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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

DENO MILANO,

Plaintiff,

vs.

INTERSTATE BATTERY SYSTEM OF
AMERICA, INC.; INTERSTATE BATTERY
SYSTEM INTERNATIONAL, INC.,

Defendants.

Case No. 10-CV-2125-CW

**~~PROPOSED~~ FINAL JUDGMENT AND
ORDER**

1 This case was filed in 2010 as a proposed class action and was resolved pursuant to the terms of
2 the Amended Class Action Settlement Agreement dated February 16, 2012 (“Amended Settlement
3 Agreement”). (Dkt. No. 77.) Where not otherwise defined, all capitalized terms in this Final Judgment
4 and Order shall have the same meaning as set forth in the Amended Settlement Agreement. The
5 proposed class action settlement has proceeded through the required process for Court approval and is
6 now formally and finally approved by this Court.

7 Due and adequate notice having been given of the proposed amended settlement as required by
8 the Preliminary Approval Order, (Dkt. No. 75), and the Court having considered all papers filed and
9 proceedings had herein, the Court now enters this Final Judgment and Order stating the final
10 disposition of the case and the terms of the relief to which the Parties are entitled.

11 IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

12 **THE PARTIES AND DEFINITIONS USED IN THIS FINAL JUDGMENT AND ORDER**

- 13 1. The Named Plaintiff is Deno Milano, who filed this Litigation in 2010.
- 14 2. Defendants are Interstate Battery System of America, Inc. (“Interstate Batteries”)
15 and Interstate Battery System International, Inc.
- 16 3. The Released Parties are Interstate Battery System of America, Inc.; Interstate
17 Battery System International, Inc.; their predecessors, successors, and assigns; the present and
18 former, direct and indirect, parents, subsidiaries, sister corporations, divisions, corporate
19 affiliates, or associates of any of the above; and the present and former employees, officers,
20 directors, control persons, members, principals, partners, agents, attorneys, shareholders,
21 advisors, assigns, and representatives of any of the above. “Released Parties” includes
22 distributors and authorized dealers owned by any Settling Defendant, but “Released Parties”
23 does not include distributors and authorized dealers not owned by a Settling Defendant.
- 24 4. The Effective Date is the date on which all appellate rights with respect to this
25 Final Judgment and Order have expired or have been exhausted in such a manner as to affirm
26 this Final Judgment and Order, and when no further appeals are permissible, including review by
27 the United States Supreme Court.

1 **CERTIFICATION OF SETTLEMENT CLASS**

2 5. The Court has certified the following Settlement Class pursuant to Federal Rule of Civil
3 Procedure 23(b)(2):

4 All original purchasers of an Interstate Batteries trademarked battery (meaning the
5 Interstate Batteries, Nationwide, Power Volt, and Quickstart brands) that was covered by
6 a Previous Interstate Batteries' Pro-Rata Warranty and that was purchased from an
7 Interstate Batteries authorized dealer (but not from an All Battery Center Store), in the
8 United States or the District of Columbia, at any time from April 19, 2000 through April
9 30, 2012, and who:

10 (i) later presented that original battery, during the applicable pro-rata-warranty-
11 coverage period, to an Interstate Batteries authorized warranty dealer for a pro-
12 rata-warranty adjustment on the price of a Replacement Battery, and who then
13 purchased that Replacement Battery from that dealer at an adjusted price on a
14 date from May 19, 2006, through April 30, 2012 ("Replacement-Battery-
15 Purchaser Class Members"); or

16 (ii) still had, on or before April 30, 2012, an unexpired contractual right under a
17 Previous Interstate Batteries' Pro-Rata Warranty to purchase a Replacement
18 Battery in a pro-rata-warranty-adjustment transaction if their original battery fails
19 under the terms of the Previous Interstate Batteries' Pro-Rata Warranty
20 ("Unexpired-Warranty-Holder Class Members").

