

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION
CASE NO. CV 10-2125-CW

DENO MILANO, on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

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

Defendants.

AMENDED CLASS ACTION SETTLEMENT AGREEMENT

(executed as of February 16, 2012)

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This Amended Settlement Agreement and Release (“Amended Settlement Agreement”) is made and entered into by the Parties and their counsel as of February 16, 2012, in *Milano v. Interstate Battery System of America, Inc. and Interstate Battery System International, Inc.*, Case No. CV 10-2125-CW, and will be submitted to the Court for approval pursuant to Rule 23 of the Federal Rules of Civil Procedure. This Amended Settlement Agreement supersedes the Original Settlement Agreement signed by the Parties as of October 26, 2011, and the Parties agree that the Original Settlement Agreement shall have no further force or effect.

I. RECITALS

WHEREAS, in 2010 the Named Plaintiff brought an action that is currently pending as a proposed class action in the United States District Court for the Northern District of California, alleging that Settling Defendants’ warranty violated state and federal law, seeking both equitable and monetary relief, and proposing class certification, alternatively, under Federal Rules of Civil Procedure 23(b)(1), 23(b)(2), and 23(b)(3); and

WHEREAS, Settling Defendants deny each and every one of Named Plaintiff’s allegations of wrongful conduct and damages, and Settling Defendants have asserted numerous defenses to Named Plaintiff’s claims and disclaim any wrongdoing or liability whatsoever, and Settling Defendants further deny that this Litigation satisfies the requirements to be tried as a class action under Federal Rule of Civil Procedure 23; and

WHEREAS, this Amended Settlement Agreement has been reached after a year of litigation and discovery, and is the product of repeated, arm’s-length settlement

negotiations in a Court-ordered mediation conducted by a highly experienced retired California judge and independent mediator; and

WHEREAS, the Parties signed the Original Settlement Agreement as of October 26, 2011, and filed it with the Court on October 31, 2011, and the Court preliminarily approved the Original Settlement Agreement on December 1, 2011, but later events led the Parties to negotiate and sign this Amended Settlement Agreement; and

WHEREAS, the Parties recognize that the outcome of this Litigation is uncertain, and that a final resolution through the litigation process would require several more years of protracted adversary litigation and appeals, substantial risk and expense, and the distraction and diversion of the Settling Defendants' personnel and resources; and the Parties and their counsel have agreed to resolve this Litigation as a settlement class action according to the terms of this Amended Settlement Agreement; and

WHEREAS, the Parties believe that this Amended Settlement Agreement is fair, reasonable, and adequate because: (1) it provides for certification of a conditional settlement class under Federal Rule of Civil Procedure 23(b)(2), even though the Court has not yet determined whether this action could properly be brought as a class action, and Settling Defendants maintain that class certification for trial purposes would not be proper under Rule 23; (2) it provides Injunctive Relief to the Settlement Class in improvements to Interstate Batteries' warranty and warranty practices, including an improved method for explaining, disclosing, and delivering Interstate Batteries' warranty; (3) it provides a two-tier claims program that will allow all eligible Settlement Class Members to receive either monetary relief or a product voucher; and (4) it expands the

Settlement Class definition to allow a larger number of Interstate Batteries' customers to benefit from the negotiated resolution provided by this Amended Settlement Agreement; and

NOW, THEREFORE, without (a) any admission or concession by the Named Plaintiff of any lack of merit of the Litigation whatsoever, or (b) any admission or concession of liability or wrongdoing by Settling Defendants, it is hereby stipulated and agreed by the undersigned, on behalf of the Named Plaintiff, the Settlement Class, and the Settling Defendants, that the Litigation and the Released Claims of the Settlement Class be settled, compromised, and dismissed on the merits and with prejudice as to Settling Defendants, subject to Court approval as required by Federal Rule of Civil Procedure 23, on the terms and conditions set forth herein.

The recitals stated above are true and accurate and are hereby made a part of this Amended Settlement Agreement.

II. DEFINITIONS

For the purposes of this Amended Settlement Agreement, including the recitals stated above and accompanying Exhibits, the following terms shall have the following meanings:

A. **“All Battery Center Stores”** refers to stores by that name, which sell a variety of Interstate Batteries products.

B. **“Amended Settlement Agreement”** means this Amended Settlement Agreement and Release, including its Exhibits, executed as of February 16, 2012.

C. **“Class Counsel”** means the law firm Girard Gibbs LLP.

D. **“Class Settlement Website”** means the Internet website, www.InterstateBatteriesSettlement.com, which was established and activated by the Settlement Administrator on December 2, 2011, following the Court’s December 1, 2011 Order preliminarily approving the Original Settlement Agreement. That Class Settlement Website will continue to be the formal settlement website used to provide further notice and information to Settlement Class Members under the Amended Settlement Agreement, as set forth in Section V.C.3.

E. **“Commencement of the Interstate Batteries Settlement Program”** means the date that Interstate Batteries formally commenced the Interstate Batteries Settlement Program under the Original Settlement Agreement. Interstate Batteries began processing claims on an informal basis under the Original Settlement Agreement on December 2, 2011, and formally commenced the Interstate Batteries Settlement Program under the Original Settlement Agreement on January 9, 2012. Interstate Batteries will continue to operate the Interstate Batteries Settlement Program under the Original Settlement Agreement until it begins processing claims under the Amended Settlement Agreement, as further described in Section VI.B.2. Interstate Batteries will begin processing claims under the Amended Settlement Agreement promptly after the Court grants New Preliminary Approval of this Amended Settlement Agreement.

F. **“Court”** means the United States District Court for the Northern District of California where the Litigation is pending.

G. **“Effective Date”** means the date on which all appellate rights with respect to the Final Judgment and Order have expired or have been exhausted in such a manner as to affirm the Final Judgment and Order, and when no further appeals are permissible, including review by the United States Supreme Court.

H. **“Final Judgment”** or **“Final Judgment and Order”** means a final judgment and order of dismissal entered by the Court in the Litigation in accordance with Section X and Federal Rule of Civil Procedure 58.

I. **“Injunctive Relief”** means the injunctive relief to which the Settling Defendants have agreed in Section VI, which is expected to be ordered in the Court’s Final Judgment and Order.

J. **“Interstate Batteries”** means Interstate Battery System of America, Inc.

K. **“Interstate Batteries Settlement Program”** means the two-tier claims program Interstate Batteries already began implementing and will continue to implement under this Amended Settlement Agreement for the benefit of Settlement Class Members, as further described in Section VI.B.2.

L. **“Litigation”** means the civil action captioned *Deno Milano v. Interstate Battery System of America, Inc., and Interstate Battery System International, Inc.*, Case No. CV 10-2125-CW, pending before Judge Claudia Wilken, in the United States District Court, Northern District of California.

M. **“Memo Binder”** means the web-based portal Interstate Batteries uses to communicate with its distributors.

N. **“Named Plaintiff”** means Deno Milano, the named plaintiff in the Litigation.

O. **“New CAFA Notice”** means notice of this Amended Settlement Agreement to the appropriate federal and state governmental officials, as provided by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and as further described in Section V.C.2.

P. **“New Long-Form Settlement Notice”** means the longer form of notice to the Settlement Class under the Notice Plan (in a form substantially similar to Exhibit B to this Amended Settlement Agreement), that will be posted on the Class Settlement Website, as further described in the Notice Plan and Section V.C.3.

Q. **“New Preliminary Approval”** and **“New Preliminary Approval Order”** mean an order by the Court granting all aspects of the Plaintiff’s New Motion for Preliminary Approval of the Amended Settlement Agreement, Conditional Certification of Settlement Class, Appointment of Class Counsel, Approval and Direction of Notice Plan, and Appointment of Settlement Administrator, as contemplated in Section III.

R. **“Notice Plan”** means the plan for providing notice of this Amended Settlement Agreement to the Settlement Class under Federal Rule of Civil Procedure 23(e)(1) and 23(c)(2)(A), as set forth in Section V.

S. **“Original Settlement Agreement”** means the Original Settlement Agreement and Release signed by the Parties as of October 26, 2011, and preliminarily approved by the Court on December 1, 2011, which is superseded by this Amended

Settlement Agreement. Upon execution of the Amended Settlement Agreement, the Original Settlement Agreement shall have no further force or effect.

T. **“Party”** and **“Parties”** mean the Named Plaintiff, the Settlement Class, and the Settling Defendants.

U. **“Previous Interstate Batteries’ Pro-Rata Warranty”** means a warranty (1) that Interstate Batteries provided on certain Interstate Batteries trademarked batteries (in Interstate Batteries’ category of Starting, Lighting, Ignition (“SLI”) batteries) sold by Interstate Batteries authorized dealers in the United States and the District of Columbia from April 19, 2000 through April 30, 2012, and, (2) that included a pro-rata warranty, which provided the customer with the right (under certain circumstances) to buy a Replacement Battery at an adjusted price that was calculated based (directly or indirectly) on Interstate Batteries’ List Price for the Replacement Battery.

V. **“Released Claims”** means the varying claims that Named Plaintiff and the Replacement-Battery-Purchaser Class Members and the Unexpired-Warranty-Holder Class Members will fully, finally, and forever release and discharge upon the Effective Date, as defined and set forth in Sections VII.A-C.

W. **“Released Parties”** means Interstate Battery System of America, Inc.; Interstate Battery System International, Inc.; their predecessors, successors, and assigns; the present and former, direct and indirect, parents, subsidiaries, sister corporations, divisions, corporate affiliates, or associates of any of the above; and the present and former employees, officers, directors, control persons, members, principals, partners, agents, attorneys, shareholders, advisors, assigns, and representatives of any of

the above. “Released Parties” includes distributors and authorized dealers owned by any Settling Defendant, but “Released Parties” does not include distributors and authorized dealers not owned by a Settling Defendant.

