

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE OPTICAL DISK DRIVE)	Case No. 3:10-MD-2143-RS
PRODUCTS ANTITRUST LITIGATION)	
)	MDL 2143
THIS DOCUMENT RELATES TO:)	
ALL DIRECT-PURCHASER ACTIONS)	

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into this 25 day of September, 2015 by and between Toshiba Samsung Storage Technology Korea Corporation; Toshiba Samsung Storage Technology Corporation; Toshiba America Information Systems, Inc.; Toshiba Corporation; Samsung Electronics Co., Ltd.; and Samsung Electronics America, Inc. (collectively, the “Settling Defendants”); and the direct-purchaser plaintiff class representatives (“Plaintiffs”), both individually and on behalf of a settlement class of direct purchasers of Optical Disk Drives (“ODDs”) (“the Class”) as more particularly defined in Paragraph 1 below.

WHEREAS, Plaintiffs are prosecuting the above *In Re Optical Disk Drive Products Antitrust Litigation*, MDL No. 2143 (N.D. Cal.) (the “Action”) on their own behalf and on behalf of the Class against, among others, the Settling Defendants;

WHEREAS, Plaintiffs allege that the Settling Defendants participated in an unlawful conspiracy to raise, fix, maintain, or stabilize the price of ODDs at artificially high levels in violation of Section 1 of the Sherman Act;

WHEREAS, the Settling Defendants deny Plaintiffs’ allegations and have asserted defenses to Plaintiffs’ claims;

WHEREAS, Plaintiffs have conducted an investigation into the facts and the law

regarding the Action and have concluded that resolving claims against the Settling Defendants according to the terms set forth below is in the best interest of Plaintiffs and the Class;

WHEREAS, the Settling Defendants, despite their belief that they are not liable for the claims asserted and have good defenses thereto, have nevertheless agreed to enter into this Agreement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, and to obtain the releases, orders, and judgments contemplated by this Agreement, and to put to rest with finality all claims that have been or could have been asserted against the Settling Defendants, based on the allegations of the Action, as more particularly set out below;

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, it is agreed by and among the undersigned that the Action be settled, compromised, and dismissed on the merits with prejudice as to the Releasees, as defined below, and except as hereinafter provided, without costs as to Plaintiffs, the Class, or the Settling Defendants, subject to the approval of the Court, on the following terms and conditions:

A. Definitions.

1. For purposes of this Agreement, "the Class" and "Class Period" are defined in Plaintiffs' Third Consolidated Direct Purchaser Class Action Complaint (the "Complaint"). In particular, "the Class" and "Class Period" shall be defined as follows:

All individuals and entities who, during the period from January 1, 2004 until at least January 1, 2010 (the 'Class Period') purchased one or more Optical Disk Drives in the United States directly from the Defendants, their subsidiaries, or their affiliates. Excluded from the Class are Defendants and their parents, subsidiaries, affiliates, and all governmental entities. As used herein the term 'Optical Disc Drive' includes (a) a drive sold by a Defendant or its subsidiary or affiliate as a separate unit that is to be inserted into,

or incorporated in, an electronic device; (b) a drive sold by a Defendant or its subsidiary or affiliate as a separate unit that is to be attached to an electronic device through an external interface such as a Universal Serial Bus connection; and (c) an internal drive sold as a component of a laptop or desktop computer by a Defendant or its subsidiary or affiliate.

The parties to this Agreement hereby stipulate for purposes of this settlement only that the requirements of Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure are satisfied.

2. For purposes of this Agreement, "Optical Disk Drives" and "ODDs" shall have the meaning as defined in the Complaint. In particular, "Optical Disk Drives" and/or "ODDs" shall be defined as follows:

ODDs consist of both internal drives built to be incorporated or inserted into electronic devices (including notebook and desktop computers, and Microsoft Xboxes) and external drives that attach to a notebook or desktop computer or other electronic device by means of an external interface, such as a Universal Serial Bus ('USB') connection. ODDs utilize the following optical disc formats: (a) compact discs ('CDs'), such as CD-ROMs or CD-recordable/rewritable discs ('CD-R/RWs'); (b) digital versatile discs ('DVDs'), such as DVD-ROMs or DVD-recordable/rewritable discs ('DVD±R/RWs'); (c) Blu-ray products, such as Blu-ray discs ('BDs') and Blu-ray-recordable/rewritable discs ('BDR'/'BD-RWs'); (d) High Definition DVDs ('HD-DVDs'); and (e) Super Multi-Drives or other combination drives that read from and/or write to various types of the foregoing media.