21 Excluded from the class definition are Interstate Battery System of America, Inc., and
22 Interstate Battery System International, Inc.; affiliates, parents, or subsidiaries of
23 Settling Defendants; entities in which Settling Defendants have a controlling interest;
24 predecessors, successors, or assigns of Settling Defendants; any judges who preside over
25 this Litigation before Final Judgment, their spouses, the members of their staffs, and
26 anyone within the third degree of relationship from the judges or their spouses, as well
27 as those persons' spouses; and persons employed by Class Counsel.

28 **FINAL APPROVAL OF CLASS SETTLEMENT**

6. The Court hereby reaffirms its finding that the Settlement Class defined above in
paragraph 5 meets the requirements of Federal Rule of Civil Procedure 23(b)(2).

7. The Court finds that the notice given in this Rule 23(b)(2) class action settlement
is both appropriate under Rule 23(c)(2)(A) and is reasonable under Rule 23(e)(1). The Court
further finds that appropriate notice under the Class Action Fairness Act, 28 U.S.C. § 1715, has
been given to the appropriate federal and state governmental officials. The Court has given the
appropriate state and federal government officials the requisite ninety day time period (pursuant

1 to 28 U.S.C. § 1715) to comment or object to the proposed amended settlement before entering
2 this Final Judgment and Order, and no such objections or comments were received.

3 8. The Court has considered the two objections submitted regarding final approval
4 of the settlement.

5 a. The Court finds that Leonard A. Wood, Jr, a former Interstate Batteries
6 dealer, did not establish that he is a Settlement Class Member so he does not have standing to
7 object to the proposed settlement. The Court further finds that the matters contained in Mr.
8 Wood's objection relate to his situation as a former Interstate Batteries dealer, and thus do not
9 pertain to the claims in this Litigation. Accordingly, the Court overrules Mr. Wood's objections.

10 b. The Court finds that Wayne Barginear failed to respond to Plaintiff's
11 discovery requests for documents and tangible things and thus did not comply with the
12 preliminary approval order entered by the Court on March 8, 2012. (*See* Dkt. No. 72.) By
13 failing to respond to Plaintiff's discovery requests, Mr. Barginear is also in violation of the
14 stipulation and order entered by the Court on June 1, 2012. (*See* Dkt. Nos. 89 & 90.) Pursuant
15 to the March 8 Order, the Court hereby strikes Mr. Barginear's objection, which the Court notes
16 Mr. Barginear repudiated in his deposition testimony on June 25, 2012. (*See* Dkt. 97, Exhibit 1.)
17 The Court also overrules Mr. Barginear's objection on the merits. The Court finds that the
18 objection misstates Supreme Court precedent and repeatedly makes notice objections based on
19 the subpart of Federal Rule of Civil Procedure 23(c) that applies to Rule 23(b)(3) classes—not
20 this Rule 23(b)(2) class. The Court further finds that the Notice Plan is appropriate and
21 reasonable, the terms of the settlement are fair, reasonable, and adequate, and the Court's
22 deadlines and administrative requirements for objections were proper.

23 9. The Court has considered the following factors in determining whether the
24 settlement should be finally approved: (1) the strength of the plaintiff's case; (2) the risk,
25 expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class
26 action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery
27 completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the
28 presence of a governmental participant; and (8) the reaction of the class members to the proposed

1 settlement. *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004). In addition,
2 the Court has considered all of the requirements identified in *In re Bluetooth Headset Prods.*
3 *Liab. Litig.*, 654 F.3d 935 (9th Cir. 2011), including the possibility of collusion among the
4 negotiating parties. In this case, the negotiating parties conducted Court-ordered mediation
5 before an experienced former California judge. This mediation occurred after the parties had
6 conducted significant discovery and assessed the merits of the case. Moreover, the record
7 demonstrates that, at the direction of this former California judge, the parties reached agreement
8 on all substantive terms before discussing attorneys' fees or Named Plaintiff's incentive award.
9 The Court finds that the settlement is a result of extensive, arm's-length negotiation. Finally, the
10 conduct of counsel before this Court over the course of the Litigation demonstrates that counsel
11 for both sides are experienced in class action litigation and zealously represented their respective
12 clients. After considering all of those factors, the Court approves every term of the Amended
13 Settlement Agreement, finding that it is fair, reasonable, and adequate. The Court directs the
14 Parties to implement the Amended Settlement Agreement according to its terms.

