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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE LITHIUM ION BATTERIES
ANTITRUST LITIGATION,

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

MDL No. 2420

This Documents Relates to:
ALL INDIRECT PURCHASER ACTIONS

LG CHEM SETTLEMENT
AGREEMENT

DATE ACTION FILED: Oct. 3, 2012

1 This Settlement Agreement (hereinafter, "Agreement") is made and entered into as of the
2 ____ day of November, 2016, by and between Defendants LG Chem, Ltd. and LG Chem
3 America, Inc. (collectively "LG Chem"), and Indirect Purchaser Plaintiffs, both individually and on
4 behalf of Classes in the above-captioned class action. This Agreement is intended by the Settling
5 Parties to fully, finally and forever resolve, discharge and settle the Released Claims, upon and
6 subject to the terms and conditions hereof.

7 **RECITALS**

8 WHEREAS, Indirect Purchaser Plaintiffs are prosecuting the above-captioned litigation on
9 their own behalf and on behalf of Classes against, among others, LG Chem;

10 WHEREAS, Indirect Purchaser Plaintiffs allege, among other things, that LG Chem
11 violated the antitrust laws by conspiring to fix, raise, maintain or stabilize the prices of Lithium Ion
12 Batteries, and these acts caused the Classes to incur significant damages;

13 WHEREAS, LG Chem has denied and continues to deny each and all of the claims and
14 allegations of wrongdoing made by the Indirect Purchaser Plaintiffs in the Actions; all charges of
15 wrongdoing or liability against it arising out of any of the conduct, statements, acts or omissions
16 alleged, or that could have been alleged, in the Actions; and the allegations that the Indirect
17 Purchaser Plaintiffs or any member of Classes were harmed by any conduct by LG Chem alleged
18 in the Actions or otherwise;

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

23 WHEREAS, arm's length settlement negotiations have taken place between LG Chem and
24 Indirect Purchaser Plaintiffs' Class Counsel, and this Agreement, which embodies all of the terms
25 and conditions of the Settlement between the Settling Parties, has been reached (subject to the
26 approval of the Court) as provided herein and is intended to supersede any prior agreements
27 between the Settling Parties;

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

11 WHEREAS, LG Chem, despite its belief that it is not liable for the claims asserted against
 12 it in the Actions and that it has good defenses thereto, has nevertheless agreed to enter into this
 13 Agreement to avoid the further expense, inconvenience and distraction of burdensome and
 14 protracted litigation, and thereby to put to rest this controversy with respect to the Indirect
 15 Purchaser Plaintiffs and the Classes and avoid the risks inherent in complex litigation;

16 **A G R E E M E N T**

17 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the
 18 Settling Parties, by and through their attorneys of record, that, subject to the approval of the Court,
 19 the Actions and the Released Claims as against LG Chem shall be finally and fully settled,
 20 compromised and dismissed on the merits and with prejudice upon and subject to the terms and
 21 conditions of this Agreement, as follows:

22 **A. Definitions**

- 23 **1.** As used in this Agreement the following terms have the meanings specified below:
 24 (a) “Actions” means *In re Lithium Ion Batteries Antitrust Litigation – All*
 25 *Indirect Purchaser Actions*, Case No. 13-MD-02420 YGR (DMR), and each
 26 of the cases brought on behalf of indirect purchasers previously consolidated
 27 and/or included as part of MDL Docket No. 2420.

- 1 (b) “Affiliates” means entities controlling, controlled by or under common
2 control with a Releasee or Releasor.
- 3 (c) “Authorized Claimant” means any Indirect Plaintiff Purchaser who, in
4 accordance with the terms of this Agreement, is entitled to a distribution
5 consistent with any Distribution Plan or order of the Court.
- 6 (d) “Class” or “Classes” are generally defined as all persons and entities who, as
7 residents of the United States and during the period from January 1, 2000
8 through May 31, 2011, indirectly purchased new for their own use and not
9 for resale one of the following products which contained a lithium-ion
10 cylindrical battery manufactured by one or more defendants or their co-
11 conspirators: (i) a portable computer; (ii) a power tool; (iii) a camcorder; or
12 (iv) a replacement battery for any of these products. Excluded from the class
13 are any purchases of Panasonic-branded computers. Also excluded from the
14 class are any federal, state, or local governmental entities, any judicial
15 officers presiding over this action, members of their immediate families and
16 judicial staffs, and any juror assigned to this action, but includes all non-
17 federal and non-state governmental entities in California.
- 18 (e) “Class Counsel” means the law firms of Cotchett, Pitre & McCarthy, LLP;
19 Hagens Berman Sobol Shapiro LLP; and Lieff Cabraser Heimann &
20 Bernstein, LLP.
- 21 (f) “Class Member” means a Person who or California government entity that
22 falls within the definition of the Classes and does not timely and validly
23 elect to be excluded from the Classes in accordance with the procedure to be
24 established by the Court.
- 25 (g) “Court” means the United States District Court for the Northern District of
26 California.
- 27 (h) “Distribution Plan” means any plan or formula of allocation of the Gross
28 Settlement Fund, to be approved by the Court, whereby the Net Settlement

1 Fund shall in the future be distributed to Authorized Claimants. Any
2 Distribution Plan is not part of this Agreement.

- 3 (i) “Effective Date” means the first date by which all of the events and
4 conditions specified in ¶ 35 of this Agreement have occurred and have been
5 met.
- 6 (j) “Escrow Agent” means the agent jointly designated by Class Counsel and
7 LG Chem, and any successor agent.
- 8 (k) “Execution Date” means the date of the last signature set forth on the
9 signature pages below.
- 10 (l) “Final” means, with respect to any order of court, including, without
11 limitation, the Judgment, that such order represents a final and binding
12 determination of all issues within its scope and is not subject to further
13 review on appeal or otherwise. Without limitation, an order becomes
14 “Final” when: (a) no appeal has been filed and the prescribed time for
15 commencing any appeal has expired; or (b) an appeal has been filed and
16 either (i) the appeal has been dismissed and the prescribed time, if any, for
17 commencing any further appeal has expired, or (ii) the order has been
18 affirmed in its entirety and the prescribed time, if any, for commencing any
19 further appeal has expired. For purposes of this Agreement, an “appeal”
20 includes appeals as of right, discretionary appeals, interlocutory appeals,
21 proceedings involving writs of certiorari or mandamus, and any other
22 proceedings of like kind. Any appeal or other proceeding pertaining solely
23 to any order adopting or approving a Distribution Plan, and/or to any order
24 issued with respect to an application for attorneys’ fees and expenses
25 consistent with this Agreement, shall not in any way delay or preclude the
26 Judgment from becoming Final.
- 27 (m) “Finished Product” means any product and/or electronic device that contains
28 a Lithium Ion Battery or Lithium Ion Battery Pack, including but not limited

1 to laptop PCs, notebook PCs, netbook computers, tablet computers, mobile
2 phones, smart phones, cameras, camcorders, digital video cameras, digital
3 audio players and power tools.

