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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 OAKLAND DIVISION

19 IN RE LITHIUM ION BATTERIES
ANTITRUST LITIGATION,
20

Case No. 13-MD-02420 YGR (DMR)

MDL No. 2420

21
22 This Documents Relates to:
23 ALL INDIRECT PURCHASER ACTIONS
24

MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENTS WITH HITACHI
MAXELL, LTD., MAXELL
CORPORATION OF AMERICA, AND
NEC CORPORATION

25 Date: February 28, 2017
26 Time: 2:00 p.m.
Judge: Hon. Yvonne Gonzalez Rogers
Location: Courtroom 1- 4th Floor

27
28 DATE ACTION FILED: Oct. 3, 2012

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on February 28, 2017 at 2:00 p.m. or as soon thereafter as the matter may be heard by the Honorable Yvonne Gonzalez Rogers of the United States District Court of the Northern District of California, located in Courtroom 1, at 1301 Clay Street, Oakland, CA 94612, Indirect Purchaser Plaintiffs (“IPPs”) will and hereby do move the Court pursuant to Federal Rules of Civil Procedure 23 for an order:

- 1) preliminarily approving the proposed class action settlements with Hitachi Maxell, Ltd. and Maxell Corporation of America (collectively, “Hitachi Maxell”), and with NEC Corporation (“NEC”);
- 2) certifying the settlement classes;
- 3) appointing Hagens Berman Sobol Shapiro LLP; Cotchett, Pitre & McCarthy, LLP; and Lief, Cabraser, Heimann & Bernstein, LLP as Class Counsel; and
- 4) approving the manner and form of notice and proposed plan of allocation to class members.

This motion is based on this notice of motion and motion for preliminary approval of settlement with Hitachi Maxell and NEC, the following memorandum of points and authorities, the accompanying settlement agreements, the pleadings and the papers on file in this action and such other matters as the Court may consider.

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I. INTRODUCTION

1
2 IPPs seek preliminary approval under Rule 23 of the Federal Rules of Civil Procedure of
3 settlements with Hitachi Maxell and NEC.¹ The proposed settlement with Hitachi Maxell is for
4 \$3,450,000, and the proposed settlement with NEC is for \$2,500,000. That is approximately 108
5 percent and 258.5 percent, respectively, of the indirect purchaser class’s estimated damages
6 attributable to Hitachi Maxell’s and NEC’s sales.

7 The recovery to the class is outstanding. The class has not been certified and discovery has
8 not yet closed. The proposed settlements require certification by this Court of settlement classes
9 co-extensive with the proposed nationwide class in the pending motion for class certification –
10 purchasers in the United States of the following products that contained a lithium-ion cylindrical
11 battery (“LIB”) manufactured by a defendant or alleged co-conspirator: (i) portable computers; (ii)
12 power tools; (iii) camcorders; or (iv) a replacement battery for any of these products. The proposed
13 settlements were reached after prolonged negotiations between experienced and informed counsel,
14 and they easily meet the standards for preliminary approval. In addition to financial consideration,
15 the settlements require Hitachi Maxell and NEC to cooperate with IPPs in the prosecution of their
16 claims against the remaining defendants.

17 As part of their pending Motion for Preliminary Approval of Class Action Settlement with
18 the LG Chem Defendants (ECF No. 1652), IPPs have proposed a comprehensive notice program
19 designed by experienced notice administrator Gilardi & Co. LLC (“Gilardi”). Direct notice will be
20 sent to class members wherever possible – IPPs have collected approximately 15.8 million email
21 addresses. Supplementing the direct notice campaign, IPPs proposed a robust print publication
22 notice campaign and an online publication campaign that will ensure over 70 percent, and likely
23
24

25 ¹ See Declaration of Steven N. Williams in Support of Indirect Purchaser Plaintiffs’ Motion for
26 Preliminary Approval of Settlements with Hitachi Maxell, Ltd., Maxell Corporation of America,
27 and NEC Corporation (“Williams Decl.”), Ex. A (Hitachi Maxell Settlement Agreement);
28 Declaration of Jeff D. Friedman in Support of Motion for Preliminary Approval of Settlements
with Hitachi Maxell, Ltd., Maxell Corporation of America, and NEC Corporation (“Friedman
Decl.”), Ex. A (NEC Settlement Agreement), concurrently filed herewith.

1 close to 80 percent, of class members will receive notice.² The proposed notices are written in plain
 2 English, and are substantially the same as prior notices approved by this Court. IPPs propose that
 3 should the Court preliminarily approve the Hitachi Maxell settlement, the NEC settlement, and the
 4 LG Chem settlement, notice to the class of the Hitachi Maxell and NEC settlements should be done
 5 alongside notice to the class of the LG Chem settlement, so that all three of these class settlements
 6 can proceed on the same schedule, which will save time and resources.

7 IPPs propose that distribution of the \$3.45 million and the \$2.5 million to class members
 8 (totaling \$5.95 million) be held pending further settlements. Four defendant families (Panasonic,
 9 Samsung, Sanyo, and Toshiba) and NEC Tokin Corporation remain in the IPP case, including two
 10 of the largest defendants by market share – Samsung and Sanyo.³ Claims against these remaining
 11 defendants are not released by the IPPs’ settlements with Hitachi Maxell and NEC. Given the
 12 expense associated with distribution, IPPs believe that it is in the best interests of the class to wait
 13 before distributing the funds.

14 Accordingly, IPPs respectfully request an order: (1) preliminarily approving the proposed
 15 class action settlements with Hitachi Maxell and NEC; (2) certifying the settlement classes;
 16 (3) appointing Hagens Berman Sobol Shapiro, LLP, Cotchett, Pitre & McCarthy, LLP, and Lief, Inc.,
 17 Cabraser, Heimann & Bernstein, LLP as Class Counsel; and (4) approving the manner and form of
 18 notice and proposed plan of allocation to class members.

19 II. PROCEDURAL HISTORY

20 This litigation has been pending for approximately four years. The parties have briefed
 21 multiple motions to dismiss, a motion for summary judgment, and discovery motions. IPPs’ motion
 22 for class certification has been briefed and argued and is under submission.⁴ Defendants have filed
 23

24 ² See Declaration of Alan Vasquez (“Vasquez Decl.”), ¶ 32, December 6, 2016, ECF No. 1652-
 25 4.

26 ³ The remaining defendants in the IPP case are: Samsung SDI Co. Ltd.; Samsung SDI America,
 27 Inc.; Panasonic Corporation; Panasonic Corporation of North America; Sanyo Electric Co., Ltd.;
 28 Sanyo North America Corporation; NEC Tokin Corporation; and Toshiba Corporation.