X. **“Replacement Battery”** means a battery purchased from an Interstate Batteries authorized warranty dealer at an adjusted price in a pro-rata-warranty-adjustment transaction based on the Previous Interstate Batteries’ Pro-Rata Warranty. Replacement Battery does not refer to a battery acquired in any other type of transaction.

Y. **“Replacement-Battery-Purchaser Class Member”** means all Settlement Class Members who were the original purchaser of an Interstate Batteries trademarked battery that was covered by a Previous Interstate Batteries’ Pro-Rata Warranty and that was purchased from an Interstate Batteries authorized dealer (but not from an All Battery Center Store), in the United States or the District of Columbia, at any time from April 19, 2000 through April 30, 2012, and who later presented that original battery, during the applicable pro-rata-warranty-coverage period, to an Interstate Batteries authorized warranty dealer for a pro-rata-warranty adjustment on the price of a Replacement Battery, and who then purchased that Replacement Battery from that dealer at an adjusted price on a date from May 19, 2006, through April 30, 2012.

Z. **“Settlement Administrator”** means Jennifer Keough and Garden City Group Inc.

AA. **“Settlement Class,” “Class Members” or “Settlement Class Members”** means all original purchasers of an Interstate Batteries trademarked battery (meaning the Interstate Batteries, Nationwide, Power Volt, and Quickstart brands) that

was covered by a Previous Interstate Batteries' Pro-Rata Warranty and that was purchased from an Interstate Batteries authorized dealer (but not from an All Battery Center Store), in the United States or the District of Columbia, at any time from April 19, 2000 through April 30, 2012, and who:

- (i) later presented that original battery, during the applicable pro-rata-warranty-coverage period, to an Interstate Batteries authorized warranty dealer for a pro-rata-warranty adjustment on the price of a Replacement Battery, and who then purchased that Replacement Battery from that dealer at an adjusted price on a date from May 19, 2006, through April 30, 2012; or
- (ii) still had, on or before April 30, 2012, an unexpired contractual right under a Previous Interstate Batteries' Pro-Rata Warranty to purchase a Replacement Battery in a pro-rata-warranty-adjustment transaction if their original battery fails under the terms of the Previous Interstate Batteries' Pro-Rata Warranty.

Excluded from the class definition are Interstate Battery System of America, Inc., and Interstate Battery System International, Inc.; affiliates, parents, or subsidiaries of Settling Defendants; entities in which Settling Defendants have a controlling interest; predecessors, successors, or assigns of Settling Defendants; any judges who preside over this Litigation before Final Judgment, their spouses, the members of their staffs, and anyone within the third degree of relationship from the

judges or their spouses, as well as those persons' spouses; and persons employed by Class Counsel.

BB. **“Settling Defendants”** means Defendants Interstate Battery System of America, Inc., and Interstate Battery System International, Inc.

CC. **“Submission Deadline”** means the last date a Settlement Class Member may submit tier-one or tier-two claims under Interstate Batteries Settlement Program. The Submission Deadline for a Replacement-Battery-Purchaser Class Member is 11:59 p.m. Pacific Time on December 31, 2012. The Submission Deadline for an eligible Unexpired-Warranty-Holder Class Member will be the date one year after the pro-rata-warranty-adjustment transaction that is the basis for that Unexpired-Warranty-Holder Class Member submitting a claim under the Interstate Batteries Settlement Program. In no event will the Submission Deadline for any Unexpired-Warranty-Holder Class Member be later than December 31, 2020.

DD. **“Summary Notice”** means the shorter form of settlement notice that was published in *USA Today* on December 8, 2011, pursuant to the Court's order preliminarily approving the Original Settlement Agreement.

EE. **“Unexpired-Warranty-Holder Class Member”** means all Settlement Class Members who were the original purchaser of an Interstate Batteries trademarked battery that was covered by a Previous Interstate Batteries' Pro-Rata Warranty and that was purchased from an Interstate Batteries authorized dealer (but not from an All Battery Center Store), in the United States or the District of Columbia, at any time from April 19, 2000 through April 30, 2012, and who still had, on or before April

30, 2012, an unexpired contractual right under a Previous Interstate Batteries' Pro-Rata Warranty to purchase a Replacement Battery in a pro-rata-warranty-adjustment transaction if their original battery fails under the terms of the Previous Interstate Batteries' Pro-Rata Warranty.

FF. **“Valid Proof of Purchase”** means a receipt for a Settlement Class Member's purchase of a Replacement Battery, which receipt indicates the name of the Interstate Batteries authorized dealer where the Replacement Battery was purchased, the date of that transaction, the amount paid for that Replacement Battery, and the battery model/part number of the Replacement Battery. If a receipt is provided, but lacks some of this information, Interstate Batteries shall review an updated version of the spreadsheet that was produced by Interstate Batteries in discovery and make a good faith attempt to confirm that the proffered receipt corresponds to the purchase of a Replacement Battery during the class period. If that review enables Interstate Batteries to verify the receipt corresponds to a pro-rata-warranty-adjustment transaction, the receipt shall be deemed a Valid Proof of Purchase.

III. MOTION FOR NEW PRELIMINARY APPROVAL

Not later than February 16, 2012, the Named Plaintiff shall file with the Court a New Motion for Preliminary Approval of the Amended Settlement Agreement, Conditional Certification of Settlement Class, Appointment of Class Counsel, Approval and Direction of Notice Plan, and Appointment of Settlement Administrator that seeks entry of an order that would, for settlement purposes only:

1. preliminarily approve this Amended Settlement Agreement and the accompanying Exhibits;
2. confirm that the Parties have agreed that the Amended Settlement Agreement supersedes the Original Settlement Agreement signed as of October 26, 2011;
3. certify a new conditional Settlement Class under Federal Rule of Civil Procedure 23(b)(2) composed of the Settlement Class Members;
4. reconfirm the appointment of Girard Gibbs as Class Counsel for the new Settlement Class as defined in the Amended Settlement Agreement;
5. approve the proposed New Long-Form Settlement Notice to the Settlement Class, and the New CAFA Notice to governmental officials in forms substantially similar to those attached hereto as Exhibits A-B;
6. reconfirm the appointment of Jennifer Keough and Garden City Group as the Settlement Administrator for the proposed settlement contained in the Amended Settlement Agreement; and
7. order that the New Preliminary Approval Order supersedes entirely the Court's earlier Order, dated December 1, 2011, preliminarily approving the Original Settlement Agreement.

Settling Defendants will file a separate brief urging the Court to approve and order the seven actions set forth above.

IV. CERTIFICATION OF SETTLEMENT CLASS

A. Settlement Class Definition

For purposes of settlement only, and upon the express terms and conditions set forth in this Amended Settlement Agreement, Named Plaintiff agrees to seek certification of a mandatory, nationwide Settlement Class in the Litigation pursuant to Federal Rule of Civil Procedure 23(b)(2). Settling Defendants agree not to contest certification of the conditional Settlement Class but reserve the right to state their position that a class could not be certified as a class action for litigation purposes.

The proposed class definition in Plaintiff's First Amended Complaint will be superseded by the Settlement Class as defined in this Amended Settlement Agreement.¹ The Parties have agreed to a new and more precise class definition for purposes of settlement as follows:

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

(i) later presented that original battery, during the applicable pro-rata-warranty-coverage period, to an

¹ The proposed class as alleged in Plaintiff's First Amended Complaint is as follows:

All persons who purchased an Interstate automobile battery in the United States at a prorated price under Interstate's Warranty within four years of the filing of this litigation.

Excluded from the proposed Class are Interstate; any affiliate, parent, or subsidiary of Interstate; any entity in which Interstate has a controlling interest; any officer, director, or employee of Interstate; any successor or assign of Interstate; anyone employed by counsel for Plaintiff in this action; any Judge to whom this case is assigned as well as his or her immediate family and staff; and anyone who purchased an Interstate battery for purposes of resale.

Interstate Batteries authorized warranty dealer for a pro-rata-warranty adjustment on the price of a Replacement Battery, and who then purchased that Replacement Battery from that dealer at an adjusted price on a date from May 19, 2006, through April 30, 2012; or

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

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

B. No Right to Opt Out

Because the Settlement Class will be certified as a mandatory class under Federal Rule of Civil Procedure 23(b)(2), which does not provide an opportunity for Settlement Class Members to opt out, Settlement Class Members shall not be permitted to opt out of the Settlement Class.

C. Class Certified for Settlement Purposes Only

Nothing in this Amended Settlement Agreement shall be construed as an admission by Settling Defendants that this Litigation or any similar case is amenable to

class certification for trial purposes. Furthermore, nothing in this Amended Settlement Agreement shall prevent Settling Defendants from opposing class certification or seeking de-certification of the conditionally certified Settlement Class if, for any reason, the Amended Settlement Agreement is terminated or Final Judgment is not obtained or not upheld on appeal, including review by the United States Supreme Court.

V. NOTICE

A. Settlement Class Notice

Named Plaintiff, Settling Defendants, and the proposed Settlement Administrator have developed an appropriate and reasonable Notice Plan to reach Settlement Class Members. The Parties will recommend this Notice Plan to the Court. This Amended Settlement Agreement provides for a Settlement Class under Federal Rule of Civil Procedure 23(b)(2). Accordingly, individual notice is not required. Further, Settling Defendants represent (and discovery confirms) that individual notice would not be possible because the Settling Defendants do not have records identifying names or addresses for members of the Settlement Class.

The Notice Plan will be administered by an experienced and qualified settlement administrator. The Settlement Administrator was consulted and utilized to develop, focus, and implement the proposed Notice Plan. Before recommending the Notice Plan, the Settlement Administrator investigated the specific demographic characteristics of Interstate Batteries' customer base in order to develop and recommend a cost-effective Notice Plan specifically targeted to the Settlement Class.

B. Previously Implemented Notice Efforts

This Notice Plan is a continuation of various methods of Notice that have already been implemented under the Court's December 1, 2011 Order, preliminarily approving the Original Settlement Agreement.

