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Lead Counsel for Indirect Purchaser Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

IN RE LITHIUM ION BATTERIES ANTITRUST LITIGATION	**Case No. 4:13-md-02420 YGR**
This Document Relates to: **All Indirect Purchaser Actions**	**INDIRECT PURCHASER PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF SETTLEMENTS WITH HITACHI, LG CHEM AND NEC; MEMORANDUM IN SUPPORT THEREOF** Date: May 20, 2020 Time: 2:00pm Judge: Hon. Yvonne Gonzalez Rogers Court: Courtroom 1, 4th Floor

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT, on May 20, 2020 at 2:00pm, or as soon thereafter as the matter may be heard, in the Courtroom[1] of the Honorable Yvonne Gonzalez Rogers, United States District Judge for the Northern District of California, located in the Oakland Courthouse, Courtroom 1 – 4th Floor, 1301 Clay Street, Oakland, California, the Indirect Purchaser Plaintiffs ("IPPs") will and hereby do move for:

(1) Certification of the Proposed Settlement Class;

(2) Appointment of Cotchett, Pitre & McCarthy, LLP; Hagens Berman Sobol Shapiro LLP; and Lieff Cabraser Heimann & Bernstein, LLP ("Class Counsel") as Settlement Class Counsel;

(3) Appointment of the Named Plaintiffs Jason Ames, Caleb Batey, Christopher Bessette, Cindy Booze, Matt Bryant, Steve Bugge, William Cabral, Matthew Ence, Drew Fennelly, Sheri Harmon, Christopher Hunt, John Kopp, Linda Lincoln, Patrick McGuiness, Joseph O'Daniel, Tom Pham, Piya Robert Rojanasathit, Bradley Seldin, Donna Shawn, David Tolchin, Bradley Van Patten, the City of Palo Alto, and the City of Richmond (the "Class Representatives") as Class Representatives for the Settlement Class;

(4) Entry of an order granting final approval of proposed settlements with: Hitachi Maxell, Ltd. and Maxell Corporation of America (collectively, "Hitachi"), NEC Corporation ("NEC"), and LG Chem, Ltd. and LG Chem America (collectively, "LG Chem") (collectively, "the Settling Defendants"); and

(5) Entry of a dismissal with prejudice of IPPs' claims against the Settling Defendants.

(6) Entry of an order rejecting claim forms that were filed after the claims deadline, as well as any claim forms received in the future.

[1] In light of the Covid-19 pandemic and the Northern District of California's General Orders in response to the Coronavirus, Judge Gonzalez Rogers' scheduling notes state that law and motion matters will be heard through the Zoom platform. *See* Scheduling Notes, https://apps.cand.uscourts.gov/CEO/cfd.aspx?7145#Notes ("[A]ll law and motion hearings before Judge Gonzales Rogers in the month of May 2020 will be **held by Zoom platform** . . . .").

This motion is brought pursuant to Federal Rule of Civil Procedure ("Rule") 23 and the Northern District of California's Procedural Guidance for Class Action Settlements. The grounds for this motion are that the settlements with the Settling Defendants easily fall within the range of final approval, contain no obvious deficiencies, and are the result of serious, informed, and non-collusive negotiations. In addition, IPPs' class notice program satisfied Rule 23, complied with due process, and constituted "the best notice practicable under the circumstances . . . ." Rule 23(c)(2)(B). IPPs' plan provided direct email notice to potential Class Members whose contact information was available from records provided by non-party distributors produced during the course of discovery in this litigation. The direct mail notice plan was supplemented by a robust publication program and media plan. Taken together, the plan exceeded the requirements of Rule 23, satisfied due process, and fairly apprised putative Settlement Class Members of the existence of the settlements and their options under them. As of the date of this filing, there have been only twenty-one total requests for exclusion, and 4 objections despite millions of putative class members. This motion is based upon this Notice; the Memorandum of Points and Authorities in Support; the Declaration of Adam J. Zapala and the attached exhibits; the Declaration of IPPs' Notice Program Expert, Cameron Azari from Epiq and attached exhibits, and any further papers filed in support of this motion, as well as arguments of counsel and all records on file in this matter.

Dated: May 5, 2020

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STATEMENT OF ISSUES TO BE DECIDED

1. Whether this Court should certify a Settlement Class of indirect purchasers of lithium ion rechargeable batteries;

2. Whether this Court should appoint Cotchett, Pitre & McCarthy, LLP, Hagens Berman Sobol Shapiro LLP, and Lieff Cabraser Heimann & Bernstein, LLP as Settlement Class Counsel for the purposes of final approval of the Proposed Settlements;

3. Whether this Court should appoint the Named Plaintiffs as class representatives for the Settlement Class;

4. Whether this Court should grant final approval of the IPP settlements with Hitachi Maxell, Ltd. and Maxell Corporation of America (collectively, "Hitachi"), NEC Corporation ("NEC"), and LG Chem, Ltd. and LG Chem America (collectively, "LG Chem") ("the Settling Defendants"); and

5. Whether this Court should enter judgment of dismissal of IPPs' claims against the Settling Defendants.

6. Whether this Court should deny late-filed claims given the longstanding claims filing deadline.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Indirect Purchaser Plaintiffs ("IPPs") move for final approval of the Round 2 settlements[2] with the Defendants Hitachi Maxell, Ltd. and Maxell Corporation of America (collectively, "Hitachi"), NEC Corporation ("NEC"), and LG Chem, Ltd. and LG Chem America (collectively, "LG Chem") (collectively, the "Settling Defendants"). Under the settlements, IPPs have recovered $44.95 million, with each settlement being reached after many years of vigorous litigation and a full development of the parties' respective claims and defenses. The $44.95 million in recovery to the IPP class constitutes an excellent result, meriting final approval.[3] These are the same settlements the Court previously approved (ECF 1714), before the Ninth Circuit vacated and remanded the Court's order "to allow the district court to properly exercise its discretion' consistent with Rule 23's rigorous procedural requirements."[4] On remand, IPPs altered the previous plan of allocation and proposed an allocation plan that mirrors the one used for the Round 3 Settlements—allocating 90% of the settlement funds to purchasers from *Illinois Brick* repealer jurisdictions and 10% to purchasers from the other states.[5] Since IPPs and the Settling Defendants first made these agreements, the relevant case law in the Ninth Circuit—and the circumstances of this case—have evolved substantially. Accordingly, the proposed allocation plan accounts for these changed circumstances and implements a fair allocation plan—which incorporates the same analysis and recommendation that this Court approved in connection with the Round 3 Settlements.