⁴ See IPPs’ Motion for Class Certification (“Class Cert. Mot.”), originally filed Jan. 22, 2016,
 ECF No. 1599-2; Defendants’ Opposition to IPPs’ Motion for Class Certification, originally filed
 May 24, 2016, ECF No. 1551; and IPPs’ Reply in Support of Class Certification, originally filed

1 *Daubert* motions to exclude the expert testimony of IPPs’ experts, which IPPs opposed.⁵ This
 2 litigation also has required the assistance of Magistrate Judge Donna Ryu to manage and adjudicate
 3 many discovery disputes. All of the work done to date has provided the parties with a thorough
 4 understanding of the claims and defenses.

5 IPPs and Hitachi Maxell, as well as IPPs and NEC, have discussed possible resolution of
 6 this litigation for the past several months. The terms of the final Hitachi Maxell settlement
 7 agreement were agreed to on December 16, 2016, and the agreement itself was signed by the last
 8 party on January 10, 2017. The terms of the final settlement agreement with NEC were agreed to
 9 on December 31, 2016 and signed by the last party on January 20, 2017. Each class representative
 10 has reviewed and approved the terms of the Hitachi Maxell settlement and the NEC settlement.⁶

11 III. SUMMARY OF SETTLEMENT TERMS

12 A. The Settlement Classes

13 The proposed settlement classes are substantively identical to the class and subclass
 14 proposed in the IPPs’ motion for class certification – a nationwide, cylindrical-only class of
 15 purchasers of portable computers, power tools, camcorders, or replacement batteries. That class is
 16 as follows:

17 All persons and entities who, as residents of the United States and
 18 during the period from January 1, 2000 through May 31, 2011,
 19 indirectly purchased new for their own use and not for resale one of
 20 the following products which contained a lithium-ion cylindrical
 21 battery manufactured by one or more defendants or their co-
 conspirators: (i) a portable computer; (ii) a power tool; (iii) a
 camcorder; or (iv) a replacement battery for any of these products.
 Excluded from the class are any purchases of Panasonic-branded
 computers. Also excluded from the class are any federal, state, or

22 _____
 23 August 23, 2016, ECF No. 1402-2. The hearing on IPPs’ Class Certification Motion occurred on
 November 15, 2016.

24 ⁵ See Defendants’ Motion to Exclude the Proposed Expert Testimony of Dr. Edward E. Leamer
 (“Leamer *Daubert* Mot.”), originally filed May 24, 2016, ECF No. 1553; Defendants’ Motion to
 25 Exclude the Proposed Expert Testimony of Dr. Rosa M. Abrantes-Metz (“Abrantes-Metz *Daubert*
 Mot.”), originally filed May 24, 2016, ECF No. 1554; IPPs’ Opposition to the Leamer *Daubert*
 26 Mot., originally filed November 1, 2016, ECF No. 1604-6; and IPPs’ Opposition to the Abrantes-
 Metz *Daubert* Mot., originally filed November 1, 2016, ECF No. 1604-9.

27 ⁶ Williams Decl., ¶ 2; Friedman Decl., ¶¶ 2-3. All of the class representatives also have
 28 approved of the IPPs’ Settlement with LG Chem, Ltd. and LG Chem America, Inc. (“LG Chem”).
 Friedman Decl., ¶ 3.

1 local governmental entities, any judicial officers presiding over this
 2 action, members of their immediate families and judicial staffs, and
 3 any juror assigned to this action, but included are all non-federal and
 non-state governmental entities in California.⁷

4 Thus, “Class Member” means a person, entity, or California local government entity that falls
 5 within the class definition and does not elect to be excluded from the settlement.⁸

6 **B. The Settlement Consideration**

7 These are the third and fourth proposed settlements in the IPP case. The first was the
 8 proposed settlement with the Sony defendants for \$19.5 million. The Court heard argument on
 9 IPPs’ motion for final approval on November 8, 2016, and the motion remains pending. The
 10 second is a proposed settlement with the LG Chem defendants in the amount of \$39 million. The
 11 third proposed \$3.45 million settlement with Hitachi Maxell represents approximately 108 percent
 12 of the IPPs’ estimated damages attributable to Hitachi Maxell’s sales, and the fourth proposed \$2.5
 13 million settlement with NEC represents approximately 258.5 percent of the IPPs’ estimated
 14 damages attributable to NEC’s sales.⁹ The settlements also provide that Hitachi Maxell and NEC
 15 will cooperate with IPPs in the prosecution of this action against the remaining defendants.¹⁰

16 **C. Release of Claims**

17 If the settlements become final, plaintiffs and class members will release claims against
 18 Hitachi Maxell and NEC relating to the conduct alleged in IPPs’ complaint, including “claim[s] of
 19 restraint of competition relating to Lithium Ion Batteries . . . whether under federal, state, local, or
 20 foreign law” that are or could be asserted against Hitachi Maxell or NEC.¹¹ The release does not
 21 preclude plaintiffs from pursuing their claims against the other defendants.¹² The settlements
 22 release claims relating to alleged conduct pertaining to any indirect purchase or sale of cylindrical,
 23 prismatic, or polymer battery cells or packs. That includes cylindrical, prismatic, or polymer

24 ⁷ Williams Decl., Ex. A, ¶ 1(d); Friedman Decl., Ex. A, ¶ 1(d).

25 ⁸ Williams Decl., Ex. A, ¶ 1(f); Friedman Decl., Ex. A, ¶ 1(f).

26 ⁹ Williams Decl., ¶ 4; Friedman Decl., ¶ 4.

27 ¹⁰ Williams Decl., Ex. A, ¶¶ 28-30; Friedman Decl., Ex. A, ¶¶ 28-30.

28 ¹¹ Williams Decl., Ex. A, ¶¶ 1.(z), 1.(aa), 7, 11; Friedman Decl., Ex. A, ¶¶ 1.(z), 1.(aa), 7, 11.

¹² *Id.*

1 battery cells or packs contained in finished products, such as laptop PCs, notebook PCs, netbook
2 computers, tablet computers, mobile phones, smart phones, cameras, camcorders, digital video
3 cameras, digital audio players, and power tools.¹³

4 **D. Notice and Implementation of the Settlements**

5 As part of the LG Chem motion for preliminary approval, IPPs submitted proposed notices
6 and a plan for the dissemination of notice. Previously, IPPs obtained approximately 15.8 million
7 email addresses for potential class members.¹⁴ The direct notice campaign will be supplemented
8 with an online campaign and publication notice. Gilardi estimates that over 70 percent and closer to
9 80 percent of class members will receive notice.¹⁵ While the Hitachi Maxell and NEC settlements
10 provide that up to \$250,000 and \$750,000, respectively, may be used for notice and administration
11 costs, subject to Court approval, there will be no increased costs for the proposed combined Hitachi
12 Maxell/NEC/LG Chem notice program beyond those set forth in the motion for preliminary
13 approval of the LG Chem settlement. The cost of the program will be paid *pro rata* from the three
14 settlements in proportions reflecting the total amount of each settlement. Updated proposed forms
15 of notice that include information about all three settlements are submitted with this motion as
16 Exhibits 1 and 2 to the Supplemental Declaration of Alan Vasquez Regarding Implementation of
17 Class Notice Plan (“Vasquez Suppl. Decl.”), concurrently filed herewith.

