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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	INDIRECT PURCHASER PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF SETTLEMENTS WITH SDI, TOKIN, TOSHIBA AND PANASONIC DEFENDANTS Date: July 16, 2019 Time: 2:00pm Judge: Hon. Yvonne Gonzalez Rogers Court: Courtroom 1, 4th Floor DATE ACTION FILED: Oct. 3, 2012

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Term	Definition
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Berman Final App. Decl.	Declaration of Steve W. Berman in Support of Indirect Purchaser Plaintiffs' Notice of Motion and Motion for Final Approval of Settlements With SDI, TOKIN, Toshiba, and Panasonic Defendants and Omnibus Response to Objections
Class Counsel	Co-Lead Counsel and Supporting Counsel
Class Representatives	Jason Ames, Caleb Batey, Christopher Bessette, Cindy Booze, Matt Bryant, Steven 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
Co-Lead Counsel	Hagens Berman Sobol Shapiro LLP, Lieff Cabraser Heimann & Bernstein, LLP, and Cotchett, Pitre & McCarthy, LLP
ECF No.	Unless otherwise noted, all "ECF No." references are to the docket in *In re Lithium Ion Batteries Antitrust Litig.*, No. 13-md-02420 YGR (DMR) (N.D. Cal. May 17, 2013)
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Hitachi Maxell	Hitachi Maxell, Ltd., Maxell Corporation of America
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Panasonic/Sanyo	Panasonic Corporation, Panasonic Corporation of North America, Sanyo Electric Co., Ltd., Sanyo North America Corporation
SDI	Samsung SDI Co., Ltd., Samsung SDI America, Inc.
Sony	Sony Corporation, Sony Energy Devices Corporation, Sony Electronics, Inc.
TOKIN	TOKIN Corporation
Toshiba	Toshiba Corporation
Zapala Decl.	Declaration of Adam J. Zapala in Support of Indirect Purchaser Plaintiffs' Motion for Attorneys' Fees and Reimbursement of Expenses on Behalf of Cotchett, Pitre & McCarthy, LLP

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on July 16, 2019, at 2:00 p.m. or as soon thereafter as the matter may be heard by the Honorable Yvonne Gonzalez Rogers of the United States District Court for the Northern District of California, Oakland Division, located at Courtroom 1, 4th Floor, 1301 Clay Street, Oakland, California, Indirect Purchaser Plaintiffs ("Plaintiffs") will and hereby do move the Court for final approval of settlements with the SDI, Tokin, Toshiba, and Panasonic/Sanyo Defendants. This motion is based on this notice of motion and motion, the accompanying memorandum of points and authorities, the declarations in support of the motion, argument by counsel at the hearing before this Court, any papers filed in reply, such oral and documentary evidence as may be presented at the hearing of this motion, and all papers and records on file in this matter.

I. INTRODUCTION

Indirect Purchaser Plaintiffs ("Plaintiffs") move for final approval of the Settlement Agreements[1] with the SDI, TOKIN, Toshiba, and Panasonic/Sanyo Defendants (the "Settling Defendants").[2] If approved, these settlements will conclude this litigation. Each settlement was reached between the parties after many years of vigorous advocacy and a full development of the parties' claims and defenses. The indirect purchaser class will recover $49 million from these settlements, bringing total recovery to $113.45 million. All factors support finding the settlements fair, adequate, and reasonable. Furthermore, the Ninth Circuit's recent *en banc* opinion in *In re Hyundai & Kia Fuel Economy Litigation*[3] supports final approval here. On June 6, 2019, the Ninth Circuit affirmed a district court's orders certifying a nationwide settlement class and approving a settlement of a case alleging consumer fraud. The *Hyundai* decision confirms the appropriateness of certifying a nationwide class in this settlement context.

Reaching about 87 percent of likely class members, the notice campaign in this case has been robust. Email notice was sent to those class members for whom email addresses were available, and a state-of-the-art media indirect notice campaign ensured further reach. A simple and appealing settlement website (www.reversethecharge.com) made claims as easy to complete as possible, and provided class members with detailed information on the settlements and litigation. Although the class numbers in the millions, only three objections were filed and ten class members have requested exclusion from the class. The three objections focus primarily – two almost

[1] *See* Declaration of Steve W. Berman in Support of Indirect Purchaser Plaintiffs' Motion for Final Approval of Settlements with SDI, TOKIN, Toshiba and Panasonic Defendants ("Berman Final App. Decl."), Ex. A (SDI Settlement Agreement), Ex. B (TOKIN Settlement Agreement), Ex. C (Toshiba Settlement Agreement), Ex. D (Panasonic Settlement Agreement).

[2] In full, the defendants involved in these settlements are: Samsung SDI Co., Ltd. and Samsung SDI America, Inc.; TOKIN Corporation; Toshiba Corporation; and Panasonic Corporation, Panasonic Corporation of North America, Sanyo Electric Co., Ltd., and Sanyo North America Corporation.

[3] *In re Hyundai & Kia Fuel Econ. Litig.*, No. 15-56014, 2019 WL 2376831 (9th Cir. June 6, 2019) (en banc).

exclusively – on the attorney fee request.[4] The small number of objections and opt-outs further supports approval of the settlements and that the notice program met constitutional and statutory requirements.

Plaintiffs respectfully request that this Court grant final approval of their settlements with the Settling Defendants.

II. BACKGROUND

This Court is familiar with Plaintiffs' allegations, so Plaintiffs do not repeat them in full here. Plaintiffs included a detailed discussion of the procedural history and described Plaintiffs' efforts in litigating this case in their motion for attorneys' fees.[5]

A. Settlement terms.

The proposed Settlement Agreements resolve all claims arising from the conspiracy to restrain competition for lithium-ion batteries against the SDI, TOKIN, Toshiba, and Panasonic/Sanyo Defendants – the last remaining Defendants in this case. The settlement class is defined as follows:

> [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.[6]

[4] These objections are addressed separately in Indirect Purchaser Plaintiffs' Omnibus Response to Objections to Settlements with SDI, TOKIN, Toshiba, and Panasonic Defendants, concurrently filed herewith.