IPPs' notice program has been robust, reaching a minimum of 70 percent of likely Class Members.[6] Direct email notice was sent to class members for whom addresses were available, and a state-of-the-art publication program ensured further notice.

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[2] *See* Declaration of Adam J. Zapala In Support of Indirect Purchaser Plaintiffs' Notice of Motion and Motion for Final Approval of Settlements with Defendants ("Zapala Decl."), Exs. 1-4.

[3] *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 944 (9th Cir. 2015).

[4] *See Indirect Purchaser Plaintiffs v. Bednarz*, No. 17-17367, 777 F. App'x 221 (9th Cir. Sept. 16, 2019).

[5] ECF 2566.

[6] *See* Declaration of Cameron Azari in Support of IPPs' Motion for Final Approval of Settlements with Round 2 Defendants ("Azari Decl."), ¶ 17.

The reaction of the class has been almost uniformly positive. Of millions of putative Class Members, only four objections were filed: two to Class Counsel's attorneys' fees request, which largely raise the same arguments this Court already rejected in connection with the Court's prior attorneys' fee order, and two to the Settlements themselves. Only twenty-one putative Class Members requested exclusion from the Class. The extremely low number of objections and opt-outs demonstrate the strength of the settlements and further weigh in favor of final approval. IPPs successfully navigated many factual and legal challenges in prosecuting this case, at considerable risk, and there is still much costly work to be done should these settlements not be approved. All relevant factors support finding the settlements fair, adequate, and reasonable, and as such, IPPs respectfully request that this Court grant final approval of their settlements.

Additionally, given the presence of objections and the widespread impacts of COVID-19, IPPs respectfully request a final fairness hearing via Zoom, teleconference or any other means deemed appropriate by the Court.[7]

II. BACKGROUND

A. Procedural History Regarding the Litigation

This Court is familiar with the facts of this case.[8] As this Court is aware, during the course of this case, Class Counsel and counsel for the Settling Defendants engaged in substantial discovery and extensive arm's length negotiations before reaching the Round 2 Settlements.[9]

B. Procedural History Regarding the Round 2 Settlements

IPPs reached settlements with the Settling Defendants in late 2016. Together, the Round 2 Settlements comprised the second of three rounds of settlements in this litigation and provided $44.95 million in compensation for a nationwide class of indirect purchasers. At the time the parties reached agreement, the Court had not yet issued its guidance on the availability of Cartwright Act claims to a nationwide class. Indeed, the motion to certify the class was heard on

[7] *See* Judge Gonzalez Rogers' Scheduling Notes, https://apps.cand.uscourts.gov/CEO/cfd.aspx?7145#Notes ("[A]ll law and motion hearings before Judge Gonzales Rogers in the month of May 2020 will be held by Zoom platform . . . .").

[8] IPPs' Motion for Attorneys' Fees; Reimbursement of Expenses; and Class Representative Incentive Awards, ECF 2487 ("Fee Motion") pp. 2-10, and Joint Declaration of Steve W. Berman, Brendan P. Glackin and Adam J, Zapala in Support Thereof ¶¶ 16-54.

[9] *See* ECF 1652, 1672 (describing negotiation scope and details).

November 15, 2016—a day after the LG Chem settlement agreement was signed, and weeks before the Hitachi Maxell and NEC settlements were signed. *See* ECF No. 1643.

On March 20, 2017, the Court granted preliminary approval of the Round 2 Settlements, directing notice of a proposed *pro rata* allocation of the settlement funds to the class. ECF No. 1714. On April 12, 2017, after IPPs commenced their notice campaign to the class and one day after the claims period began for the Round 2 Settlements, the Court denied certification of IPPs' proposed nationwide litigation class. Although the Court denied the motion without prejudice to its renewal, the Court indicated that it would likely certify only a class consisting of residents from so-called *Illinois Brick* "repealer" states—*i.e.*, those states that have passed laws allowing recovery by indirect purchasers—rather than a nationwide class also including residents of "non-repealer" states. *See* ECF No. 1735.

On October 27, 2017, this Court granted final approval of the Round 2 Settlements, which included certification of a single nationwide settlement class and allocation of settlement funds *pro rata* to class members regardless of their states of residence.[10]

Two objectors, Michael Frank Bednarz and Christopher Andrews filed appeals to the Round 2 Settlements (the "*Bednarz* Appeal" and *Andrews* Appeal," respectively). In the first appeal, Bednarz objected to certification of the settlement class and IPPs' proposed *pro rata* allocation method, arguing that it unfairly diluted his damages claim as a resident of an *Illinois Brick* repealer state. The second appeal concerned the Court's interim award of attorneys' fees alongside approval of the Round 2 Settlements.[11] On September 16, 2019, the Ninth Circuit vacated this Court's final approval order of the Round 2 Settlements and remanded the case for further proceedings.[12] The Ninth Circuit "express[ed] no opinion on whether the representation, settlement class, and settlement agreements satisfy Rule 23. Instead, [it] vacate[d] and remand[ed] to allow the district court to properly exercise its discretion' consistent with Rule 23's rigorous procedural requirements."[13] The Ninth Circuit requested "[a] more fulsome analysis" of Rule

[10] *See* ECF 2003.
[11] *See* ECF 2034; 2532.
[12] *See* ECF 2531.
[13] *Id*. at 4.

23's requirements given the proposed *pro rata* allocation of settlement proceeds to residents of repealer and non-repealer states alike.[14] The appellate court's request for "[a] more fulsome analysis" did not necessitate a contrary outcome.[15]

While the Round 2 Settlements were pending on appeal, IPPs reached settlements with the remaining Defendants in the action and sought final approval of the Round 3 Settlements. In connection with the Round 3 Settlements, IPPs proposed a different plan of allocation, allocating 90% of the settlement proceeds to *Illinois Brick* repealer states and 10% of the settlement proceeds to claimants in non-repealer states.[16] This allocation formula was devised after a contested proceeding before a neutral, the Hon. Rebecca Westerfield (Ret.), wherein Judge Westerfield engaged in an extensive analysis of other states' laws which were evaluated in an adversarial process.[17] The Court carefully reviewed Judge Westerfield's recommendation, and on August 16, 2019, the Court finally approved the Round 3 Settlements and the foregoing plan of allocation, and awarded counsel 30% of the settlement funds in attorneys' fees ($33,829,176).[18]

Following remand of the Round 2 Settlements, IPPs moved to direct notice to the class regarding the Round 2 Settlements and the new proposed plan of allocation. ECF 2566. On January 10, 2020, the Court granted the motion, concluding it was "likely" to certify a settlement Class and approve the Round 2 Settlements as "fair, reasonable and adequate."[19] The Court also set deadlines by which Class Members could either opt-out or object.[20] Class notice has been issued and disseminated pursuant to Rule 23 consistent with the Court's January 10, 2020 Order.[21] Despite the extensive and thorough notice program, only twenty one individuals opted out of the Proposed Round 2 Settlements, and only four individuals objected.[22]

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[14] *Id*. at 3-4.

