

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

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

**SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is made and entered into this 14th day of October, 2015, by and between NEC Corporation (“NEC”) and the indirect purchaser plaintiff class representatives (“Plaintiffs”), both individually and on behalf of a settlement class of indirect 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, NEC;

WHEREAS, Plaintiffs allege that NEC 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 and various state laws;

WHEREAS, NEC denies Plaintiffs’ allegations and has 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 NEC according to the

terms set forth below is in the best interest of Plaintiffs and the Class;

WHEREAS, NEC, despite its belief that it is not liable for the claims asserted and has good defenses thereto, has 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 judgment contemplated by this Agreement, and to put to rest with finality all claims that have been or could have been asserted against NEC, 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 Releasees, as defined below, without costs as to Plaintiffs, the Class, or NEC, 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’ Revised Motion for Class Certification on Behalf of the Indirect Purchaser Class (the “Revised Motion for Class Certification”). Specifically, “the Class” references the “Proposed Class” in the Revised Motion for Class Certification and refers to: “All persons and entities who, as residents of Arizona, California, District of Columbia, Florida, Hawaii, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, Oregon, Tennessee, Utah, Vermont, West Virginia and Wisconsin and during the period April 2003 to December 2008, purchased new for their own use and not for resale: (i) a computer with an internal ODD; (ii) a stand-alone ODD designed for internal use in computers; or (iii) an ODD designed to be attached externally to a computer.

ODD refers to a DVD-RW, DVD-ROM, or COMBO drive manufactured by one or more Defendants or their coconspirators. Excluded from the class are any purchases of Panasonic-branded computers.” 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, “ODDs” shall have the meaning as defined in the “Proposed Class” of the Revised Motion for Class Certification.

3. “Releasees” shall refer to NEC and to all of its 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 NEC.

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 indirect purchaser plaintiff Class representatives and the indirect 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 \$6,500,000 specified in Paragraph 16 plus accrued interest on said deposits set forth in Paragraph 17.

7. “Lead Counsel for the Indirect Purchaser Plaintiffs” (“IPP Lead Counsel”) shall refer to the law firm of:

HAGENS BERMAN SOBOL SHAPIRO LLP  
715 Hearst Avenue, Suite 202  
Berkeley, CA 94710

**B. Approval of this Agreement and Dismissal of Claims Against NEC.**

8. Plaintiffs and NEC 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 NEC 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 judgment contemplated by this Agreement to all Class members. 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 judgment. The text of the foregoing items (i) and (ii) shall be agreed upon by Plaintiffs and NEC before submission of the Motion. The Motion shall recite and ask the Court to find that the proposed form of notice by Plaintiffs, including any notice of settlement by e-mail, mail or publication, constitutes valid, due and sufficient notice, is the best practicable notice under the circumstances, and complies fully with the requirements of Federal Rule of Civil Procedure 23 and any other applicable law.

10. Plaintiffs shall seek, and NEC will not object unreasonably to the entry of, an order and final judgment, the text of which Plaintiffs and NEC shall agree upon. The terms of that order and final judgment 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 NEC, 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 judgment of dismissal as to NEC 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 a final judgment dismissing the Action with prejudice as to NEC against all Class Members and without costs, and (ii) the time for appeal or to seek permission to appeal from the Court's approval of this Agreement and entry of a final judgment as to NEC described in (i) hereof has expired or, if appealed, approval of this Agreement and the final judgment as to NEC 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 NEC have executed this Agreement, Plaintiffs and NEC shall be bound by its terms and this

Agreement shall not be rescinded except in accordance with Paragraphs: 17(h), 28, or 29 of this Agreement.

12. Neither this Agreement (whether or not it should become final) nor the final judgment, nor any and all negotiations, documents and discussions associated with them, shall be deemed or construed to be an admission by NEC or evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by NEC, or of the truth of any of the claims or allegations contained in any 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 settling 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, or to defend against the assertion of 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 judgment 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 16 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

Releasers, 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 does 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 indirectly from Defendants or their alleged co-conspirators. However, the Released Claims shall not preclude Plaintiffs from pursuing any and all claims against other defendants. Releasers 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 the subject of the Plaintiffs' Complaint.

14. In addition to the provisions of Paragraph 13 of this Agreement, Releasers 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.

15. The release, discharge, and covenant not to sue set forth in Paragraph 13 of this Agreement does not include claims by any of the Class Members other than the Released Claims. The Releasors hereby covenant and agree that they shall not, hereafter, sue or otherwise seek to establish liability against any of the Releasees based, in whole or in part, upon any of the Released Claims.

**D. Settlement Amount.**

16. Subject to the provisions hereof, and in full, complete and final settlement of the Action as provided herein, defendant NEC shall pay the Settlement Amount of US \$6,500,000 (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 17 of this Agreement (the "Escrow Account") within thirty (30) days after execution of this Agreement.



17. Escrow Account.

(a) The Escrow Account will be established at Huntington National Bank, with such Bank serving as escrow agent (“Escrow Agent”) subject to escrow instructions mutually acceptable to IPP Lead Counsel and NEC, 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 or accounts 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 NEC 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 17, 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 17(d)) shall be consistent with Paragraph 17(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 17(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 NEC 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 17(d) through 17(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 17(f) (“Tax Expenses”)), shall be paid out of the Settlement Fund.

(g) Neither NEC nor any other Releasee nor 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 NEC nor any other Releasee is responsible nor shall they have any liability therefor. Plaintiffs and NEC 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 17(d) through 17(f).

(h) If this Agreement does not receive final Court approval, including final approval of “the Class” as defined in Paragraph 1, or, if the Action is not certified as a class action for settlement purposes, then all amounts paid by NEC into the Settlement Fund (other than costs expended in accordance with Paragraph 19) shall within thirty (30) calendar days be returned to NEC from the Escrow Account by the Escrow Agent along with any interest accrued thereon.