18 **E. Plan of Distribution**

19 IPPs propose to distribute the funds from the settlements *pro rata* to class members based
20 on: (1) the number of approved purchases per class member of products containing cylindrical
21 LIBs during the settlement class period; and (2) the number of valid claims filed.¹⁶ There will be no
22 reversion of unclaimed funds to Hitachi Maxell or NEC. To the extent that there is any balance
23
24

25 ¹³ Williams Decl., Ex. A, ¶ 1.(z); Friedman Decl., Ex. A, ¶ 1.(z).

26 ¹⁴ Declaration of Eric Schacter re Dissemination of Notice of Sony Settlement and Requests for
Exclusion, Sept. 29, 2016, ECF No. 1492-1.

27 ¹⁵ See Vasquez Decl., ¶ 32.

28 ¹⁶ Williams Decl., ¶ 5; Friedman Decl., ¶ 5.

1 remaining in the Net Settlement Fund and money is not able to be reasonably redistributed to class
2 members, IPPs propose that remaining funds will escheat to state governments.¹⁷

3 **F. Class Action Fairness Act (“CAFA”)**

4 The Settlement Agreements provides that Hitachi Maxell and NEC will provide the notices
5 required by CAFA.¹⁸

6 **IV. ARGUMENT**

7 **A. The Court’s Role in Approving a Class Action Settlement**

8 Federal Rule of Civil Procedure 23(e) requires judicial approval of any compromise or
9 settlement of class action claims. Approval of a settlement is a multi-step process, beginning with
10 preliminary approval, which then allows notice to be given to the class and an opportunity for
11 objections and comments by class members as well as requests to be excluded from the class, after
12 which there is a motion for final approval and a fairness hearing.¹⁹ Preliminary approval is thus not
13 a dispositive assessment of the fairness of the proposed settlement, but rather determines whether it
14 falls within the “range of possible approval.”²⁰ Preliminary approval establishes an “initial
15 presumption” of fairness,²¹ such that notice may be given to the class and the class may have a
16 “full and fair opportunity to consider the proposed [settlement] and develop a response.”²²

17 Preliminary approval of a settlement and notice to the proposed class is appropriate if the
18 proposed settlement: (1) appears to be the product of serious, informed, non-collusive negotiations;
19 (2) has no obvious deficiencies; (3) does not improperly grant preferential treatment to class
20 representatives or segments of the class; and (4) falls with the range of possible approval.²³ The

21 ¹⁷ Williams Decl., Ex. A, ¶ 22, Friedman Decl., Ex. A, ¶ 22.

22 ¹⁸ Williams Decl., Ex. A, ¶ 4; Friedman Decl., Ex. A, ¶ 4.

23 ¹⁹ See Manual for Complex Litigation (Fourth) § 21.632, 320-21 (2004). All internal citations
24 and quotation marks omitted and all emphases added, unless otherwise indicated.

25 ²⁰ *Id.*; see also *Collins v. Cargill Meat Solutions Corp.*, 274 F.R.D. 294, 301-02 (E.D. Cal.
26 2011).

27 ²¹ *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007).

28 ²² *Williams v. Vukovich*, 720 F.2d 909, 921 (6th Cir. 1983).

²³ See *Zepeda v. Paypal, Inc.*, No. C 10-2500 SBA, 2015 U.S. Dist. LEXIS 150577, at *14
(N.D. Cal. Nov. 5, 2015); *Fraley v. Facebook, Inc.*, No. C 11-1726 RS, 2012 U.S. Dist. LEXIS
116526, at *4 n.1 (N.D. Cal. Aug. 17, 2012) (same); *Tableware*, 484 F. Supp. 2d at 1079 (same).

1 “initial decision to approve or reject a settlement proposal is committed to the sound discretion of
2 the trial judge.”²⁴

3 **1. The Settlements Are the Result of Arm’s-Length Negotiations**

4 These settlements arise out of informed, arm’s-length negotiations between counsel for the
5 parties. The parties reached agreement after four years of litigation, discovery, and investigation,
6 and multiple meetings and communications of counsel and the parties concerning settlement terms.

7 The settlements themselves also bear no signs of collusion or conflict. In its opinion in *In re*
8 *Bluetooth*, the Ninth Circuit admonished that courts must, at the final approval stage, ensure that
9 the settlement, taken as a whole, is free of collusion or any indication that the pursuit of the
10 interests of the class counsel or the named plaintiffs “infected” the negotiations.²⁵ The Ninth
11 Circuit has pointed to three factors as potential of a disregard for the class’s interests during the
12 course of negotiation: (a) when class counsel receive a disproportionate distribution of the
13 settlement; (b) when the parties negotiate a “clear sailing” arrangement that provides for the
14 payment of attorneys’ fees separate and apart from class funds; or (c) when the parties arrange for
15 fees not awarded to plaintiffs’ counsel to revert to the defendants rather than the class.²⁶

16 Here, none of those signs are present. The proposed settlements are common fund, all-in
17 settlements with no possibility of reversion. The funds will be used to cover costs and fees and
18 compensate the class based on a *pro rata* formula. There are no “clear sailing” provisions, no
19 payments of fees separate and apart from the class funds, and no “kicker” provision like the one in
20 *In re Bluetooth*, which would allow unawarded consideration to revert to Hitachi Maxell or NEC.
21 The proposed class notices inform class members that class counsel will make a request for
22 attorneys’ fees up to 30 percent of the settlement fund.²⁷ In short, the settlements are entitled to a
23 presumption of fairness.

24 ²⁴ *Officers for Justice v. Civ. Serv. Comm’n of the City & Cnty. of San Francisco*, 688 F.2d 615,
25 625 (9th Cir. 1982).

26 ²⁵ *See In re Bluetooth Headset Prods. Liability Litig.*, 654 F.3d 935, 946-48 (9th Cir. 2011).

27 ²⁶ *Id.* at 947.

28 ²⁷ Vasquez Suppl. Decl., Ex. 1, ¶ 16, Ex. 2.