[15] *See also Allen v. Bedolla*, 787 F.3d 1218, 1225 (9th Cir. 2015) ("On remand, the district court, after appropriately supplementing the record, may exercise its discretion to reapprove the settlement . . . .").

[16] ECF 2516.

[17] ECF 2501.

[18] The Court awarded $29,334,176, which combined with the prior interim award of $4,495,000 totals $33,829,176. ECF 2516.

[19] *See* ECF 2571.

[20] *Id*.

[21] *See* Azari Decl. ¶¶ 12-25 (describing the extensive, multipronged notice program as well as the form and content of notice); ¶¶ 26-44 (describing the results of claims administration to date).

[22] Azari Decl. ¶ 45.

C. The Settlement Class and Terms

The proposed Settlement Agreements resolve all claims arising from the conspiracy to restrain competition for lithium ion batteries against the Settling Defendants. The Settlement Class is defined as follows in each of the Settlement Agreements:

> [A]ll persons and entities who, as residents of the United States and during the period from January 1, 2000 through May 31, 2011, indirectly purchased new for their own use and not for resale one of the following products which contained a lithium ion cylindrical battery manufactured by one or more defendants or their coconspirators: (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 local governmental entities, any judicial officers presiding over this action, members of their immediate families and judicial staffs, and any juror assigned to this action, but included in the class are all non-federal and non-state governmental entities in California.

The terms of the proposed settlements are described in detail in IPPs' motion to direct notice to the class.[23] Each of these settlements are substantially identical to one another in their non-monetary terms and to the Round 3 Settlements with SDI, TOKIN, Toshiba, and Panasonic that were finally approved.[24] Each agreement grants a release on behalf of a nationwide class of indirect purchasers. In return for the releases and other terms set forth in the Settlement Agreements, the Round 2 Settling Defendants agreed to pay a combined total of $44.95 million in non-reversionary funds. This Court has already once found the terms of these settlements to be fair, reasonable, and adequate.[25]

D. Notice to the Class

Notice was successfully disseminated to the Class. IPPs' notice program included (1) direct email notice, (2) publication notice, (3) internet notice, (4) an earned media plan, (5) banner ads, (6) a case-specific website, and (7) a case specific toll-free number. *See* Azari Decl. ¶¶ 18-44; IPPs' Motion to Direct Notice, at 20-25. The multi-part Notice Program was designed in conjunction with notice experts to provide the "best notice that [was] practicable under the circumstances." *See* Fed. R. Civ. P. 23(c)(2)(B); *see also* Azari Decl. ¶¶ 46-48.

[23] ECF 2566; *see also* ECF 2571.
[24] ECF 2516.
[25] ECF 2571.

The Notice Program succeeded. Over eight million class notices were successfully emailed to potential Class Members, with an 87 percent delivery success rate. Azari Decl. ¶¶ 26-29. Digital banner advertisements specifically targeted settlement class members, including on Google and Yahoo's ad networks, as well as Facebook and Instagram, with over 396 million impressions delivered. *Id.* ¶¶ 30-34. Sponsored search listings were purchased on Google, Yahoo and Bing, resulting in 216,477 results, with 1,845 clicks through to the settlement website. *Id.* ¶¶ 39-40. An informational release was distributed to 495 media contacts in the consumer electronics industry. *Id.* ¶ 41. Between February 11, 2020 and April 23, 2020, there have been 207,205 unique visitors to the case website (www.ReverseTheCharge.com). *Id.* ¶ 42. In the same period, the toll-free telephone number available to class members received 515 calls. *Id.* ¶ 43.

E. The Claims Program Has Been Successful

The Northern District of California Procedural Guidance for Class Actions requires information about the number of undeliverable class notices and claim packets, and the number of class members who submitted valid claims.[26] As noted, after Epiq's completion of the Email Notice effort, 8,644,344 Email Notices were deliverable, and 1,372,508 Email Notices remain undeliverable, constituting an 86.3% deliverable rate.

IPPs also successfully completed a claims process for all three rounds of settlements. Any claims submitted on any prior settlement have been deemed made against all prior settlements, ensuring that benefits from all settlements reach the maximum number of class members. The deadline has now passed for Settlement Class Members to submit a Claim Form. Epiq has received 57,716 Claim Forms (56,609 online and 1,107 paper).[27] Additionally, Epiq received Claim Data related to 1,046,087 Claim Forms filed with the previous claims administrators used earlier in this case.[28] Of the total claims received, 485,768 are for repealer states and 618,035 are for non-repealer states.[29] This represents a total of 110,214,606 devices claimed: 44,159,745 PC

[26] United States District Court, Northern District of California, Procedural Guidance for Class Actions, available at https://www.cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements/.

[27] Azari Decl. ¶ 45.

[28] *Id.*

[29] *Id.*

batteries, 38,141,788 mobile phone batteries, 7,340,271 camcorder batteries, and 20,572,802 power tool batteries.[30]

Epiq also receive 1,289 late paper Claim Forms. These claims represent a large number of additional device claims. These late claims reflect approximately 707,690 claims for PC batteries, 400,597 claims for mobile phone batteries, 88,056 for camcorder batteries, and 533,121 for power tool batteries, for a total of 1,729,464 batteries claims across all categories.[31] Although it is entirely within this Court's discretion, class counsel recommend that these late claims be denied. The time to file claims was clearly stated both in the notice and on the settlement website. With the presence of the objectors, it is entirely likely that another appeal will be filed and years may pass before the settlement monies are distributed to class members. Allowing the late claims for these additional 1.7 million devices, and more if late claims for additional years are allowed, will dramatically dilute the existing claims. For this reason, class counsel recommends that this Court reject these claims, all of which have been made without a showing of good cause.[32]

F. The Plan of Allocation

IPPs propose to allocate the settlement funds in connection with the Round 2 Settlements using the same plan approved by this Court in connection with the Round 3 settlements. As with the Round 3 settlements, 90% of the settlement funds will be allocated toward purchases in repealer jurisdictions and 10% will be allocated to purchases in non-repealer states. Second, within each allocation, the funds will be distributed *pro rata* to claimants based on the total number of products purchased from January 1, 2000 through May 31, 2011. Should a balance remain after distribution to the class (whether from tax refunds, uncashed checks, or otherwise), Class Counsel propose to allow the money to escheat to federal or state governments. No settlement funds will revert to the Settling Defendants.