- 4 (n) “Gross Settlement Fund” means the Settlement Amount plus any interest
5 that may accrue.
- 6 (o) “Indirect Purchaser Plaintiffs” means Christopher Hunt, Piya Robert
7 Rojanasathit, Steve Bugge, Tom Pham, Bradley Seldin, Patrick McGuiness,
8 John Kopp, Drew Fennelly, Jason Ames, William Cabral, Donna Shawn,
9 David Beson, Maury “Kim” Billingsley, Joseph O’Daniel, Cindy Booze,
10 Matthew Ence, David Tolchin, Matt Bryant, Sheri Harmon, Christopher
11 Bessette, Caleb Batey, Linda Lincoln, Bradley Van Patten, the City of Palo
12 Alto, and the City of Richmond, as well as any other Person added as an
13 Indirect Purchaser Plaintiff in the Actions.
- 14 (p) “Judgment” means the order of judgment and dismissal of the Actions with
15 prejudice.
- 16 (q) “Lithium Ion Battery” means a Lithium Ion Battery Cell or Lithium Ion
17 Battery Pack.
- 18 (r) “Lithium Ion Battery Cell” means cylindrical, prismatic or polymer cell used
19 for the storage of power that is rechargeable and uses lithium ion
20 technology.
- 21 (s) “Lithium Ion Battery Pack” means Lithium Ion Cells that have been
22 assembled into a pack, regardless of the number of Lithium Ion Cells
23 contained in such packs.
- 24 (t) “MDL Defendants” means LG Chem, Ltd.; LG Chem America, Inc.;;
25 Samsung SDI Co. Ltd.; Samsung SDI America, Inc.; Panasonic Corporation;
26 Panasonic Corporation of North America; Sanyo Electric Co., Ltd.; Sanyo
27 North America Corporation; Sanyo GS Soft Energy Co. Ltd.; Sony
28 Corporation; Sony Energy Devices Corporation; Sony Electronics Inc.;

1 Hitachi Maxell, Ltd.; Maxell Corporation of America; GS Yuasa
2 Corporation; NEC Corporation; NEC Tokin Corporation; Toshiba
3 Corporation; A&T Battery Corporation; and Toshiba America Electronic
4 Components Inc.

5 (u) “Net Settlement Fund” means the Gross Settlement Fund, less the payments
6 set forth in ¶ 19(a)-(e).

7 (v) “Notice and Administrative Costs” means the reasonable sum of money not
8 in excess of seven hundred fifty thousand U.S. Dollars (\$750,000.00) to be
9 paid out of the Gross Settlement Fund to pay for notice to the Classes and
10 related administrative costs.

11 (w) “Notice and Claims Administrator” means the claims administrator(s) to be
12 selected by Class Counsel and approved by the Court.

13 (x) “Person(s)” means an individual, corporation, limited liability corporation,
14 professional corporation, limited liability partnership, partnership, limited
15 partnership, association, joint stock company, estate, legal representative,
16 trust, unincorporated association, government or any political subdivision or
17 agency thereof, and any business or legal entity and any spouses, heirs,
18 predecessors, successors, representatives or assignees of any of the
19 foregoing.

20 (y) “Proof of Claim and Release” means the form to be sent to the Classes, upon
21 further order(s) of the Court, by which any member of the Classes may make
22 claims against the Gross Settlement Fund.

23 (z) “Released Claims” means any and all manner of claims, demands, rights,
24 actions, suits, causes of action, whether class, individual or otherwise in
25 nature, fees, costs, penalties, injuries, damages whenever incurred and
26 liabilities of any nature whatsoever, known or unknown (including, but not
27 limited to, “Unknown Claims”), foreseen or unforeseen, suspected or
28 unsuspected, asserted or unasserted, contingent or non-contingent, in law or

1 in equity, under the laws of any jurisdiction, which Releasors or any of them,
2 whether directly, representatively, derivatively, or in any other capacity, ever
3 had, now have or hereafter can, shall or may have, relating in any way to any
4 conduct prior to the date of this Agreement and arising out of or related in
5 any way in whole or in part to any facts, circumstances, acts or omissions
6 arising out of or related to (1) any purchase or sale of Lithium Ion Batteries
7 (including Lithium Ion Batteries contained in Finished Products) up through
8 May 31, 2011; or (2) any agreement, combination or conspiracy to raise, fix,
9 maintain or stabilize the prices of Lithium Ion Batteries (including Lithium
10 Ion Batteries contained in Finished Products) or restrict, reduce, alter or
11 allocate the supply, quantity or quality of Lithium Ion Batteries (including
12 Lithium Ion Batteries contained in Finished Products) or concerning the
13 development, manufacture, supply, distribution, transfer, marketing, sale or
14 pricing of Lithium Ion Batteries (including Lithium Ion Batteries contained
15 in Finished Products), or any other conduct alleged in the Actions or relating
16 to restraint of competition that could have been or hereafter could be alleged
17 against the Releasees relating to Lithium Ion Batteries; or (3) any other
18 restraint of competition relating to Lithium Ion Batteries that could be
19 asserted as a violation of the Sherman Act or any other antitrust, unjust
20 enrichment, unfair competition, unfair practices, trade practices, price
21 discrimination, unitary pricing, racketeering, contract, civil conspiracy or
22 consumer protection law, whether under federal, state, local or foreign law.

23 (aa) “Releasees” means LG Chem and their former, present and future direct and
24 indirect parents, subsidiaries and Affiliates, and their respective former,
25 present and future officers, directors, employees, managers, members,
26 partners, agents, shareholders (in their capacity as shareholders), attorneys
27 and legal representatives, and the predecessors, successors, heirs, executors,
28 administrators and assigns of each of the foregoing.

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

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

8 (dd) “Settlement Amount” means Thirty-Nine Million U.S. Dollars
9 (\$39,000,000).

10 (ee) “Settling Parties” means, collectively, LG Chem and the Indirect Purchaser
11 Plaintiffs (on behalf of themselves and the Classes).

12 (ff) “Unknown Claims” means any Released Claim that an Indirect Purchaser
13 Plaintiff and/or Class Member does not know or suspect to exist in his, her
14 or its favor at the time of the release of the Releasees that if known by him,
15 her or it, might have affected his, her or its settlement with and release of the
16 Releasees, or might have affected his, her or its decision not to object to or
17 opt out of this Settlement. Such Unknown Claims include claims that are the
18 subject of California Civil Code § 1542 and equivalent, similar or
19 comparable laws or principles of law. California Civil Code § 1542
20 provides:

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

25 **B. Preliminary Approval Order, Notice Order and Settlement Hearing**

26 **2. Reasonable Best Efforts to Effectuate This Settlement.** The Settling Parties: (a)
27 acknowledge that it is their intent to consummate this Agreement; and (b) agree to cooperate to the
28 extent reasonably necessary to effectuate and implement the terms and conditions of this

1 Agreement and to exercise their best efforts to accomplish the terms and conditions of this
2 Agreement.

3 **3. Motion for Preliminary Approval.** At a time to be determined by Class Counsel,
4 and subject to prior notice of ten (10) days to LG Chem, Class Counsel shall submit this
5 Agreement to the Court and shall apply for entry of a preliminary approval order (“Preliminary
6 Approval Order”), requesting, *inter alia*, preliminary approval (“Preliminary Approval”) of the
7 Settlement. The motion shall include (a) the proposed Preliminary Approval Order, and (b) a
8 definition of the proposed settlement classes pursuant to Federal Rule of Civil Procedure 23. The
9 text of the foregoing items (a)-(b) shall be agreed upon by the Settling Parties.