3. "Releasees" shall refer to the Settling Defendants and to all of their respective past and present, direct and indirect, parents, subsidiaries, and affiliates; the predecessors, successors and assigns of any of the above; and each and all of the present and former principals, partners, officers, directors, supervisors, employees, agents, representatives, insurers, attorneys, heirs, executors, administrators, and assigns of each of the foregoing. "Releasees" does not include any defendant in the Action other than the Settling Defendants.

4. "Class Member" means each member of the Class who has not timely elected to be excluded from the Class.

5. "Releasers" shall refer to the direct-purchaser plaintiff Class representatives and the direct-purchaser plaintiff Class Members, and to their past and present officers, directors, employees, agents, stockholders, attorneys, servants, representatives, parents, subsidiaries, affiliates, partners, insurers and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and the predecessors, successors, heirs, executives, administrators and assigns of any of the foregoing.

6. "The Settlement Fund" shall be US \$9,200,000 specified in Paragraph 15 plus accrued interest on said deposits set forth in Paragraph 16.

7. "Chairman of the Executive Committee for the Direct Purchaser Plaintiffs" ("Chairman") shall refer to the law firm of:

Guido Saveri
R. Alexander Saveri
Saveri & Saveri, Inc.
706 Sansome Street
San Francisco, CA 94111

B. Approval of this Agreement and Dismissal of Claims Against the Settling Defendants.

8. Plaintiffs and the Settling Defendants shall use their best efforts to effectuate this Agreement, including cooperating in seeking the Court's approval for the establishment of procedures (including the giving of class notice under Federal Rules of Civil Procedure 23(c) and (e)) to secure the prompt, complete, and final dismissal with prejudice of the Action as to the Settling Defendants only.

9. At a time mutually agreed upon by the parties, Plaintiffs shall submit to the Court a motion for authorization to disseminate notice of the settlement and final judgments contemplated by this Agreement to all Class members identified by the parties (the "Motion"). The costs of notice and claims administration shall be paid from the Settlement Fund subject to Paragraph 18(a), and if notice to the Class is given jointly with any other settling defendant, for

purposes of Paragraph 18 below, the costs of notice and claims administration shall be prorated with any other such defendant based on their respective settlement amounts. The Motion shall include (i) a proposed form of, method for, and date of dissemination of notice; and (ii) a proposed form of order and final judgments. The text of the foregoing items (i) and (ii) shall be agreed upon by Plaintiffs and the Settling Defendants before submission of the Motion, with the understanding that, among other things, individual notice of the settlement shall be mailed by regular mail or email, with appropriate notice by publication (in the event required by the Court). The Motion shall recite and ask the Court to find that the mailing of the notice of settlement to all members of the Class who can be identified upon reasonable effort constitutes valid, due and sufficient notice to the Class, constitutes the best notice practicable under the circumstances, and complies fully with the requirements of Federal Rule of Civil Procedure 23.

10. Plaintiffs shall seek, and the Settling Defendants will not object unreasonably to, the entry of, an order and final judgments, the text of which Plaintiffs and the Settling Defendants shall agree upon. The terms of the order and final judgments will include, at a minimum, the substance of the following provisions:

(a) certifying the Class described in Paragraph 1, pursuant to Rule 23 of the Federal Rules of Civil Procedure, solely for purposes of this settlement as a settlement class;

(b) as to the Action, approving finally this settlement and its terms as being a fair, reasonable and adequate settlement as to the Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to its terms;

(c) as to the Settling Defendants, directing that the Action be dismissed with

prejudice and, except as provided for in this Agreement, without costs;

(d) reserving exclusive jurisdiction over the settlement and this Agreement, including the administration and consummation of this settlement, to the United States District Court for the Northern District of California; and

(e) determining under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing that the judgments of dismissal as to the Settling Defendants shall be final.