15 **INJUNCTION AGAINST DEFENDANTS**

16 10. Pursuant to the terms of the Amended Settlement Agreement, Defendants are
17 **HEREBY ENJOINED** as follows:

18 **Implementation of Improved Business Practices**

19 11. The Court enjoins Interstate Batteries to implement the improved business
20 practices stated below (in paragraphs 11(a) to 11(g)) until December 31, 2014. The Court finds
21 that Interstate Batteries began implementing the improved warranty practices in May 2012, with
22 the specific approval of Class Counsel.

23 a. Interstate Batteries shall rewrite and begin using a new form of limited
24 warranty for the Interstate Batteries brand of automotive batteries currently sold by Interstate
25 Batteries authorized dealers in the United States and the District of Columbia.

26 b. Interstate Batteries shall make the terms, language, and format of this new
27 limited warranty more easily understood by consumers.

1 c. If the new form of limited warranty for some automotive battery models
2 includes a pro-rata warranty, Interstate Batteries shall state clearly how any pro-rata-warranty-
3 adjustment price would be calculated. Moreover, that calculation shall be based on Interstate
4 Batteries' then-current "Suggested Retail Price" for the replacement battery, and not based on
5 Interstate Batteries' "List Price."

6 d. Interstate Batteries shall improve its method of delivering this new limited
7 warranty to consumers. Going forward, Interstate Batteries shall create a new program of
8 providing this new written limited warranty to its authorized dealers, through its distributors,
9 with instructions that dealers are to deliver the new written limited warranty to the purchaser at
10 the time of sale of any Interstate Batteries brand of automotive batteries sold by Interstate
11 Batteries authorized dealers in the United States and the District of Columbia. As the Warrantor,
12 Interstate Batteries is specifically permitted to provide the warranty to the "sellers" of the
13 batteries under the Magnuson-Moss Warranty Act.

14 e. When Interstate Batteries begins using the new form of limited warranty,
15 however, there will be batteries that Interstate Batteries has already sold (to its distributors or
16 otherwise) and that are already in the chain of distribution and labeled or packaged with the
17 Previous Interstate Batteries' Pro-Rata Warranty. Interstate Batteries is not required to recall or
18 repackaging any of those batteries.

19 f. The new limited warranty shall contain all statements and disclosures
20 required by the Magnuson-Moss Warranty Act.

21 g. Interstate Batteries shall take reasonable steps to ensure that any posting of
22 this new limited warranty is uniform with the language of the hard copies of that limited
23 warranty provided at the time of sale.

24 12. The injunctive obligations relating to the improved business practices described
25 above (in paragraphs 11(a) to 11(g)) shall apply only to the current models of Interstate Batteries
26 brand of automotive batteries currently sold by Interstate Batteries authorized dealers in the
27 United States and the District of Columbia as of the date of this Final Judgment and Order; those
28

1 obligations shall not apply to any new or different battery models or products that Interstate
2 Batteries may develop, market, sell, or distribute after the date of this Final Judgment and Order.

3 **Implementation of Interstate Batteries Settlement Program**

4 13. The Court enjoins Interstate Batteries to implement the Interstate Batteries
5 Settlement Program according to the specific terms contained in the Amended Settlement
6 Agreement, (Dkt. No. 77 at 31-44), until March 15, 2021. The Court finds that Interstate
7 Batteries formally commenced the Interstate Batteries Settlement Program on January 9, 2012.

8 a. Subject to the limitations described in the Amended Settlement
9 Agreement, Interstate Batteries shall provide a product voucher for \$5 to any eligible Settlement
10 Class Member who timely submits a valid tier-one claim.

11 b. Subject to the limitations described in the Amended Settlement
12 Agreement, Interstate Batteries shall provide any eligible Settlement Class Member's choice of a
13 check card in the amount of \$8.50 or a product voucher for \$12 to any eligible Settlement Class
14 Member who timely submits a valid tier-two claim.