1 **2. The Settlements Have No Obvious Deficiencies When Considered in Relation to**
 2 **the IPPs' Case**

3 The proposed settlements easily clear the hurdles for preliminary approval. This Court is
 4 aware of the risk of no recovery faced by the class. IPPs' motion for class certification is pending
 5 with the Court, and if it is denied, the class may receive nothing. The settlements represent an
 6 outstanding recovery for the class – ensuring \$5.95 million cash in recovery, while preserving
 7 IPPs' claims against large non-settling defendants, such as Samsung and Sanyo. The settlements
 8 preserve the rights of IPPs to pursue their claims against the other non-settling defendants for the
 9 entire amount of IPPs' damages based on joint and several liability to the extent permitted under
 10 the law. They also provide that Hitachi Maxell and NEC will cooperate with IPPs in the
 11 prosecution of this action against the remaining defendants.

12 At class certification, IPPs' damages expert estimated that, nationwide, indirect purchaser
 13 damages totaled \$967,034,890 for the period of January 2000 through May 31, 2011.²⁸ Considering
 14 the market shares of Hitachi Maxell, NEC, LG Chem, and Sony, the defendants with whom there
 15 are proposed settlements thus far, the percent of recovery is as follows:

Defendant Family	Damages Attributed to Defendant Family By IPPs	Percent Share of Total Damages	Contribution to Settlement Fund	Percent Recovery for IPPs (of Damages Attributed to Defendant Family by IPPs)
Hitachi Maxell	\$3,187,687	0.3%	\$3,450,000	108.2%
NEC	\$967,035	0.1%	\$2,500,000	258.5%
LG Chem	\$123,312,217	12.8%	\$39,000,000	31.6%
Sony	\$239,725,760	24.8%	\$19,500,000	8.1% ²⁹
TOTAL	\$367,192,699	38%	\$64,450,000	17.55%

24
 25 ²⁸ See [Corrected] Expert Report of Edward E. Leamer (“Leamer Report”) at 78, originally filed January 22, 2016, ECF No. 1599-4.

26 ²⁹ The Sony settlement included all types of lithium-ion batteries (prismatic, polymer and
 27 cylindrical), making the percent recovery somewhat different than the model proposed by IPPs in
 28 support of the motion for class certification. To make a meaningful comparison across settlements,
 however, IPPs provide the estimated recovery for the Sony settlement against the current damage
 model.

1 These four settlements would result in recovery of \$64.45 million of the total estimated
2 \$967 million damages – an estimated 6.7 percent of the damages suffered by the IPP class in total,
3 with non-settling defendants representing 62 percent of the market remaining in this litigation.

4 Compared more generally against other similar litigation, in *In re TFT-LCD (Flat Panel)*
5 *Antitrust Litig.*, after settlements with all defendants, the indirect purchasers recovered
6 approximately 50 percent of potential damages, and virtually all of these settlements were reached
7 *after* class certification was granted.³⁰ In *In re Cathode Ray Tube (CRT) Antitrust Litig.*, the
8 indirect purchasers recovered 20 percent of potential single damages after settlements with all
9 defendants.³¹ However, in addition to the fact that these reflect total recoveries at the end of the
10 case, indirect purchaser claims in those cases faced fewer challenges. In both *CRT* and *LCD*,
11 defendants pled guilty to market-wide conspiracies spanning years and involving many routine and
12 documented group meetings of competitors. In both cases, the component at issue also generally
13 formed a much larger percentage of the finished products purchased by the class. In *In re Static*
14 *Random Access Memory (SRAM) Antitrust Litig.*, there were no guilty pleas, and the total
15 settlements for indirect purchaser claims represented approximately 15 percent of the estimated
16 damages.³² None of these cases or settlements is apples-to-apples with this one, but together they

17
18 ³⁰ *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827, 2013 U.S. Dist. LEXIS 49885,
19 at *70 (N.D. Cal. Apr. 1, 2013). One *LCD* settlement, with Chunghwa, was agreed as to the
20 majority of terms in 2008 (before class certification), but then modified and finalized in 2011. *See*
21 *also In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 538 (3d Cir. 2004) (approving \$44.5
22 million settlement, recovery of **33%** of single damages); *In re Currency Conversion Fee Antitrust*
23 *Litig.*, 263 F.R.D. 110, 124 (S.D.N.Y. 2009), (approving \$336 million settlement, recovery of **31%**
24 of single damages), *aff'd*, *Priceline.com, Inc. v. Silberman*, 405 F. App'x 532 (2d Cir. 2010); *In re*
25 *Linerboard Antitrust Litig.*, 321 F. Supp. 2d 619, 633 (E.D. Pa. 2004) (approving \$202.5 million in
26 settlements, recovery of **55%** of single damages); *In re NASDAQ Market-Makers Antitrust Litig.*,
27 187 F.R.D. 465, 478 (S.D.N.Y. 1998) (approving settlements of \$1.027 billion, recovery of **33%-**
28 **41%** of single damages).

³¹ *In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. C-07-5944 (JST), 2016 U.S. Dist. LEXIS
88665, at *185 (N.D. Cal. July 7, 2016).

³² Order Granting Final Approval of Settlements, *In re Static Random Access Memory (SRAM)*
Antitrust Litig., No. M 07-1819 CW (N.D. Cal. Oct. 6, 2010), ECF No. 1141 (approving
settlements of \$25,422,000); Order Granting Final Approval of Samsung and Cypress Settlements
and Plan of Distribution, *In re Static Random Access Memory (SRAM) Antitrust Litig.*, No. M 07-
1819 CW (N. D. Cal., Oct. 14, 2011), ECF No. 1408 (approving settlements of \$15,900,000);
Declaration of Christopher T. Michelletti in Support of Motion for Indirect Purchaser Plaintiffs'
Counsel's Attorney's Fees, Reimbursement of Expenses and for Class Representative Incentive
Payments, ¶ 67, *In re Static Random Access Memory (SRAM) Antitrust Litig.*, No. M 07-1819 CW,

1 show that recoveries in this case are on track to be of the appropriate order of magnitude given the
2 risks involved.

3 Here, the decisions to settle are also based on a thorough understanding of the strengths and
4 weaknesses of IPPs' case. IPPs have propounded and responded to multiple sets of discovery,
5 conducted numerous (lengthy) meet and confers, and engaged in multiple rounds of motion
6 practice in front of Magistrate Judge Ryu on various discovery issues.³³ Defendants produced more
7 than eight million pages of documents from 273 document custodians and centralized files, and
8 produced voluminous electronic transactional data.³⁴ Plaintiffs have taken 25 depositions of
9 defendants' witnesses to date (both individual percipient witness depositions, as well as corporate
10 depositions pursuant to Federal Rule of Civil Procedure 30(b)(6)).³⁵ Every class representative
11 identified in the Fourth Amended Class Action Complaint has been deposed.³⁶ Interim Co-Lead
12 Counsel and supporting counsel prepared the class representatives for, and defended them in, these
13 depositions.³⁷

14 The parties have fully briefed IPPs' motion for class certification, which included IPPs'
15 submission of the expert reports of Dr. Edward Leamer and Dr. Rosa Abrantes-Metz.³⁸ Defendants
16 submitted opposition expert reports, filed two *Daubert* motions, and deposed IPPs' experts for a
17 total of sixteen and a half hours.³⁹ IPPs' expert performed extensive analysis of defendants'

18
19
20 (N. D. Cal. July 27, 2011), ECF No. 1375-1(Micheletti fee declaration citing damages of
\$276,000,000).