[5] *See* Fee Motion at 2-10 (describing litigation history, Plaintiffs' litigation efforts, and the settlements reached in the case).

[6] Berman Final App. Decl., Ex. A ¶ 1(d), (f) (SDI Settlement Agreement), Ex. B ¶ 1(d), (f) (TOKIN Settlement Agreement), Ex. C ¶ 1(d), (f) (Toshiba Settlement Agreement), Ex. D ¶ 1(d), (f) (Panasonic Settlement Agreement).

B. The settlement consideration.

The SDI, TOKIN, Toshiba, and Panasonic/Sanyo Defendants will pay a total of $49 million in cash under the terms of these proposed Settlement Agreements: SDI will pay $39.5 million, TOKIN will pay $2 million, Toshiba will pay $2 million, and Panasonic/Sanyo will pay $5.5 million. Combined with the previous settlements, Plaintiffs have secured settlements totaling $113.45 million for the class.

C. Release of claims.

Each Settlement Agreement provides that upon final approval and entry of judgment, class members will release state and federal law claims against the Settling Defendants relating to purchases of lithium-ion batteries or products containing lithium-ion batteries up through May 31, 2011.[7] The proposed settlement class includes only purchasers of portable computers, power tools, camcorders, and replacement batteries, consistent with the class for which Plaintiffs originally sought certification. As to these settlement class members, the Settlement Agreements will release *all* antitrust claims based on *all* lithium-ion battery types (*i.e.*, cylindrical, prismatic, and polymer batteries) and *additional* products (*e.g.*, mobile phones, smart phones, cameras, digital video cameras, and digital audio players), consistent with the scope of claims originally pleaded.[8]

D. Notice to the class.

The class received direct and indirect notice through a variety of means: email notice, mailed notice upon request, an informative settlement website, a telephone support line, and a vigorous online publication campaign. Pursuant to this Court's orders,[9] the notice administrator provided direct notice via email (obtained from retailers of the products at issue here) to about 9.06 million potential class members, as well as via mail to those requesting mailed notice. The notice

[7] Berman Final App. Decl., Ex. A ¶ 1(m), (q)-(s) (SDI Settlement Agreement), Ex. B ¶ 1(m), (q)-(s) (TOKIN Settlement Agreement), Ex. C ¶ 1(m), (q)-(s) (Toshiba Settlement Agreement), Ex. D ¶ 1(m), (q)-(s) (Panasonic Settlement Agreement).

[8] *Id.*

[9] *See* Order Directing Notice, ¶¶ 6-12, ECF No. 2475; Order Granting Stipulation Regarding Modification to Direct Notice Campaign, Apr. 8, 2019, ECF No. 2486.

administrator estimates an 86.9 percent deliverable rate for the email notice.[10]

This direct notice campaign was supported by a number of other outreach methods to ensure class members both heard about the settlement, and received sufficient information to evaluate their options. Since April 11, 2017, the settlement website (www.reversethecharge.com) has been available to the class. The website provides answers to frequently asked questions, the claims form, relevant motions and orders (including the motion for attorneys' fees), and the notices themselves.[11] A toll-free automated telephone support line was put in place to provide answers to frequently asked questions by class members.[12] And the notice administrator engaged in an extensive public notice campaign, including:

a. A party-neutral Informational Release to approximately 15,000 media outlets, including newspapers, magazines, national wire services, television, radio, and online media in all 50 states, including in Spanish to the Hispanic newsline, which reaches over 7,000 U.S. Hispanic media contacts, including online placement of approximately 100 Hispanic websites nationally;

b. Targeted television advertisements covering a variety of networks such as History, The Weather Channel, A&E, Syfy, and Lifetime;

c. Digital banners and advertising in English and Spanish on the Google DoubleClick and Oath Ad Networks (formerly Yahoo! Ad Network), which served 468,809,829 impressions with 145,391 clicks through to the case website;

d. Sponsored search listings on Google, which were displayed 3,972,843 times, resulting in 8,886 clicks through to the case website;

e. Digital banners and advertising on Facebook, Instagram, and Twitter, which served 63,591,790 impressions with 20,801 clicks through to the case website;

f. Digital video notices on Facebook, Instagram, Twitter, and YouTube, utilizing advanced targeting algorithms to identify and target possible class members, which served 58,128,552 impressions with 912 clicks through to the website; and

g. Targeted digital media advertisements, including pacing advertisements alongside online articles, blogs, and content that specifically contain keywords and phrases in line with lithium-ion cylindrical battery products.

In total, for example, the banner notices and digital video notices for this round of settlements generated over 590 million impressions, directing over 195,473 clicks through to the

[10] Azari Decl., ¶¶ 14-26.

[11] *Id.*, ¶ 45.

[12] *Id.*, ¶ 47.

case website. The notice administrator estimates that the notice program reached approximately 87 percent of adults who purchased portable computers, power tools, camcorders, or replacement batteries, and even then, these class members were notified an average of 3.5 times each.[13]

As a result of Plaintiffs' notice efforts, in total, 1,025,449 class members have submitted claims. That includes 51,961 new claims, and 973,488 claims filed under the prior settlements, which will be applied to this round of settlements.[14] The claims period for the settlement closes on July 19, 2019.[15]

E. Plan of distribution.

Plaintiffs propose to distribute the settlement funds in two steps. *First*, 90 percent of the settlement funds will be allocated toward Class Member residents from so-called *Illinois Brick* repealer states, and the remaining 10 percent will be allocated toward residents of non-repealer states. *Second*, within each allocation, the funds will be distributed *pro rata* to claimants based on the total number of covered products purchased from January 1, 2000 through May 31, 2011. Should a balance remain after distribution to the class (whether by reason of tax refunds, uncashed checks, or otherwise), Class Counsel propose to allow the money to escheat to federal or state governments. Accordingly, no settlement funds will revert to the Settling Defendants.

