pacer.gov/psc/faq.html), or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 1301 Clay Street, Courtroom 1, 4th Floor, Oakland, CA 94612, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

Dated: _____

BY ORDER OF THE COURT

**For More Information: Call 1-888-XXX-XXX
or Visit www.BatteriesDirectPurchaserAntitrustSettlement.com**

EXHIBIT 3

LEGAL NOTICE

**If You Bought a Lithium Ion Battery or Lithium Ion Battery Product,
a Class Action Settlement May Affect You.**

Lithium Ion Battery Products include, but are not limited to, notebook computers, cellular (mobile) phones, digital cameras, camcorders and power tools.

Why was this notice published?

A settlement has been reached with a group of defendants in a class action lawsuit involving Lithium Ion Batteries (“Li-Ion Batteries”) and Lithium Ion Battery Products (“Li-Ion Products”). A Li-Ion Battery is a cylindrical, prismatic or polymer battery that is rechargeable and uses lithium ion technology. A Li-Ion Product is a product manufactured, marketed and/or sold by Defendants, their divisions, subsidiaries or Affiliates, or their alleged co-conspirators that contain one or more Lithium Ion Battery Cells (“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.

What is this lawsuit about?

The lawsuit alleges that Defendants and Co-Conspirators engaged in an unlawful conspiracy to fix, raise, maintain or stabilize the prices of Li-Ion Cells. Plaintiffs further claim that direct purchasers from the Defendants of Li-Ion Batteries and/or Li-Ion Products manufactured by a Defendant may recover for the effect that the alleged conspiracy had on the prices of the purchased items. Plaintiffs allege that, as result of the unlawful conspiracy involving Li-Ion Cells, they and other direct purchasers paid more for Li-Ion Batteries and Li-Ion Products than they would have absent the conspiracy. Defendants deny Plaintiffs’ claims.

Who’s included in the Settlement?

The settlement class includes persons and entities who, from January 1, 2000 through May 31, 2011, bought a Li-Ion Battery and/or Li-Ion Product directly from one or more of the Defendants, or any division, subsidiary or Affiliate thereof, or any alleged co-conspirator in the United States (“Settlement Class”).

Who are the Released Defendants?

A settlement has been reached with Defendants Sony Corporation, Sony Energy Devices Corporation and Sony Electronics Inc. (collectively “Sony”). A complete list of Defendants is set out in the Long Form of Notice available at www.BatteriesDirectPurchaserAntitrustSettlement.com.

What does the Settlement provide?

The Settlement provides for the payment of \$19,000,000 in cash, plus interest, to the Settlement Class. Sony has agreed to produce witnesses in the case against the remaining Non-Released Defendants. Money will not be distributed to Settlement Class members at this time. The lawyers will pursue the lawsuit against the other Defendants, to see if any future settlements or judgments can be obtained in the case and then be distributed together, on a *pro rata* basis based on the value of your Li-Ion Battery and/or Li-Ion Product purchases, to reduce expenses.

What are my rights?

If you wish to remain a member of the Settlement Class you do not need to take any action at this time. If you do not want to be legally bound by the Settlement, you must exclude yourself in writing by _____, or you will not be able to sue, or continue to sue, Sony about the legal claims that were or could have been asserted in this case.

If you wish to object to any aspect of the proposed Settlement, you must do so in writing no later than _____. The Settlement Agreement, along with details on how to object to it, is available at www.BatteriesDirectPurchaserAntitrustSettlement.com. The U.S. District Court for the Northern District of California will hold a Fairness Hearing on _____ at ____ [a.m. / p.m.], at 1301 Clay Street, Courtroom 1, 4th Floor, Oakland, CA 94612 to consider whether the Settlement is fair, reasonable and adequate. If there are objections, the Court will consider them at that time. You may appear at the hearing, but don’t have to. We do not know how long these decisions will take. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check the website for information. Please do not contact the Court about this case.

The Court has appointed the law firms of Saveri & Saveri, Inc.; Pearson, Simon & Warshaw, LLP; and Berman DeValerio as Class Counsel, to represent Direct Purchaser Class members.

This is a Summary Notice. For more details, call toll free 1-888-XXX-XXXX, _____ visit www.BatteriesDirectPurchaserAntitrustSettlement.com, or write to Batteries Claim Administrator, c/o Epiq Systems, P.O. Box XXX, XXXXX.