10 **4. Proposed Form of Notice.** At a time to be determined in their sole discretion but
11 no later than any other class settlement entered into by Class Counsel, Class Counsel shall submit
12 to the Court for approval a proposed form of, method for and schedule for dissemination of notice
13 to the Classes. To the extent practicable and to the extent consistent with this paragraph, Class
14 Counsel may seek to coordinate this notice program with other settlements that may be reached in
15 the Actions in order to reduce the expense of notice. This motion shall recite and ask the Court to
16 find that the proposed form of and method for dissemination of notice to the Classes constitutes
17 valid, due and sufficient notice to the Classes, constitutes the best notice practicable under the
18 circumstances, and complies fully with the requirements of Federal Rule of Civil Procedure 23.
19 Class counsel shall provide LG Chem with seven days advance notice of the text of the notice(s) to
20 be provided to the Classes, and shall consider in good faith any concerns or suggestions expressed
21 by LG Chem. LG Chem shall be responsible for providing all notices required by the Class Action
22 Fairness Act of 2005 to be provided to state attorneys general or to the United States of America.

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

- 1 (a) certifying the Classes, pursuant to Federal Rule of Civil Procedure 23, solely
2 for purposes of this Settlement;
- 3 (b) fully and finally approving the Settlement contemplated by this Agreement
4 and its terms as being fair, reasonable and adequate within the meaning of
5 Federal Rule of Civil Procedure 23 and directing its consummation pursuant
6 to its terms and conditions;
- 7 (c) finding that the notice given to the Class Members constituted the best notice
8 practicable under the circumstances and complies in all respects with the
9 requirements of Federal Rule of Civil Procedure 23 and due process;
- 10 (d) directing that the Actions be dismissed with prejudice as to LG Chem and,
11 except as provided for herein, without costs;
- 12 (e) discharging and releasing the Releasees from all Released Claims;
- 13 (f) permanently barring and enjoining the institution and prosecution, by
14 Indirect Purchaser Plaintiffs and Class Members, of any other action against
15 the Releasees in any court asserting any claims related in any way to the
16 Released Claims;
- 17 (g) reserving continuing and exclusive jurisdiction over the Settlement,
18 including all future proceedings concerning the administration,
19 consummation and enforcement of this Agreement;
- 20 (h) determining pursuant to Federal Rule of Civil Procedure 54(b) that there is
21 no just reason for delay and directing entry of a final judgment as to LG
22 Chem; and
- 23 (i) containing such other and further provisions consistent with the terms of this
24 Agreement to which the parties expressly consent in writing.

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

27 **6. Stay Order.** Upon the date that the Court enters an order preliminarily approving
28 the Settlement, Indirect Purchaser Plaintiffs and members of the Classes shall be barred and

1 enjoined from commencing, instituting or continuing to prosecute any action or any proceeding in
2 any court of law or equity, arbitration tribunal, administrative forum or other forum of any kind
3 worldwide based on the Released Claims. Nothing in this provision shall prohibit the Indirect
4 Purchaser Plaintiffs or Class Counsel from continuing to participate in discovery in the Actions that
5 is initiated by other plaintiffs or that is subject to and consistent with the cooperation provisions set
6 forth in ¶¶28-34.

7
8 **C. Releases**

9 **7. Released Claims.** Upon the Effective Date, the Releasors (regardless of whether
10 any such Releasor ever seeks or obtains any recovery by any means, including, without limitation,
11 by submitting a Proof of Claim and Release, or by seeking any distribution from the Gross
12 Settlement Fund) shall be deemed to have, and by operation of the Judgment shall have fully,
13 finally and forever released, relinquished and discharged all Released Claims against the Releasees.

14 **8. No Future Actions Following Release.** The Releasors shall not, after the Effective
15 Date, seek (directly or indirectly) to commence, institute, maintain or prosecute any suit, action or
16 complaint or collect from or proceed against LG Chem or any other Releasee (including pursuant
17 to the Actions) based on the Released Claims in any forum worldwide, whether on his, her or its
18 own behalf or as part of any putative, purported or certified class of purchasers or consumers.

19 **9. Covenant Not to Sue.** Releasors hereby covenant not to sue the Releasees with
20 respect to any such Released Claims. Releasors shall be permanently barred and enjoined from
21 instituting, commencing or prosecuting against the Releasees any claims based in whole or in part
22 on the Released Claims. The parties contemplate and agree that this Agreement may be pleaded as
23 a bar to a lawsuit, and an injunction may be obtained, preventing any action from being initiated or
24 maintained in any case sought to be prosecuted on behalf of any Releasors with respect to the
25 Released Claims.

26 **10. Waiver of California Civil Code § 1542 and Similar Laws.** The Releasors
27 acknowledge that, by executing this Agreement, and for the consideration received hereunder, it is
28 their intention to release, and they are releasing, all Released Claims, even Unknown Claims. In

1 furtherance of this intention, the Releasors expressly waive and relinquish, to the fullest extent
2 permitted by law, any rights or benefits conferred by the provisions of California Civil Code §
3 1542, as set forth in ¶ 1(ff), or equivalent, similar or comparable laws or principles of law. The
4 Releasors acknowledge that they have been advised by Class Counsel of the contents and effects of
5 California Civil Code § 1542, and hereby expressly waive and release with respect to the Released
6 Claims any and all provisions, rights and benefits conferred by California Civil Code § 1542 or by
7 any equivalent, similar or comparable law or principle of law in any jurisdiction. The Releasors
8 may hereafter discover facts other than or different from those which they know or believe to be
9 true with respect to the subject matter of the Released Claims, but the Releasors hereby expressly
10 waive and fully, finally and forever settle and release any known or unknown, suspected or
11 unsuspected, foreseen or unforeseen, asserted or unasserted, contingent or non-contingent, and
12 accrued or unaccrued claim, loss or damage with respect to the Released Claims, whether or not
13 concealed or hidden, without regard to the subsequent discovery or existence of such additional or
14 different facts. The release of unknown, unanticipated, unsuspected, unforeseen, and unaccrued
15 losses or claims in this paragraph is not a mere recital.

16 **11. Claims Excluded from Release.** Notwithstanding the foregoing, the releases
17 provided herein shall not release claims against LG Chem for product liability, breach of contract,
18 breach of warranty or personal injury, or any other claim unrelated to the allegations in the Actions.
19 For avoidance of doubt, this Agreement does not release claims arising from restraints of
20 competition directed at goods other than (a) Lithium Ion Batteries, or (b) Lithium Ion Batteries
21 contained in Finished Products. Additionally, the releases provided herein shall not release any
22 claims to enforce the terms of this Agreement.

23 **D. Settlement Fund**

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

4 **13. Disbursements Prior to Effective Date.** No amount may be disbursed from the
5 Gross Settlement Fund unless and until the Effective Date, except that: (a) Notice and
6 Administrative Costs, which may not exceed seven hundred fifty thousand U.S. Dollars
7 (\$750,000.00), may be paid from the Gross Settlement Fund as they become due; (b) Taxes and
8 Tax Expenses (as defined in ¶ 17(b) below) may be paid from the Gross Settlement Fund as they
9 become due; and (c) attorneys' fees and reimbursement of litigation costs and expenses, as may be
10 ordered by the Court, may be disbursed during the pendency of any appeals which may be taken
11 from the judgment to be entered by the Court finally approving this Settlement. Class Counsel will
12 attempt in good faith to minimize the amount of Notice and Administrative Costs and may seek to
13 coordinate the notice described herein with other settlements in these Actions.