18. Exclusions and Objections.

(a) Class members who wish to exclude themselves from the Class must serve on IPP Lead Counsel a written request for exclusion by the deadline for exclusions, as provided in the class notice. Plaintiffs shall submit the name, city and state of residence of all Class members who request exclusion to the Court at the time Plaintiffs file their motion for final approval of the settlement.

(b) Within ten (10) business days after the end of the period to request exclusion from the Class, IPP Lead Counsel will cause copies of timely requests for exclusion from the Class to

be provided to counsel for NEC. With respect to any potential Class member who requests exclusion from the Class, NEC reserves all of its legal rights and defenses, including, but not limited to, any defenses relating to whether the excluded Class member is an indirect purchaser of any allegedly price fixed product and/or has standing to bring any claim.

(c) Class members who wish to object to any aspect of the Settlement must file with the Court a written statement containing their objection by end of the period to object to the Settlement, as provided in the Class Notice.

(d) Any award or payment of attorneys' fees made to counsel to an objector to the settlement shall only be made by Court order and upon a showing of the benefit conferred to the class. In determining any such award of attorneys' fees to an objectors' counsel, the Court will consider the incremental value to the Class caused by any such objection. Any award of attorneys' fees by the Court will be conditioned on the objector and his or her attorney stating under penalty of perjury that no payments shall be made to the objector based on the objector's participation in the matter – other than ordered by the Court.

19. Payment of Expenses.

NEC agrees to permit use of a maximum of US \$200,000 of the Settlement Fund towards notice to the class and the costs of administration of the Settlement Fund as set forth in Paragraph 17. The US \$200,000 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 19, NEC shall not be liable for any of the costs or expenses associated with 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.

**E. The Settlement Fund.**

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

21. 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 19 of this Agreement.

22. Plaintiffs and Class Counsel shall be reimbursed and indemnified solely out of the Settlement Fund for all expenses. NEC 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.

23. 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..

(b) The Fee and Expense Award, as approved by the Court, shall be paid solely from the Settlement Fund. The attorneys' fees and expenses, as awarded by the Court,

shall be paid from the Settlement Fund to an account designated by Lead Counsel, as ordered, within ten (10) business days of the order granting the request for fees and expenses. In the event that the Agreement does not become final within the meaning of Paragraph 11, or the order making the Fee and Expense Award is reversed or modified, then Lead Counsel shall within five (5) business days from receiving notice from NEC or from a court of appropriate jurisdiction, refund to the Settlement Fund the Fee and Expense Award or any portion thereof previously paid to them plus interest thereon at the same rate as earned by the account into which the balance of the Settlement Fund is deposited pursuant to Paragraph 17(b) above.

(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 judgment approving the settlement.

(d) Neither NEC 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 NEC 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.**

24. NEC shall use best efforts to make available for deposition in San Francisco or at trial, upon reasonable notice and conditions, and at NEC's expense, a witness to be identified by Plaintiffs.

25. In the event that this Agreement fails to receive final approval by the Court as contemplated in Paragraphs 8-11 hereof, or in the event that it is terminated by either party under any provision herein, the parties agree that Paragraph 24 above does not apply, and NEC need not comply with its cooperation provision.

26. Except as provided in Paragraph 24 of this Agreement, NEC need not respond to formal discovery from Plaintiffs or otherwise participate in the Action during the pendency of the Agreement. NEC agrees to withdraw all outstanding discovery served on Plaintiffs and neither NEC nor Plaintiffs shall file motions against the other during the pendency of the Agreement.

27. NEC 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; provided, however, that the existence of this settlement may be disclosed.

**G. Rescission if this Agreement is Not Approved or Final Judgment is Not Entered.**

28. 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 above in Paragraph 1, or if such approval is modified or set aside on appeal, or if the Court does not enter the final judgment provided for in Paragraph 10 of this Agreement, or if the Court enters the final judgment and appellate review is sought, and on such review, such final judgment is not affirmed in its entirety, then NEC and the 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 39. A modification or reversal on appeal of any amount of Class Counsel's fees and 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 judgment.

29. 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 deposited in the Escrow Account (including interest earned thereon) shall be returned forthwith to NEC less only disbursements made in accordance with Paragraph 19(a) of this Agreement. NEC expressly reserves all of its rights and defenses if this Agreement does not become final.

30. Further, and in any event, Plaintiffs and NEC 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 NEC 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.

31. 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.

32. 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.**

33. 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 Releasees. All rights against such other defendants or alleged co-conspirators are specifically reserved by Plaintiffs and the Class. NEC's sales to the Class shall not be removed from the Action.

34. 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 NEC. 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.

35. This Agreement constitutes the entire, complete and integrated agreement among Plaintiffs and NEC pertaining to the settlement of the Action against NEC, and supersedes all prior and contemporaneous undertakings of Plaintiffs and NEC in connection herewith. This Agreement may not be modified or amended except in writing executed by Plaintiffs and NEC, and approved by the Court.

36. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Plaintiffs and NEC. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by Plaintiffs or IPP Lead Counsel shall be binding

upon all Class Members and Releasers. The Releasees (other than NEC which is a party hereto) are third party beneficiaries of this Agreement and are authorized to enforce its terms applicable to them.

37. This Agreement may be executed in counterparts by Plaintiffs and NEC, and a facsimile signature shall be deemed an original signature for purposes of executing this Agreement.

38. Neither Plaintiffs nor NEC 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.


39. 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 email and by letter via overnight delivery to the undersigned counsel of record for the party to whom notice is being provided.

40. 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: October 14, 2015

  
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*Lead Counsel for the  
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