III. ARGUMENT

The court should conduct a multiple-step inquiry to determine whether to approve a class action settlement. *First*, the Court must certify the proposed settlement class. *Second*, it must determine that the settlement agreement is "fair, reasonable, and adequate."[16] *Third*, it must assess whether appropriate notice and other requirements have been met under the Constitution, the Class Action Fairness Act (CAFA), the Ninth Circuit, and the Northern District of California.[17]

An *en banc* panel of the Ninth Circuit provided additional guidance with respect to this

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[13] *Id.*, ¶¶ 12-13, 27-48, 53.

[14] *Id.*, ¶ 49.

[15] *Id.*

[16] *See* Fed. R. Civ. P. 23(e)(2); *Adoma v. Univ. of Phoenix. Inc.*, 913 F. Supp. 2d 964, 972 (E.D. Cal. 2012) (conducting three-step inquiry).

[17] *See* 28 U.S.C. § 1715(d).

multiple-step inquiry in *Hyundai*. The settlement in *Hyundai* involved a nationwide class of car purchasers who brought state law consumer fraud claims against an automobile manufacturer and its affiliates. In its decision, the *en banc* court affirmed the district court's orders certifying a nationwide settlement class and approving the settlement of a case alleging consumer fraud based on various states' laws. Three findings are particularly applicable here. *First*, with respect to certification of the settlement class, the Ninth Circuit held that "[t]he criteria for class certification are applied differently in litigation classes and settlement classes" because "manageability is not a concern in certifying a settlement class where, by definition, there will be no trial."[18] In analyzing predominance, the court held that where "the crux of each [plaintiff's] claim" is the defendant's conduct, predominance is "readily met."[19] *Second*, the nationwide settlement class in *Hyundai* also involved the presence of various state law claims. However, the court noted that "variations in state law do not defeat predominance."[20] Indeed, the Court found that in the settlement approval context, "California courts apply California law," subject to constitutional limitations and California's choice-of-law rules.[21] And in this context, the party litigant (here, the objector) "shoulder[s] the burden of demonstrating that foreign law" should apply.[22] *Third*, the court also approved the short form notice of the settlement, which appropriately provided "a high-level overview of the process."[23]

A. The Court should certify the settlement class.

At final approval, this Court must decide whether the proposed settlement class meets Rule 23's requirements.[24] To certify this proposed settlement class, Plaintiffs must show that the requirements of Rule 23(a) and 23(b)(3) are met. However, as the Ninth Circuit Court recently confirmed, "[t]he criteria for class certification are applied differently in litigation and settlement

[18] *Hyundai*, 2019 WL 2376831, at *5.

[19] *Id.*, at *7.

[20] *Id.*, at *9.

[21] *Id.*

[22] *Id.*, at *9 (internal quotation marks omitted).

[23] *Id.*, at *14.

[24] *See* Motion to Direct Notice to the Class at 26-33; Order Directing Notice, ¶ 2.

classes."[25] The court clarified the application of the Rule 23 criteria in the settlement class action context, which informs the analysis here. As discussed below, the Court should certify the class for settlement purposes under Rule 23(e).

1. The proposed settlement class meets the requirements of Rule 23(a).

This Court previously determined that identical nationwide litigation and settlement classes met the requirements of Rule 23(a) in the litigation context.[26] Plaintiffs also explained at length in the Motion to Direct Notice to the Class why the requirements are met.[27]

In short, 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. Those requirements are easily met here, where, respectively:

- the number of class members is in the millions;
- the central, common questions underlying each of Plaintiffs' claims in this case are whether defendants participated in a conspiracy to raise, fix, stabilize or maintain the prices of lithium ion batteries sold in the United States, and the impact from this conspiracy;
- the Class Representatives have no interests that conflict with the Settlement Class; and
- the Class Representatives have been actively involved in the litigation of this case, as has Co-Lead Counsel, whose experienced firms have vigorously prosecuted the action since their appointment in 2013.[28]

2. Common issues predominate under Rule 23(b)(3).

The settlement class satisfies Rule 23(b)(3) because common questions predominate over questions affecting individual class members. "The predominance inquiry under Rule 23(b)(3) 'tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.'"[29] The Ninth Circuit in *Hyundai* emphasized that Rule 23(b)(3) does not require

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[25] *Hyundai*, 2019 WL 2376831, at *5.

[26] *See* Order Denying Without Prejudice Mots. for Class Cert.; Final Approval Order at 3.

[27] *See* Motion to Direct Notice to the Class at 26-28 (discussing Rule 23(a)'s requirements).

[28] *See id*. (applying Rule 23(a)'s requirement to these facts in further detail).

[29] *Hyundai*, 2019 WL 2376831, at *6 (quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623 (1997)).

that all elements of a claim be susceptible to class-wide proof; rather, "even if just one common question predominates, 'the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately.'"[30] Notably, this Court already found that the predominance requirement of Rule 23(b)(3) was met for an identical settlement class.[31]

a. Predominance is readily established in antitrust cases.

In horizontal price-fixing cases, questions as to the existence of the alleged conspiracy and as to the occurrence of price-fixing are readily found to predominate.[32] This case is no different. Here, resolution of Plaintiffs' claims depends principally on whether defendants participated in a price-fixing conspiracy, and whether the conspiracy caused an artificial increase to the market price of lithium ion batteries. Thus, if Plaintiffs were able to prove these elements based on common evidence, a jury could reasonably infer that every class member suffered some injury as a result. Antitrust cases, like consumer fraud cases, are ones in which predominance is "readily met" because the class is comprised a "cohesive group of individuals [who] suffered the same harm in the same way because of the [defendants'] alleged conduct."[33]

On the other hand, if, for example, class members brought their claims individually, each would have to rely on the same evidence of cartel behavior, and prove damages using the same economic modeling on which Plaintiffs rely. Although this Court denied Plaintiffs' renewed motion for class certification, courts "will certify settlement classes although they had previously

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[30] *Id.* (quoting *Tyson Foods, Inc. v. Bouaphakeo*, _U.S._, 136 S. Ct. 1036, 1045 (2016)).

[31] Final Approval Order at 3.