11. This Agreement shall become final when (i) the Court has entered a final order certifying the Class described in Paragraph 1 and approving this Agreement under Federal Rule of Civil Procedure 23(e) and final judgments have been entered dismissing the Action with prejudice as to the Settling Defendants by all Class Members and without costs other than those provided for in this Agreement, and (ii) the time for appeal or to seek permission to appeal from the Court's approval of this Agreement and entry of final judgments as to the Settling Defendants described in (i) hereof has expired or, if appealed, approval of this Agreement and the final judgments as to the Settling Defendants have been affirmed in their entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review. It is agreed that the provisions of Rule 60 of the Federal Rules of Civil Procedure shall not be taken into account in determining the above-stated times. On the date that Plaintiffs and the Settling Defendants have executed this Agreement, Plaintiffs and the Settling Defendants shall be bound by its terms and this Agreement shall not be rescinded except in accordance with Paragraphs 16(h), 18(a), 28, or 29 of this Agreement.

12. Neither this Agreement (whether or not it should become final) nor the final judgments, nor any and all negotiations, documents and discussions associated with them, shall

be deemed or construed to be an admission by any of the Settling Defendants or evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by the Settling Defendants, or of the truth of any of the claims or allegations contained in the Complaint or any other pleading filed in the Action, and evidence thereof shall not be discoverable or used directly or indirectly, in any way, whether in the Action or in any other action or proceeding. Neither this Agreement, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any other action taken to carry out this Agreement by any of the parties shall be referred to, offered as evidence or received in evidence in any pending or future civil, criminal, or administrative action or proceedings, except in a proceeding to enforce this Agreement, including to the extent necessary for Settling Defendants and/or Releasees to demonstrate that Class Members have released their claims against the Settling Defendants and/or Releasees, to litigate the scope of the Released Claims, or as otherwise required by law.

C. Release, Discharge, and Covenant Not to Sue.

13. In addition to the effect of any final judgments entered in accordance with this Agreement, upon this Agreement becoming final as set out in Paragraph 11 of this Agreement, and in consideration of payment of the Settlement Amount, as specified in Paragraph 15 of this Agreement, into the Settlement Fund, and for other valuable consideration, the Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits, causes of action, whether class, individual, or otherwise in nature (whether or not any Class Member has objected to the settlement or makes a claim upon or participates in the Settlement Fund, whether directly, representatively, derivatively or in any other capacity) that Releasors, or each of them, ever had, now has, or hereafter can, shall, or may have on account of, or in any way arising out of, any and all known and unknown, foreseen and unforeseen,

suspected or unsuspected, actual or contingent, liquidated or unliquidated, claims, causes of action, injuries, damages, and the consequences thereof in any way arising out of or relating in any way to any act or omission of the Releasees (or any of them) that is alleged in the Complaint up to the date of the execution of this Agreement or that could have been alleged in the Complaint or in any other class action complaint filed in the Action (the "Released Claims"). The Released Claims do not include claims for product defect or personal injury or breach of contract arising in the ordinary course of business or indirect purchaser claims for ODDs that were not purchased directly from Defendants, their subsidiaries or their affiliates, or their alleged co-conspirators. However, the Released Claims shall not preclude Plaintiffs from pursuing any and all claims against defendants other than the Releasees for sales by those defendants, their subsidiaries or their affiliates, of products which contain the Settling Defendants' ODDs. Releasors shall not, after the date of this Agreement, sue or otherwise seek to establish liability against any Releasee based, in whole or in part, upon any of the Released Claims or conduct at issue in the Released Claims. For purposes of clarity, the Released Claims include any claims under foreign antitrust or competition laws or state antitrust or competition laws (including indirect purchaser claims) that relate to or arise out of the sale of any of the ODDs or any of the products containing ODDs that are encompassed by Plaintiffs' Complaint, but do not include any foreign antitrust or competition law claims or any state law indirect purchaser claims that are not based on direct purchases of ODDs or products containing ODDs from Defendants, their subsidiaries or their affiliates, or their alleged co-conspirators in the United States.