14 **14. Refund by Escrow Agent.** If the Settlement as described herein is finally
15 disapproved by any court, or it is terminated as provided herein, or the Judgment is overturned on
16 appeal or by writ, the Gross Settlement Fund, including the Settlement Amount and all interest
17 earned on the Settlement Amount while held in escrow, excluding only Notice and Administrative
18 Costs, Taxes and Tax Expenses (as defined herein), shall be refunded, reimbursed and repaid by
19 the Escrow Agent to LG Chem within five (5) business days after receiving notice pursuant to ¶42
20 below.

21 **15. Refund by Class Counsel.** If the Settlement as described herein is finally
22 disapproved by any court, or it is terminated as provided herein, or the Judgment is overturned on
23 appeal or by writ, any attorneys' fees and costs previously paid pursuant to this Agreement (as well
24 as interest on such amounts) shall be refunded, reimbursed and repaid by Class Counsel to LG
25 Chem within thirty (30) business days after receiving notice pursuant to ¶42 below.

26 **16. No Additional Payments by LG Chem.** Under no circumstances will LG Chem be
27 required to pay more or less than the Settlement Amount pursuant to this Agreement and the
28

1 Settlement set forth herein. For purposes of clarification, the payment of any Fee and Expense
2 Award (as defined in ¶ 25 below), the Notice and Administrative Costs, and any other costs
3 associated with the implementation of this Settlement Agreement shall be exclusively paid from
4 the Settlement Amount.

5 **17. Taxes.** The Settling Parties and the Escrow Agent agree to treat the Gross
6 Settlement Fund as being at all times a “qualified settlement fund” within the meaning of Treas.
7 Reg. §1.468B-1. The Escrow Agent shall timely make such elections as necessary or advisable to
8 carry out the provisions of this paragraph, including the “relation-back election” (as defined in
9 Treas. Reg. §1.468B-1) back to the earliest permitted date. Such elections shall be made in
10 compliance with the procedures and requirements contained in such regulations. It shall be the
11 responsibility of the Escrow Agent to prepare and deliver timely and properly the necessary
12 documentation for signature by all necessary parties, and thereafter to cause the appropriate filing
13 to occur.

14 (a) For the purpose of §468B of the Internal Revenue Code of 1986, as
15 amended, and the regulations promulgated thereunder, the “administrator”
16 shall be the Escrow Agent. The Escrow Agent shall satisfy the
17 administrative requirements imposed by Treas. Reg. §1.468B-2 by, *e.g.*, (i)
18 obtaining a taxpayer identification number, (ii) satisfying any information
19 reporting or withholding requirements imposed on distributions from the
20 Gross Settlement Fund, and (iii) timely and properly filing applicable
21 federal, state and local tax returns necessary or advisable with respect to the
22 Gross Settlement Fund (including, without limitation, the returns described
23 in Treas. Reg. §1.468B-2(k)) and paying any taxes reported thereon. Such
24 returns (as well as the election described in this paragraph) shall be
25 consistent with the provisions of this paragraph and in all events shall reflect
26 that all Taxes as defined in ¶ 17(b) below on the income earned by the Gross
27 Settlement Fund shall be paid out of the Gross Settlement Fund as provided
28 in ¶ 19 hereof;

1 (b) The following shall be paid out of the Gross Settlement Fund: (i) all taxes
2 (including any estimated taxes, interest or penalties) arising with respect to
3 the income earned by the Gross Settlement Fund, including, without
4 limitation, any taxes or tax detriments that may be imposed upon LG Chem
5 or its counsel with respect to any income earned by the Gross Settlement
6 Fund for any period during which the Gross Settlement Fund does not
7 qualify as a “qualified settlement fund” for federal or state income tax
8 purposes (collectively, “Taxes”); and (ii) all expenses and costs incurred in
9 connection with the operation and implementation of this paragraph,
10 including, without limitation, expenses of tax attorneys and/or accountants
11 and mailing and distribution costs and expenses relating to filing (or failing
12 to file) the returns described in this paragraph (collectively, “Tax
13 Expenses”). In all events neither LG Chem nor its counsel shall have any
14 liability or responsibility for the Taxes or the Tax Expenses. With funds
15 from the Gross Settlement Fund, the Escrow Agent shall indemnify and hold
16 harmless LG Chem and its counsel for Taxes and Tax Expenses (including,
17 without limitation, Taxes payable by reason of any such indemnification).
18 Further, Taxes and Tax Expenses shall be treated as, and considered to be, a
19 cost of administration of the Gross Settlement Fund and shall timely be paid
20 by the Escrow Agent out of the Gross Settlement Fund without prior order
21 from the Court, and the Escrow Agent shall be obligated (notwithstanding
22 anything herein to the contrary) to withhold from distribution to Authorized
23 Claimants any funds necessary to pay such amounts, including the
24 establishment of adequate reserves for any Taxes and Tax Expenses (as well
25 as any amounts that may be required to be withheld under Treas. Reg.
26 §1.468B-2(1)(2)); neither LG Chem nor its counsel is responsible therefor,
27 nor shall they have any liability therefor. The Settling Parties agree to
28 cooperate with the Escrow Agent, each other, their tax attorneys and their

1 accountants to the extent reasonably necessary to carry out the provisions of
2 this paragraph.

3 **E. Administration and Distribution of Gross Settlement Fund**

4 **18. Time to Appeal.** The time to appeal from an approval of the Settlement shall
5 commence upon the Court’s entry of the Judgment regardless of whether or not either the
6 Distribution Plan or an application for attorneys’ fees and expenses has been submitted to the Court
7 or resolved.

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

- 14 (a) To pay all costs and expenses reasonably and actually incurred in connection
15 with providing notice to the Classes in connection with administering and
16 distributing the Net Settlement Fund to Authorized Claimants, and in
17 connection with paying escrow fees and costs, if any;
- 18 (b) To pay all costs and expenses, if any, reasonably and actually incurred in
19 soliciting claims and assisting with the filing and processing of such claims;
- 20 (c) To pay the Taxes and Tax Expenses as defined herein;
- 21 (d) To pay any Fee and Expense Award that is allowed by the Court, subject to
22 and in accordance with the Agreement; and
- 23 (e) To distribute the balance of the Net Settlement Fund to Authorized
24 Claimants as allowed by the Agreement, any Distribution Plan or order of
25 the Court.
26
27
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1 **20. Distribution of Net Settlement Fund.** Upon the Effective Date and thereafter, and
2 in accordance with the terms of this Agreement, the Distribution Plan and such further approval
3 and further order(s) of the Court as may be necessary or as circumstances may require, the Net
4 Settlement Fund shall be distributed to Authorized Claimants, subject to and in accordance with the
5 following:

- 6 (a) Each member of the Classes who claims to be an Authorized Claimant shall
7 be required to submit to the Notice and Claims Administrator a completed
8 Proof of Claim and Release in such form as shall be approved by the Court;
- 9 (b) Except as otherwise ordered by the Court, each member of the Classes who
10 fails to submit a Proof of Claim and Release within such period as may be
11 ordered by the Court, or otherwise allowed, shall be forever barred from
12 receiving any payments pursuant to this Agreement and the Settlement set
13 forth herein;
- 14 (c) The Net Settlement Fund shall be distributed to Authorized Claimants
15 substantially in accordance with a Distribution Plan to be approved by the
16 Court. Any such Distribution Plan is not a part of this Agreement. No funds
17 from the Net Settlement Fund shall be distributed to Authorized Claimants
18 until after the Effective Date; and
- 19 (d) All Persons who fall within the definition of the Classes who do not timely
20 and validly request to be excluded from the Classes shall be subject to and
21 bound by the provisions of this Agreement, the releases contained herein,
22 and the Judgment with respect to all Released Claims, regardless of whether
23 such Persons seek or obtain by any means, including, without limitation, by
24 submitting a Proof of Claim and Release or any similar document, any
25 distribution from the Gross Settlement Fund or the Net Settlement Fund.