15 c. Interstate Batteries shall mail or email any product voucher or check card
16 issued in connection with a valid tier-one or tier-two claim form to the claimant within 30 days
17 of Interstate Batteries' receipt of the valid tier-one or tier-two claim.

18 d. Interstate Batteries shall continue to provide additional notice in the future
19 regarding the Interstate Batteries Settlement Program, according to the specific terms contained
20 in the Amended Settlement Agreement. (Dkt. No. 77 at 27-29.) That additional notice shall
21 include the Class Settlement Website, online hyperlinks from keyword searches, and Interstate
22 Batteries' Website, and will continue through 2020.

23 **Limitations on Injunctive Relief**

24 14. Any action by Defendants to comply with any federal, state or local law,
25 enactment, regulation, or judicial ruling shall not constitute a violation of this injunction. In the
26 event that any obligations under this injunction become unlawful under any future federal, state
27 or local law, enactment, regulation, or judicial ruling, then Defendants shall be released from
28 performing such obligation.

1 **RELEASE, WAIVER, AND RESERVATION OF RIGHTS**

2 15. The Court HEREBY fully, finally, and forever RELEASES AND DISCHARGES
3 the Settlement Class Members' claims and rights as follows:

4 **Release of Claims and Rights by Replacement-Battery-Purchaser Class Members**

5 16. Release of Equitable Claims by Replacement-Battery-Purchaser Class Members:

6 Upon the Effective Date, the Released Parties shall be fully, finally, and forever released and
7 discharged from any and all claims for injunctive relief, declaratory judgment relief, and any
8 other non-monetary equitable relief, known or UNKNOWN, arising on or before the Effective
9 Date that the Replacement-Battery-Purchaser Class Members either asserted or could have
10 asserted in the Litigation, including but not limited to equitable claims based on: (1) Interstate
11 Batteries' warranty; (2) the Magnuson-Moss Warranty Act; (3) breach of the implied covenant of
12 good faith and fair dealing; (4) the California Song-Beverly Consumer Warranty Act; (5) the
13 Consumers Legal Remedies Act; (6) unlawful, unfair, and fraudulent business practices; and/or
14 (7) the consumer protection statutes of any State or the District of Columbia. Replacement-
15 Battery-Purchaser Class Members do not release any claims they may have against the Released
16 Parties for personal injury or property damage. Individual monetary claims asserted on behalf of
17 individual Replacement-Battery-Purchaser Class Members are not released under this Final
18 Judgment and Order. If a Replacement-Battery-Purchaser Class Member elects to participate in
19 the Interstate Batteries Settlement Program, however, he or she will be required to agree to the
20 release described below in paragraph 24 and in the Amended Settlement Agreement. (Dkt. No.
21 77 at 52, Exs. D-E.)

22 17. After entering into the Amended Settlement Agreement, Replacement-Battery-
23 Purchaser Class Members may discover facts other than, different from, or in addition to, those
24 that they know or believe to be true with respect to the Released Claims. Replacement-Battery-
25 Purchaser Class Members expressly waive and fully, finally, and forever settle and release any
26 known or UNKNOWN, suspected or UNSUSPECTED, contingent or noncontingent claim with
27 respect to the Released Claims, whether or not concealed or hidden, without regard to the
28 subsequent discovery or existence of such other, different, or additional facts. With respect to

1 any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, each
2 Replacement-Battery-Purchaser Class Member shall be deemed to have, and by operation of this
3 Final Judgment and Order shall have, expressly waived any and all provisions, rights, and
4 benefits conferred by any law of any state, district, or territory of the United States, or principle
5 of common law, which is similar, comparable, or equivalent to California Civil Code § 1542,
6 which provides:

7 *A general release does not extend to claims which the creditor does not know or suspect*
8 *to exist in his or her favor at the time of executing the release, which if known by him or*
9 *her must have materially affected his or her settlement with the debtor.*

9 Named Plaintiff understands there is a risk he and Replacement-Battery-Purchaser Class
10 Members might suffer losses UNKNOWN or UNSUSPECTED at the time of the release. Class
11 Counsel advised Named Plaintiff of the rights conferred by California Civil Code § 1542. With
12 knowledge of the risks, and upon advice of counsel, Named Plaintiff, and each Replacement-
13 Battery-Purchaser Class Member shall be deemed to have, and by operation of this Final
14 Judgment and Order shall have, expressly assumed the risks of UNKNOWN or
15 UNSUSPECTED claims included in the Released Claims.