14. In addition to the provisions of Paragraph 13 of this Agreement, Releasors hereby expressly waive and release, upon this Agreement becoming final, any and all provisions, rights, and benefits conferred by § 1542 of the California Civil Code, which states:

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

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code. Each Releasor may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the Released Claims which are the subject matter of the provisions of Paragraph 13 of this Agreement, but each Releasor hereby expressly waives and fully, finally, and forever settles and releases, upon this Agreement becoming final, any known or unknown, suspected or unsuspected, contingent or non-contingent claim with respect to the subject matter of the provisions of Paragraph 13 of this Agreement, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

D. Settlement Amount.

15. Subject to the provisions hereof, and in full, complete and final settlement of the Action as provided herein, the Settling Defendants shall collectively pay a total Settlement Amount of US \$9,200,000 (the "Settlement Amount"). The Settlement Amount shall be paid into an escrow account in United States Dollars to be administered in accordance with the provisions of Paragraph 16 of this Agreement (the "Escrow Account") thirty (30) days after execution of this Agreement.

16. Escrow Account.

(a) The Escrow Account will be established at Citibank N.A.—Citi Private Bank, San Francisco, California, with such Bank serving as escrow agent ("Escrow Agent") subject to escrow instructions mutually acceptable to the Chairman and the

Settling Defendants, such escrow to be administered under the Court's continuing supervision and control.

(b) The Escrow Agent shall cause the funds deposited in the Escrow Account to be invested in short-term instruments backed by the full faith and credit of the United States Government or fully insured in writing by the United States Government, or money market funds rated Aaa and AAA, respectively by Moody's Investor Services and Standard and Poor's, invested substantially in such instruments, and shall reinvest any income from these instruments and the proceeds of these instruments as they mature in similar instruments at their then current market rates.

(c) All funds held in the Escrow Account shall be deemed and considered to be in custodia legis of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Agreement and/or further order(s) of the Court.

(d) Plaintiffs and the Settling Defendants agree to treat the Settlement Fund as being at all times a qualified settlement fund within the meaning of Treas. Reg. §1.468B-1. In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph 16, including the relation-back election (as defined in Treas. Reg. §1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

(e) For the purpose of § 468B of the Internal Revenue Code of 1986, as

amended, and the regulations promulgated thereunder, the administrator shall be the Escrow Agent. The Escrow Agent or its designee shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitation the returns described in Treas. Reg. § 1.468B-2(k)(l)). Such returns (as well as the election described in Paragraph 16(d)) shall be consistent with Paragraph 16(d) and in all events shall reflect that all Taxes, as defined below (including any estimated Taxes, interest or penalties), on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in Paragraph 16(f) hereof.

(f) All (i) taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon the Settling Defendants or any other Releasee with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a qualified settlement fund for federal or state income tax purposes ("Taxes"); and (ii) expenses and costs incurred in connection with the operation and implementation of Paragraphs 16(d) through 16(f) (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this Paragraph 16(f) ("Tax Expenses")), shall be paid out of the Settlement Fund.

(g) Neither the Settling Defendants, any other Releasee or their respective counsel shall have any liability or responsibility for the Taxes or the Tax Expenses. Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall be timely paid by the Escrow Agent out

of the Settlement Fund without prior order from the Court and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to any claimants authorized by the Court any funds necessary to pay such amounts including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)). Neither the Settling Defendants nor any other Releasee is responsible nor shall they have any liability therefor. Plaintiffs and the Settling Defendants agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of Paragraphs 16(d) through 16(f).

(h) If this Agreement does not receive final Court approval, including final approval of "the Class" as defined in the Complaint or if the Action is not certified as a class action for settlement purposes, then all amounts paid by the Settling Defendants into the Settlement Fund (other than costs expended in accordance with Paragraph 18(a)) shall within thirty (30) calendar days be returned to the Settling Defendants from the Escrow Account by the Escrow Agent along with any interest accrued thereon.

17. Exclusions.

Within ten (10) business days after the end of the period to request exclusion from the Class, the Chairman will cause copies of timely requests for exclusion from the Class to be provided to counsel for the Settling Defendants. With respect to any potential Class member who requests exclusion from the Class, the Settling Defendants reserve all of their legal rights and defenses, including, but not limited to, any defenses relating to whether the excluded Class member is a direct purchaser of any allegedly price fixed product and/or has standing to bring any claim.

