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[COMPLETE LISTING OF COUNSEL  
 APPEARS ON SIGNATURE PAGE]

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

STANLEY F. SIDDLE and MICHAEL E.  
 LIPSON, individually and on behalf of all those  
 similarly situated,

Plaintiffs,

v.

THE DURACELL COMPANY,  
 COSTCO WHOLESALE CORPORATION,  
 TECHNOMATE MANUFACTORY, LTD.,  
 PRO-TEK INDUSTRIES, LLC.

Defendants.

Case No. 4:19-cv-00568-JD

CLASS ACTION

CLASS ACTION SETTLEMENT  
 AGREEMENT AND RELEASE

This Class Action Settlement Agreement (the “Settlement Agreement”) is made and entered into by and between Plaintiffs Stanley F. Siddle, and Michael E. Lipson, (collectively “Plaintiffs”), individually for themselves and on behalf of the settlement class, and Defendants The Duracell Company (“Duracell”), Costco Wholesale Corporation (“Costco”), Technomate Manufactory, LTD (“Technomate”), and Pro-Tek Industries, LLC (“ProTek”) (collectively “Defendants”). Plaintiffs and Defendants are referred to hereinafter as the “Settling Parties.” This settlement is intended to fully, finally and forever resolve, discharge, release, and settle the lawsuit captioned *Siddle, et al. v. The Duracell Company, et al.* Case No. 4:19-cv-00568-JD (the

“Litigation”), upon and subject to the terms and conditions herein and in compliance with the Northern District of California’s Procedural Guidance for Class Action Settlements.

**1. Recitals.**

1.1 Plaintiff Stanley Siddle (“Siddle”) and former plaintiff Jeffrey Meeks (“Meeks”) filed the original complaint on January 31, 2019 against Duracell, Berkshire-Hathaway, Inc. (“Berkshire”) the Proctor & Gamble Company (“P&G”), Costco, Home Depot U.S.A, Inc. (“Home Depot”) and Amazon.com Services, Inc. (“Amazon”) in the United States District Court for the Northern District of California alleging battery-drain defects associated with certain handheld flashlight products manufactured by Techonmate. Dkt. # 1.

1.2 While motions to dismiss were pending, Siddle filed the First Amended Complaint, adding Pro-Tek and Technomate as defendants, and removing Berkshire, Home Depot, and Amazon as defendants. Dkt. # 35. Plaintiff Meeks also voluntarily dismissed himself from the litigation. Dkt. #34.

1.3 Defendants each filed separate motions to dismiss, which the Court heard on September 12, 2019. The Court denied Duracell’s motion to dismiss, granted the motions of Pro-Tek, P&G, and Costco with leave to amend, and took Technomate’s motion to dismiss for lack of personal jurisdiction under submission. Dkt. # 81.

1.4 On September 25, 2019, this action was referred to Magistrate Judge Laurel Beeler (“Judge Beeler”) to conduct a settlement conference. Dkt. # 82.

1.5 On October 17, 2019, Plaintiffs Stanley Siddle and Michael Lipson (“Plaintiffs”) filed the Second Amended Complaint (“SAC”), again naming Duracell, Costco, Technomate, and Pro-Tek as defendants. Dkt. # 90. On October 28, 2019, the parties stipulated to extend the time to respond to the SAC until February 7, 2020, and to delay discovery until thirty days after the parties’ Rule 26(f) conference on the SAC. Dkt. # 91.

1.6 The Settling Parties informally exchanged discovery in advance of a settlement conference held before Judge Beeler on January 14, 2020.

1.7 On January 14, 2020, the Parties held a settlement conference before Judge Beeler

1 wherein the Parties reached a tentative settlement to resolve Plaintiffs' claims on a class basis,  
 2 subject to Court approval and final approval of Technomate's board of directors. Dkt. # 94.

3 1.8 Following the January 14, 2020 settlement conference, Technomate's board of  
 4 directors voted to approve the terms of the settlement reached by the Parties.

5 1.9 Class Counsel have investigated the facts and issues raised in the Litigation, and  
 6 have sufficient information to evaluate the settlement and this Settlement Agreement.

7 1.10 On January 27, 2020 the Settling Parties stipulated to extend the time to respond to  
 8 the SAC until May 7, 2020. Dkt. # 96.

9 1.11 On March 24, 2020, Judge Donato terminated Technomate's motion to dismiss  
 10 (Dkt.# 57) without prejudice on the basis that the parties had reached a settlement. Dkt. # 97.