1. CAFA Notice

On November 9, 2011, in accordance with the Court's December 1, 2011 Order preliminarily approving the Original Settlement Agreement, the Settlement Administrator mailed notice of the settlement (via Federal Express) to the appropriate federal and state officials. That notice met the requirements of CAFA, 28 U.S.C. § 1715.

2. Class Settlement Website

On December 2, 2011, in accordance with the Court's December 1, 2011 Order preliminarily approving the Original Settlement Agreement, the Settlement Administrator created and activated the Class Settlement Website. Since December 2, 2011, the Class Settlement Website has posted information about the Court-approval process for the Original Settlement Agreement.

3. Sponsored Hyperlinks From Keyword/Phrase Searches

Between December 6, 2011 and January 6, 2012, in accordance with the Court's December 1, 2011 Order preliminarily approving the Original Settlement Agreement, the Settlement Administrator secured keyword/phrase sponsorships. These keyword/phrase sponsorships provided a hyperlink to the Class Settlement Website.

4. Interstate Batteries' Website

Since December 2, 2011, in accordance with the Court's December 1, 2011 Order preliminarily approving the Original Settlement Agreement, Interstate Batteries has posted the hyperlinked phrase "Class Action Settlement" on its Website. Consumers who click on the phrase "Class Action Settlement" are automatically transferred to a separate page that notifies consumers that Interstate Batteries has entered into a class action settlement regarding the implementation of its pro-rata warranty on certain Interstate Batteries trademarked batteries and that information about the settlement can be found on the Class Settlement Website. That separate page also includes a hyperlink to the landing page of the Class Settlement Website.

5. Print Publication in National Newspaper

On Thursday, December 8, 2011, in accordance with the Court's December 1, 2011 Order preliminarily approving the Original Settlement Agreement, the Settlement Administrator published Summary Notice one time in a 1/6 page unit size in *USA Today*. The Summary Notice was designed to alert Settlement Class Members about the class action settlement and direct them to the Class Settlement Website.

6. Publishing Online Banner Advertisements

On December 8, 2011, in accordance with the Court's December 1, 2011 Order preliminarily approving the Original Settlement Agreement, the Settlement Administrator published an online banner advertisement in *Car and Driver—Digital* for a one-month period. The online banner advertisement was designed to alert Settlement Class

Members about the class action settlement and direct them to the Class Settlement Website.

7. Print Media Outreach

On December 8, 2011, in accordance with the Court's December 1, 2011 Order Preliminarily Approving the Original Settlement Agreement, the Settlement Administrator disseminated press releases to print media in the United States and the District of Columbia. The content of the press releases notified Interstate Batteries' customers that Interstate Batteries entered into a class action settlement regarding the implementation of its pro-rata warranty on certain Interstate Batteries trademarked batteries and that information about the settlement could be found on the Class Settlement Website.

8. Radio Media Outreach

On December 12, 2011, in accordance with the Court's December 1, 2011 Order Preliminarily Approving the Original Settlement Agreement, the Settlement Administrator disseminated audio news releases to approximately 4,000 radio stations across the United States. The content of the audio news releases notified Interstate Batteries' customers that Interstate Batteries entered into a class action settlement regarding the implementation of its pro-rata warranty on certain Interstate Batteries trademarked batteries and that information about the settlement could be found on the Class Settlement Website.

9. Handouts to Interstate Batteries Authorized Warranty Dealers

On December 2, 2011, in accordance with the Court's December 1, 2011 Order preliminarily approving the Original Settlement Agreement, Interstate Batteries posted an 8½ by 11 inch handout in its Memo Binder. That handout announced the proposed settlement and the Interstate Batteries Settlement Program and provided the URL for the Class Settlement Website.

C. Notice Plan Under the Amended Settlement Agreement

In addition to the notice components already implemented under the Original Settlement Agreement, the Notice Plan will employ eight additional methods for circulating information about the new proposed settlement under the Amended Settlement Agreement:

- sending a New CAFA Notice to the appropriate Federal and State governmental officials;
- continuing the operation of the formal Class Settlement Website, for posting various materials relating to the Settlement, including the Amended Settlement Agreement, a New Long-Form Settlement Notice, and instructions and forms for the Interstate Batteries Settlement Program;
- purchasing internet keyword and phrase sponsorships related to the Litigation;

- posting a hyperlink on Interstate Batteries' Website that will redirect that customer to the Class Settlement Website as explained below;
- distributing press releases to print media in the United States and the District of Columbia;
- distributing audio news releases to radio stations in the United States and the District of Columbia;
- disseminating handouts, which announce the proposed settlement and the Interstate Batteries Settlement Program, and provide the URL for the Class Settlement Website, by posting an 8½ by 11 inch handout and instruction sheet in Interstate Batteries' electronic Memo Binder and requesting distributors to print the handout and have their route men deliver the handout to all Interstate Batteries authorized warranty dealers in distributors' territories; and
- directing New Long-Form Settlement Notice (1) to any customer who previously complained to Interstate Batteries about the pro-rata warranty; and (2) to any Settlement Class Member who filed a claim under the Interstate Batteries Settlement Program on or before April 30, 2012, and for whom Interstate Batteries has contact information.

Each of the eight methods is further explained below in Sections V.C.2—V.C.9.

1. Court Appointment and Retention of Settlement Administrator

At or before the preliminary approval hearing, the Parties will propose that the Court reaffirm the appointment of Ms. Jennifer Keough and Garden City Group Inc. as the Settlement Administrator for the new proposed settlement contained in this Amended Settlement Agreement. The Settlement Administrator will facilitate the notice process by assisting the Parties and providing professional guidance in the creation and implementation of the Notice Plan, as well as New CAFA Notice.

2. New CAFA Notice

The Parties agree that Settling Defendants shall again retain the Settlement Administrator to serve notice of the Amended Settlement Agreement (via Federal Express) that meets the requirements of CAFA, 28 U.S.C. § 1715, on the appropriate federal and state officials not later than 10 days after the filing of this Amended Settlement Agreement with the Court. A proposed form of that New CAFA Notice is attached as Exhibit A.

Settling Defendants shall file with the Court a certification stating the date(s) when the New CAFA Notice was served.

3. Class Settlement Website

The Settlement Administrator will continue to operate and maintain the Class Settlement Website, in order to implement the terms of the Amended Settlement Agreement. Within 15 days of entry of the Court's Order granting New Preliminary

Approval, the Class Settlement Website will be updated with the information described in this Section V.C.3.

The Class Settlement Website will post certain settlement documents such as the Amended Settlement Agreement, the Exhibits to the Amended Settlement Agreement, the New Long-Form Settlement Notice, the New Preliminary Approval Order, and Class Counsel's application for attorneys' fees, costs, and other expenses.

When the Class Settlement Website is updated as described in this Section V.C.3, it will post the instructions and Court-approved claim forms for the Interstate Batteries Settlement Program. These instructions will explain the Interstate Batteries Settlement Program and how an eligible Settlement Class Member can participate in that program. The instructions will also explain the claim forms and process for submitting a tier-one claim and a tier-two claim.

In addition, the Class Settlement Website will provide ongoing procedural information regarding the status of the Court-approval process, including certain deadlines and other dates established by the Court, such as the deadline for filing objections to the settlement, the date of the Final Approval hearing, when the Final Judgment and Order has been entered, when the Effective Date has been reached, and the Submission Deadline. The Class Settlement Website will also contain a hyperlink to Class Counsel's Website, www.girardgibbs.com, and Interstate Batteries' Online Store, www.interstatebatteries.com.

The Parties and the proposed Settlement Administrator have agreed that they will jointly recommend a New Long-Form Settlement Notice for the Court's approval.

Although this will be a Rule 23(b)(2) settlement class, the Parties have prepared the content of the New Long-Form Settlement Notice in accordance with the more stringent requirements for notice in a Rule 23(b)(3) class, as stated in Rule 23(c)(2)(B)(i-iv and vii) and the Federal Judicial Center’s guidelines. A proposed New Long-Form Settlement Notice is attached as Exhibit B. That New Long-Form Settlement Notice is designed to provide comprehensive and reasonable notice of the terms of the Amended Settlement Agreement. Because the Settlement Class is to be certified under Federal Rule of Civil Procedure 23(b)(2), the specific notice requirements for a Rule 23(b)(3) class do not apply.

The Settlement Administrator will maintain the Class Settlement Website at least until either (1) December 31, 2020, or (2) the date on which the proposed settlement is terminated or otherwise not approved by a court. The Settlement Administrator will then transfer ownership of the URL to the Settling Defendants.

4. Sponsored Hyperlinks From Keyword/Phrase Searches

After New Preliminary Approval, the Settlement Administrator will take steps to attract Settlement Class Members to the Class Settlement Website by obtaining agreed-upon keyword/phrase sponsorships—such as “Interstate prorated”; “Interstate warranty discount”; and/or “Interstate settlement”—from Google and Yahoo!. This keyword/phrase sponsorship will provide a hyperlink to the Class Settlement Website and will run for a period of 6 weeks sometime after the Court enters a New Preliminary Approval Order and before the date the Court establishes as the deadline for the filing of any objections to this proposed settlement.

5. Interstate Batteries' Website

The Parties agree that Settling Defendants will continue to post on Interstate Batteries' Website—www.interstatebatteries.com—a hyperlink to the Class Settlement Website.

On the home page of Interstate Batteries' Website, the hyperlinked phrase "Class Action Settlement" will appear under the heading "About Batteries." Consumers who click on the phrase "Class Action Settlement" will automatically be transferred to a separate page that will notify consumers that Interstate Batteries has entered into a class action settlement regarding the implementation of its pro-rata warranty on certain Interstate Batteries trademarked batteries and that information about the settlement can be found on the Class Settlement Website. That separate page will also include a hyperlink to the landing page of the Class Settlement Website.

Interstate Batteries will continue to post these hyperlinks at least until either (1) December 31, 2020, or (2) the date on which the settlement is terminated or otherwise not approved by a court.