21 ³³ See, e.g., Order on Joint Discovery Letter (ECF No. 805); Order on Plaintiffs' Motion to
Continue Deposition of Hiroshi Kubo (ECF No. 822); Order re Plaintiffs' Motion to Compel
22 Deposition of Seok Hwan Kwak (ECF No. 836); Order re Plaintiffs' Motion to Compel Deposition
of Jae Jeong Joe (ECF No. 1143); and Order Granting Plaintiffs' Motion to Compel Deposition of
23 Jae Jeong Joe (ECF No. 1177).

24 ³⁴ Williams Decl., ¶¶ 7, 9.

25 ³⁵ *Id.*

26 ³⁶ *Id.*

27 ³⁷ *Id.*

28 ³⁸ Class Cert. Mot. (ECF No. 1599-2), Leamer Report (ECF No. 1599-4) and Expert Report of
Rosa M. Abrantes-Metz, Ph.D. (ECF No. 1599-6).

³⁹ Expert Report of Margaret Guerin-Calvert, originally filed May 24, 2016, ECF No. 1551-17;
Declaration of Daniel J. Moe in Opposition to Indirect Purchaser Plaintiffs' Motion for Class

1 transactional data and proposed a multi-variate regression model, in addition to using a regression
 2 model to measure pass-through on data from 71 non-parties, and from each defendant.⁴⁰ Weighing
 3 the developed stage of the litigation against the risk that IPPs face in this litigation, there are no
 4 obvious deficiencies regarding the settlements.

5 **3. The Settlements Do Not Provide Preferential Treatment for Segments of the**
 6 **Class or the Class Representatives**

7 The third factor to be considered by this Court in determining whether the settlements
 8 should be preliminarily approved is whether the settlements grant preferential treatment to class
 9 representatives or segments of the class.⁴¹

10 **a. All Class Members Will Recover Their *Pro Rata* Share of the**
 11 **Settlements**

12 A plan of distribution of class settlement funds is subject to the “fair, reasonable and
 13 adequate” standard that applies to approval of class settlements.⁴² A plan of distribution that
 14 compensates class members based on the type and extent of their injuries (including on a *pro-rata*
 15 basis) is generally considered reasonable.⁴³

16 IPPs propose to distribute the funds *pro rata* to class members based on: (1) the number of
 17 approved purchases per class member of products containing cylindrical LIBs during the settlement
 18 class period; and (2) the number of valid claims filed.⁴⁴ There will be no reversion of unclaimed
 19 funds to Hitachi Maxell or NEC.

20 Certification, originally filed May 24, 2016, ECF No. 1551-18; Leamer *Daubert* Mot. (ECF No.
 21 1553), Abrantes-Metz *Daubert* Mot. (ECF No. 1554).

22 ⁴⁰ Williams Decl., ¶ 8.

23 ⁴¹ *Zepeda*, 2015 U.S. Dist. LEXIS 150577, at *14.

24 ⁴² *In re Citric Acid Antitrust Litig.*, 145 F. Supp. 2d 1152, 1154 (N.D. Cal. 2001).

25 ⁴³ *Gaudin v. Saxon Mortg. Servs., Inc.*, No. 11-cv-01663-JST, 2015 U.S. Dist. LEXIS 159020,
 26 at *23 (N.D. Cal. Nov. 23, 2015) (“Such a plan ‘fairly treats class members by awarding a pro rata
 27 share’ to the class members based on the extent of their injuries.”); *Noll v. eBay, Inc.*, No. 5:11-cv-
 04585-EJD, 2015 U.S. Dist. LEXIS 123147, at *10, *50 (N.D. Cal. Sept. 15, 2015) (approving
pro-rata distribution as fair and reasonable); *In re High-Tech Emp. Antitrust Litig.*, No. 11-CV-
 02509-LHK, 2015 U.S. Dist. LEXIS 118051, at *29-*30 (N.D. Cal. Sept. 2, 2015) (approving *pro-*
rata distribution of fractional share based upon class member’s total base salary as fair and
 reasonable).

28 ⁴⁴ Williams Decl., ¶ 5; Friedman Decl., ¶ 5.

1 The proposed claim form requests class members to identify the total number of products
 2 containing LIBs purchased between January 1, 2000 through May 31, 2011.⁴⁵ Although a class
 3 member will not be required to submit proof of purchase, the claim form informs class members to
 4 retain all purchase documentation until the claim is closed. For large claims, proof of purchase may
 5 be required.⁴⁶

6 **b. Service Awards for Class Representatives Reflect the Work They Have**
 7 **Undertaken on Behalf of the Class**

8 As part of its motions for final approval of the three settlements, IPPs will request service
 9 awards in the total amount of \$1,500 for each class representative.⁴⁷ As the Ninth Circuit has
 10 recognized, service awards “that are intended to compensate class representatives for work
 11 undertaken on behalf of a class ‘are fairly typical in class action cases.’”⁴⁸ Although IPPs will
 12 request the award of these fees alongside final approval of the settlement, IPPs will defer the
 13 payment of these awards until the distribution of funds to other class members takes place.

14 The representatives of the IPP class have been actively involved in the litigation of this
 15 case. Each representative has responded to over 22 interrogatories and 28 document requests.⁴⁹
 16 Defendants also have deposed each representative at length.⁵⁰ In the face of this extraordinary
 17 service and perseverance, awards of \$1,500 for each class representative are reasonable.

18 **4. The Settlements Fall Within the Range of Possible Approval**

19 To grant preliminary approval, this Court must decide that the settlement falls within the
 20 range of possible approval.⁵¹ The amounts of the recovery for the class – \$3.45 million for the
 21 Hitachi Maxell settlement, and \$2.5 million for the NEC settlement – certainly fall within a
 22 reasonable range given that the class faces the possibility of no recovery if class certification is

23 ⁴⁵ Vasquez Suppl. Decl., Ex. 3.

24 ⁴⁶ *Id.*

25 ⁴⁷ Williams Decl., ¶ 10.

26 ⁴⁸ *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015).