16 18. Waiver of Class Action Procedural Device and Any Other Method of Aggregating
17 Claims by Replacement-Battery-Purchaser Class Members: Each Replacement-Battery-
18 Purchaser Class Member waives the right to use the class action procedural device or any other
19 method of joining, consolidating, or aggregating the claims of multiple plaintiffs, persons or
20 entities, or the public in any future lawsuit or other proceeding against the Released Parties that
21 asserts any claim that was or could have been brought in the Litigation. In addition, each
22 Replacement-Battery-Purchaser Class Member waives any right conferred by rule, statute, or any
23 other law to seek—in any future lawsuit or other proceeding against the Released Parties arising
24 from claims that were or could have been brought in the Litigation—any relief on behalf of or
25 for the benefit of any other persons. Stated differently, each Replacement-Battery-Purchaser
26 Class Member may only seek money or other relief for himself or herself, individually.
27 Replacement-Battery-Purchaser Class Members recognize that as part of the Amended
28 Settlement Agreement, Defendants are not contesting the certification of a conditional Settlement

1 Class, even though Defendants believe that this Litigation could not be certified as a class action
 2 for trial purposes. Moreover, Replacement-Battery-Purchaser Class Members further recognize
 3 that they have already availed themselves of the class action procedural device once in this
 4 Litigation, and obtained the multiple benefits provided by the Amended Settlement Agreement.

5 19. Reservation of Individual Lawsuits for Monetary Damages by Replacement-
 6 Battery-Purchaser Class Members: Each Replacement-Battery-Purchaser Class Member,
 7 excluding the Named Plaintiff, does not release and discharge, but instead preserves, the right of
 8 an individual Replacement-Battery-Purchaser Class Member to file an individual lawsuit against
 9 any Released Party seeking monetary damages (but such a Settlement Class Member can only
 10 file such an individual lawsuit for himself or herself, and not for any other person) for damages
 11 which arose on or before the Effective Date and are based on claims that either were asserted or
 12 could have been asserted in the Litigation. Each Replacement-Battery-Purchaser Class Member
 13 understands and agrees that his or her reservation of rights to file such individual lawsuits is
 14 subject to the waiver of the class action procedural device and any other method of aggregating
 15 claims, described in paragraphs 18 and 27. If a Replacement-Battery-Purchaser Class Member
 16 elects to participate in the Interstate Batteries Settlement Program, however, he or she will be
 17 required to agree to the release described below in paragraph 24 and in the Amended Settlement
 18 Agreement. (Dkt. No. 77 at 52, Exs. D-E.)

19 **Release of Claims and Rights by Unexpired-Warranty-Holder Class Members**

20 20. Release of Certain Equitable Claims by Unexpired-Warranty-Holder Class
 21 Members: Upon the Effective Date, the Released Parties shall be fully, finally, and forever
 22 released and discharged from any and all claims for injunctive relief, declaratory judgment relief,
 23 and any other non-monetary equitable relief, known or UNKNOWN, arising on or before the
 24 Effective Date that Unexpired-Warranty-Holder Class Members have, however styled or
 25 presented, relating to how the adjusted price of a Replacement Battery in a pro-rata-adjustment
 26 transaction would be calculated under a Previous Interstate Batteries' Pro-Rata Warranty.
 27 Unexpired-Warranty-Holder Class Members do not release any other claims they may have
 28 against the Released Parties. If an Unexpired-Warranty-Holder Class Member becomes eligible

1 for and elects to participate in the Interstate Batteries Settlement Program, however, he or she
 2 will be required to agree to the release described below in paragraph 24 and in the Amended
 3 Settlement Agreement. (Dkt. No. 77 at 52, Exs. D-E.)