26 **21. No Liability for Distribution of Settlement Funds.** Neither the Releasees nor
27 their counsel shall have any responsibility for, interest in or liability whatsoever with respect to the
28 distribution of the Gross Settlement Fund; the Distribution Plan; the determination, administration

1 or calculation of claims; the Gross Settlement Fund’s qualification as a “qualified settlement fund”;
2 the payment or withholding of Taxes or Tax Expenses; the distribution of the Net Settlement Fund;
3 or any losses incurred in connection with any such matters. The Releasers hereby fully, finally and
4 forever release, relinquish and discharge the Releasees and their counsel from any and all such
5 liability. No Person shall have any claim against Class Counsel or the Notice and Claims
6 Administrator based on the distributions made substantially in accordance with the Agreement and
7 the Settlement contained herein, the Distribution Plan or further orders of the Court.

8 **22. Balance Remaining in Net Settlement Fund.** If there is any balance remaining in
9 the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), Class
10 Counsel may reallocate such balance among Authorized Claimants in an equitable and economic
11 fashion, distribute remaining funds through *cy pres*, or allow the money to escheat to federal or
12 state governments, subject to Court approval. In no event shall the Net Settlement Fund revert to
13 LG Chem.

14 **23. Distribution Plan Not Part of Settlement.** It is understood and agreed by the
15 Settling Parties that any Distribution Plan, including any adjustments to any Authorized Claimant’s
16 claim, is not a part of this Agreement and is to be considered by the Court separately from the
17 Court’s consideration of the fairness, reasonableness and adequacy of the Settlement set forth in
18 this Agreement, and any order or proceedings relating to the Distribution Plan shall not operate to
19 terminate or cancel this Agreement or affect the finality of the Judgment, the Final Approval Order,
20 or any other orders entered pursuant to this Agreement. The time to appeal from an approval of the
21 Settlement shall commence upon the Court’s entry of the Judgment regardless of whether either the
22 Distribution Plan or an application for attorneys’ fees and expenses has been submitted to the Court
23 or approved.

24 **F. Attorneys’ Fees and Reimbursement of Expenses**

25 **24. Fee and Expense Application.** Class Counsel may submit an application or
26 applications (the “Fee and Expense Application”) for distributions from the Gross Settlement Fund
27 for: (a) an award of attorneys’ fees; plus (b) reimbursement of expenses incurred in connection
28

1 with prosecuting the Actions; plus (c) any interest on such attorneys' fees and expenses (until paid)
2 at the same rate and for the same periods as earned by the Gross Settlement Fund, as appropriate,
3 and as may be awarded by the Court.

4 **25. Payment of Fee and Expense Award.** Any amounts that are awarded by the Court
5 pursuant to the above paragraph (the "Fee and Expense Award") shall be paid from the Gross
6 Settlement Fund consistent with the provisions of this Agreement.

7 **26. Award of Fees and Expenses Not Part of Settlement.** The procedure for, and the
8 allowance or disallowance by the Court of, the Fee and Expense Application are not part of the
9 Settlement set forth in this Agreement, and are to be considered by the Court separately from the
10 Court's consideration of the fairness, reasonableness and adequacy of the Settlement set forth in
11 this Agreement. Any order or proceeding relating to the Fee and Expense Application, or any
12 appeal from any Fee and Expense Award or any other order relating thereto or reversal or
13 modification thereof, shall not operate to terminate or cancel this Agreement, or affect or delay the
14 finality of the Judgment and the Settlement of the Actions as set forth herein. No order of the
15 Court or modification or reversal on appeal of any order of the Court concerning any Fee and
16 Expense Award or Distribution Plan shall constitute grounds for cancellation or termination of this
17 Agreement.

18 **27. No Liability for Fees and Expenses of Class Counsel.** Neither the Releasees nor
19 their counsel shall have any responsibility for or liability whatsoever with respect to any
20 payment(s) to Class Counsel pursuant to this Agreement and/or to any other Person who may assert
21 some claim thereto or any Fee and Expense Award that the Court may make in the Actions, other
22 than as set forth in this Agreement.

23 **G. Cooperation**

24 **28. Cooperation as Consideration.** In return for the Release and Discharge provided
25 herein, LG Chem agrees to pay the Settlement Amount and agrees to provide cooperation to
26 Indirect Purchaser Plaintiffs as set forth specifically below. Except as otherwise specified herein,
27

1 all cooperation shall commence within ten (10) business days after Preliminary Approval by the
2 Court of this Agreement.

3 **29. Cooperation Subject to and Consistent with Prior Obligations.** LG Chem and
4 the Indirect Purchaser Plaintiffs shall not be obligated to provide cooperation that would violate an
5 applicable court order or LG Chem's commitments to the United States Department of Justice or
6 any other governmental entity. Additionally, Indirect Purchaser Plaintiffs and LG Chem will take
7 reasonable efforts to accommodate the other's efforts to minimize duplication in the providing of
8 any cooperation.

9 **30. Cooperation.**

- 10 (a) Within a reasonable period of time (but no more than thirty (30) days) after
11 submission by Class Counsel to the Court of a proposed form of notice to the
12 Classes, LG Chem's counsel shall meet with Class Counsel for the purpose
13 of identifying any LG Chem documents that have been produced as of that
14 time that relate to and/or support the allegations in the Third Consolidated
15 Amended Class Action Complaint or that show LG Chem Lithium Ion
16 Battery sales, pricing, capacity or production; provided, however, that such
17 obligation shall not require LG Chem to provide information protected by
18 the attorney-client privilege, attorney work-product doctrine and/or other
19 similar privileges and shall not waive any such protections or privileges.
20 Further, such communications shall be considered privileged settlement
21 discussions pursuant to Federal Rule of Evidence 408 and similar provisions.
- 22 (b) LG Chem will produce all English translations of any documents that it
23 provided to the United States Department of Justice in connection with its
24 investigation of potential collusion concerning Lithium Ion Batteries, to the
25 extent they exist, within fifteen (15) business days after Preliminary
26 Approval by the Court of this Agreement.
- 27 (c) LG Chem agrees that Class Counsel may notice up to three depositions and
28 also may ask questions at depositions of LG Chem witnesses noticed by

1 other plaintiffs in the Actions.