[32] *See, e.g.*, *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 300 (3d Cir. 2011); *see also Amchem*, 521 U.S. at 625 (Predominance under Rule 23(b)(3), "is a test readily met in certain cases alleging consumer or securities fraud or violations of the antitrust laws."). The court in *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 267 F.R.D. 291, 310 (N.D. Cal.) collected cases and explained: "Courts have frequently found that whether a price-fixing conspiracy exists is a common question that predominates over other issues because proof of an alleged conspiracy will focus on defendants' conduct and not on the conduct of individual class members.");

[33] *Hyundai*, 2019 WL 2376831, at *7; *see also id.*, at *8 ("We have held that these types of common issues, which turn on a common course of conduct by the defendant, can establish predominance in nationwide class actions."); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997) ("Predominance is a test readily met in certain cases alleging consumer . . . fraud or violations of the antitrust laws.").

denied certification of the same class for litigation purposes."[34] Plaintiffs here have provided, through prior briefing, ample common factual evidence to support a finding that a conspiracy existed to fix prices for lithium ion batteries. Indeed, this Court's second class certification order indicated a concern, not with the evidence relating to the presence of a conspiracy, but rather with the quantification of the conspiracy's effect on individual purchasers.[35] Those concerns are less salient in the context of certification of a settlement class.[36]

b. Predominance is met despite variations in state law.

Plaintiffs move to certify a nationwide settlement class of consumers, including residents of both repealer states and non-repealer states. While this Court previously performed a choice of law analysis with respect to the proposed litigation class, it is not obligated to do so here.[37] The Ninth Circuit recently eschewed the need to do so in the settlement context, holding, "[t]he prospect of having to apply the separate laws of dozens of jurisdictions present[s] a significant issue for *trial manageability*," and need not be considered in the settlement context.[38]

Indeed, because it previously determined that applying California law to a nationwide class would not violate constitutional due process protections,[39] this Court "is free to apply the substantive law of a single state to the entire class."[40] This Court, sitting in California, must apply California law by default "unless a party litigant timely invokes the law of a foreign state, in which case it is the foreign law proponent who must shoulder the burden of demonstrating that foreign

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[34] 3 Newberg on Class Actions § 7:35 (5th ed.). *See also In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, No. M-02-1486-PJH, 2013 WL 12333442, at *56 (N.D. Cal. Jan. 8, 2013); *In re New Motor Vehicles Canadian Export Antitrust Litig.*, 269 F.R.D. 80, 81-82 (D. Me. 2010).

[35] Order Denying IPPs' Renewed Motion for Class Certification at 7, Mar. 5, 2018, ECF No. 2197.

[36] *Sullivan*, 667 F.3d at 304-05.

[37] *Hyundai*, 2019 WL 2376831, at *9.

[38] *Id.*, at *10 (emphasis added).

[39] *See* Order Denying Without Prejudice Mots. for Class Cert. at 20-22.

[40] *See Hyundai*, 2019 WL 2376831, at *9 (internal citations omitted).

law, rather than California law, should apply to class claims."[41] Here, because no party or objector has argued to the contrary, California law should be applied to the settlement class.[42] Additionally, the application of California law nationwide is appropriate for the reasons explained in Plaintiffs' Motion to Direct Notice to the Class.[43]

Centering the certification inquiry on variations in state law would wrongly focus predominance on the merits of a single aspect of whether such class members may recover to the exclusion of determining "simply whether common issues of fact or law predominate."[44] In antitrust cases involving certification of a nationwide settlement class including purchasers from *Illinois Brick* repealer and non-repealer states, the presence of this single variation does not defeat predominance; "the supposed lack of one element necessary to prove a violation on the merits – statutory standing [under *Illinois Brick*] – does not establish a concomitant absence of the predominantly common issues."[45] Courts consequently have repeatedly found that nationwide

[41] *Id.* (quoting *Wash. Mut. Bank, FA v. Superior Court*, 24 Cal. 4th 906 (2001)) (internal quotation marks omitted).

[42] *See generally* Objection of Gordon Morgan to the Settlements with SDI, TOKIN, Toshiba and Panasonic Settlements [sic], and to the Requested Attorneys' Fees, May 30, 2019, ECF No. 2496; Objection of Michael Frank Bednarz to Indirect Purchaser Plaintiffs' Motion For Attorneys' Fees at 15 ("Bednarz Obj."), May 30, 2019, ECF No. 2495 (confirming that he is not objecting to the settlement class certification under Rule 23(b)(3)); Objector Christopher Andrews argues in conclusory fashion that the Settlement Class should not be certified for the same reasons expressed by defendants in the *Qualcomm* litigation. Objections to the Settlement by Christopher Andrews at 14-15 ("Andrews Obj."), May 30, 2019, ECF No. 2497. But his objection is merely a verbatim copy of an article about the Qualcomm defendants' objections, without any explanation about how those objections apply to the facts of this case. That alone is grounds alone to reject the objections. *See* Fed. R. Civ. P. 23(e)(5)(A). The 2018 Advisory Committee Notes on the Rule 23 amendment provides that "[t]he objection must state . . . with specificity the grounds for the objection," "clarif[ying] that objections must provide sufficient specifics to enable the parties to respond to them and the court to evaluate them."

[43] Motion to Direct Notice to the Class at 30-32.

[44] *Sullivan*, 667 F.3d at 304-05; *see also Amgen Inc. v. Conn. Ret. Plans and Trust Funds*, 568 U.S. 455, 468 (2013)(courts should look to the existence of a question common to the class rather than whether plaintiffs have satisfied their burden on each element of proof).