6. Print Media Outreach

Within 30 days of entry of the New Preliminary Approval Order, the Settlement Administrator will disseminate new agreed-upon press releases to print media in the United States and the District of Columbia. The content of those new press releases will notify Interstate Batteries' customers that Interstate Batteries has entered into an amended class action settlement regarding the implementation of its pro-rata warranty on certain Interstate Batteries trademarked batteries and that information about the New Amended

Settlement Agreement and the schedule of the Court-approval process can be found on the Class Settlement Website.

7. Radio Media Outreach

Within 30 days of entry of the New Preliminary Approval Order, the Settlement Administrator will disseminate new agreed-upon audio news releases to radio media in the United States and the District of Columbia. Audio news releases will be distributed to approximately 4,000 radio stations across the United States. The content of those new audio news releases will notify Interstate Batteries' customers that Interstate Batteries has entered into an amended class action settlement regarding the implementation of its pro-rata warranty on certain Interstate Batteries trademarked batteries and that information about the New Amended Settlement Agreement and the schedule of the Court-approval process can be found on the Class Settlement Website.

8. Handouts to Interstate Batteries Authorized Warranty Dealers

No later than 30 days after the entry of the Court's new Preliminary Approval Order, Interstate Batteries will coordinate an outreach program for disseminating a new 8½ by 11 inch handout to more than 50,000 Interstate Batteries authorized warranty dealers. The Court-approved handout will announce the proposed settlement and the Interstate Batteries Settlement Program, and provide the URL for the Class Settlement Website. A proposed form of the handout is attached as Exhibit C.

Interstate Batteries will post the handout, with accompanying instructions, in its electronic Memo Binder and request its distributors to print the handout and have the

distributors' route men and women deliver the handouts to Interstate Batteries authorized warranty dealers (in the United States and the District of Columbia) within the distributors' territories. Interstate Batteries cannot compel its independent distributors or authorized warranty dealers to distribute or post handouts or provide Settlement Class Members with information about the settlement, but Interstate Batteries will request and encourage its distributors and authorized warranty dealers to do so.

The instructions with the handout will request Interstate Batteries authorized warranty dealers to have the handout available in their stores until at least December 31, 2019, and to provide the handouts to anyone who asks about the Interstate Batteries class action settlement, expresses concern about the pro-rata warranty, or returns a failed original battery and wants to obtain a new Replacement Battery under the Previous Interstate Batteries' Pro-Rata Warranty.

Whether before or after the Final Judgment and Order, Interstate Batteries will have the right to make periodic, non-material modifications and changes to the handout, subject to approval by Class Counsel, which shall not be unreasonably withheld.

9. Direct Notice

Within 60 days of the Court's entry of the New Preliminary Approval Order, Interstate Batteries will attempt to provide the New Long-Form Settlement Notice to each customer who has complained to Interstate Batteries (at any time from May 19, 2006, through April 30, 2012) about the previous Interstate Batteries' Pro-Rata Warranty, in order to inform those customers about this proposed settlement. Interstate Batteries will attempt to contact these customers either by telephone or by mailing a copy, or e-mailing

a hyperlink, of the New Long-Form Settlement Notice to the customer. Interstate Batteries need only attempt to contact those customers whose complaints are known to the Customer Service Department, and when Interstate Batteries still has valid contact information for those customers.

Interstate Batteries will also mail a copy, or e-mail a hyperlink, of the New Long-Form Settlement Notice to all Settlement Class Members who filed a claim under the Interstate Batteries Settlement Program before April 30, 2012.

D. Additional, Future Notice Components

The Parties recognize that under this Amended Settlement Agreement the Interstate Batteries Settlement Program will continue to be available to eligible Unexpired-Warranty-Holder Class Members through 2020. In order to provide some ongoing notice of the continuing availability of the Interstate Batteries Settlement Program, Interstate Batteries will provide the following additional notice.

1. Class Settlement Website

The Settlement Administrator will continue to maintain the Class Settlement Website, as described in Section V.C.3, until (1) December 31, 2020, or (2) the date on which the proposed settlement is terminated or otherwise not approved by a court. The Class Settlement Website will be modified and tailored with information relevant to the applicable circumstances in a particular year.

2. Sponsored Hyperlinks From Keyword/Phrase Searches

The Settlement Administrator will obtain additional agreed-upon keyword/phrase sponsorships for a two-week period in both March and September of each year of 2013

through 2019. This additional keyword/phrase sponsorship will notify Settlement Class Members about the continued Interstate Batteries Settlement Program. The cost of this keyword/phrase sponsorship will be approximately \$6,000 for each year of 2013 through 2019.

3. Interstate Batteries' Website

Interstate Batteries will continue to post a hyperlink on its Website, as described in Section V.C.5, until (1) December 31, 2020 or (2) the date on which the proposed settlement is terminated or otherwise not approved by a court. After December 31, 2012, Interstate Batteries may change the hyperlinked phrase "Class Action Settlement" to the hyperlinked phrase "Pro-Rata Concerns?," or a similar phrase.

4. Handouts to Interstate Batteries Authorized Warranty Dealers

After 2012, Interstate Batteries will continue its outreach program for disseminating an 8½ by 11 inch handout to its authorized warranty dealers, as described in Section V.C.8. Each year from 2013 through 2019, Interstate Batteries will remind its distributors and authorized warranty dealers that the Interstate Batteries Settlement Program remains in existence and that eligible Settlement Class Members are still able to participate in that program. Interstate Batteries will use its Memo Binder and the dealers' Application Guide to make this annual reminder of the Interstate Batteries Settlement Program and to urge authorized warranty dealers to follow the recommended procedures set forth in Section V.C.8.

E. Costs

Settling Defendants shall be responsible for the costs of all components of the Notice Plan, whether under the Original Settlement Agreement or the Amended Settlement Agreement. The Parties have jointly worked with the proposed Settlement Administrator to develop both the original Notice Plan and the proposed new Notice Plan. The cost for the additional components of Notice required by the Amended Settlement Agreement, as set forth in Sections V.C-D, will be approximately \$80,000. The Named Plaintiff, Class Counsel, and the Settlement Class Members are not responsible for any portion of the costs of the Notice Plan.

VI. INJUNCTIVE RELIEF

Subject to the terms and conditions of this Amended Settlement Agreement, the Named Plaintiff and Settling Defendants have agreed to move for the Court to enter, as part of the Final Judgment and Order, an injunction applicable to the Settling Defendants. The injunctive relief provision of the Final Judgment and Order shall enjoin the Settling Defendants as follows:

A. Schedule for Injunctive Relief

The schedule for the Injunctive Relief is specified in various subsections of Sections VI below.

B. Agreed Injunctive Relief Benefiting Settlement Class Members

1. Implementation of Improved Business Practices

- (i) Interstate Batteries will rewrite and begin using a new form of limited warranty for the Interstate Batteries brand of automotive batteries currently sold by Interstate Batteries

authorized dealers in the United States and the District of Columbia.

(ii) Interstate Batteries will make the terms, language, and format of this new limited warranty more easily understood by consumers.

(iii) If the new form of limited warranty for some automotive battery models includes a pro-rata warranty, it will state clearly how any pro-rata-warranty-adjustment price would be calculated. Moreover, that calculation will be based on Interstate Batteries' then-current "Suggested Retail Price" for the replacement battery, and not based on Interstate Batteries' "List Price."

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

(v) When Interstate Batteries begins using this new form of limited warranty, however, there will be batteries that Interstate Batteries has already sold (to its distributors or otherwise) and that are already in the chain of distribution and labeled or packaged with the Previous Interstate Batteries Pro-Rata Warranty. Interstate Batteries will not be required to recall or repackage any of those batteries.

(vi) The new limited warranty will contain all statements and disclosures required by the Magnuson-Moss Warranty Act.

(vii) Interstate Batteries will take all reasonable steps to ensure that any posting of this new limited warranty is uniform with the language of the hard copies of that limited warranty provided at the time of sale.

Given the Parties' desire to provide these new improved warranty practices as soon as practicable, the Parties have agreed that Interstate Batteries will not wait until the Court's Final Judgment and Order to implement these improved warranty practices. Instead, Interstate Batteries will implement these improved warranty practices in May 2012. The Parties expressly agree that the early implementation of these new warranty practices is consideration for this Amended Settlement Agreement.

2. Interstate Batteries Settlement Program

Interstate Batteries will implement a two-tier claims program as part of the consideration provided in this Amended Settlement Agreement. This program will not operate as part of Interstate Batteries' ordinary business, but will instead be a component of this Court-approved class action settlement. This Interstate Batteries Settlement Program will be implemented through Interstate Batteries' Customer Service Department and will provide an additional benefit to any eligible Settlement Class Member who may not be satisfied with the implementation of the Previous Interstate Batteries' Pro-Rata Warranty applicable to his or her Interstate Batteries trademarked battery that is at issue in this Litigation. Replacement-Battery-Purchaser Class Members are immediately eligible to participate in the Interstate Batteries Settlement Program. Unexpired-Warranty-Holder Class Members will become eligible to participate in the Interstate Batteries Settlement Program if and when they buy a Replacement Battery on or before December 31, 2019.

Interstate Batteries formally commenced operating the Interstate Batteries Settlement Program under the Original Settlement Agreement on January 9, 2012, and

will begin operating the Interstate Batteries Settlement Program under the Amended Settlement Agreement, as described in this Section VI.B.2, within 15 days after the Court enters a New Preliminary Approval Order.

(i) **Tier-One Claims**

(1) Summary

An eligible Settlement Class Member who submits a valid, sworn, and timely tier-one claim form under the Interstate Batteries Settlement Program shall be entitled to one product voucher for \$5, which can be used toward the purchase of any products sold on Interstate Batteries' Online Store or at any All Battery Center Store. Product vouchers cannot be applied, however, toward shipping and handling charges, applicable taxes, or legislatively imposed fees. Tier-one claims do not require a Valid Proof of Purchase.