27 ⁴⁹ Williams Decl., ¶ 9.

28 ⁵⁰ *Id.*

⁵¹ *See Zepeda*, 2015 U.S. Dist. LEXIS 150577, at *14; *Fraley*, 2012 U.S. Dist. LEXIS 116526, at *4 n.1; *Tableware*, 484 F. Supp. 2d at 1079.

1 denied. Moreover, recovery of more than 100% of IPPs’ estimated damages attributable to Hitachi
2 Maxell, as well as more than 258% of IPPs’ estimated damages attributable to NEC, represent
3 outstanding recoveries by any measurement.

4 **B. The Proposed Settlement Class Satisfies Rule 23**

5 Certification is appropriate where the proposed class and the proposed class representatives
6 meet the four prerequisites of Rule 23(a) – numerosity, commonality, typicality, and adequacy of
7 representation. In addition, certification of a class action for damages requires a showing that
8 “questions of law or fact common to class members predominate over any questions affecting only
9 individual members, and that a class action is superior to other available methods for fairly and
10 efficiently adjudicating the controversy.”⁵²

11 IPPs’ motion for class certification demonstrates that the proposed class – which is the
12 same in the Hitachi Maxell and NEC settlements – satisfies all of the elements needed for class
13 certification. IPPs review this evidence briefly.

14 **1. Rule 23(a): Numerosity**

15 The first requirement for maintaining a class action is that its members are so numerous that
16 joinder would be “impracticable.”⁵³ No minimum number has been established, but courts
17 generally find numerosity where class membership exceeds forty.⁵⁴ Geographic dispersal of
18 plaintiffs also supports a finding that joinder is impracticable.⁵⁵ In this case, the class of end-users
19 of LIBs in many different states is vast and geographically dispersed, and certainly satisfies the
20 numerosity requirement, as do the many local government entities that comprise the California
21 local government portion of the class.

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23
24
25 ⁵² Fed. R. Civ. P. 23(b)(3).

26 ⁵³ Fed. R. Civ. P. 23(a)(1).

27 ⁵⁴ Alba Conte & Herbert B. Newberg, 4 Newberg on Class Actions § 18:4 (4th ed. 2002).

28 ⁵⁵ *In re Rubber Chems. Antitrust Litig.*, 232 F.R.D. 346, 350-51 (N.D. Cal. 2005); *In re TFT-LCD (Flat Panel) Antitrust Litig. (“TFT-LCD IP”)*, 267 F.R.D. 291, 300 (N.D. Cal. 2010).

1 **2. Rule 23(a): The Case Involves Questions of Law or Fact Common to the Class**

2 The second requirement of Rule 23 is the existence of common questions of law or fact.⁵⁶
3 This requirement is to be “construed permissively,”⁵⁷ and a single issue has been held sufficient to
4 satisfy the commonality requirement.⁵⁸ Here, issues of law and fact are common to the class.

5 Numerous questions of law and fact common to the class are at the heart of this case. These
6 common questions of law and fact include the overriding issue of whether defendants engaged in a
7 price-fixing agreement that injured the class. Common questions of law and fact include:

- 8 (1) Whether defendants and their co-conspirators conspired to raise, fix, stabilize or
9 maintain the prices of LIBs sold in the United States;
10 (2) Whether the alleged conspiracy violated Section 1 of the Sherman Act and the
11 unfair competition and consumer protection laws of California;
12 (3) The duration and extent of the conspiracy;
13 (4) Whether defendants’ conduct caused prices of LIBs to be set at artificially high and
14 non-competitive levels; and
15 (5) Whether defendants’ conduct injured plaintiffs and other members of the class and,
16 if so, the appropriate class-wide measure of damages.

17 Similar common questions have been routinely found to satisfy the commonality
18 requirement in other antitrust class actions.⁵⁹

19 **3. Rule 23(a): Plaintiffs’ Claims Are Typical of the Claims of the Class**

20 The “claims . . . of the representative parties [must be] typical of the claims . . . of the
21 class.”⁶⁰ “Under the rule’s permissive standards, representative claims are ‘typical’ if they are
22 reasonably co-extensive with those of absent class members; they need not be substantially
23

24 ⁵⁶ Fed. R. Civ. P. 23(a)(2).

25 ⁵⁷ *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998).

26 ⁵⁸ *Slaven v. BP Am., Inc.*, 190 F.R.D. 649, 655 (C.D. Cal. 2000); *Haley v. Medtronic, Inc.*, 169
27 F.R.D. 643, 647 (C.D. Cal. 1996).

28 ⁵⁹ *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, No. M 02-1486 PJH, 2006
U.S. Dist. LEXIS, at *29 (N.D. Cal. June 5, 2006) (“the very nature of a conspiracy antitrust action
compels a finding that common questions of law and fact exist”); *accord Rubber Chems.*, 232
F.R.D. at 351; *TFT-LCD II*, 267 F.R.D. at 300.

⁶⁰ Fed. R. Civ. P. 23(a)(3).

1 identical.”⁶¹ Typicality is easily satisfied in cases involving allegations of horizontal price-fixing
 2 because “in instances wherein it is alleged that the defendants engaged in a common scheme
 3 relative to all members of the class, there is a strong assumption that the claims of the
 4 representative parties will be typical of the absent class members.”⁶² In this case, the claims of the
 5 representative plaintiffs are typical of the claims of the class members because they all indirectly
 6 purchased – at inflated prices – LIBs or products containing LIBs manufactured by the defendants.

7 **4. Rule 23(a): Plaintiffs Will Fairly and Adequately Represent the Interests of the**
 8 **Class**

9 The final requirement of Rule 23(a) is that the representative plaintiffs will fairly and
 10 adequately represent the interests of the class. This consists of two separate inquiries. First, this
 11 requires that class representatives do not have interests antagonistic to or in conflict with the
 12 interests of the class. Second, plaintiffs must be represented by counsel of sufficient diligence and
 13 competence to fully litigate the case.⁶³

14 Here, the class representatives have been actively involved in the litigation of this case.
 15 Each class representative has reviewed the terms of the settlements with Hitachi Maxell and NEC
 16 and has given his or her approval.⁶⁴ The interests of all plaintiffs and class members are aligned
 17 because they all suffered similar injury in the form of higher LIB prices and the prices of products
 18 containing LIBs due to the conspiracy, and all class members seek the same relief. By proving their
 19 own claims, plaintiffs will necessarily be proving the claims of their fellow class members.