[45] *Sullivan*, 667 F.3d at 307; *see also Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1022 (9th Cir. 1998) ("Variations in state law do not necessarily preclude a 23(b)(3) action, but class counsel should be prepared to demonstrate the commonality of substantive law applicable to all class members." (citing *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 821-23 (1985))).

settlement classes may be certified notwithstanding state law variations.[46] In other words, as the court reaffirmed in *Hyundai*, even if this were an individual issue, it would only be one such issue among a host of obviously common ones, and would not obviate the required analysis of whether common issues nevertheless predominate.[47]

c. 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.[48]

As explained in the Motion to Direct Notice to the Class, Judge Westerfield recommended that either zero or 10 percent of the Gross Settlement Funds be allocated for distribution to class members from non-repealer states. Plaintiffs recommend that the Court allocate 10 percent of the settlement funds for distribution to non-repealer state residents, based on considerations of the risk-discounted value of the claims those class members release under the terms of the Settlement Agreements. This Court held in its Order Directing Notice to the Class that it "is likely to find [Plaintiffs'] proposed distribution plan fair, reasonable, and adequate."[49] No class member has objected to Plaintiffs' proposal, nor to this Court's tentative recommendation to endorse it.[50]

3. The settlement class satisfies superiority under Rule 23(b)(3).

Resolution of Plaintiffs' claims through a class action is unquestionably superior to alternative methods. For example, litigating every class member's claims separately would waste

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[46] *Hanlon*, 150 F.3d at 1022; *Sullivan*, 667 F.3d at 301; *In re Mexico Money Transfer Litig.*, 267 F.3d 743, 747 (7th Cir. 2001).

[47] *Hyundai*, 2019 WL 2376831, at *6. The Ninth Circuit elaborated that "[p]redominance is not, however, a matter of nose-counting. Rather, more important questions apt to drive the resolution of the litigation are given more weight in the predominance analysis over individualized questions which are of considerably less significance to the claims of the class." *Id*. (Internal quotation marks and citation omitted.)

[48] *See, e.g., Comcast Corp. v. Behrend*, 569 U.S. 27, 42 (2013) (Ginsburg & Breyer, JJ., dissenting) ("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, 988 (9th Cir. 2015) (reaffirming "the proposition that differences in damage calculations do not defeat class certification").

[49] Order Directing Notice, ¶ 1(d).

[50] *See, e.g.*, Bednarz Obj. at 15 (explicitly saying so).

both judicial and party resources, given that the vast majority of evidence of liability would be identical.[51] Certification of the settlement class is therefore appropriate.

B. The proposed settlements are fair, reasonable, and adequate.

This Court may exercise its "sound discretion" when deciding whether to grant final approval.[52] In doing so, the Ninth Circuit advises:

> [T]he court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable, and adequate[.][53]

In the Ninth Circuit, there is a "'strong judicial policy that favors settlements, particularly where complex class action litigation is involved. . . .'"[54] That is because settlements in such cases "promote the amicable resolution of disputes and lighten the increasing load of litigation faced by the federal courts."[55]

The new amendments to Rule 23 provide that in determining whether a proposed settlement is fair, reasonable, and adequate, the Court must consider whether:

> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) the relief provided for the class is adequate, taking into account:
>
> (i) the costs, risks, and delay of trial and appeal;
>
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

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[51] *See Hanlon*, 150 F.3d at 1023.

[52] *See 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) ("Dismissal or compromise of a class action is left to the sound discretion of the trial judge.").

[53] *Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

[54] *Hyundai*, 2019 WL 2376831, at *4 (quoting *Allen v. Bedolla*, 787 F.3d 1218, 1223 (9th Cir. 2015) and *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008)).

[55] *Sullivan*, 667 F.3d at 311 (internal quotation marks and citation omitted).

> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
>
> (iv) any agreement required to be identified under Rule 23(e)(3); and
>
> (D) the proposal treats class members equitably relative to each other.[56]

Recognizing that "[c]ourts have generated lists of factors," the Advisory Committee emphasizes that these new provisions are intended to "focus" the inquiry on "the primary considerations that should always matter to the decision whether to approve the proposal."[57] The proposed Settlement Agreements are fair, reasonable, and adequate under the above-referenced factors and other relevant considerations identified by the Ninth Circuit.[58]

1. 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 whether "the class representatives and class counsel have adequately represented the class." The Advisory Committee Notes explain that this subsection, in conjunction with subsection (B), "identify matters that might be described as 'procedural' concerns, looking to the conduct of the litigation and of the negotiations leading up to the proposed settlement."[59] As an "example, the nature and amount of discovery in this or other cases, or the actual outcomes of other cases, may indicate whether counsel negotiating on behalf of the class had an adequate information base."[60] Ninth Circuit law, too, instructs court to consider the "extent of discovery completed and the stage of the proceedings."[61] The extent of the discovery

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[56] Fed. R. Civ. P. 23(e)(2).

[57] Fed. R. Civ. P. 23(e)(2) 2018 Advisory Committee Notes.

[58] Prior to the recent Rule 23 amendments, the Ninth Circuit instructed courts to weigh some or all of the following factors: "(1) the strength of the plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members of the proposed settlement." *In re Bluetooth Headset Prods. Liability Litig.*, 654 F.3d 935, 946 (9th Cir. 2011)

[59] *See* Fed. R. Civ. P. 23, Notes of Advisory Comm., Subdivision (e)(2), Paragraphs (A) and (B) (2018).

[60] *Id.*

[61] *See Bluetooth*, 654 F.3d at 946 (9th Cir. 2011) (factor five).

conducted to date and the stage of the litigation are both indicators of counsel's familiarity with the case and of Plaintiffs having enough information to make informed decisions.[62] "A settlement following sufficient discovery and genuine arms-length negotiation is presumed fair."[63]

Plaintiffs here – during *six and half years of hard-fought litigation* – survived at least four rounds of dispositive motions and conducted extensive discovery, thoroughly testing the claims and defenses in this case. During fact discovery, Plaintiffs took and defended over eighty depositions, served voluminous discovery, reviewed millions of pages of documents (mostly in Japanese, Korean, and Chinese), and analyzed enormous electronic data files produced by defendants and third parties.[64] To obtain this discovery, Plaintiffs brought and prevailed on, at least in part, fourteen fiercely contested motions to compel. That included obtaining orders compelling defendants to produce worldwide transactional sales and cost data for battery cells and packs (ECF Nos. 624, 710); orders compelling defendants to produce detailed interrogatory responses (ECF Nos. 690, 805); and an order after hotly disputed briefing compelling recalcitrant LG Chem witness Seok Hwan Kwak to appear for deposition (ECF No. 836). Plaintiffs also engaged in extensive expert discovery and motion practice, and with the help of expert analyses, synthesized large amounts of evidence to show the conspiracy's substantial and universal impact on consumers.[65] As a result of their work, Plaintiffs obtained substantial recoveries for the Settlement Class from all but one of the Defendant families prior to the Court's final denial of class certification.