(2) Claim Forms

To make a claim under tier one in the Interstate Batteries Settlement Program, an eligible Settlement Class Member must complete and submit a timely, valid, signed (electronically or by hand), and certified tier-one claim form. The tier-one claim form will be substantially similar to Exhibit D.

Tier-one claim forms can be completed and submitted online through the Class Settlement Website or mailed, by first-class U.S. Mail or overnight delivery, to Interstate Batteries' Customer Service Department (the address for which will appear on the tier-one claim form). An eligible Settlement Class Member desiring to submit a tier-one claim form online must complete the online form, which will appear at www.interstatebatteriessettlement.com, and click the submission button at the bottom of

that claim form no later than 11:59 p.m. Pacific Time on the Submission Deadline. An eligible Settlement Class Member may obtain a printed tier-one claim form either online at www.interstatebatteriessettlement.com, or by mail from Interstate Batteries' Customer Service Department at an address that will appear on the Class Settlement Website. Tier-one claim forms submitted by either first class U.S. Mail or overnight delivery must be in an envelope that has a postmark or other postal service or professional courier marking that shows that the claim form was mailed or placed with a professional courier for overnight delivery on or before the Submission Deadline.

To complete the tier-one claim form under the Interstate Batteries Settlement Program, a claimant must certify the following:

(1) the claimant was the original purchaser of an Interstate Batteries trademarked battery (meaning the Interstate Batteries, Nationwide, Power Volt, and Quickstart brands) from an Interstate Batteries authorized dealer (but not an All Battery Center Store) in the United States or the District of Columbia from April 19, 2000 through April 30, 2012;

(2) that original battery was covered by a previous Interstate Batteries' limited warranty with a pro-rata-warranty-coverage period;

(3) the claimant returned that battery, during the applicable pro-rata-warranty-coverage period, to an Interstate Batteries authorized warranty dealer for a pro-rata-warranty adjustment on the price of a replacement battery;

(4) the claimant then purchased that replacement battery from that dealer at an adjusted price between May 19, 2006, and December 31, 2019;

(5) if the claimant purchased that replacement battery on or before April 30, 2012, that he or she is submitting the claim form not later than December 31, 2012;

(6) if the claimant purchased that replacement battery on or after May 1, 2012, that he or she is submitting the claim form within one year of the date he or she bought that replacement battery;

(7) the claimant has not previously submitted a tier-one or tier-two claim form; and

(8) the claimant understands that any product voucher will be mailed or e-mailed to him or her to an address provided on the tier-one claim form.

The claimant must also certify that he or she agrees to the terms and limitations of the Interstate Batteries Settlement Program, including the limitations explained in this Section VI.B.2, and understands that he or she will be releasing all of his or her claims in accordance with the release printed on the claim form, once Interstate Batteries sends him or her the \$5 product voucher.

Tier-one claim forms under the Interstate Batteries Settlement Program will contain a release of any and all claims (whether styled as legal, equitable, monetary, or otherwise, known or UNKNOWN) that were asserted or could have been asserted in the Litigation. The claimant will also release the Released Parties from any and all claims (whether styled as legal, equitable, monetary, or otherwise, known or UNKNOWN) that the claimant has on the date the claimant submits a tier-one or tier-two claim form and that relate to the claimant's purchase, use, return of, or warranty on his or her original

battery, or the purchase of his or her Replacement Battery. The tier-one claim form and release must be properly completed and signed, electronically or by hand, before a tier-one claim will be processed. The release will not be valid, however, until Interstate Batteries issues a product voucher to the claimant. A sample tier-one claim form is attached as Exhibit D.

(3) Limitations

An eligible Settlement Class Member may submit only one tier-one claim, and an eligible Settlement Class Member who submits a tier-one claim may not make any other claim or obtain any other relief under the Interstate Batteries Settlement Program. Product vouchers can be redeemed for any products sold at any All Battery Center Store or at Interstate Batteries' Online Store, www.interstatebatteries.com, but cannot be applied toward shipping and handling charges, applicable taxes, or legislatively imposed fees. Moreover, product vouchers issued under the Interstate Batteries Settlement Program are not transferable, are not redeemable for cash, and can be redeemed for products in only one transaction. If an eligible Settlement Class Member uses the product voucher in a transaction and obtains products priced for less than the value of the product voucher, the product voucher will still become void at the conclusion of that transaction and have no further value. The eligible Settlement Class Member will not be entitled to use the product voucher again in a second transaction or otherwise receive any credit or refund of any unused portion.

(ii) **Tier-Two Claims**

(1) **Summary**

An eligible Settlement Class Member who submits a valid, timely, and sworn tier-two claim form under the Interstate Batteries Settlement Program, shall be entitled to his or her choice of either a payment in the form of a check card in the amount of \$8.50 or one product voucher for \$12, which can be used toward the purchase of any products sold on Interstate Batteries' Online Store or at any All Battery Center Store. Product vouchers cannot be applied, however, toward shipping and handling charges, applicable taxes, or legislatively imposed fees. Each tier-two claim requires a Valid Proof of Purchase.

If an eligible Settlement Class Member purchased multiple Replacement Batteries that qualify under the Interstate Batteries Settlement Program, he or she may submit a separate tier-two claim for each qualifying Replacement Battery. An eligible Settlement Class Member cannot submit more than one claim for each Replacement Battery. Notwithstanding any other provision in this Amended Settlement Agreement, no person or entity may submit more than 10 tier-two claim forms in this Interstate Batteries Settlement Program. These restrictions are explained more fully below in Section VI.B.2.ii.(3).

(2) **Claim Forms**

To make a claim under tier two in the Interstate Batteries Settlement Program, an eligible Settlement Class Member must complete and submit a timely, valid, signed, and certified tier-two claim form, along with a Valid Proof of Purchase, as defined in Section II.FF. The tier-two claim form will be substantially similar to Exhibit E.

An eligible Settlement Class Member may obtain a printed tier-two claim form either online at www.interstatebatteriessettlement.com, or by mail from Interstate Batteries' Customer Service Department at an address that will appear on the Class Settlement Website.

To submit a tier-two claim, an eligible Settlement Class Member must complete a tier-two claim form and either (1) mail both the tier-two claim form and the required Valid Proof of Purchase, by first-class U.S. Mail or overnight delivery, to Interstate Batteries' Customer Service Department (the address for which will appear on the tier-two claim form); or (2) e-mail a pdf of both the tier-two claim form and the required Valid Proof of Purchase to Interstate Batteries' Customer Service Department (the e-mail address for which will appear on the tier-two claim form). Tier-two claim forms submitted by mail (with the accompanying Valid Proof of Purchase) may be submitted by either first class U.S. Mail or overnight delivery, but in either event the envelope must have a postmark or other postal service or professional courier marking that shows that the claim form was mailed or placed with a professional courier for overnight delivery on or before the Submission Deadline. Tier-two claim forms submitted as a pdf by e-mail (with the accompanying pdf of a Valid Proof of Purchase) must be submitted by 11:59 p.m. Pacific Time on the Submission Deadline.

To complete the tier-two claim form under the Interstate Batteries Settlement Program, a claimant must certify the following:

- (1) the claimant was the original purchaser of an Interstate Batteries trademarked battery (meaning the Interstate Batteries, Nationwide, Power Volt,

and Quickstart brands) from an Interstate Batteries authorized dealer (but not an All Battery Center Store) in the United States or the District of Columbia from April 19, 2000 through April 30, 2012;

(2) that original battery was covered by a previous Interstate Batteries' limited warranty with a pro-rata-warranty-coverage period;

(3) the claimant returned that battery, during the applicable pro-rata-warranty-coverage period, to an Interstate Batteries authorized warranty dealer for a pro-rata-warranty adjustment on the price of a replacement battery;

(4) the claimant then purchased that replacement battery from that dealer at an adjusted price between May 19, 2006, and December 31, 2019;

(5) if the claimant purchased that replacement battery on or before April 30, 2012, that he or she is submitting the claim form not later than December 31, 2012;

(6) if the claimant purchased that replacement battery on or after May 1, 2012, that he or she is submitting the claim form within one year of the date he or she bought that replacement battery;

(7) the claimant has not previously submitted any tier-one claim form, and the claimant has not previously submitted any other tier-two claim form based on the same replacement battery as referenced in item 4 above;

(8) the claimant understands that he or she cannot submit more than 10 tier-two claim forms;

(9) the claimant is also submitting a receipt for the replacement battery identified in item 4 above. That receipt shows (a) the name of the Interstate Batteries authorized dealer where the claimant purchased the replacement battery, (b) the date of the transaction, (c) the amount the claimant paid for the replacement battery, and (d) the battery model/part number of the replacement battery; and

(10) the claimant understands any check card or product voucher will be mailed or e-mailed to him or her at an address provided on the tier-two claim form.

The claimant must also certify that he or she agrees to the terms and limitations of the Interstate Batteries Settlement Program, including the limitations explained in this Section VI.B.2, and understands that he or she will be releasing all of his or her claims in accordance with the release printed on the claim form, once Interstate Batteries sends him or her the \$12 product voucher or \$8.50 check card.

The tier-two claim form will allow claimants to select between a payment of \$8.50 in the form of a check card or a product voucher for \$12.

Tier-two claim forms under the Interstate Batteries Settlement Program will contain a release of any and all claims (whether styled as legal, equitable, monetary, or otherwise, known or UNKNOWN) that were asserted or could have been asserted in the Litigation. The claimant will also release the Released Parties from any and all claims (whether styled as legal, equitable, monetary, or otherwise, known or UNKNOWN) that the claimant has on the date the claimant submits a tier-one or tier-two claim form and

that relate to the claimant's purchase, use, return of, or warranty on his or her original battery, or the purchase of his or her Replacement Battery. The tier-two claim form and release must be properly completed and signed before a tier-two claim will be processed. The release will not be valid, however, until Interstate Batteries issues a product voucher or check card to the claimant. A sample tier-two claim form is attached as Exhibit E.