- 2 (d) If LG Chem produces any declarations, documents, data or other responses
3 to discovery to any other plaintiff in the Actions, LG Chem will produce the
4 same to Class Counsel.
- 5 (e) Each of the Settling Parties shall cooperate in good faith to authenticate, to
6 the extent possible, documents and/or things produced in the Actions,
7 whether by declarations, affidavits, depositions, hearings and/or trials as may
8 be necessary for the Actions, without the need for the other party to issue
9 any subpoenas, letters rogatory, letters of request or formal discovery
10 requests to the other.
- 11 (f) LG Chem will respond to reasonable requests (including, if necessary, by
12 providing reasonable telephonic access to appropriate employees) for
13 clarification of the transactional, production and cost data that LG Chem
14 produced in the Actions prior to the Execution Date.
- 15 (g) LG Chem will continue to comply with the terms of paragraph I(C) in the
16 Court's Order re Deposition Protocol (ECF No. 593) ("Deposition
17 Protocol") relating to employee "watchlists" for as long as these terms are in
18 effect. LG Chem will inform Class Counsel under the terms of that
19 paragraph if LG Chem becomes aware that a person on Plaintiffs' (as
20 defined in the Deposition Protocol) watchlist intends to leave, or does leave,
21 his or her employment at LG Chem, to the extent reasonably possible.
- 22 (h) Upon reasonable notice after Preliminary Approval of this Agreement, LG
23 Chem shall use its best efforts to make available up to two (2) of its
24 employees identified by Indirect Purchaser Plaintiffs for interviews,
25 depositions and/or testimony at trial, via videoconference or at a mutually
26 agreed upon location or locations (except for testimony at trial, which shall
27 be at the United States District Court for the Northern District of California).
28 Unless mutually agreed to by the Parties, any such interviews shall not

1 exceed one six-hour day. Except as specifically provided for herein, any
2 such depositions shall be conducted in accordance with the procedures set
3 forth in the Deposition Protocol and shall count toward the maximum of
4 twelve (12) depositions for LG Chem as a defendant group as set forth in the
5 Deposition Protocol.

6 **31. Confidentiality.** Indirect Purchaser Plaintiffs and Class Counsel agree that they
7 will not use the information provided by LG Chem or its representatives for any purpose other than
8 pursuit of the Actions, and will not publicize the information beyond what is reasonably necessary
9 for the prosecution of the Actions. Any information provided pursuant to this Agreement shall be
10 subject to the Stipulated Protective Order entered in the Actions on May 17, 2013 (ECF No. 193)
11 (“Protective Order”) as if produced in response to discovery requests and so designated.

12 **32. Other Discovery.** Upon the Execution Date, LG Chem and Releasees need not
13 respond to formal discovery from Indirect Purchaser Plaintiffs or otherwise participate in the
14 Actions. Further, neither LG Chem nor the Indirect Purchaser Plaintiffs shall file motions against
15 the other or initiate or participate in any discovery, motion or proceeding directly adverse to the
16 other in connection with the Actions, except as specifically provided for herein, and LG Chem and
17 the Indirect Purchaser Plaintiffs shall not be obligated to respond to or supplement prior responses
18 to formal discovery that has been previously propounded by the other in the Actions or otherwise
19 participate in the Actions. Indirect Purchaser Plaintiffs and LG Chem agree to withdraw all
20 outstanding discovery served on the other.

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

25 **34. Final Approval.** In the event that this Agreement fails to receive Final Approval by
26 the Court as contemplated herein or in the event that it is terminated by either of the Settling Parties
27 under any provision herein, the parties agree that neither Indirect Purchaser Plaintiffs nor Class
28 Counsel shall be permitted to introduce in evidence, at any hearing, or in support of any motion,

1 opposition or other pleading in the Actions or in any other federal or state or foreign action alleging
2 a violation of any law relating to the subject matter of the Actions, any information provided by LG
3 Chem or its counsel pursuant to ¶ 30(a) or ¶ 30(f) or any information obtained during interviews
4 provided pursuant to ¶ 30(h). Further, in such event, LG Chem and Indirect Purchaser Plaintiffs
5 will each be bound by and have the benefit of any rulings made in the Actions to the extent they
6 would have been applicable to LG Chem or Indirect Purchaser Plaintiffs had LG Chem been
7 participating in the Actions.

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

9 **35. Effective Date.** The Effective Date of this Agreement shall be conditioned on the
10 occurrence of all of the following events:

- 11 (a) LG Chem no longer has any right under ¶¶40-42 to terminate this Agreement
12 or, if LG Chem does have such right, they have given written notice to Class
13 Counsel that they will not exercise such right;
- 14 (b) Indirect Purchaser Plaintiffs no longer have any right under ¶¶40-42 to
15 terminate this Agreement or, if Indirect Purchaser Plaintiffs do have such
16 right, they have given written notice to LG Chem that they will not exercise
17 such right;
- 18 (c) the Court has finally approved the Settlement as described herein, following
19 notice to the Classes and a hearing, as prescribed by Rule 23 of the Federal
20 Rules of Civil Procedure, and has entered the Judgment; and
- 21 (d) the Judgment has become Final.

22 **36. Occurrence of Effective Date.** Upon the occurrence of all of the events referenced
23 in the above paragraph, any and all remaining interest or right of LG Chem in or to the Gross
24 Settlement Fund, if any, shall be absolutely and forever extinguished, and the Gross Settlement
25 Fund (less any Notice and Administrative Costs, Taxes, Tax Expenses or Fee and Expense Award
26 paid) shall be transferred from the Escrow Agent to the Notice and Claims Administrator as
27 successor Escrow Agent within ten (10) days after the Effective Date.

1 **37. Failure of Effective Date to Occur.** If all of the conditions specified in ¶35 are not
2 met, then this Agreement shall be cancelled and terminated, subject to and in accordance with ¶42
3 unless the Settling Parties mutually agree in writing to proceed with this Agreement.

4 **38. Exclusions and Rights to Terminate.**

5 (a) Class Counsel shall cause copies of requests for exclusion from the Classes
6 to be provided to LG Chem's counsel. No later than fourteen (14) days after
7 the final date for mailing requests for exclusion, Class Counsel shall provide
8 LG Chem's counsel with a complete and final list of opt-outs. With the
9 motion for final approval of the Settlement, Class Counsel will file with the
10 Court a complete list of requests for exclusion from the Classes, including
11 only the name, city and state of the person or entity requesting exclusion.
12 With respect to any member of the Class who requests exclusion from the
13 Classes, LG Chem reserves all of its legal rights and defenses, including, but
14 not limited to, any defenses relating to whether the member of the Class is
15 an indirect purchaser of the allegedly price-fixed product and/or has standing
16 to bring any claim. LG Chem shall have the option to terminate this
17 Agreement if the purchases of Lithium Ion Batteries, Lithium Ion Packs
18 and/or Finished Products made by members of the Classes who timely and
19 validly request exclusion from the Classes equal or exceed five percent (5%)
20 of the total volume of purchases made by the Classes. After meeting and
21 conferring with Class Counsel, LG Chem may elect to terminate this
22 Agreement by serving written notice on Class Counsel by email and
23 overnight courier and by filing a copy of such notice with the Court no later
24 than thirty (30) days before the date for the final approval hearing of this
25 Agreement, except that LG Chem shall have a minimum of ten (10) days in
26 which to decide whether to terminate this Agreement after receiving the final
27 opt-out list.

1 (b) LG Chem believes it has made its best effort to reasonably comply with its
2 discovery obligations to date, and Indirect Purchaser Plaintiffs possess all
3 non-privileged, documents of LG Chem's responsive to their discovery
4 requests through that effort. In the event non-privileged, responsive
5 documents that had been in LG Chem's possession, custody, or control are
6 produced to or identified by Indirect Purchaser Plaintiffs that were not
7 previously produced in the Actions to Indirect Purchaser Plaintiffs at the
8 time of the execution of this Agreement, Indirect Purchaser Plaintiffs will
9 have thirty days to terminate this Agreement, so long as such documents
10 contain evidence of the conspiracy alleged by Indirect Purchaser Plaintiffs
11 that is materially different than the evidence previously disclosed in the
12 Actions and which materially changes Indirect Purchaser Plaintiffs' claims
13 against LG Chem. If there is a dispute as to the materiality of such
14 documents, the parties agree to submit the dispute to a mutually agreed
15 neutral for determination. Indirect Purchaser Plaintiffs' termination rights
16 under this paragraph expire upon final approval of the settlement in this
17 matter by the Court prior to any appeals.