11 1.12 On May 4, 2020, the Settling Parties stipulated to extend the time to respond to the  
 12 SAC until June 22, 2020. Dkt. # 98

13 1.13 Defendants deny the allegations in the Litigation and that they have any liability to  
 14 Plaintiffs or any consumer arising from the claims asserted in the Litigation. Nonetheless, to avoid  
 15 the substantial burden, risk, and distraction that arises from continuation of the litigation, and fully  
 16 and finally to resolve the claims asserted or that could have been asserted against them therein,  
 17 Defendants have agreed to the terms of this Settlement Agreement.

18 1.14 Class Counsel and Counsel for Defendants engaged in arm's-length negotiations  
 19 to achieve settlement of the Litigation. After a full-day settlement conference before Judge Beeler,  
 20 the parties reached an agreement that forms the basis of this Settlement Agreement. The Settling  
 21 Parties did not discuss attorneys' fees, costs, or any potential incentive awards for Plaintiffs until  
 22 they first agreed on the substantive terms of their settlement.

23 1.15 Class Counsel analyzed and evaluated the merits of Defendants' defenses, the risk  
 24 of continued litigation, and the benefits this settlement could confer on Plaintiffs and the  
 25 Settlement Class, as defined below.

26 1.16 Based on their experience and knowledge of the strength of the claims and defenses  
 27 in the Litigation, Class Counsel have concluded and are satisfied that the terms and conditions of  
 28

1 this Settlement Agreement are fair, reasonable, adequate, and in the best interests of the Settlement  
 2 Class and the Settling Parties.

3 1.17 Nothing in this Settlement Agreement or the circumstances relating to or that give  
 4 rise to this Settlement Agreement constitute or shall be deemed to constitute an admission by  
 5 Defendants of any type or nature, including claims asserted in the Litigation, or waiver of  
 6 Defendants' objections and defenses to the claims asserted in the Litigation, including class  
 7 certification.

8 NOW, THEREFORE, pursuant to the terms set forth herein and subject to the Court's  
 9 approval of this Settlement Agreement, the Parties hereby stipulate and agree, including on Behalf  
 10 of the Settlement Class, as defined below, fully and finally to settle, compromise, and resolve the  
 11 Litigation and releases the claims as set forth below.

## 12 **2. Definitions.**

13 2.1 Capitalized terms in this Settlement Agreement are defined by the terms set  
 14 forth in this Section. If and to the extent Definitions in this Section conflict with other terms set  
 15 forth in this Settlement Agreement, the definitions in this Section shall govern.

16 2.2 "Action" means *Siddle, et al. v. The Duracell Company, et al.* Case No. 4:19-cv-  
 17 00568-JD pending in the United States District Court for the Northern District of California.

18 2.3 "Authorized Claim" means Automatic Payment Recipients in conjunction with any  
 19 claim submitted by a Claiming Recipient that the Settlement Administrator validates as complete  
 20 and timely.

21 2.3 "Automatic Payment Recipient" means a Class Member whose purchase of  
 22 Flashlights occurred on or before October 23, 2015 as reflected in Costco's records. Automatic  
 23 Payment Recipients will receive a Settlement Payment without the need to submit a Claim Form,  
 24 unless a Request for Exclusion is submitted.

25 2.4 "Claiming Recipient" means a Class Member who is not an Automatic Payment  
 26 Recipient and who submits a complete and timely Claim Form consistent with the claims process  
 27 detailed in Section 6 of this Settlement Agreement and whose purchase of a Flashlight on or before  
 28

1 October 23, 2015 is reflected in Costco's records.

2 2.5 "Claims Deadline" means sixty (60) days after the date the Notice is disseminated  
3 to the Settlement Class by the Settlement Administrator.

4 2.6 "Claim Form" means the online and paper forms in substantially the same form  
5 attached hereto as **Exhibit A**.

6 2.7 "Class Counsel" mean the Law Offices of Timothy Rumberger and the attorneys  
7 at that law firm assisting in representation of the Settlement Class.

8 2.8 "Class Counsel's Fees and Expenses" means an award approved by the Court for  
9 Plaintiffs' reasonable attorney's fees in an amount up to 25% of the total Settlement Fund, plus  
10 reasonable expenses.

11 2.9 "Class Member" or "Settlement Class Member" means an individual meeting the  
12 definition of the Settlement Class.

13 2.10 "Class Period" means August 12, 2015 through October 23, 2015.

14 2.11 "*Cy Pres* Distribution" means the money paid from the Settlement Fund to the *Cy*  
15 *Pres* recipient(s) as described in Section 7.3.