18. Payment of Expenses.

(a) The Settling Defendants agree to permit use of a maximum of US \$300,000 of the Settlement Fund towards notice to the class and the costs of administration of the Settlement Fund set forth in Paragraph 16. The US \$300,000 in notice and administration expenses are not recoverable if this settlement does not become final to the extent such funds are expended for notice and administration costs. Other than as set forth in this Paragraph 18(a), the Settling Defendants shall not be liable for any of the costs or expenses of the litigation of the Action, including attorneys' fees; fees and expenses of expert witnesses and consultants; and costs and expenses associated with discovery, motion practice, hearings before the Court or any Special Master, appeals, trials or the negotiation of other settlements, or for Class administration and costs.

(b) If the Chairman enters into any other settlements on behalf of the Class before notice of this Agreement is given to the Class, the Chairman shall use its reasonable best efforts to provide a single notice to prospective Class members of all of the settlements.

E. The Settlement Fund.

19. Releasors shall look solely to the Settlement Fund for settlement and satisfaction against the Releasees of all Released Claims, and shall have no other recovery against the Settling Defendants or any other Releasee.

20. After this Agreement becomes final within the meaning of Paragraph 11, the Settlement Fund shall be distributed in accordance with a plan to be submitted at the appropriate time by Plaintiffs, subject to approval by the Court. In no event shall any Releasee have any responsibility, financial obligation, or liability whatsoever with respect to the investment,

distribution, or administration of the Settlement Fund, including, but not limited to, the costs and expenses of such distribution and administration, with the sole exception of the provisions set forth in Paragraph 18(a) of this Agreement.

21. Plaintiffs and Class Counsel shall be reimbursed and indemnified solely out of the Settlement Fund for all expenses. The Settling Defendants shall not be liable for any costs, fees, or expenses of any of Plaintiffs' or the Class' respective attorneys, experts, advisors, agents, or representatives, but all such costs, fees, and expenses as approved by the Court shall be paid out of the Settlement Fund.

22. Class Counsel's Attorneys' Fees And Reimbursement of Expenses.

(a) Class Counsel may submit an application or applications to the Court (the "Fee and Expense Application") for distribution to them from the Settlement Fund and the Settling Defendants shall not oppose such application for: (i) an award of attorneys' fees not in excess of one-third of the settlement fund; plus (ii) reimbursement of expenses and costs incurred in connection with prosecuting the Action, plus interest on such attorneys' fees, costs and expenses at the same rate and for the same period as earned by the Settlement Fund (until paid) as may be awarded by the Court (the "Fee and Expense Award"). Class Counsel reserve the right to make an application for a payment of up to US \$750,000, to which the Settling Defendants will not object, for expenses and costs incurred and reasonably anticipated to be incurred in connection with continued prosecution of the Action, but in no event shall Releasees be responsible to pay any such fees and expenses except to the extent they are paid out of the Settlement Fund. Further, Class Counsel reserve the right to make additional applications for fees and expenses incurred, but in no event shall Releasees be responsible to pay any such additional fees

and expenses except to the extent they are paid out of the Settlement Fund.

(b) The Fee and Expense Award, as approved by the Court, shall be paid solely from the Settlement Fund. After this Agreement becomes final within the meaning of Paragraph 11, the Fee and Expense Award shall be paid to the Chairman within ten (10) business days. The Chairman shall allocate the attorneys' fees among Class Counsel in a manner which it in good faith believe reflects the contributions of such counsel to the prosecution and settlement of the Action.

(c) The procedure for and the allowance or disallowance by the Court of the application by Class Counsel for attorneys' fees, costs and expenses to be paid out of the Settlement Fund are not part of this Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement, and any order or proceeding relating to the Fee and Expense Application, or any appeal from any such order shall not operate to terminate or cancel this Agreement, or affect or delay the finality of the judgments approving the settlement.

(d) Neither the Settling Defendants nor any other Releasee under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to any payment to Class Counsel of any Fee and Expense Award in the Action.

(e) Neither the Settling Defendants nor any other Releasee under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to the allocation among Class Counsel, and/or any other person who may assert some claim thereto, of any Fee and Expense Award that the Court may make in the Action.