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[30] *Id.*

[31] *Id.*

[32] *See In re Volkswagen "Clean Diesel" Mktg., Sales Practices, and Products Liab. Litig.*, 895 F.3d 597, 619 (9th Cir. 2018)*, cert. denied sub nom. Fleshman v. Volkswagen, AG*, 139 S. Ct. 2645 (2019) (holding the district court did not abuse its discretion in denying a late motion to opt-out where there was no excusable neglect); *In re Valdez,* 289 F. App'x. 204, 206 (9th Cir. 2008) (unpublished) (holding it was not an abuse of discretion to deny a late claim where there was "no plausible excuse"); *S.E.C. v. Hardy,* 803 F.2d 1034, 1039 (9th Cir. 1986) (confirming a district court's authority to "establish deadlines for filing claims, and to bar untimely claims").

III. THE SETTLEMENTS ARE FAIR, REASONABLE AND ADEQUATE

Final approval is a multi-step inquiry: first, the Court must certify the proposed settlement class and appoint settlement class counsel; second, it must determine that the settlement proposal is "fair, reasonable, and adequate;"[33] and third, it must assess whether notice has been provided consistent with Rule 23 and due process. These procedures safeguard class members' due process rights and enable the Court to fulfill its role as the guardian of class interests.[34] The proposed settlements here satisfy each of these requirements.

A. The Court Should Certify the Settlement Class

When considering whether to certify the settlement class, the recent instructions of the Ninth Circuit remain relevant: "[t]he criteria for class certification are applied differently in litigation and settlement classes."[35] In the settlement context, "a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.[36] As discussed below, the Court should certify the classes.

1. The Settlement Classes Meet the Requirements of Rule 23(a)

This Court has extensively examined the proposed class, first in the context of litigation and next in connection with both the Round 2 and Round 3 Settlements and determined that identical nationwide settlement classes meet the requirements of Rule 23(a).[37] This Court also previously found, in connection with IPPs' motion to direct notice,[38] that "it is likely to certify the Settlement Class" proposed herein.[39] Nothing has occurred that would change that determination.

Under Rule 23(a), the proponent of class certification must show that the proposed class meets the requirements of (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy. Once again, these requirements are satisfied here.

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[33] Rule 23(e)(2); *Adoma v. Univ. of Phoenix. Inc.*, 913 F. Supp. 2d 964, 972 (E.D. Cal. 2012).
[34] *See* 4 Albert Conte & Herbert Newberg, Newberg on Class Actions §§ 11.22, *et seq*. (4th ed. 2002).
[35] *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 556 (9th Cir. 2019) (*en banc*).
[36] *See* Fed. R. Civ. P. 23(e)(1)(B)(ii); *see also Amchem Prod. Inc. v. Windsor*, 521 U.S. 581, 620 (1997); Manual for Complex Litigation (4th ed. 2004) § 21.632.
[37] ECF 2516.
[38] ECF 2566.
[39] *See* ECF 2516; ECF 2571.

First, it is undisputed that class members number in the millions,[40] making joinder impracticable,[41] and as this Court previously found "there are many geographically dispersed class members."[42] *Second*, the claims of the proposed settlement class are common, as they "depend upon a common contention . . . of such a nature that it is capable of classwide resolution."[43] A single issue has been held sufficient to satisfy the commonality requirement.[44] Here, a central, common, question underlying each of IPPs' claims in this case is whether defendants participated in a conspiracy to raise, fix, stabilize or maintain the prices of lithium ion cylindrical batteries sold in the United States.[45] As this Court previously found, the commonality requirement is met.[46] *Third*, the claims of the class representatives are "typical of the claims . . . of the class."[47] The typicality requirement is easily satisfied where, as here, "it is alleged that the defendants engaged in a common [price-fixing] scheme relative to all members of the class."[48] The Class Representatives have no interests that conflict with the Settlement Class and are bound by the common interest of obtaining compensation for a shared injury.[49] *Fourth*, for over seven years, the Class Representatives have been actively involved in the litigation of this case.[50] As

[40] *See* Azari Decl. ¶¶ 26-44 (reflecting notice to more than 8.6 million potential Class Members).

[41] *See Bellinghausen v. Tractor Supply Co*., 303 F.R.D. 611, 616 (N.D. Cal. 2014) (where "general knowledge and common sense" indicate a large class, "numerosity is satisfied.").

[42] ECF 2003 at 3; ECF 2571 at 3.

[43] *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011); Fed. R. Civ. P. 23(a)(2).

[44] *See Slaven v. BP Am., Inc*., 190 F.R.D. 649, 655 (C.D. Cal. 2000); *Haley v. Medtronic, Inc*., 169 F.R.D. 643, 647 (C.D. Cal. 1996).

[45] *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) (common questions "will resolve an issue that is central to the validity of each one of the claims in one stroke."); *see also In re Dynamic Random Access Memory (DRAM) Antitrust Litig*., No. M 02-1486 PJH, 2006 WL 1530166, at *3 (N.D. Cal. June 5, 2006) ("[T]he very nature of a conspiracy antitrust action compels a finding that common questions of law and fact exist." (quoting *Rubber Chems*., 232 F.R.D. at 351)).

[46] ECF 2003 at 3 ("there are questions of law and fact common to the class."); ECF 2571 (same).

[47] Fed. R. Civ. P. 23(a)(3).

[48] *In re Cathode Ray Tube (CRT) Antitrust Litig*., 308 F.R.D. 606, 613 (N.D. Cal. 2015) (quoting *In re Catfish Antitrust Litig*., 826 F. Supp. 1019, 1035 (N.D. Miss. 1993)).