20 Plaintiffs also have retained highly capable and well-recognized counsel with extensive
 21 experience in antitrust cases. Plaintiffs’ interim co-lead counsel, Cotchett, Pitre & McCarthy, LLP,
 22 Hagens Berman Sobol & Shapiro, LLP, and Lief, Cabraser, Heimann & Bernstein, LLP were
 23 appointed by the Court as IPPs’ Interim Class Counsel on May 17, 2013. They have undertaken the
 24 responsibilities assigned to them by the Court and have directed the efforts of other plaintiffs’

25 ⁶¹ *Hanlon*, 150 F.3d at 1020.

26 ⁶² *In re Catfish Antitrust Litig.*, 826 F. Supp. 1019, 1035 (N.D. Miss. 1993); *In re Citric Acid*
Antitrust Litig., No. 95-1092, 1996 WL 655791, at *3 (N.D. Cal. Oct. 2, 1996).

27 ⁶³ *Hanlon*, 150 F.3d at 1020; *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th
 28 Cir. 1978).

⁶⁴ Williams Decl., ¶¶ 2, 9; Friedman Decl., ¶ 3.

1 counsel in vigorously prosecuting this action. Interim Class Counsel have each successfully
 2 prosecuted numerous antitrust class actions on behalf of injured purchasers throughout the United
 3 States. Interim Class Counsel are capable of, and committed to, prosecuting this action vigorously
 4 on behalf of the class. Plaintiffs' counsel's prosecution of this case, and, indeed, the settlements,
 5 demonstrates their diligence and competence. The named plaintiffs satisfy the requirements of Rule
 6 23(a)(4).

7 **5. Rule 23(b)(3): Common Questions of Fact or Law Predominate**

8 Predominance, under Rule 23(b)(3), "is a test readily met in certain cases alleging
 9 consumer or securities fraud or violations of the antitrust laws."⁶⁵ The weight of authority holds
 10 that in horizontal price-fixing cases like this one, the predominance requirement is readily met. The
 11 existence of a conspiracy is the overriding issue common to all plaintiffs, sufficient to satisfy the
 12 Rule 23(b)(3) predominance requirement.⁶⁶ The second element of plaintiffs' claims, proof of
 13 impact, similarly predominates in this case. "Courts have long held that a plaintiff can demonstrate
 14 antitrust impact by showing that the conspiracy caused an increase to the standard market price of
 15 the product at issue,"⁶⁷ which plaintiffs have done.⁶⁸

16 In this case, common issues relating to the existence of the alleged LIB conspiracy and
 17 defendants' acts in furtherance of the alleged conspiracy predominate over any questions arguably
 18 affecting only individual class members because they are the central issue in the case and proof is
 19 identical for every member of the class. If separate actions were to be filed by each class member
 20 in the instant case, each would have to establish the existence of the same alleged conspiracy and

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 22 ⁶⁵ *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997).

23 ⁶⁶ *See, e.g., Rubber Chems.*, 232 F.R.D. at 352 ("[T]he great weight of authority suggests that
 the dominant issues in cases like this are whether the charged conspiracy existed and whether
 price-fixing occurred.").

24 ⁶⁷ *See Kleen Prods. LLC v. Int'l Paper*, 306 F.R.D. 585, 595 (N.D. Ill. 2015); *see also In re*
 25 *Urethane Antitrust Litig.*, 768 F.3d 1245, 1254 (10th Cir. 2014) ("The inference of class-wide
 26 impact is especially strong where, as here, there is evidence that the conspiracy artificially inflated
 the baseline for price negotiations."); *In re Indus. Diamonds Antitrust Litig.*, 167 F.R.D. 374, 383
 27 (S.D.N.Y. 1996) ("[I]f a plaintiff proves that the alleged conspiracy resulted in artificially inflated
 list prices, a jury could reasonably conclude that each purchaser who negotiated an individual price
 suffered some injury.").

28 ⁶⁸ *See Leamer Report* at 32-59, 62-77.

1 would depend on identical evidence, and each would prove damages using identical “textbook”
 2 economic models. The evidence needed to prove how defendants implemented and enforced their
 3 alleged conspiracy to set the prices of LIBs at supra-competitive levels will be common for all
 4 class members. These issues pose predominant common questions of law and fact.

5 Moreover, the Court need not concern itself with questions of the manageability of a trial
 6 because the settlement disposes of the need for a trial as to Hitachi Maxell and NEC, along with
 7 any “thorny issues” that might arise. The Supreme Court has explained the “predominance” inquiry
 8 is relaxed in the settlement context. “Confronted with a request for settlement-only class
 9 certification, a district court need not inquire whether the case, if tried, would present intractable
 10 management problems . . . for the proposal is that there be no trial.”⁶⁹ As Judge Posner has
 11 explained, manageability concerns that might preclude certification of a litigated class may be
 12 disregarded with a settlement class “because the settlement might eliminate all the thorny issues
 13 that the court would have to resolve if the parties fought out the case.”⁷⁰ Issues common to the
 14 class predominate in this case.

15 **C. The Court Should Reaffirm the Appointment of Class Counsel**

16 Federal Rule of Civil Procedure 23(c)(1)(B) states that “[a]n order certifying a class action .
 17 . . must appoint class counsel under Rule 23(g).” Rule 23(g)(1)(C) states that “[i]n appointing class
 18 counsel, the court (A) must consider: [i] the work counsel has done in identifying or investigating
 19 potential claims in the action, [ii] counsel’s experience in handling class actions, other complex
 20 litigation, and claims of the type asserted in the action, [iii] counsel’s knowledge of the applicable
 21 law, and [iv] the resources counsel will commit to representing the class.”

22 This Court considered the submissions and arguments of all parties before appointing
 23 Cotchett, Pitre & McCarthy, LLP, Hagens Berman Sobol & Shapiro, LLP, and Lieff Cabraser
 24 Heimann & Bernstein, LLP as interim co-lead counsel for the indirect purchaser class. Since that

25 ⁶⁹ *Amchem*, 521 U.S. at 620 (discussing manageability, which is a sub-part of Rule 23(b)(3)
 26 predominance); *see also In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 68 (D. Mass. 2005)
 (discussing settlement exception to rigorous analysis of predominance).

27 ⁷⁰ *Carnegie v. Household Int’l, Inc.*, 376 F.3d 656, 660 (7th Cir. 2004); *see also In re Initial*
 28 *Public Offering Secs. Litig.*, 226 F.R.D. 186, 190, 195 (S.D.N.Y. 2005) (settlement class may be
 broader than litigated class because settlement resolves manageability/predominance concerns).