(3) Limitations

If an eligible Settlement Class Member purchased multiple Replacement Batteries that qualify under the Interstate Batteries Settlement Program, he or she may submit separate tier-two claims for each qualifying Replacement Battery. An eligible Settlement Class Member cannot submit more than one claim for each Replacement Battery. Notwithstanding any other provision in this Amended Settlement Agreement, no person or entity may submit more than 10 tier-two claim forms in this Interstate Batteries Settlement Program. Product vouchers can be redeemed for any products sold at any All Battery Center Store or at Interstate Batteries' Online Store, www.interstatebatteries.com, but cannot be applied toward shipping and handling charges, applicable taxes, or legislatively imposed fees. Moreover, product vouchers issued in the Interstate Batteries Settlement Program are not transferable, are not redeemable for cash, and can be redeemed for products in only one transaction. If an eligible Settlement Class Member uses a product voucher in a transaction and obtains products priced for less than the value of the product voucher, the product voucher will still become void at the conclusion of that transaction and have no further value. The eligible Settlement Class Member will

not be entitled to use the product voucher again in a second transaction or otherwise receive any credit or refund of any unused portion.

(iii) **Audit Rights**

Settling Defendants retain the right to audit both tier-one and tier-two claims at any time during the Interstate Batteries Settlement Program. In the event that Settling Defendants believe, in good faith, that a particular claim is incomplete, not timely, fraudulent, or otherwise fails to meet the specified requirements of making such a claim under the Interstate Batteries Settlement Program, Settling Defendants may reject it. Before rejecting a tier-one or tier-two claim on the grounds that it is incomplete, fraudulent, or otherwise not consistent with the specified requirements listed in this Amended Settlement Agreement, Settling Defendants will provide written notice to the claimant and allow 30 days from the date of the written notice for the claimant to attempt to cure the purported deficiency. Settling Defendants are not required to provide written notice of a deficiency if the claim was sent after the Submission Deadline and thus cannot be cured. In cases where a tier-one or tier-two claim is finally rejected (including in instances in which 30 days have passed and either no cure attempt was received or the cure attempt was inadequate), Settling Defendants will provide written notice to the claimant at the address provided on his or her claim form and to Class Counsel of the rejected claim. Settling Defendants may communicate with Class Counsel under this section via email.

(iv) **Product Voucher Expiration Date**

All product vouchers issued under the Interstate Batteries Settlement Program will expire 24 months after the date they are issued.

Any product voucher or check card issued in connection with a valid tier-one or tier-two claim form under this Amended Settlement Agreement will be mailed or e-mailed to the claimant within 30 days of Interstate Batteries' receipt of the valid tier-one or tier-two claim.

(v) **Check Cards**

Check cards issued under tier two of the Interstate Batteries Settlement Program can be used anywhere that accepts debit or credit cards.

Interstate Batteries reserves the unrestricted option, for its administrative convenience, to make the payment of \$8.50 by a check instead of a check card.

(vi) **No Undistributed Funds or Vouchers**

The Parties agree that this Amended Settlement Agreement does not create or establish a settlement or common "fund." No obligation to issue a product voucher or check card is created until an eligible Settlement Class Member files a valid tier-one or tier-two claim. After an eligible Settlement Class Member has used a product voucher in one transaction, the product voucher immediately expires and has no further residual value. If a product voucher is issued under Interstate Batteries Settlement Program but never used, it will expire in accordance with Section VI.B.2.iv. The Parties agree that no residue will result from product vouchers or check cards issued as part of Interstate Batteries Settlement Program.

While the Parties agree that no residue will result from this Interstate Batteries Settlement Program, if it were to be later determined that residue does exist, any unclaimed, unredeemed, unpaid, uncashed, or undistributed residue will revert to Interstate Batteries.

The Parties agree that the use and redemption of any product voucher issued as a part of the Interstate Batteries Settlement Program is limited to the terms of this Amended Settlement Agreement and that an unused or partially used product voucher does not have any value.

3. Sunset Provision

The Settling Defendants' Injunctive Relief obligations under Section VI.B.1, involving Interstate Batteries' implementation of improved business practices relating to the new form of limited warranty on the Interstate Batteries brand of automotive batteries, will expire on December 31, 2014.

The Settling Defendants Injunctive Relief obligations under Section VI.B.2, involving Interstate Batteries implementation and operation of the Interstate Batteries Settlement Program, will expire on March 15, 2021.

C. Limitations on Injunctive Relief

The Injunctive Relief obligations in Section VI.B.1 apply only to the current models of those batteries specified in Section VI.B.1.i (which exist as of the date of the Court's Final Judgment and Order); those obligations do not apply to any new or different battery models or products that Interstate Batteries may develop, market, sell, or distribute at a later date.

Any action by Settling Defendants to comply with any federal, state or local law, enactment, regulation, or judicial ruling shall not constitute a breach of this Amended Settlement Agreement. In the event that any obligation that Settling Defendants have agreed to undertake in the Injunctive Relief becomes unlawful under any future federal, state or local law, enactment, regulation, or judicial ruling, then Settling Defendants shall be released from performing such obligation.

Settling Defendants are not required to use any method of communicating with an eligible Settlement Class Member who chooses to participate in the Interstate Batteries Settlement Program beyond using the contact information provided by the Settlement Class Member on the claim form. Settling Defendants are not required to mail or e-mail a product voucher or check card to any Settlement Class Member who chooses to participate in the Interstate Batteries Settlement Program at any address other than the address or e-mail address provided in the claim form.

D. Costs

Except as otherwise specified herein, Settling Defendants shall be responsible for the costs associated with implementing the Injunctive Relief and other obligations required by the Amended Settlement Agreement. Eligible Settlement Class Members are responsible for their costs associated with submitting tier-one or tier-two claim forms as a part of Interstate Batteries Settlement Program.

VII. RELEASE, WAIVER, AND RESERVATION OF RIGHTS

A. Release of Claims and Rights by Replacement-Battery-Purchaser Class Members

1. Release of Equitable Claims by Replacement-Battery-Purchaser Class Members

Upon the Effective Date, the Released Parties shall be fully, finally, and forever released and discharged from any and all claims for injunctive relief, declaratory judgment relief, and any other non-monetary equitable relief, known or UNKNOWN, arising on or before the Effective Date that the Replacement-Battery-Purchaser Class Members either asserted or could have asserted in the Litigation, including but not limited to equitable claims based on: (1) Interstate Batteries' warranty; (2) the Magnuson-Moss Warranty Act; (3) breach of the implied covenant of good faith and fair dealing; (4) the California Song-Beverly Consumer Warranty Act; (5) the Consumers Legal Remedies Act; (6) unlawful, unfair, and fraudulent business practices; and/or (7) the consumer protection statutes of any State or the District of Columbia. Replacement-Battery-Purchaser Class Members are not releasing any claims they may have against the Released Parties for personal injury or property damage. Individual monetary claims asserted on behalf of individual Replacement-Battery-Purchaser Class Members are not released under the terms of this Amended Settlement Agreement and the Final Judgment and Order. In the future, however, if a Replacement-Battery-Purchaser Class Member elects to participate in the Interstate Batteries Settlement Program, he or she will be required to agree to the complete release of all claims that he or she may have against the Released Parties, as described in Sections VI and VII.E.

After entering into this Amended Settlement Agreement, Replacement-Battery-Purchaser Class Members may discover facts other than, different from, or in addition to, those that they know or believe to be true with respect to the Released Claims.

Replacement-Battery-Purchaser Class Members expressly waive and fully, finally, and forever settle and release any known or UNKNOWN, suspected or UNSUSPECTED, contingent or noncontingent claim with respect to the Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such other, different, or additional facts.

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

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

Named Plaintiff understands there is a risk he and Replacement-Battery-Purchaser Class Members might suffer losses UNKNOWN or UNSUSPECTED at the time of the release. Class Counsel advised Named Plaintiff of the rights conferred by California Civil Code § 1542. With knowledge of the risks, and upon advice of counsel, Named Plaintiff, and each Replacement-Battery-Purchaser Class Member shall be deemed to

have, and by operation of the Final Judgment and Order shall have, expressly assumed the risks of UNKNOWN or UNSUSPECTED claims included in the Released Claims.

2. Waiver of the Class Action Procedural Device and Any Other Method of Aggregating Claims by Replacement-Battery-Purchaser Class Members

Each Replacement-Battery-Purchaser Class Member waives the right to use the class action procedural device or any other method of joining, consolidating, or aggregating the claims of multiple plaintiffs, persons or entities, or the public in any future lawsuit or other proceeding against the Released Parties that asserts any claim that was or could have been brought in the Litigation. In addition, each Replacement-Battery-Purchaser Class Member waives any right conferred by rule, statute, or any other law to seek—in any future lawsuit or other proceeding against the Released Parties arising from claims that were or could have been brought in the Litigation—any relief on behalf of or for the benefit of any other persons. Stated differently, each Replacement-Battery-Purchaser Class Member may only seek money or other relief for himself or herself, individually.

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

3. Reservation of Individual Lawsuits for Monetary Damages by Replacement-Battery-Purchaser Class Members

Each Replacement-Battery-Purchaser Class Member, excluding the Named Plaintiff, does not release and discharge, but instead preserves, the right of an individual Replacement-Battery-Purchaser Class Member to file an individual lawsuit against any Released Party seeking monetary damages (but such a Settlement Class Member can only file such an individual lawsuit for himself or herself, and not for any other person) for damages which arose on or before the Effective Date and are based on claims that either were asserted or could have been asserted in the Litigation. Each Replacement-Battery-Purchaser Class Member understands and agrees that his or her reservation of rights to file such individual lawsuits is subject to the waiver of the class action procedural device and any other method of aggregating claims, described above in Section VII.A.2. In the future, however, if a Replacement-Battery-Purchaser Class Member elects to participate in the Interstate Batteries Settlement Program, he or she will be required to agree to the complete release of all claims that he or she may have against the Released Parties, as described in Sections VI and VII.E.