[49] ECF 2487-7 (Class Representative Declarations); *see also Torres v. Mercer Canyons, Inc*., 835 F.3d 1125, 1141 (9th Cir. 2016) ("[R]epresentative claims are 'typical' . . . if reasonably coextensive with those of absent class members.").

[50] *See* Fee Motion ¶¶ 2-10 (describing Class Counsel's efforts).

this Court already determined, "the class representatives have, and will continue to, fairly and adequately protect the interests of the Settlement Class."[51]

2. The Proposed Settlements Satisfy Predominance and Superiority

Rule 23(b)(3) requires that common questions of law or fact "predominate over any questions affecting only individual members," and that a class action is a superior vehicle for relief.[52] Rule 23(b)(3) does not require that *all* elements of a claim be susceptible to class-wide proof.[53] In horizontal price-fixing cases like this, questions as to the existence of the alleged conspiracy and the occurrence of price-fixing are readily found to predominate.[54] Resolution of IPPs' claims here depends principally on whether Defendants participated in a price-fixing conspiracy that increased the price of goods containing lithium ion cylindrical batteries. This Court has already found that the predominance requirement of Rule 23(b)(3) was met for an identical settlement class in connection with the Round 3 Settlements[55] and in its approval of disseminating notice to the Class for these Proposed Settlements.[56]

a. A Nationwide Settlement Class Does Not Defeat Settlement Class Certification.

While applying "the separate laws of dozens of jurisdictions [may] present[] a significant issue for trial manageability," "[i]n settlement cases, . . . the district court need not consider trial manageability issues."[57] The Court previously endorsed this position in approving the Round 3

[51] ECF 2571 at 3; ECF 2003 at 3 ("the representative parties will fairly and adequately protect the interests of the class.").

[52] *See Amchem*, 521 U.S. at 623; *Hanlon v. Chrysler Corp.*, 150 F.3d at 1020 (9th Cir. 1998); *In re TFT-LCD Antitrust Litig.*, 267 F.R.D. 291, 314 (N.D. Cal. 2010) ("[I]f common questions are found to predominate in an antitrust action . . . courts generally have ruled that the superiority prerequisite of Rule 23(b)(3) is satisfied."); *In re High-Tech Emp. Antitrust Litig.*, 985 F. Supp. 2d 1167, 1227 (N.D. Cal. 2013) (same).

[53] Fed. R. Civ. P. 23(b)(3); *see also Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 469 (2013).

[54] *See, e.g., Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 300 (3d Cir. 2011); *Amchem*, 521 U.S. at 625 (predominance under Rule 23(b)(3) is "readily met" in antitrust cases"); *Flat Panel*, 267 F.R.D. 291 at 310 (collecting cases).

[55] *See* Order Granting Final Approval of Class Action Settlements for Round 3 Settlements, ECF 2516.

[56] ECF 2571 at 3.

[57] *Id.* at 562. The question of which jurisdiction's laws apply to the claims of settling class members from different states is a common one; it does not change from class-member to class-member and is not required to be considered in the settlement context. *See also Hyundai*, 2019

Settlements, in directing notice to the Class in connection with Round 2 Settlements,[58] and considered these issues carefully in incorporating and relying on the work of Judge Westerfield. Moreover, courts have repeatedly found that nationwide settlement classes may be certified notwithstanding state law variations.[59]

b. Differing Allocation of Funds Does Not Affect Predominance.

Nor does allocating different amounts to subgroups of the class defeat predominance. Courts have universally recognized that individualized damages determinations, particularly when they are largely formulaic, do not defeat predominance.[60]

After an extensive allocation process involving a former judge as neutral and lawyers that advocated for each group, this Court adopted a 90/10 split in approving the Round 3 Settlements. The Court's reasoning there applies equally to the Round 2 Settlements:

> THE COURT: . . I reviewed and considered [in connection with the Round 3 Settlements] Judge Westerfield's recommendation, the lengthy analysis that was done, and the arguments that were made after the fact with respect to the 90/10 distribution. And for all of those reasons, I believe that it is appropriate to approve the current recommendation.[61]

There is no reason to depart from this holding.

And resolution of IPPs' claims through a class action is unquestionably superior, as litigating every Class Member's claims separately would waste both judicial and party resources, given that the vast majority of evidence would be identical,[62] and individual Class Members

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WL 2376831, at *10 ("[t]he prospect of having to apply the separate laws of dozens of jurisdictions present[s] a significant issue for trial manageability[.]"

[58] *See* ECF 2516 at 7; ECF 2571 at 3.

[59] *Hanlon*, 150 F.3d at 1022; *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 301 (3d Cir. 2011); *In re Mexico Money Transfer Litig.*, 267 F.3d 743, 747 (7th Cir. 2001).

[60] *See, e.g., Comcast Corp. v. Behrend*, 569 U.S. 27, 42 (2013) ("Recognition that individual damages calculations do not preclude class certification under Rule 23(b)(3) is well nigh universal."); *Pulaski & Middleman, LLC v. Google, Inc.*, 802 F.3d 979, 987 (9th Cir. 2015) (reaffirming "the proposition that differences in damage calculations do not defeat class certification").

[61] *See* Nov. 4 Case Management Conference Hearing Tr., 9:11-16. *See also id.* at 7:17-23 ("THE COURT: Well, as we discussed in detail, having had the benefit of all the analysis that I'd done during the course of this quite lengthy MDL, I do think that the 90/10 split was an appropriate split. And so I am willing to approve it again. I mean, there is no difference in the sense of the analytics behind what I did before and what I'm doing now.").

[62] *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1023 (9th Cir. 1998).

would lack an incentive to bring their own cases given the enormous costs necessary to litigate complex antitrust cases.[63]

B. The Court Should Appoint Cotchett, Pitre & McCarthy, LLP; Hagens Berman Sobol Shapiro LLP; and Lieff Cabraser Heimann & Bernstein, LLP as Settlement Class Counsel for Final Approval

Rule 23(g) separately requires this Court to appoint class counsel to represent the settlement class.[64] Considering counsel's work in this action, their collective expertise and experience in handling similar actions,[65] and the resources they have committed to representing the class, they should be appointed as class counsel for the proposed settlement class under Rule 23(g)(3) and confirmed under Rule 23(g)(1), as this Court already indicated.[66]

C. The Court Should Appoint the Named Plaintiffs as Class Representatives for the Settlement Class

The Court should appoint the Named Plaintiffs as Settlement Class Representatives.[67] A representative plaintiff is an adequate representative of the class if he or she: (1) does not have interests antagonistic to or in conflict with the interests of the class; and (2) is represented by qualified counsel who will vigorously prosecute the class's interests.[68] Here, the interests of named Plaintiffs and Class Members are aligned because (a) all claimed similar injury due to Defendants' alleged conspiracy and (b) seek the same relief. Plaintiffs understand the allegations in this Action and have reviewed pleadings, responded to discovery, and produced the documents requested.[69] By proving their own claims, representative Plaintiffs would necessarily prove the claims of their fellow Class Members. As such they should be named as Class Representatives for the Settlement Class.