F. Cooperation.

23. Settling Defendants shall reasonably cooperate with the Chairman as set forth specifically below:

(a) If Settling Defendants produce any documents to any other party in the Action in response to any discovery request, Settling Defendants shall produce to the Chairman within ten (10) days of a request by the Chairman, but only if any Plaintiff remains a party to the Action and is represented by the Chairman.

(b) Upon reasonable notice after Final Approval of this Agreement, but only if any Plaintiff remains a party to the Action and is represented by the Chairman, Settling Defendants agree to use reasonable efforts to make available for depositions via videoconference or at a mutually agreed upon location or locations, and at Settling Defendants' expense, up to two (2) persons which may consist of current directors, officers, and/or employees of Settling Defendants (or former directors, officers and/or employees of Settling Defendants, if such former employees agree to cooperate) whom the Chairman, in consultation with counsel for Settling Defendants, reasonably and in good faith believes to have knowledge regarding the conduct alleged in the Complaint. Depositions shall be administered according to the rules and limitations of the Federal Rules of Civil Procedure, regardless of the location at which they take place or the citizenship of the deponent. Settling Defendants agree to bear reasonable travel expenses incurred by witnesses pursuant to this Paragraph. For the avoidance of doubt, any cooperation subject to this provision shall only take place in the event that (i) Final Approval of this Agreement is entered, but (ii) the settlement agreement of some other Defendant does not receive final approval and the Chairman continues to represent any Plaintiff as a party against that non-settling Defendant. Other than the situation described

in the immediate prior sentence, Settling Defendants do not have any obligation to cooperate with the Chairman or any Plaintiff.

(c) Upon reasonable notice after Final Approval of this Agreement, but only if any Plaintiff remains a party to the Action and is represented by the Chairman, Settling Defendants agree to authenticate and lay a foundation, through affidavit or declarations, for admission into evidence any of Settling Defendants' produced documents and transaction and/or cost data. If the affidavits or declarations previously identified are insufficient to authenticate and lay the foundation into evidence of any Settling Defendants' produced documents or data, Settling Defendants shall provide one or more witnesses that will authenticate and lay the foundation for admission into evidence any of Settling Defendants' produced document or data.

(d) If any document protected by the attorney-client privilege, attorney work-product protection, joint defense or any other protection, privilege, or immunity is accidentally or inadvertently produced under this Paragraph, the document shall promptly be destroyed and/or returned to Settling Defendants, and its production shall in no way be construed to have waived any privilege or protection attached to such document

(e) Settling Defendants and Plaintiffs and the Chairman agree they will not use the information provided by Settling Defendants or their representatives under this Paragraph for any purpose other than the pursuit of the Action, and will not publicize the information beyond what is reasonably necessary for the prosecution of the Action or as otherwise required by law. Any documents and other information provided will be deemed "Confidential - Restricted" and subject to the protective order entered in the Action as if they had been produced in response to discovery requests and so designated.

24. In the event that this Agreement fails to receive final approval by the Court as contemplated in Paragraphs 8-11 hereof, including final approval of "the Class" as defined in Plaintiffs' Complaint or in the event that it is terminated by either party under any provision herein, the parties agree that neither Plaintiffs nor Plaintiffs' counsel shall be permitted to introduce into evidence, at any hearing, or in support of any motion, opposition or other pleading in the Action or in any other federal or state or foreign action alleging a violation of any law relating to the subject matter of this Action, any deposition testimony or any documents provided by the Releasees, their counsel, or any individual made available by the Releasees pursuant to the cooperation provisions of Paragraph 24.

25. The Settling Defendants need not respond to formal discovery from Plaintiffs or otherwise participate in the Action during the pendency of the Agreement. The Settling Defendants agree to withdraw all outstanding discovery served on Plaintiffs and neither the Settling Defendants nor Plaintiffs shall file motions against the other during the pendency of the Agreement.

26. The Settling Defendants and Plaintiffs agree not to disclose publicly or to any other defendant the terms of this Agreement until this Agreement is submitted to the Court for approval.