B. Release of Certain Equitable Claims by Unexpired-Warranty-Holder Class Members

Upon the Effective Date, the Released Parties shall be fully, finally, and forever released and discharged from any and all claims for injunctive relief, declaratory judgment relief, and any other non-monetary equitable relief, known or UNKNOWN, arising on or before the Effective Date that Unexpired-Warranty-Holder Class Members have, however styled or presented, relating to how the adjusted price of a Replacement

Battery in a pro-rata-adjustment transaction would be calculated under a Previous Interstate Batteries' Pro-Rata Warranty. Unexpired-Warranty-Holder Class Members are not releasing any other claims they may have against the Released Parties.

In the future, however, if an Unexpired-Warranty-Holder Class Member becomes eligible for and elects to participate in the Interstate Batteries Settlement Program, he or she will be required to agree to the complete release of all claims that he or she may have against the Released Parties, as described in Sections VI and VII.E.

After entering into this Amended Settlement Agreement, Unexpired-Warranty-Holder Class Members may discover facts other than, different from, or in addition to, those that they know or believe to be true with respect to the Released Claims.

Unexpired-Warranty-Holder Class Members expressly waive and fully, finally, and forever settle and release any known or UNKNOWN, suspected or UNSUSPECTED, contingent or noncontingent claim with respect to the Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such other, different, or additional facts.

With respect to any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, each Unexpired-Warranty-Holder Class Member shall be deemed to have, and by operation of the Final Judgment and Order shall have, expressly waived any and all provisions, rights, and benefits conferred by any law of any state, district, or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

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

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

C. Named Plaintiff's Release of All Claims

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

After entering into this Settlement Agreement, Named Plaintiff may discover facts other than, different from, or in addition to, those that he knows or believes to be true with respect to the claims he is releasing. Named Plaintiff expressly waives and fully, finally, and forever settles and releases any known or UNKNOWN, suspected or UNSUSPECTED, contingent or noncontingent claim, whether or not concealed or

hidden, without regard to the subsequent discovery or existence of such other, different, or additional facts.

Named Plaintiff and the Settling Defendants stipulate and agree that upon the Effective Date, Named Plaintiff shall expressly waive any and all provisions, rights, and benefits conferred by any law of any state, district, or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

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

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

D. Binding Releases

Upon the Effective Date, no default by any person in the performance of any obligation under this Amended Settlement Agreement or any order entered in connection therewith shall affect the dismissal of the Litigation, the *res judicata* effect of the Final Judgment and Order, the foregoing releases, or any other provision of the Final Judgment and Order; provided, however, that all other legal and equitable remedies for violation of

a court order or breach of this Amended Settlement Agreement shall remain available to all Parties.

E. Additional Release for Participants in Interstate Batteries Settlement Program

If any eligible Settlement Class Member elects to make a claim under the Interstate Batteries Settlement Program (as described above in Section VI.B.2) and is issued a check card or product voucher under that program, he or she will be required in exchange to release the Released Parties from any and all claims (whether styled as legal, equitable, monetary, or otherwise, known or UNKNOWN) that were asserted or could have been asserted in the Litigation. The claimant will also release the Released Parties from any and all claims (whether styled as legal, equitable, monetary, or otherwise, known or UNKNOWN) that the claimant has on the date the claimant submits a tier-one or tier-two claim form and that relate to the claimant's purchase, use, return of, or warranty on his or her original battery, or the purchase of his or her Replacement Battery. Any eligible Settlement Class Member who makes a claim under the Interstate Batteries Settlement Program will not release any claims he or she may have against the Released Parties for personal injury or property damage. The exact terms and form of that release is attached as part of Exhibits D and E, the tier-one and tier-two claim forms.

VIII. INCENTIVE AWARD TO NAMED PLAINTIFF

A. Amount

In addition to the Injunctive Relief that will benefit the Named Plaintiff as a Settlement Class Member, Named Plaintiff will seek the Court's approval of an Incentive

Award in an amount that does not exceed \$1,250. Settling Defendants will not oppose an Incentive Award to the Named Plaintiff in an amount that does not exceed \$1,250. The Parties' negotiation of and agreement to the foregoing Incentive Award did not occur until after the substantive terms of the settlement, as stated in the Original Settlement Agreement, had been negotiated and agreed upon during the mediation.

B. Payment Schedule

Interstate Batteries will pay the Incentive Award, subject to Court approval and in an amount that does not exceed \$1,250, within 14 calendar days of the later of: (1) the Effective Date; or (2) receipt by counsel for Settling Defendants of Named Plaintiff's completed W-9 form.

IX. ATTORNEYS' FEES, COSTS, AND OTHER EXPENSES

A. At least 30 days in advance of the Court's deadline for submission of objections (and separate from the motion for final approval of the proposed Settlement), Class Counsel shall make an application to the Court for an award of reasonable attorneys' fees, costs, and all other expenses in an amount not to exceed \$1,050,000, in the aggregate, to be paid by the Settling Defendants. Class Counsel's application shall also request that the Court specifically approve all of the terms of this Section IX. Settling Defendants shall not oppose or object to the application by Class Counsel for attorneys' fees, costs, and other expenses in an amount up to \$1,050,000, in the aggregate. The \$1,050,000 award shall include all fees, costs, and all other expenses for plaintiff's attorneys (and their employees, consultants, experts, and other agents) who may have performed work in connection with the Litigation, including the Original

Settlement Agreement and the Amended Settlement Agreement. Regardless of the number of attorneys sharing in the Court's award of attorneys' fees, costs, and other expenses, the Settling Defendants shall not be required to pay any award that exceeds, in the aggregate, \$1,050,000. Finally, this award of attorneys' fees, costs, and all other expenses will cover all past and future attorneys' fees, costs, and expenses of Class Counsel that are related in any way to this Litigation regardless of when those fees, costs, or other expenses were or will be incurred; including but not limited to matters occurring pre-litigation, during litigation, during the settlement and court-approval process, after Final Judgment, during any appellate proceeding, during the implementation of the Interstate Batteries Settlement Program, or at any other time.

B. Settling Defendants shall pay these attorneys' fees to Class Counsel over and above the costs associated with providing the Injunctive Relief and Notice Plan to Settlement Class Members. The foregoing payment of attorneys' fees to Class Counsel is only applicable, however, if the proposed class action settlement is finally approved, and all appellate rights with respect to the Final Judgment and Order have expired or have been exhausted in such a manner as to affirm the Final Judgment and Order and when no further appeals are permissible, including review by the United States Supreme Court. If these conditions are met, within 14 calendar days after the Effective Date, Settling Defendants will pay the attorneys' fees, costs, and expenses approved by the Court to Class Counsel in an amount that does not exceed \$1,050,000.

C. No other agreement exists among the Parties as to attorneys' fees, costs, or expenses. This agreement with respect to attorneys' fees, costs, and other expenses was

not negotiated until after the substantive terms of the settlement, as stated in the Original Settlement Agreement, had been negotiated and agreed upon during the mediation.

X. ENTRY OF FINAL JUDGMENT AND ORDER

The Parties shall jointly seek entry by the Court of a Final Judgment and Order that includes provisions:

1. granting final approval of this Amended Settlement Agreement, and directing its implementation pursuant to its terms and conditions;
2. enjoining Settling Defendants according to the specific terms applicable to them in Section VI;
3. discharging and releasing the Released Parties from the Released Claims as provided in Section VII;
4. discharging and releasing the Released Parties from claims of the Named Plaintiff, as provided in Section VII.C;
5. permanently barring and enjoining all Settlement Class Members from instituting, maintaining, or prosecuting, either directly or indirectly, any lawsuit to the extent that it asserts Released Claims;
6. permanently barring and enjoining each Replacement-Battery-Purchaser Class Member from seeking to use the class action procedural device or any other method of joining, consolidating, or aggregating claims of multiple plaintiffs, persons or entities, or the public in any future lawsuit or other proceeding against any Released Party that asserts any claim, whether legal, equitable, monetary, or otherwise, that was or could have been brought in the Litigation; permanently

barring and enjoining each Replacement-Battery-Purchaser Class Member from seeking—in any future lawsuit or other proceeding against the Released Parties—any relief on behalf of or for the benefit of any other persons; and permanently barring and enjoining each Replacement-Battery-Purchaser Class Member from seeking any relief or otherwise participating as an unnamed class member, represented person, or beneficiary in any class action or other representative, joint, consolidated, or aggregate proceeding that asserts any claim, whether legal, equitable, monetary, or otherwise, that was or could have been brought in the Litigation;

7. dismissing the Litigation with prejudice and without costs (other than those to be paid to Class Counsel per Class Counsel’s separate application for attorneys’ fees, costs, and expenses), and further subject to any additional release granted by Settlement Class Members who elect to participate in the Interstate Batteries Settlement Program, as provided in Section VII.E; and

8. reserving to this Court continuing and exclusive jurisdiction over the Named Plaintiff, the Settlement Class, and the Settling Defendants with respect to the Amended Settlement Agreement and the Final Judgment and Order.

XI. TERMINATION

Settling Defendants’ willingness to settle this Litigation on a class action basis and to not contest the accompanying certification of a conditional settlement class is dependent on achieving finality in this Litigation and the desire to avoid the expense of this and other litigation, except to the extent certain individual lawsuits are expressly

preserved in Sections VII.A-B. Consequently, if settlement is not approved by the Court in accordance with all the material terms of this Amended Settlement Agreement—including all of the undertakings and substantive provisions of the Amended Settlement Agreement and all of the Exhibits—or is not upheld on appeal, including any review by the United States Supreme Court, this Amended Settlement Agreement will become null and void, and the Parties shall have no further obligations under this Amended Settlement Agreement. The Parties agree that material terms include, but are not limited to, each and every term contained in the following sections: Notice (Section V), Injunctive Relief (Section VI), Release, Waiver, and Reservation of Rights (Section VII), Entry of Final Judgment and Order (Section X), and Termination (Section XI). If all or any part of the above sections is not approved in exact accordance with this Amended Settlement Agreement, this Amended Settlement Agreement will become null and void, and the Parties shall have no further obligations under this Amended Settlement Agreement.