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[63] ECF 2003 at 3; ECF 2571 at 3.

[64] Fed. R. Civ. P. 23(g)(1); *see also Bellinghausen*, 303 F.R.D. at 618; *Farley v. Baird, Patrick & Co., Inc.*, No. 90 CIV. 2168 (MBM), 1992 W321632, at *5 (S.D.N.Y. Oct. 28, 1992) ("Class counsel's competency is presumed absent specific proof to the contrary by defendants.")

[65] ECF 2588 (IPPs' Mot. for Attorneys' Fees) at 3-7.

[66] ECF 2571 at 5 (designating Class Counsel as Counsel for the Settlement Class).

[67] Jason Ames, Caleb Batey, Christopher Bessette, Cindy Booze, Matt Bryant, Steve Bugge, William Cabral, Matthew Ence, Drew Fennelly, Sheri Harmon, Christopher Hunt, John Kopp, Linda Lincoln, Patrick McGuiness, Joseph O'Daniel, Tom Pham, Piya Robert Rojanasathit, Bradley Seldin, Donna Shawn, David Tolchin, Bradley Van Patten, the City of Palo Alto, and the City of Richmond (the "Named Plaintiffs").

[68] *Hanlon*, 150 F.3d at 1020.

[69] *See* ECF 2487-7.

D. The Court Should Grant Final Approval of the Settlements

The law favors the settlement of class action lawsuits.[70] "[T]he decision to approve or reject a settlement is committed to the sound discretion of the trial judge because [s]he is exposed to the litigants, and their strategies, positions and proof."[71] This Court previously determined that the Settlement Agreements satisfy each of the requirements of Rule 23(e)(2).[72] All that remains is evaluate the "new" proposed plan of allocation (the same plan that was approved in connection with the Round 3 Settlements) and determine that notice was disseminated in accord with the Notice Plan. After completing this evaluation, there is no reason to depart from the Court's prior conclusions that these settlements are fair, adequate and reasonable.

1. The Settlements Are Fair, Reasonable, and Adequate

Rule 23(e) requires the district court to determine whether the proposed settlement is "fair, reasonable, and adequate."[73] And Rule 23(e)(2), as recently amended, provides that the Court consider: (A) whether the class representatives and class counsel have adequately represented the class; (B) whether the proposal was negotiated at arm's length; (C) whether the relief provided for the class is adequate, taking into account the costs, risks, and delay of trial and appeal, the effectiveness of any proposed method of distributing relief to the class, including the method of processing class member claims, the terms of any proposed award of attorney's fees, including timing of payment, and any relevant agreements; and (D) whether the proposal treats class members equitably relative to each other.

a. Rule 23(e)(2)(A): The Class Representatives and Class Counsel Have Vigorously Represented the Class

Rule 23(e)(2)(A) requires this Court to consider the adequacy of class representatives and class counsel's representation of the class. The Advisory Committee Notes explain that the aim is

[70] *See, e.g., Churchill Vill., L.L.C. v. GE*, 361 F.3d 566, 576 (9th Cir. 2004); *Class Plaintiffs v. City of Seattle,* 955 F.2d 1268, 1276 (9th Cir. 1992).

[71] *Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1026 (9th Cir. 1998); *see also M. Berenson Co. v. Faneuil Hall Marketplace, Inc*., 671 F. Supp. 819, 822 (D. Mass. 1987); *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), aff'd, 661 F.2d 939 (9th Cir. 1981); *Torrisi v. Tucson Elec. Power Co*., 8 F.3d 1370, 1375 (9th Cir. 1993).

[72] *See* ECF 1714 (preliminarily approving the Round 2 Settlements); ECF 2003 (final approval order); ECF 2571 (Order Granting Motion to Distribute Notice to the Class, at 1).

[73] *In re Online DVD-Rental Antitrust Litig*., 779 F.3d at 944.

to "identify . . . procedural concerns, looking to the conduct of the litigation and of the negotiations leading up to the proposed settlement," such as the nature and amount of discovery, or outcomes in other cases which "may indicate whether counsel negotiating on behalf of the class had an adequate information base."[74] Ninth Circuit law recommends similar considerations.[75]

The class representatives and counsel have vigorously represented the interests of the class in this action for nearly seven years.[76] IPPs conducted significant party and non-party discovery, engaged in substantial motion practice, and consulted extensively with experts during the course of this litigation, during this complex, multi-year case. [77] Defendants produced many millions of pages of documents, as well as voluminous electronic transactional data, IPPs deposed thirty-four merits and 30(b)(6) witnesses, collected and produced documents from the class representatives, and prepared them for and defended them in dispositions. IPPs also engaged in substantial motion practice during the litigation, including summary judgment and three rounds of motions to dismiss.[78] The Class Representatives searched for and produced burdensome amounts of information and sat for 32 depositions.[79] This work all confirms that IPPs had a sufficient understanding of the strengths and weaknesses of their position to "make an informed decision about settlement."[80] It also indicates a lack of collusion.[81] The experienced views of counsel and their intimate knowledge of the strengths and weaknesses of the case given the lengthy litigation history strongly weigh in favor of final approval.

[74] *See* Rule 23, Notes of Advisory Comm., Subdivision (e)(2), Paragraphs (A) and (B) (2018).
[75] *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011) ("extent of discovery" should be evaluated*")*; *In re Mego Fin. Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (fairness presumed with "sufficient discovery and genuine arms-length negotiation.").
[76] *See* Fed. R. Civ. P. 23(e)(2)(A).
[77] *See e.g.*, ECF 1921 at 4-8.
[78] *See* Order Den. Toshiba's Mot. for Summ. J. on Withdrawal (Mar. 16, 2016), ECF 1160.
[79] *See* ECF 2487-7.
[80] *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (quoting *Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1239 (9th Cir. 1998)).
[81] *See* 4 *Newberg on Class Actions* § 13:50 (5th ed. 2018).

b. Rule 23(e)(2)(B): Class Counsel negotiated the settlements at arm's length.