4 21. After entering into the Amended Settlement Agreement, Unexpired-Warranty-
 5 Holder Class Members may discover facts other than, different from, or in addition to, those that
 6 they know or believe to be true with respect to the Released Claims. Unexpired-Warranty-
 7 Holder Class Members expressly waive and fully, finally, and forever settle and release any
 8 known or UNKNOWN, suspected or UNSUSPECTED, contingent or noncontingent claim with
 9 respect to the Released Claims, whether or not concealed or hidden, without regard to the
 10 subsequent discovery or existence of such other, different, or additional facts. With respect to
 11 any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, each
 12 Unexpired-Warranty-Holder Class Member shall be deemed to have, and by operation of this
 13 Final Judgment and Order shall have, expressly waived any and all provisions, rights, and
 14 benefits conferred by any law of any state, district, or territory of the United States, or principle
 15 of common law, which is similar, comparable, or equivalent to California Civil Code § 1542,
 16 which provides:

17 *A general release does not extend to claims which the creditor does not know or suspect*
 18 *to exist in his or her favor at the time of executing the release, which if known by him or*
 19 *her must have materially affected his or her settlement with the debtor.*

20 Named Plaintiff understands there is a risk he and Unexpired-Warranty-Holder Class Members
 21 might suffer losses UNKNOWN or UNSUSPECTED at the time of the release. Class Counsel advised
 22 Named Plaintiff of the rights conferred by California Civil Code § 1542. With knowledge of the risks,
 23 and upon advice of counsel, Named Plaintiff, and each Unexpired-Warranty-Holder Class Member
 24 shall be deemed to have, and by operation of this Final Judgment and Order shall have, expressly
 25 assumed the risks of UNKNOWN or UNSUSPECTED claims included in the Released Claims.

26 **Release of Claims and Rights by Named Plaintiff**

27 22. Named Plaintiff's Release of All Claims: Upon the Effective Date, the Released
 28 Parties shall be fully, finally, and forever released and discharged from any and all claims by or
 brought on behalf of the Named Plaintiff, whether legal, equitable, monetary, or otherwise,

1 known or UNKNOWN, arising on or before the Effective Date that Named Plaintiff either
2 asserted or could have asserted against the Released Parties in the Litigation.

3 23. After entering into the Amended Settlement Agreement, Named Plaintiff may
4 discover facts other than, different from, or in addition to, those that he knows or believes to be
5 true with respect to the claims he is releasing. Named Plaintiff expressly waives and fully,
6 finally, and forever settles and releases any known or UNKNOWN, suspected or
7 UNSUSPECTED, contingent or noncontingent claim, whether or not concealed or hidden,
8 without regard to the subsequent discovery or existence of such other, different, or additional
9 facts. Named Plaintiff and the Defendants stipulate and agree that upon the Effective Date,
10 Named Plaintiff shall expressly waive any and all provisions, rights, and benefits conferred by
11 any law of any state, district, or territory of the United States, or principle of common law, which
12 is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

13 *A general release does not extend to claims which the creditor does not know or suspect*
14 *to exist in his or her favor at the time of executing the release, which if known by him or*
15 *her must have materially affected his or her settlement with the debtor.*

16 Named Plaintiff understands there is a risk he might suffer losses UNKNOWN or
17 UNSUSPECTED at the time of the release. Class Counsel advised Named Plaintiff of the rights
18 conferred by California Civil Code § 1542. With knowledge of the risks, and upon advice of
19 counsel, Named Plaintiff expressly assumes the risks of UNKNOWN or UNSUSPECTED
20 claims.

21 **Release for Participation in Interstate Batteries Settlement Program**

22 24. Additional Release for Participation in Interstate Batteries Settlement Program:
23 The releases described above in paragraphs 16 to 23 shall become effective according to the
24 specific terms of this Final Judgment and Order. If any eligible Settlement Class Member elects
25 to make a valid claim under the Interstate Batteries Settlement Program (as described in the
26 Amended Settlement Agreement) and is issued a check card or product voucher under that
27 program, he or she will be required in exchange to provide a different release, as described in the
28 Amended Settlement Agreement. (Dkt. No. 77 at 52, Ex. D-E.) The Court approves of that
release for those Settlement Class Members who choose to participate in the Interstate Batteries

1 Settlement Program. That release arises under the Amended Settlement Agreement and from an
2 eligible Settlement Class Member's participation in the Interstate Batteries Settlement Program.