18 (c) In the event that this Agreement is terminated by either of the Settling
19 Parties: (i) this Agreement shall be null and void, and shall have no force or
20 effect and shall be without prejudice to the rights and contentions of
21 Releasees and Releasers in this or any other litigation; and (ii) the Settlement
22 Amount paid by LG Chem, plus interest thereon, shall be refunded promptly
23 to LG Chem, minus such payment (as set forth in this Agreement) of Notice
24 and Administrative Costs and Taxes and Tax Expenses, consistent with the
25 provisions of ¶42.

26 **39. Objections.** Settlement Class members who wish to object to any aspect of the
27 Settlement must file with the Court a written statement containing their objection by the end of the
28 period to object to the Settlement. Any award or payment of attorneys' fees made to the counsel of

1 an objector to the Settlement shall only be made by Court order and upon a showing of the benefit
2 conferred to the Classes. In determining any such award of attorneys' fees to an objectors'
3 counsel, the Court will consider the incremental value to the Classes caused by any such objection.
4 Any award of attorneys' fees by the Court will be conditioned on the objector and his or her
5 attorney stating under penalty of perjury that no payments shall be made to the objector based on
6 the objector's participation in the matter other than as ordered by the Court. LG Chem shall have
7 no responsibility for any such payments.

8 **40. Failure to Enter Proposed Preliminary Approval Order, Final Approval Order**
9 **or Judgment.** If the Court does not enter the Preliminary Approval Order, the Final Approval
10 Order or the Judgment, or if the Court enters the Final Approval Order and the Judgment and
11 appellate review is sought and, on such review, the Final Approval Order or the Judgment is finally
12 vacated, modified or reversed, then this Agreement and the Settlement incorporated therein shall be
13 cancelled and terminated; provided, however, the Settling Parties agree to act in good faith to
14 secure Final Approval of this Settlement and to attempt to address in good faith concerns regarding
15 the Settlement identified by the Court and any court of appeal.

16 **41.** No Settling Party shall have any obligation whatsoever to proceed under any terms
17 other than substantially in the form provided and agreed to herein; provided, however, that no order
18 of the Court concerning any Fee and Expense Application or Distribution Plan, or any modification
19 or reversal on appeal of such order, shall constitute grounds for cancellation or termination of this
20 Agreement by any Settling Party. Without limiting the foregoing, LG Chem shall have, in its sole
21 and absolute discretion, the option to terminate the Settlement in its entirety in the event that the
22 Judgment, upon becoming Final, does not provide for the dismissal with prejudice of all of the
23 Actions against it.

24 **42. Termination.** Unless otherwise ordered by the Court, in the event that the Effective
25 Date does not occur or this Agreement should terminate, or be cancelled or otherwise fail to
26 become effective for any reason, including, without limitation, in the event that this Agreement is
27 terminated by either of the Settling Parties pursuant to ¶38, the Settlement as described herein is
28

1 not finally approved by the Court or the Judgment is reversed or vacated following any appeal
2 taken therefrom, then:

- 3 (a) within five (5) business days after written notification of such event is sent
4 by counsel for LG Chem to the Escrow Agent, the Gross Settlement Fund—
5 including the Settlement Amount and all interest earned on the Settlement
6 Amount while held in escrow excluding only Notice and Administrative
7 Costs that have either been properly disbursed or are due and owing, Taxes
8 and Tax Expenses that have been paid or that have accrued and will be
9 payable at some later date, and attorneys' fees and costs that have been
10 disbursed pursuant to Court order—will be refunded, reimbursed and repaid
11 by the Escrow Agent to LG Chem; if said amount or any portion thereof is
12 not returned within such five (5) day period, then interest shall accrue
13 thereon at the rate of ten percent (10%) per annum until the date that said
14 amount is returned;
- 15 (b) within thirty (30) business days after written notification of such event is
16 sent by counsel for LG Chem to Class Counsel, all attorneys' fees and costs
17 which have been disbursed to Class Counsel pursuant to Court order shall be
18 refunded, reimbursed and repaid by Class Counsel to LG Chem;
- 19 (c) the Escrow Agent or its designee shall apply for any tax refund owed to the
20 Gross Settlement Fund and pay the proceeds to LG Chem, after deduction of
21 any fees or expenses reasonably incurred in connection with such
22 application(s) for refund, pursuant to such written request;
- 23 (d) the Settling Parties shall be restored to their respective positions in the
24 Actions as of the Execution Date, with all of their respective claims and
25 defenses preserved as they existed on that date;
- 26 (e) the terms and provisions of this Agreement, with the exception of ¶¶13-15,
27 17, 27, 31, 33-35, 37, 40-42, 44-45, 47-48, 50-57 (which shall continue in
28 full force and effect), shall be null and void and shall have no further force

1 or effect with respect to the Settling Parties, and neither the existence nor the
2 terms of this Agreement (nor any negotiations preceding this Agreement nor
3 any acts performed pursuant to, or in furtherance of, this Agreement) shall
4 be used in the Actions or in any other action or proceeding for any purpose
5 (other than to enforce the terms remaining in effect); and

6 (f) any judgment or order entered by the Court in accordance with the terms of
7 this Agreement shall be treated as vacated, *nunc pro tunc*.

8
9 **I. No Admission of Liability**

10 **43. Final and Complete Resolution.** The Settling Parties intend the Settlement as
11 described herein to be a final and complete resolution of all disputes between them with respect to
12 the Actions and Released Claims and to compromise claims that are contested, and it shall not be
13 deemed an admission by any Settling Party as to the merits of any claim or defense or any
14 allegation made in the Actions.

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

21 **45. Use of Agreement as Evidence.** Neither this Agreement nor the Settlement, nor
22 any act performed or document executed pursuant to or in furtherance of this Agreement or the
23 Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the
24 validity of any Released Claims, any allegation made in the Actions, or any wrongdoing or liability
25 of LG Chem; or (b) is or may be deemed to be or may be used as an admission of, or evidence of,
26 any liability, fault or omission of the Releasees in any civil, criminal or administrative proceeding
27 in any court, administrative agency or other tribunal. Neither this Agreement nor the Settlement,
28 nor any act performed or document executed pursuant to or in furtherance of this Agreement or the

1 Settlement, shall be admissible in any proceeding for any purpose, except to enforce the terms of
2 the Settlement, and except that the Releasees may file this Agreement and/or the Judgment in any
3 action for any purpose, including, but not limited to, in order to support a defense or counterclaim
4 based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar
5 or reduction or any other theory of claim preclusion or issue preclusion or similar defense or
6 counterclaim. The limitations described in this paragraph apply whether or not the Court enters the
7 Preliminary Approval Order, the Final Approval Order or the Judgment.

8 **J. Miscellaneous Provisions**

9 **46. Voluntary Settlement.** The Settling Parties agree that the Settlement Amount and
10 the other terms of the Settlement as described herein were negotiated in good faith by the Settling
11 Parties, and reflect a settlement that was reached voluntarily after consultation with competent
12 legal counsel.