Rule 23(e)(2)(B) instructs courts to consider whether "the proposal was negotiated at arm's length." As described thoroughly in IPPs' Motion for Attorneys' Fees (ECF 2588), the Settlement Agreements were negotiated at arm's length amongst experienced and sophisticated counsel, and there are no signs of collusion.[82] The Federal Rules advise courts to consider any attorneys' fees agreement,[83] and the Ninth Circuit identifies three related signs as potentially indicative of collusion or procedural unfairness: (a) attorneys' fees disproportionate to the settlement; (b) a "clear sailing" arrangement paying attorneys' fees separately from class funds; or (c) when fees not awarded to plaintiffs' counsel revert to defendants rather than the class.[84] None of these signs are present. The Round 2 Settlements are non-reversionary. The funds will cover costs and fees. There is no "clear sailing" provision, and no payment of fees separate and apart from the class funds. In sum, all procedural considerations, including the advanced procedural stage of the litigation, support a conclusion that negotiations by experienced and well-informed counsel occurred at arm's length, without collusion.[85]

c. Rule 23(e)(2)(C): The relief provided by the settlements represents an excellent recovery, taking into account the costs, risks, and delay of trial and appeal.

Rule 23(e)(2)(C) asks the court to consider whether "the relief provided for the class is adequate," taking into account four enumerated factors, each of which supports approval here.

Costs, Risks, and Delay of Trial and Appeal. IPPs' recovery here is excellent in light of the risks and the Settling Defendants' relevant commerce during the class period. Payments totaling $44,950,000 confer a substantial benefit to the Settlement Class, because—beyond receiving these funds—the Class will avoid the uncertainty, delay, and risk of continued

[82] ECF 2588 IPPs' Mot. for Attorneys' Fees at 3-9.
[83] Advisory Committee Notes to Rule 23(e)(2)(A) and (B).
[84] *Hyundai*, 926 F.3d at 569; *Bluetooth*, 654 F.3d at 946.
[85] *See* Fed. R. Civ. P. 23(e)(2)(B); *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) ("We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution . . . ."); *see also* ECF 1652 (preliminary approval motion of LG Chem settlement); ECF 1672 (preliminary approval motion of settlements with Hitachi Maxwell and NEC).

litigation, especially given the Court's denial of the motions to certify a litigation class.[86] Moreover, even if a litigation class had been certified following a direct appeal, there is also the risk that it would have been certified for a shorter time period or for a smaller geographic scope, or that Settling Defendants, already operating on slim margins, might have become insolvent during the litigation, or that IPPs might not have proved damages at trial (probably negating any appeal of the denial of class certification).[87] These are just a few of the risks to IPPs' success to be considered with the high costs of litigating this complex matter.

The Settlement amounts thus are reasonable and well within the range of final approval.[88] IPPs estimate the Settlements represent more than 258.8% of the single damages attributable to NEC's sales, 119% of Hitachi's sales, and 33.4% of the single damages attributable to LG Chem's sales.[89] These figures reflect the fact that antitrust class action litigation is notoriously risky, while revealing the strength of results obtained.[90] This Court previously held that the Settlements "meet[] the Rule 23 requirements for a settlement class,[91] and compare favorably to settlements finally approved in other recent price-fixing cases in the Ninth Circuit.[92] And when taken together with the other settlements already approved in this Action totaling $113.45 million,

[86] *See* Order Den. Without Prejudice Mot. for Class Certification; Granting in Part & Den. in Part Mots. to Strike Expert Reports or Portions Thereof (Apr. 12, 2017), ECF 1735.

[87] Plaintiffs bear the burden of establishing liability, impact, and damages. *See, e.g., Wal-Mart Stores, Inc. v. Visa U.S.A., Inc*., 396 F.3d 96, 118 (2d Cir. 2005) ("Indeed, the history of antitrust litigation is replete with cases in which antitrust plaintiffs succeeded at trial on liability, but recovered no damages, or only negligible damages, at trial, or on appeal" (quoting *In re NASDAQ Market-Makers Antitrust Litig*., 187 F.R.D. 465, 476 (S.D.N.Y. 1998)); *In re Sumitomo Copper Litig*., 189 F.R.D. 274, 282-83 (S.D.N.Y. 1999).

[88] *See In re Cathode Ray Tube (CRT) Antitrust Litig*., No. 14-CV-2058 JST, 2015 WL 9266493, at *5 (N.D. Cal. Dec. 17, 2015) (citing *Fisher Bros. v. Mueller Brass Co.,* 630 F. Supp. 493, 499 (E.D. Pa. 1985)) (holding settlements equal to .1%, .2%, 2%, .3%, .65%, .88%, and 2.4% of defendants' total sales were reasonable); *Four in One Co. v. S.K. Foods, L.P*., No. 2:08cv-3017 KJM EFB, 2014 WL 28808, at *9 (E.D. Cal. Jan. 2, 2014) (holding settlement amounting to 1% of defendants' sales were reasonable).

[89] *See* ECF 2588. At their initial motion for class certification, Plaintiffs' damages experts estimated that nationwide IPP damages totaled $967,034,890 in the class period. *See* Corrected Expert Report of Edward E. Leamer, Feb. 2, 2016, ECF 1599-4 at 78.

[90] *See, e.g., In re Shopping Carts Antitrust Litig*., MDL No. 451-CLB, M-21-29, 1983 U.S. Dist. LEXIS 11555 (S.D.N.Y. Nov. 18, 1983).

[91] *See* ECF 1714 ¶ 4; ECF 2571 at 2-4.

[92] *See, e.g.*, *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 941 (approving $27.25 million settlement).

there can be little doubt that the cumulative settlements here provide considerable relief for those harmed by the anticompetitive conduct at the heart of this Action.