G. Rescission if this Agreement Is Not Approved or Final Judgments Are Not Entered.

27. If the Court refuses to approve this Agreement or any part hereof, including if the Court does not certify a settlement class in accordance with the specific class definition set forth in the Complaint, or if such approval is modified or set aside on appeal, or if the Court does not enter the final judgments provided for in Paragraph 11 of this Agreement, or if the Court enters the final judgments and appellate review is sought, and on such review, such final judgments are

not affirmed in their entirety, then the Settling Defendants and Plaintiffs shall each, in their sole discretion, have the option to rescind this Agreement in its entirety. Written notice of the exercise of any such right to rescind shall be made according to the terms of Paragraph 38 within twenty (20) days of the triggering event. Notwithstanding the foregoing, and consistent with Paragraph 22(c), this right to rescind shall not extend to any order or modification by the Court regarding the application by Class Counsel for attorneys' fees, costs and/or expenses to be paid out of the Settlement Fund. Further, a modification or reversal on appeal of any amount of Class Counsel's fees, costs and/or expenses awarded by the Court from the Settlement Fund shall not be deemed a modification of all or a part of the terms of this Agreement or such final judgments.

28. In the event that this Agreement does not become final, then this Agreement shall be of no force or effect and any and all parts of the Settlement Fund caused to be deposited in the Escrow Account (including interest earned thereon) shall be returned forthwith to the Settling Defendants less only disbursements made in accordance with Paragraph 18(a) of this Agreement. The Settling Defendants expressly reserve all of their rights and defenses if this Agreement does not become final.

29. Further, and in any event, Plaintiffs and the Settling Defendants agree that this Agreement, whether or not it shall become final, and any and all negotiations, documents, and discussions associated with it, shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by any of the Settling Defendants or the Releasees, or of the truth of any of the claims or allegations contained in the Complaint or any other pleading filed in the Action, or by any person or entity in any other action, and evidence thereof shall not be discoverable or used directly or indirectly, in any way, whether in the Action or in any other action or proceeding.

30. This Agreement shall be construed and interpreted to effectuate the intent of the parties, which is to provide, through this Agreement, for a complete resolution of the relevant claims with respect to each Releasee as provided in this Agreement.

31. The parties to this Agreement contemplate and agree that, prior to final approval of the settlement as provided for in Paragraphs 8-11 hereof, appropriate notice (1) of the settlement; and (2) of a hearing at which the Court will consider the approval of this Settlement Agreement will be given to Class members.

H. Miscellaneous.

32. This Agreement does not settle or compromise any claim by Plaintiffs or any Class Member asserted in the Complaint or, if amended, any subsequent Complaint, against any defendant or alleged co-conspirator other than the Settling Defendants and/or the Releasees. All rights against such other defendants or alleged co-conspirators are specifically reserved by Plaintiffs and the Class. The Settling Defendants' sales to the Class shall not be removed from the Action.

33. The United States District Court for the Northern District of California shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of this Agreement that cannot be resolved by negotiation and agreement by Plaintiffs and the Settling Defendants. This Agreement shall be governed by and interpreted according to the substantive laws of the state of California without regard to its choice of law or conflict of laws principles.

34. This Agreement constitutes the entire, complete and integrated agreement among Plaintiffs and the Settling Defendants pertaining to the settlement of the Action against the

Settling Defendants, and supersedes all prior and contemporaneous undertakings of Plaintiffs and the Settling Defendants in connection herewith. This Agreement may not be modified or amended except in writing executed by Plaintiffs and each of the Settling Defendants, and must also be approved by the Court.

35. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Plaintiffs and the Settling Defendants. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by Plaintiffs, the Chairman or Class Counsel shall be binding upon all Class Members and Releasors. The Releasees (other than the Settling Defendants which are parties hereto) are third party beneficiaries of this Agreement and are authorized to enforce its terms applicable to them.

36. This Agreement may be executed in counterparts by Plaintiffs and each of the Settling Defendants, and a facsimile signature shall be deemed an original signature for purposes of executing this Agreement.

37. Neither Plaintiffs nor the Settling Defendants shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

38. Where this Agreement requires either party to provide notice or any other communication or document to the other, such notice shall be in writing, and such notice, communication, or document shall be provided by facsimile or letter by overnight delivery to the undersigned counsel of record for the party to whom notice is being provided.

39. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement, subject to Court approval.

Dated: September 25, 2015



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*Chairman of the Executive Committee for the
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Dated: September 25, 2015



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