These facts show that the Class Representatives and Class Counsel had the information they needed to negotiate intelligently on behalf of the class. In such circumstances in particular, it is important to defer to "the experience and views of counsel."[66] Indeed, courts have explained that "[t]he recommendations of plaintiffs' counsel should be given a presumption of reasonableness."[67]

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[62] *See, e.g.*, *In re Mego Fin. Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000).

[63] *See Knight v. Red Door Salons, Inc.*, No. 08-01520 SC, 2009 U.S. Dist. LEXIS 11149, at *10 (N.D. Cal. Feb. 2, 2009).

[64] Fee Motion at 3-8.

[65] *Id.* at 6-8.

[66] *See Bluetooth*, 654 F.3d at 946 (factor six).

[67] *See In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008).

The experienced views of counsel and their intimate knowledge of the strengths and weaknesses of the case weigh in favor of final approval.

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

Rule 23(e)(2)(B) instructs courts to consider whether "the proposal was negotiated at arm's length." The Settlement Agreements were negotiated at arm's length among experienced and sophisticated counsel. The Advisory Committee Notes state that "the involvement of a neutral or court-affiliated mediator or facilitator in those negotiations may bear on whether they were conducted in a manner that would protect and further the class interests." Here, the largest settlement at issue in this motion, the $39.5 million settlement with SDI, followed multiple mediation sessions involving retired Judge Vaughn R. Walker.[68] The smaller TOKIN, Toshiba, and Panasonic/Sanyo Settlements resulted from iterative negotiations directly between counsel.[69]

As a final procedural consideration, the Advisory Committee Notes to the federal rules directs courts to consider the "treatment of any award of attorney's fees, with respect to both the manner of negotiating the fee award and its terms." The Ninth Circuit has identified three related signs as troubling and potentially indicative that a proposed settlement is not in the class's interests: (a) when class counsel receive a disproportionate distribution of the settlement; (b) when the parties negotiate a "clear sailing" arrangement that provides for the payment of attorneys' fees separate and apart from class funds; or (c) when the parties arrange for fees not awarded to plaintiffs' counsel to revert to the defendants rather than the class.[70] Here, none of these typical signs of collusive behavior are present. The proposed settlement is a common fund, all-in settlement with no possibility of reversion. The funds will be used to cover costs and fees and compensate the class based on a *pro rata* formula. There is no "clear sailing" provision, no payment of fees separate and apart from the class funds, and no "kicker" provision which would allow unawarded fees to revert to the defendants. The class notice informed class members that

[68] Berman Final App. Decl., ¶ 5.

[69] *Id.*, ¶ 6.

[70] *Hyundai*, 2019 WL 2376831, at *14; *Bluetooth*, 654 F.3d at 946.

Class Counsel would make a request for attorneys' fees up to 30 percent of the settlement fund.[71]

In sum, all procedural considerations support a conclusion that negotiations occurred at arm's length.

3. Rule 23(e)(2)(C): The relief provided by the settlements represents a strong 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.

Costs, Risks, and Delay of Trial and Appeal. The first factor – "the costs, risks, and delay of trial and appeal"[72] – is analogous to the Ninth Circuit's consideration of the risk, expense, complexity, and likely duration of further litigation, while also examining the strength of plaintiffs' case, the risk of maintaining class action status throughout the trial, and the amount offered in settlement.[73]

Recovery of $49 million in settlements for the indirect purchaser class from the SDI, TOKIN, Toshiba, and Panasonic/Sanyo Defendants is a strong result given the tremendous risks, challenges, and costs faced. Plaintiffs reached settlements totaling $43.5 from the SDI, TOKIN, and Toshiba Defendants – representing 20.11 percent of the *nationwide* single damages attributable to these defendants [74] – which is greater than the average recovery in settled cartel cases.[75] Indeed, this was after the Court denied Plaintiffs' original motion for class certification and while Plaintiffs' renewed motion was pending – "a time of extraordinary risk for the class receiving no

[71] Fee Motion at 25 (quoting class notice advising settlement class members that Class Counsel would seek attorneys' fees in the amount of $34,035,000 (inclusive of $4,495,000 already awarded by the Court) plus interest, equal to 30 percent of the common fund).

[72] Fed. R. Civ. P. 23(e)(2)(C)(i).

[73] *Bluetooth*, 654 F.3d at 947-48 (identifying these factors).

[74] *See* Fee Motion at 14.

[75] *See In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. C-07-5944 JST, 2016 WL 3648478, at *7 n.19 (N.D. Cal. July 7, 2016) (citing survey of 71 settled cartel cases which showed that the weighted mean – weighting settlements according to their sales – was 19% of possible single damages recovery).

recovery at all."[76] Plaintiffs took a calculated risk, leaving only Panasonic/Sanyo potentially liable for damages. The risk of no further recovery increased when the renewed motion was denied. But Class Counsel persevered to maximize recovery for the Class, achieving a $5.5 million settlement with Panasonic/Sanyo on the eve of trial. The Ninth Circuit recognizes that "the very essence of a settlement is compromise, 'a yielding of absolutes and an abandoning of highest hopes.'"[77] These settlements, while compromises, represent a strong result for the Class.

This is especially true given that, while Plaintiffs believe their evidence is substantial,[78] there are undeniably great risks (and related potential costs and delay) in this case. *First and foremost*, this Court is aware of the risk of nominal or no recovery by the Class. This Court denied Plaintiffs' initial and renewed motions for class certification, greatly limiting Plaintiffs' potential recovery to only the damages of the Class Representatives, and Plaintiffs faced a summary judgment motion and then trial at the time of the final settlement with Panasonic/Sanyo. Thus, recovery of $49 million is outstanding given the real risk that the class faced the possibility of little to no recovery if the Ninth Circuit had upheld this Court's denials of class certification, or if this Court granted summary judgment, or if a jury returned a verdict in favor of the defendants.