Even putting aside the issue of class certification, the settlements reflect a fair compromise in light of the potential trial recovery, the costs of litigation which would be taken from the settlement funds, and the delay in payment to the class. These cases are particularly risky and challenging, with courts recognizing that antitrust cases are "arguably the most complex action to prosecute."[93] Even where liability is proven, IPPs could legitimately "recover[] no damages, or only negligible damages, at trial, or on appeal."[94] Each of these significant factors favors final approval.[95]

Terms of Proposed Attorneys' Fees. The terms of any proposed attorneys' fees award, including the timing of payment is a third factor under Rule 23(e)(2)(C). The Settlement Agreements provide that any Court-awarded fees will be paid from the Gross Settlement Fund.[96] As detailed in their motion, IPPs requested a total award of $33,829,176 in attorneys' fees plus interest, which represents just under 30% percent of the total recovery in this case. The Round 2 Settlements contain no terms regarding the amount of attorneys' fees, other than that the Court has the authority to award them in its discretion.

Other Agreements. The last factor of Rule 23(e)(2)(C) instructs courts to consider "any agreement required to be identified under Rule 23(e)(3)," such as "related undertakings that . . . may have influenced the terms of the settlement."[97] IPPs have entered into no such agreements.

[93] *In re Linerboard Antitrust Litig.*, MDL No. 1261, 2004 WL 1221350, at *10 (E.D. Pa. June 2, 2004); *see also In re Auto. Refinishing Paint Antitrust Litig.*, 617 F. Supp. 2d 336, 341 (E.D. Pa. 2007) (the "antitrust class action is arguably the most complex action to prosecute").

[94] *See Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 118 (2d Cir. 2005) ("antitrust litigation is replete" with plaintiffs' success on liability, but little or no damages at trial."); *In re Superior Beverage/Glass Container Consol. Pretrial*, 133 F.R.D. 119, 127 (N.D. Ill. 1990) ("None of these risks should be underestimated.").

[95] *See Browning v. Yahoo! Inc.*, No. C04-01463 HRL, 2007 WL 4105971, at *10 (N.D. Cal. Nov. 16, 2007) (finding the fact that "further litigation before this Court would be time consuming, complex and expensive" supports granting final approval).

[96] Zapala Decl. Ex. 1-3.

[97] Rule 23(e) 2003 Advisory Committee Notes.

d. Rule 23(e)(2)(D): The settlements treat class members equitably.

The Proposed Settlements treat class members equitably relative to each other.[98] For the purposes of directing Notice, the Court approved IPPs' proposed 90/10 allocation plan after process undertaken to determine it was most appropriate, finding it "appropriate for class members from non-repealer states to receive some recovery through these settlements."[99] The Court approved the same plan for the Round 3 Settlements. This factor weighs in favor of final approval.

e. IPPs Provided Adequate Notice Under Rule 23(b)(3).

A Rule 23(b)(3) class must also satisfy Rule 23(c)(2)'s notice provisions, and notice of any settlement must be directed to all class members who would be bound by the proposal.[100] This requires the best notice practicable "to all members who can be identified through reasonable effort."[101] Notice must "present information about a proposed settlement neutrally, simply, and understandably" and is "satisfactory if it generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard."[102] IPPs' notice campaign was procedurally and substantively successful. As described in Section II(D), *supra*, the Court-appointed notice administrator, Epiq, implemented a multifaceted direct and indirect notice campaign, estimated to have reached a minimum of 70 percent of the class.[103] The Rule 23 notice requirements have been met.[104]

2. The Reaction of Class Members Favors Final Approval.

The reaction of Class Members is an important factor in determining the fairness of a proposed settlement.[105] IPPs' notice program reached approximately 8.6 million consumers who

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[98] *See* Rule 23(e)(2)(d); 2018 Advisory Committee Notes.
[99] *See* ECF 2571, at 1-2.
[100] Rule 23(e)(l)(B); *Hyundai*, 926 F.3d at 567 (class must be notified "in a reasonable manner").
[101] Rule 23(c)(2)(B) (notice requirements for classes certified under Rule 23(b)(3)).
[102] *Hyundai*, 926 F.3d at 564.
[103] Azari Decl. at ¶¶ 47-49.
[104] *Id*.
[105] *Bluetooth*, 654 F.3d at 946; *Churchill Village*, 361 F.3d at 575; *Hanlon*, 150 F.3d at 1026.

purchased lithium ion batteries.[106] Yet, only twenty-one requests for exclusion were received, and four objections.[107] The numbers strongly support granting final approval. It is truly extraordinary that in a consumer-type class action, where there are millions of class members, that only four objected.[108] The objections, many of which have been made previously in this case and overruled, are addressed in IPPs' Omnibus Response to Objections, filed herewith.

IV. CONCLUSION

For the foregoing reasons, IPPs respectfully request that this Court: 1) certify a Settlement Class of indirect purchasers of lithium ion batteries as set forth above; 2) appoint Cotchett, Pitre & McCarthy, LLP, Hagens Berman Sobol Shapiro LLP, and Lieff Cabraser Heimann & Bernstein, LLP as Settlement Class Counsel for the purposes of final approval of the Proposed Settlements; 3) appoint the Named Plaintiffs as class representatives for the Settlement Class; 4) grant final approval of the IPP settlements with the Settling Defendants; and 5) enter judgment of dismissal of IPPs' claims against the Settling Defendants.

Dated: May 5, 2020

Respectfully submitted,

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[106] Azari Decl. at ¶ 27 (referencing the 8,644,344 Direct Emails sent to "deliverable" addresses).

[107] There were fourteen requests for exclusion in response to the Round 2 Class Notice disseminated in 2017, and seven requests for exclusion received after the most recent Class Notice was disseminated pursuant to the April 13, 2020 opt-out deadline, amounting to a total of twenty-one opt-outs for this Round of Settlements. Azari Decl. ¶ 46. In total for all three Settlement Rounds in this case, 49 individuals have requested exclusion. *Id*.

[108] *Nat'l Rural Telcomms. Coop. v. DIRECTV, Inc*., 221 F.R.D. 523, 529 (C.D. Cal. 2004) (collecting cases and finding absence of a large number of objections "raises a strong presumption" of fairness); *Village L.L.C. v. Gen. Elec*., 361 F.3d 566, 577 (9th Cir. 2004) (affirming settlement with 45 objections out of 90,000 notices sent); *In re LinkedIn User Privacy Litig*., 309 F.R.D. 573, 589 (N.D. Cal. 2015) (57 opt-outs and six objectors of a 798,000 member class an "overall positive" reaction); *Garner v. State Farm Mut. Auto. Ins*., No. CV 08 1365 CW (EMC), 2010 U.S. Dist. LEXIS 49477, at *15 (N.D. Cal. April 22, 2010) (0.4% opt-out rate supports fairness).

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