However, the failure of the Court or any appellate court to approve in full the request by Class Counsel for attorneys' fees, costs, and other expenses shall not be grounds for the Named Plaintiff, the Settlement Class, or Class Counsel to cancel or terminate this Amended Settlement Agreement. The failure of the Court or any appellate court to approve in full the request of the Named Plaintiff's Incentive Award shall not be grounds for the termination of this Amended Settlement Agreement.

If the Amended Settlement Agreement is not finally approved, is not upheld on appeal, or is otherwise terminated for any reason before the Effective Date, the Settlement Class shall be decertified; the Amended Settlement Agreement and all

negotiations, proceedings, and documents prepared, and statements made in connection therewith, shall be without prejudice to any Party and shall not be deemed or construed to be an admission or confession by any Party of any fact, matter, or proposition of law; and all Parties shall stand in the same procedural position as if the Amended Settlement Agreement had not been negotiated, made, or filed with the Court.

Notwithstanding any other provision in this Section XI, Termination, an independent release agreed to by a potential Settlement Class Member who voluntarily elects to participate in the Interstate Batteries Settlement Program takes effect when Interstate Batteries issues a product voucher or check card to the potential Settlement Class Member, in accordance with Sections VI and VII.E, which release could occur before the Final Judgment or the Effective Date.

XII. MISCELLANEOUS PROVISIONS

A. Best Efforts to Obtain Court Approval

Named Plaintiff and Settling Defendants, and the Parties' counsel, agree to use their best efforts to obtain Court approval of this Amended Settlement Agreement.

B. No Admission

The Original Settlement Agreement and this Amended Settlement Agreement, whether or not it shall become final, and any and all negotiations, communications, and discussions associated with this Amended Settlement Agreement and the Original Settlement Agreement, shall not be:

1. offered or received by or against Named Plaintiff, any Settlement Class Member, or Settling Defendants as evidence of, or be construed as or

deemed to be evidence of, any presumption, concession, or admission by a Party of the truth of any fact alleged by Named Plaintiff or the Settlement Class or defense asserted by Settling Defendants; of the validity of any claim or defense that has been or could have been asserted in the Litigation, or the deficiency of any claim or defense that has been or could have been asserted in the Litigation; or of any liability, negligence, fault, or wrongdoing on the part of Named Plaintiff, any Settlement Class Member, or Settling Defendants;

2. offered or received by or against Named Plaintiff, any Settlement Class Member, or Settling Defendants as a presumption, concession, admission, or evidence of any violation of any state or federal statute, law, rule, or regulation, or of any liability or wrongdoing by Named Plaintiff, any Settlement Class Member, or Settling Defendants, or of the truth of any of the claims, and evidence thereof shall not be used directly or indirectly, in any way, (whether in the Litigation or in any other action or proceeding), except for purposes of enforcing all of the terms of this Amended Settlement Agreement and the Final Judgment and Order;

3. offered or received by or against Named Plaintiff, any Settlement Class Member, or Settling Defendants as evidence of a presumption, concession, or admission with respect to a decision by any court regarding the certification of a class, or for purposes of proving any liability, negligence, fault, or wrongdoing, or in any way referred to for any other reason as against Named Plaintiff, any Settlement Class Member, or Settling Defendants, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary

to effectuate the provisions of this Amended Settlement Agreement; provided, however, that if this Amended Settlement Agreement is approved by the Court, then Named Plaintiff, any Settlement Class Member, or Settling Defendants may refer to it to enforce their rights hereunder; or

4. construed as an admission or concession by Named Plaintiff, any Settlement Class Member, or Settling Defendants that the consideration to be given hereunder represents the relief that could or would have been obtained through trial in the Litigation.

These prohibitions on the use of this Amended Settlement Agreement and the Original Settlement Agreement also apply to any individual lawsuit permitted under Sections VII.A-B.

C. Settlement Notices

Except for the Notice Plan and the New CAFA Notice, as provided for in Section V above, and notice regarding Audit Rights, as provided for in Section VI.B.2.iii above, all other formal notices or formal communications regarding compliance or satisfaction of this Amended Settlement Agreement shall be in writing and shall be given (i) by hand delivery; or (ii) by registered or certified mail, return receipt requested, postage pre-paid; or (iii) by Federal Express or similar overnight courier to counsel for the Party to whom notice is directed at the following addresses:

For the Named Plaintiff and Settlement Class:

Eric H. Gibbs
Girard Gibbs LLP
601 California Street, Suite 1400
San Francisco, CA 94108

For Settling Defendants:

Jerome R. Doak
Jones Day
2727 N. Harwood Street
Dallas, TX 75201

Counsel may designate a change of the person to receive notice or a change of address, from time to time, by giving notice to counsel for all Parties in the manner described in this Section.

D. Administrative Costs

Except as expressly provided in Sections V (Notice Plan), VI (Injunctive Relief), VIII (Incentive Award to Named Plaintiff), and IX (Attorneys' Fees, Costs, and Other Expenses), the Named Plaintiff and the Settling Defendants shall be solely responsible for his, her, or its own costs and expenses.

E. Taxes

Named Plaintiff and Class Counsel shall be responsible for paying any and all federal, state, local, and other taxes due on any payments made to them pursuant to the Amended Settlement Agreement.

F. Settling Defendants' Communication with Customers, Business Contacts, and Members of the Public

Settling Defendants reserve the right to communicate with their customers, business contacts, and members of the public in the ordinary course of business.

G. Confidentiality of Discovery Materials and Information

The Parties, their counsel, and any experts in this Litigation agree that they remain subject to the Court's September 9, 2010, Stipulated Protective Order for Standard Litigation, which sets forth procedures for the return or destruction of protected material after final disposition of the Litigation.

H. Complete Agreement

This Amended Settlement Agreement is the entire, complete agreement of each and every term agreed to by and among Named Plaintiff, the Settlement Class, Settling Defendants, and their counsel. In entering into this Amended Settlement Agreement, no Party has made or relied on any warranty or representation not specifically set forth herein. This Amended Settlement Agreement shall not be modified except by a writing executed by counsel for all the Parties hereto.

I. Headings for Convenience Only

The headings in this Amended Settlement Agreement are for the convenience of the reader only and shall not affect the meaning or interpretation of this Amended Settlement Agreement.

J. No Party Is the Drafter

None of the Parties to this Amended Settlement Agreement shall be considered to be the primary drafter of this Amended Settlement Agreement or any provision hereof for the purpose of any rule of interpretation or construction that might cause any provision to be construed against the drafter.

K. Binding Effect

This Amended Settlement Agreement shall be binding according to its terms upon, and inure to the benefit of, the Named Plaintiff, the Settlement Class, the Settling Defendants, the Released Parties, and their respective successors and assigns.

L. Authorization to Enter Amended Settlement Agreement

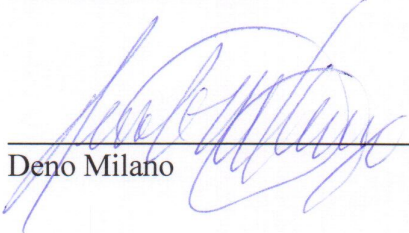
The individual signing this Amended Settlement Agreement on behalf of the Settling Defendants represents that he is fully authorized by the Settling Defendants to enter into, and to execute, this Amended Settlement Agreement on behalf of the Settling Defendants. Class Counsel represent that they are fully authorized to conduct settlement negotiations with counsel for Settling Defendants on behalf of Named Plaintiff, and to enter into, and to execute, this Amended Settlement Agreement on behalf of the Settlement Class, subject to Court approval pursuant to Federal Rule of Civil Procedure 23(e). Named Plaintiff enters into and executes this Amended Settlement Agreement on behalf of himself, and as a representative of and on behalf of the Settlement Class, subject to Court approval pursuant to Federal Rule of Civil Procedure 23(e).

M. Execution in Counterparts

Named Plaintiff, Class Counsel, and Settling Defendants may execute this Amended Settlement Agreement in counterparts, and the execution of counterparts shall have the same effect as if all Parties had signed the same instrument. Facsimile signatures shall be considered as valid signatures as of the date signed, although the original signature pages shall thereafter be appended to the Amended Settlement Agreement. This Amended Settlement Agreement shall not be deemed executed until

signed by the Named Plaintiff, by Class Counsel, and by counsel for and by an authorized representative of Settling Defendants.

Named Plaintiff:



Deno Milano

**Counsel for Named Plaintiff and
Settlement Class:**

Eric H. Gibbs
Girard Gibbs LLP
601 California Street, Suite 1400
San Francisco, CA 94108

Named Plaintiff:

Deno Milano

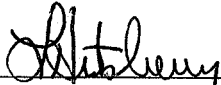
**Counsel for Named Plaintiff and
Settlement Class:**



Eric H. Gibbs
Girard Gibbs LLP
601 California Street, Suite 1400
San Francisco, CA 94108

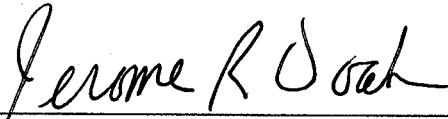
Settling Defendants

**Interstate Battery System of America, Inc. and
Interstate Battery System International, Inc.:**



Lisa Huntsberry
*Vice President, Chief Financial Officer, and
Secretary*
Interstate Battery System of America, Inc. and
Vice President and Secretary
Interstate Battery System International, Inc.

Interstate Battery System of America, Inc. and
Interstate Battery System International, Inc.



Jerome R. Doak
Jones Day
2727 N. Harwood Street
Dallas, TX 75201

Attorney for
Interstate Battery System of America, Inc. and
Interstate Battery System International, Inc.