3 **INJUNCTION AGAINST SETTLEMENT CLASS MEMBERS**

4 25. Settlement Class Members are HEREBY ENJOINED as follows:

5 **Replacement-Battery-Purchaser Class Members Barred from Asserting Released**
6 **Claims And Using the Class Action Procedural Device**

7 26. The Court permanently bars and enjoins all Replacement-Battery-Purchaser Class
8 Members from instituting, maintaining, or prosecuting, either directly or indirectly, any lawsuit
9 to the extent that it asserts Released Claims, as described above in paragraphs 16 to 19.

10 27. The Court permanently bars and enjoins each Replacement-Battery-Purchaser
11 Class Member from seeking to use the class action procedural device or any other method of
12 joining, consolidating, or aggregating claims of multiple plaintiffs, persons or entities, or the
13 public in any future lawsuit or other proceeding against any Released Party that asserts any
14 claim, whether legal, equitable, monetary, or otherwise, that was or could have been brought in
15 the Litigation. The Court permanently bars and enjoins each Replacement-Battery-Purchaser
16 Class Member from seeking—in any future lawsuit or other proceeding against the Released
17 Parties—any relief on behalf of or for the benefit of any other persons. The Court permanently
18 bars and enjoins each Replacement-Battery-Purchaser Class Member from seeking any relief or
19 otherwise participating as an unnamed class member, represented person, or beneficiary in any
20 class action or other representative, joint, consolidated, or aggregate proceeding that asserts any
21 claim, whether legal, equitable, monetary, or otherwise, that was or could have been brought in
22 the Litigation.

23 **Unexpired-Warranty-Holder Class Members Barred from Asserting Released**
24 **Claims**

25 28. The Court permanently bars and enjoins all Unexpired-Warranty-Holder Class
26 Members from instituting, maintaining, or prosecuting, either directly or indirectly, any lawsuit
27 to the extent that it asserts Released Claims, as described above in paragraphs 20-21.

28 **DISMISSAL OF THE LITIGATION**

1 29. The Court HEREBY DISMISSES THIS ACTION WITH PREJUDICE AND
2 WITHOUT COSTS, except as might be awarded in connection with Named Plaintiff's Motion
3 for Attorneys' Fees, Expenses, and Service Award. (Dkt. No. 78.).

4 **FEE APPLICATION**

5 30. The Court shall consider the Motion for Attorneys' Fees, Expenses, and Service
6 Award, (Dkt. No. 78), separately from the Court's consideration of the fairness, reasonableness,
7 and adequacy of the Amended Settlement Agreement. Any order or proceedings relating to the
8 Motion for Attorneys' Fees, Expenses, and Service Award, (Dkt. No. 78), or any appeal from
9 any order relating thereto or reversal or modification thereof, shall not disturb or affect this Final
10 Judgment and Order or affect or delay the finality of this Final Judgment and Order.

11 **COURT'S CONTINUING JURISDICTION**

12 31. Without affecting the finality of this Final Judgment and Order in any way, this
13 Court hereby retains continuing and exclusive jurisdiction over the Named Plaintiff, the
14 Settlement Class, and the Defendants with respect to the Amended Settlement Agreement and
15 this Final Judgment and Order, including (a) implementation of the Amended Settlement
16 Agreement; (b) Named Plaintiff's Motion for Attorneys' Fees, Expenses, and Service Award,
17 (Dkt. No. 78); and (c) jurisdiction over the Named Plaintiff, members of the Settlement Class,
18 and the Defendants for purposes of construing, enforcing, and administering the Amended
19 Settlement Agreement and this Final Judgment and Order, including the injunctions set forth
20 herein.

21 IT IS SO ORDERED.

22
23 Dated: July 5, 2012



Judge Claudia Wilken
United States District Judge