1 time, interim co-lead counsel has capably managed this complex antitrust class action, and the
 2 settlements with Hitachi Maxell and NEC are products of that representation that will provide real
 3 and meaningful benefits to the class. The work they have done to date supports the conclusion that
 4 they should be appointed as Class Counsel for purposes of the settlement.⁷¹ The firms meet the
 5 criteria of Rule 23(g)(1).⁷²

6 **D. The Proposed Class Notice and Plan for Dissemination Meet the Strictures of Rule 23**

7 Rule 23(e)(1) requires that a court approving a class action settlement must “direct notice in
 8 a reasonable manner to all class members who would be bound by the proposal.” In addition, for a
 9 Rule 23(b)(3) class, the Rule requires the court to “direct to class members the best notice that is
 10 practicable under the circumstances, including individual notice to all members who can be
 11 identified through reasonable effort.”⁷³ A class action settlement notice “is satisfactory if it
 12 generally describes the terms of the settlement in sufficient detail to alert those with adverse
 13 viewpoints to investigate and to come forward and be heard.”⁷⁴

14 The proposed plan of notice is supported by Gilardi, an experienced notice and claims
 15 administrator who has worked cooperatively with counsel to develop the proposed plan of notice.
 16 Gilardi has previously submitted a declaration in support of the proposed notice plan attesting to its
 17 adequacy and constitutionality, and it has now submitted a supplemental declaration reaffirming
 18 this.⁷⁵ The proposed forms of notice provide the settlement class with all information required by
 19 Rule 23(c)(2)(B), in language that is plain and easy to understand. IPPs have followed, as closely
 20 as possible, the language for settlements recommended by this District’s Procedural Guidance for
 21
 22

23 _____
 24 ⁷¹ See, e.g., *Harrington v. City of Albuquerque*, 222 F.R.D. 505, 520 (D.N.M. 2004).

25 ⁷² Cf. *Farley v. Baird, Patrick & Co., Inc.*, No. 90 Civ. 2168 (MBM), 1992 WL 321632, at *5
 26 (S.D.N.Y. Oct. 29, 1992) (“Class counsel’s competency is presumed absent specific proof to the
 27 contrary by defendants.).

28 ⁷³ Fed. R. Civ. P. 23(c)(2)(B).

⁷⁴ *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004); see also Fed. R. Civ. P.
 23(c)(2)(B) (describing specific information to be included in the notice).

⁷⁵ See generally Vasquez Decl.; Vasquez Suppl. Decl.

1 Class Action Settlements.⁷⁶ With this motion, IPPs provide proposed forms for publication notice,
2 email notice, and online banner notices.⁷⁷

3 The proposed plan of notice includes several components. The direct notice component will
4 include email notice to approximately 15.8 million potential class members for whom IPPs have
5 collected direct contact information.⁷⁸ To supplement this direct notice campaign, Gilardi will also
6 undertake a publication notice program consisting of print publication, online publication (through
7 banner advertising, Facebook advertising), and a press release.⁷⁹ In addition, IPPs have established
8 a website, www.batteriesconsumerlitigation.com, where class members will be able to find
9 additional, detailed information, including “Frequently Asked Questions,” important case
10 documents, and contact information for both class counsel and the notice and claims administrator.
11 A toll-free telephone number will also be established to answer questions from class members.⁸⁰
12 Gilardi estimates that this notice campaign will reach in excess of 70 percent of class members and
13 likely will reach close to 80 percent.⁸¹ IPPs have worked with Gilardi to draft a simple claims form
14 for class members, which will be available in electronic and hard copy form.⁸² Class members will
15 be able to make claims starting immediately for their purchases of LIBs. These notice provisions
16 meet the requirements of Rule 23 and will allow the class a full and fair opportunity to review and
17 respond to the proposed settlement.

18 **E. IPPs Propose Having the Sony Settlement Claims Period Occur Simultaneously With**
19 **the Claims Period for the LG Chem, Hitachi Maxell, and NEC Settlements**

20 IPPs propose having the claims period for the earlier Sony settlement, for which final
21 approval is pending, occur at the same time as the claims period for the LG Chem, Hitachi Maxell,
22 and NEC settlements, and to use the same claim form, which will be available in electronic and

23 ⁷⁶ See <http://www.cand.uscourts.gov/ClassActionSettlementGuidance> (last visited January 24,
2016).

24 ⁷⁷ Vasquez Suppl. Decl., ¶¶ 7-11, Exs. 1-6; see also Vasquez Decl., ¶¶ 11-29.

25 ⁷⁸ Vasquez Decl., ¶ 31.

26 ⁷⁹ *Id.*

27 ⁸⁰ *Id.*

28 ⁸¹ *Id.*

⁸² Vasquez Suppl. Decl., Ex. 3.

1 hard-copy format.⁸³ This will enable the claims administrator to maximize the effectiveness of its
 2 advertising campaign for the settlements, drive all potential class members to the settlement
 3 website, and allow class members to fill out a single claim form for all of these settlements. The
 4 email and publication notices notify potential Sony class members about the claims period, and
 5 they and the online banner advertisements have been modified to take into account the differences
 6 between the products included in the Sony settlement versus the LG Chem, Hitachi Maxell, and
 7 NEC settlements.⁸⁴

8 **F. Proposed Schedule for Dissemination of Notice and Final Approval**

9 IPPs propose the following schedule for the dissemination of class notice and final
 10 approval:

11 Event	Proposed Deadline
12 Notice campaign to begin, including website, email, publication and internet notice	Tuesday, April 11, 2017
13 Claims period to begin	Tuesday, April 11, 2017
14 Last day for motion for attorneys' fees, costs, expenses, and service awards	Monday, May 29, 2017 (14 days before objection deadline)
15 Last day for objections and requests for exclusion from the class	Monday, June 12, 2017 (62 days from notice)
16 Last day for motion in support of final approval of settlements	Tuesday, June 27, 2017 (15 days after objection deadline)
17 Fairness Hearing	Tuesday, August 1, 2017 (35 days from motion for final approval), unless otherwise ordered by the Court.
18 Close of claims period	Wednesday, September 30, 2017

20 **V. CONCLUSION**

21 If the Court approves these settlements and the Sony and LG Chem settlements, IPPs will
 22 have provided \$64,450,000 for the IPP class. These settlements were reached only after intense
 23 negotiations that followed several years of hard-fought litigation.

24 Respectfully, IPPs request that this Court enter an order: (1) preliminarily approving the
 25 proposed class action settlements with Hitachi Maxell and NEC; (2) certifying the settlement
 26 classes; (3) appointing Cotchett, Pitre & McCarthy, LLP, Hagens Berman Sobol & Shapiro LLP,

27 ⁸³ Vasquez Suppl. Decl., Ex. 1, ¶ 9, Ex. 3.

28 ⁸⁴ See Vasquez Suppl. Decl., ¶¶ 9-11, Exs. 1-6.

1 and Lief Cabraser Heimann & Bernstein, LLP as Class Counsel; and (4) approving the manner
2 and form of notice and proposed plan of allocation to class members.

3 DATED: January 24, 2017

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