Second, antitrust cases are particularly risky and challenging, with courts recognizing that the "antitrust class action is arguably the most complex action to prosecute."[79] Even where liability

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[76] *See In re Optical Disk Drive Prods. Antitrust Litig.*, No. 10-md-2143 RS, 2016 WL 7364803, at *14 (N.D. Cal. Dec. 19, 2016) (explaining the great risk associated with this time period in a case).

[77] *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998) (internal citation omitted).

[78] Under Ninth Circuit law, when examining the strength of plaintiffs' case, the Court is to "evaluate objectively the strengths and weaknesses inherent in the litigation and the impact of those considerations on the parties' decisions to reach these agreements." *In re Wash. Pub. Power Supply Sys. Secs. Litig.*, 720 F. Supp. 1379, 1388 (D. Ariz. 1989).

[79] *In re Linerboard Antitrust Litig.*, MDL No. 1261, 2004 WL 1221350, at *10 (E.D. Pa. June 2, 2004) (quoting *In re Motorsports Merch. Antitrust Litig.*, 112 F. Supp. 2d 1329, 1337 (N.D. Ga. 2000)) (internal quotation marks omitted); *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[;] [t]he legal and factual issues involved are always numerous and uncertain in outcome") (internal quotation marks and citation omitted).

is proven, there is the very real risk that plaintiffs will "recover[] no damages, or only negligible damages, at trial, or on appeal."[80]

Third, this case has always had unique risks and challenges, described in detail in the Fee Motion.[81] The sheer scale of this litigation required extensive coordination among Class Counsel and the supporting firms in developing pleadings, engaging in motion practice, and conducting discovery. At every turn, defendants had the opportunity to significantly narrow the scope of or altogether end the litigation. For example, as discussed, Plaintiffs survived at least four rounds of dispositive motions. This is also an intrinsically difficult case due to the scope and length of the conspiracy alleged – a more than decade-long conspiracy centered in Asia with the evidence mostly in foreign language documents and obtained via translated depositions – and the complexity associated with proving the existence of overcharges. Moreover, in addition to measuring the overcharge as to battery cells, Plaintiffs, as indirect purchaser plaintiffs, had to measure the pass-through of the overcharge to the end-consumer of a finished product, a data-intensive task. All of these challenges support final approval of the settlements.

Effectiveness of Distribution. Rule 23(e)(2)(C) also instructs the Court to take into account the "effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims." Plaintiffs' proposed distribution plan will maximize the effectiveness of the distribution of the settlement proceeds. The current, provisional, estimate of the average payment per device to class members from the non-Sony settlements is a nationwide average $1.43 per device.[82] Class Counsel will provide an update for the Court, and an estimate broken down by repealer and non-repealer states, following an audit after the close of the claims period on July 19, 2019. The estimated average payment per device to class members from the

[80] *See 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, 475 (S.D.N.Y. 1998))); *see also In re Superior Beverage/Glass Container Consol. Pretrial*, 133 F.R.D. 119, 127 (N.D. Ill. 1990) ("The 'best' case can be lost and the 'worst' case can be won, and juries may find liability but no damages. None of these risks should be underestimated.").

[81] *See* Fee Motion at 14-16.

[82] Azari Decl., ¶ 51.

Sony settlement is unavailable due to some uncertainty over potentially fraudulent claims, and the need to conduct an audit. Class Counsel will provide an update to the Court.

After the claims period closes on July 19, 2019, any outreach requested by the parties to review the validity of claims is complete, and the Court approves the settlement and enters final judgment (which may take several months, pending appeals and Court availability), settlement administrators will send an email to all valid claimants. The email will provide instructions on how to receive payments electronically via PayPal, Google Wallet, Amazon Balance, and other popular methods. Epiq Class Action & Claims Solutions ("Epiq") also will mail physical checks to Settlement Class Members who have requested to receive compensation in that manner.[83]

Terms of Proposed Attorney's Fees. A third factor to be considered under Rule 23(e)(2)(C) is "the terms of any proposed award of attorney's fees, including timing of payment." Here, while Settlement Agreements do not contemplate a specific award of attorney's fees, they do provide that any Court-awarded fees will be paid from the Gross Settlement Fund.[84] As detailed in their Fee Motion, Plaintiffs have requested a total award of $34,035,000 in attorneys' fees plus interest, which represents 30 percent of the total recovery in this case, inclusive of the $4,495,000 already awarded.[85] There are no troubling terms about fees in the settlements agreements, and each are subject to this Court's approval.[86]

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)." This provision is aimed at "related undertakings that, although seemingly separate, may have influenced the terms of the settlement by trading away possible advantages for the class in return for advantages for others."[87] Plaintiffs have

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[83] *Id.*, ¶ 50.

[84] *See* Berman Final App. Decl., Ex. A ¶¶ 19, 24-26 (SDI Settlement Agreement), Ex. B ¶¶ 19, 24-26 (TOKIN Settlement Agreement), Ex. C ¶¶ 19, 24-26 (Toshiba Settlement Agreement), Ex. D ¶¶ 19, 24-26 (Panasonic Settlement Agreement).

[85] Fee Motion at 25. As described in the proposed notice to the class, these fees would be awarded proportionally from these and all prior settlements.

[86] *See* Berman Final App. Decl., Ex. A ¶¶ 24-27 (SDI Settlement Agreement), Ex. B ¶¶ 24-27 (TOKIN Settlement Agreement), Ex. C ¶¶ 24-27 (Toshiba Settlement Agreement), Ex. D ¶¶ 24-27 (Panasonic Settlement Agreement).

[87] Fed. R. Civ. P. 23(e) 2003 Advisory Committee Notes.

entered into no such agreements.