13 **47. Consent to Jurisdiction.** LG Chem and each Class Member hereby irrevocably
14 submit to the exclusive jurisdiction of the Court only for the specific purpose of any suit, action,
15 proceeding or dispute arising out of or relating to this Agreement or the applicability of this
16 Agreement. Solely for purposes of such suit, action or proceeding, to the fullest extent that they
17 may effectively do so under applicable law, LG Chem and the Class Members irrevocably waive
18 and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that
19 they are not subject to the jurisdiction of the Court or that the Court is in any way an improper
20 venue or an inconvenient forum. Without limiting the generality of the foregoing, it is hereby
21 agreed that any dispute concerning the provisions of ¶¶ 7-11 hereof, including but not limited to
22 any suit, action or proceeding in which the provisions of ¶¶ 7-11 hereof are asserted as a defense in
23 whole or in part to any claim or cause of action or otherwise raised as an objection, constitutes a
24 suit, action or proceeding arising out of or relating to this Agreement. In the event that the
25 provisions of ¶¶ 7-11 hereof are asserted by any Releasee as a defense in whole or in part to any
26 claim or cause of action or otherwise raised as an objection in any suit, action or proceeding, it is
27 hereby agreed that such Releasee shall be entitled to a stay of that suit, action or proceeding until
28

1 the Court has entered a final judgment no longer subject to any appeal or review determining any
2 issues relating to the defense or objection based on the provisions of ¶¶ 7-11. Nothing herein shall
3 be construed as a submission to jurisdiction for any purpose other than any suit, action, proceeding
4 or dispute arising out of or relating to this Agreement or the applicability of this Agreement.

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

10 **49. Binding Effect.** This Agreement shall be binding upon, and inure to the benefit of,
11 the successors and assigns of the parties hereto. Without limiting the generality of the foregoing,
12 each and every covenant and agreement herein by Indirect Purchaser Plaintiffs and Class Counsel
13 shall be binding upon all Class Members.

14 **50. Authorization to Enter Settlement Agreement.** The undersigned representatives
15 of LG Chem represent that they are fully authorized to enter into and to execute this Agreement on
16 behalf of LG Chem. Class Counsel, on behalf of Indirect Purchaser Plaintiffs and the Classes,
17 represent that they are, subject to Court approval, expressly authorized to take all action required or
18 permitted to be taken by or on behalf of the Classes pursuant to this Agreement to effectuate its
19 terms and to enter into and execute this Agreement and any modifications or amendments to the
20 Agreement on behalf of the Classes that they deem appropriate.

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

28 If directed to the Indirect Purchaser Plaintiffs, address notice to:

1 COTCHETT, PITRE & MCCARTHY, LLP
2 Steven N. Williams (swilliams@coplegal.com)
3 San Francisco Airport Office Center
4 840 Malcolm Road, Suite 200
5 Burlingame, CA 94010
6 Telephone: 650-697-6000
7 Facsimile: 650-697-0577

8 HAGENS BERMAN SOBOL SHAPIRO LLP
9 Jeff Friedman (jefff@hbsslaw.com)
10 715 Hearst Avenue, Suite 202
11 Berkley, CA 94710
12 Telephone: 510-725-3000
13 Facsimile: 510-725-3001

14 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
15 Brendan P. Glackin (bglackin@lchb.com)
16 275 Battery Street, 29th Floor
17 San Francisco, CA 94111-3339
18 Telephone: 415-956-1000
19 Facsimile: 415-956-1008

20 If directed to LG Chem, address notice to:

21 EIMER STAHL LLP
22 Nathan P. Eimer (neimer@eimerstahl.com)
23 224 South Michigan Avenue, Suite 1100
24 Chicago, IL 60604
25 neimer@eimerstahl.com
26 Telephone: 312-660-7600
27 Facsimile: 312-692-1718
28 aaragona@eimerstahl.com
vjacobsen@eimerstahl.com

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

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

54. **Choice of Law.** This Agreement shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of California, and the rights and

1 obligations of the parties to this Agreement shall be construed and enforced in accordance with,
2 and governed by, the internal, substantive laws of the State of California without giving effect to
3 that state's choice of law principles.

4 **55. Amendment; Waiver.** This Agreement shall not be modified in any respect except
5 by a writing executed by LG Chem and Class Counsel, and the waiver of any rights conferred
6 hereunder shall be effective only if made by written instrument of the waiving party. The waiver
7 by any party of any breach of this Agreement shall not be deemed or construed as a waiver of any
8 other breach, whether prior, subsequent or contemporaneous, of this Agreement.

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

14 **57. Integrated Agreement.** This Agreement constitutes the entire agreement between
15 the Settling Parties and no representations, warranties or inducements have been made to any party
16 concerning this Agreement other than the representations, warranties and covenants contained and
17 memorialized herein. It is understood by the Settling Parties that, except for the matters expressly
18 represented herein, the facts or law with respect to which this Agreement is entered into may turn
19 out to be other than or different from the facts now known to each party or believed by such party
20 to be true. Each party therefore expressly assumes the risk of the facts or law turning out to be so
21 different, and agrees that this Agreement shall be in all respects effective and not subject to
22 termination by reason of any such different facts or law. Except as otherwise provided herein, each
23 party shall bear its own costs and attorneys' fees.

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

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

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INDIRECT PURCHASER PLAINTIFFS' CLASS
COUNSEL, on behalf of Indirect Purchaser Plaintiffs
individually and on behalf of the Classes

DATED: November 14, 2016

HAGENS BERMAN SOBOL SHAPIRO LLP

By: 
JEFF D. FRIEDMAN

Steve W. Berman (*pro hac vice*)
Shana E. Scarlett (217895)
Jeff D. Friedman (173886)
715 Hearst Avenue, Suite 202
Berkeley, CA 94710
Telephone: (510) 725-3000
Facsimile: (510) 725-3001
steve@hbsslaw.com
jefff@hbsslaw.com
shanas@hbsslaw.com

DATED: November 14, 2016

COTCHETT, PITRE & McCARTHY, LLP

By: 
STEVEN N. WILLIAMS

Joseph W. Cotchett (SBN 36324)
Nancy L. Fineman (SBN 124870)
Demetrius X. Lambrinos (SBN 246027)
Joyce Chang (SBN 300780)
840 Malcolm Road
Burlingame, CA 94010
Telephone: (650) 697-6000
Facsimile: (650) 697-0577
jcotchett@cpmlegal.com
nfineman@cpmlegal.com
swilliams@cpmlegal.com
dlambrinos@cpmlegal.com
jchang@cpmlegal.com

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DATED: November 14, 2016

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

By: 
BRENDAN P. GLACKIN

Elizabeth J. Cabraser (SBN 083151)
Richard M. Heimann (SBN 63607)
Eric B. Fastiff (SBN 182260)
Dean M. Harvey (SBN 250298)
Lin Y. Chan (SBN 255027)
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Telephone: (415) 956-1000
Facsimile: (415) 956-1008
ecabraser@lchb.com
rheimann@lchb.com
efastiff@lchb.com
bglackin@lchb.com
dharvey@lchb.com
lchan@lchb.com

LG CHEM, LTD.

DATED: November 14, 2016

By: _____
Geon Jang
Its Vice President and General Counsel

LG CHEM AMERICA, INC.

DATED: November 14, 2016

By: _____
Soo Jung Hahm
Its Vice President and Head

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ecabraser@lchb.com
rheimann@lchb.com
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bglackin@lchb.com
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