4. Rule 23(e)(2)(D): The settlements treats class members equitably relative to each other.

The proposed Settlement Agreements do not contemplate any unwarranted preferential treatment of Class Representatives or segments of the class, a consideration identified by Rule 23(e)(2)(D).[88] Under the terms of the Settlement Agreements, the plan of distribution is, appropriately, left for the determination of the Court.[89] Plaintiffs recommended that this Court adopt the second of Judge Westerfield's recommended allocations: ninety percent of the settlement funds to class members from repealer states, and ten percent to class members from non-repealer states, for the reasons stated in their Motion to Direct Notice.[90] This Court "reviewed the adversarial process undertaken by the IPPs to arrive at this recommendation, and f[ou]nd that it was appropriate."[91] The Court reasoned[92]:

> It is appropriate for class members from non-repealer states to receive a limited recovery because they are still active litigants in the case, and their claims have been neither dismissed from nor amended out of the pleadings. Moreover, this Court's prior analysis of California choice-of-law rules would have been subject to an appeal had this case gone to judgment. *National Super Spuds, Inc. v. New York Mercantile Exchange*, 660 F.2d 9, 19 (2d Cir. 1981); *see also Anderson v. Nextel Retail Stores, LLC*, No. CV 07-4480-SVW FFMX, 2010 WL 8591002, at *9 (C.D. Cal. Apr. 12, 2010).

Thus, in recognition of the fact that such releases themselves have some value, even if nominal, the Court approved the proposed allocation plan. Plaintiffs request that this Court confirm its finding.

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[88] Matters of concern for the Court may include "whether apportionment of relief among class member takes appropriate account of differences among their claims." Fed. R. Civ. P. 23(e)(2) 2018 Advisory Committee Notes.

[89] Berman Final App. Decl., Ex. A ¶¶ 1.(h), 23 (SDI Settlement Agreement), Ex. B ¶¶ 1.(h), 23 (TOKIN Settlement Agreement), Ex. C ¶¶ 1.(h), 23 (Toshiba Settlement Agreement), Ex. D ¶¶ 1.(h), 23 (Panasonic Settlement Agreement).

[90] *See* Motion to Direct Notice to the Class at 17-19. The proposed notice provides for an allocation of 90% of funds to claimants from repealer states and 10% of funds to claimants from non-repealer states. *See* Azari Decl., Attachment 1 (Email Notice), Attachment 2, ¶ 7 (Long-Form Notice).

[91] Order at 3.

[92] *Id.*

C. Plaintiffs have complied with all additional approval factors.

1. Plaintiffs have provided adequate notice under Rule 23(b)(3).

Class actions brought under Rule 23(b)(3) must satisfy the notice provisions of Rule 23(c)(2), and upon settlement, "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal[.]"[93] Rule 23(c)(2) prescribes the "best notice that is practicable under the circumstances, including individual notice [of particular information] to all members who can be identified through reasonable effort[.]"[94] Recent amendments emphasize that "notice may be by one or more of the following: United States mail, electronic means, or other appropriate means."[95] "To satisfy Rule 23(e)(1), settlement notices must 'present information about a proposed settlement neutrally, simply, and understandably.'"[96] "Notice 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.'"[97]

The notice campaign has been successful both procedurally and substantively. Epiq, the Court-appointed settlement notice administrator, implemented a direct notice campaign via email, as well as a multifaceted indirect notice campaign. The notice administrator opines that the notice program reached approximately 87 percent of adults who purchased portable computers, power tools, camcorders, or replacement batteries and that the constitutional notice requirements have been met.[98] And the content of the notices has satisfied the Rule 23 requirements, discussed in *Hyundai*. Neutral, simple, and understandable, the notices informed class members of the nature of the action, the terms of the proposed settlement, the effect of the action and the release of claims,

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[93] Fed. R. Civ. P. 23(e)(l)(B); *see also Hyundai*, 2019 WL 2376831, at *13 ("binding settlement must provide notice to the class in a 'reasonable manner'").

[94] Fed. R. Civ. P. 23(c)(2)(B) (notice requirements for classes certified under Rule 23(b)(3)).

[95] Fed R. Civ. P. 23(c)(2)(B); *see also* Fed. R. Civ. P. 23, Notes of Advisory Comm., Subdivision (c)(2) (2018) (discussing technological changes that may provide opportunities for better notice).

[96] *Hyundai*, 2019 WL 2376831, at *14 (quoting *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 962 (9th Cir. 2009)).

[97] *Id.*

[98] Azari Decl., ¶¶ 11-13, 52-54.

as well as class members' right to exclude themselves from the action and their right to object to the proposed settlement.[99] The notice program complied with all of the requirements of Rule 23.

2. Defendants have provided notice under the Class Action Fairness Act.

CAFA requires that "[n]ot later than 10 days after a proposed settlement of a class action is filed in court, each defendant that is participating in the proposed settlement shall serve [notice of the proposed settlement] upon the appropriate State official of each State in which a class member resides and the appropriate Federal official[.]"[100] Here, the SDI, TOKIN, Toshiba, and Panasonic/Sanyo Defendants provided CAFA notices on February 27, 2019, February 1, 2019, January 31, 2019, and February 1, 2019, respectively.[101] No Attorneys General have submitted statements of interest or objections in response to these notices.

3. The reaction of class members to the proposed settlements favors final approval.

The Northern District Procedural Guidance provides and the Ninth Circuit in *Bluetooth* held that the reaction of the class members to the proposed settlement is also a relevant consideration. Plaintiffs' notice program reached millions of consumers who purchased the consumer products involved in this case. ***Yet, only three objections and ten requests for exclusion*** were received out of millions of class members.[102] Plaintiffs respond to the objections more fully in the accompanying Omnibus Response to Objections to Settlements with SDI, TOKIN, Toshiba and Panasonic Defendants, filed concurrently herewith. But the objections fall far short of satisfying the burden required to reject settlements of this size for the class. The reaction of the class strongly favors approval of the settlement.[103]

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[99] *See* Azari Decl. Attachments 1, 2.

[100] 28 U.S.C. § 1715(b), (d) (CAFA notice requirement must be met before final approval).

[101] Berman Final App. Decl., ¶ 7.

[102] Azari Decl., ¶ 52.

[103] *See, e.g.*, *Churchill 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) (finding "an overall positive reaction" by the class where only 57 class members opted out and six objected out of a class of 798,000).

IV. CONCLUSION

Plaintiffs respectfully request that this Court grant final approval to the proposed settlements with the SDI, TOKIN, Toshiba, and Panasonic/Sanyo Defendants.

DATED: June 11, 2019

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