16 2.12 "*Cy Pres* Recipient(s)" means the party or parties mutually agreed to by the  
17 Plaintiffs and Defendants, and approved by the Court, that will receive the *Cy Pres* Distribution.  
18 The Settling Parties will identify the *Cy Pres* Recipient(s) in the Motion for Final Approval of  
19 Settlement.

20 2.13 "Effective Date" means the date on which the Final Judgment (defined below) in  
21 the Action becomes "Final." As used in this Settlement Agreement, "Final" means one (1)  
22 business day after all of the following conditions have been satisfied:

- 23 1) Plaintiffs, Defendants, and their counsel have executed this Settlement Agreement;
- 24 and
- 25 2) Dismissal of the Second Amended Complaint with prejudice; and
- 26 3) The Court has entered the Final Order and Judgment approving the settlement; and
- 27 4) If appellate review is not sought from the Final Judgement, the expiration of the time

for filing or noticing any appeal, petition, and/or writ; or

- 5) If appellate review is sought from the Final Judgment: a) the date on which the Final Judgment is affirmed and is no longer subject to judicial review, or b) the date on which the appeal, petition, or writ is dismissed or denied and the Final Judgment is no longer subject to judicial review.

2.14 “Final Approval” means: (a) issuance of a Court order granting final approval of the settlement and this Settlement Agreement as binding on the Settling Parties and the Settlement Class; (b) certification of the Settlement Class and finding that the Settlement Agreement satisfies the settlement-related provisions of Federal Rule of Civil Procedure 23 in all respects; (c) the Court’s determination that the Settlement Agreement is fair, adequate, reasonable, and binding on the Settlement Class; (d) determination that the relief provided in this Settlement Agreement should be disseminated to the Settlement Class; (e) effectuating the releases set forth in Section 10 of this Settlement Agreement; (f) entering final judgment in the Litigation; and (g) retaining continuing jurisdiction over the interpretation, implementation, and enforcement of the Settlement.

2.15 “Final Approval Hearing” means the hearing to be held by the Court to adjudicate whether:

- 1) the terms of this Settlement Agreement are fair, reasonable, and adequate to the Settlement Class and should be approved;

- 2) the Notice constitutes due, adequate, and sufficient notice to all persons entitled to notice of the Litigation and meets all applicable requirements of the Federal Rules of Civil Procedure, the Class Action Fairness Act, the United States Constitution (including the Due Process Clause), rules of this Court, and any other applicable law, and constitutes the notice as directed by the Court in the Preliminary Approval Order to apprise the Settlement Class of the (a) pendency of the Litigation; (b) nature and terms of the Settlement; (c) right of Settlement Class members to opt out or object to the Settlement; and (d) right of Settlement Class members to appear at the Final Approval Hearing;

1           3) a final judgment should be entered dismissing the Litigation with prejudice, as  
2 contemplated by this Settlement Agreement;

3           4) the Court should permanently bar and enjoin: (a) all Settlement Class members from  
4 filing, commencing, prosecuting, intervening or participating in (as class members or otherwise),  
5 or receiving any benefit or other relief from another lawsuit or arbitration (as well as a motion or  
6 complaint in intervention in this Litigation if the person or entity filing such motion or complaint  
7 in intervention purports to be acting as, on behalf of, for the benefit of, or derivatively for any of  
8 the above persons or entities) or order, in any jurisdiction or forum, that is based upon, arises out  
9 of, or relates to any Released Claim as to any Released Parties; and (b) all persons and entities  
10 from filing, commencing, or prosecuting any other lawsuit as a class action (including seeking to  
11 amend a pending complaint to include class allegations or by seeking class certification in a  
12 pending action) or other proceeding on behalf of any Settlement Class member as to the Released  
13 Parties, if such other lawsuit is based upon, arises out of, or relates to any Released Claim,  
14 including any claim that is based upon, arises out of, or relates to the Litigation or the transactions  
15 or occurrences referred to therein;

16           5) the Court should approve the Fee and Expense Award to Class Counsel; and

17           6) any other matter that the Court may deem appropriate. The Parties anticipate the Final  
18 Approval Hearing will be scheduled approximately one hundred and twenty (120) days after the  
19 Notice to the Class.

20           2.16 “Final Judgment” means the “Final Judgment and Order of Dismissal” to be  
21 entered by the Court, which, among other things, fully and finally approves this Settlement  
22 Agreement and dismisses the Litigation with Prejudice.

23           2.17 “Funding Date” means the dates as follows: No later than twenty-one (21) days  
24 before the Final Approval Hearing, on which Technomate shall deposit 50% of the Settlement  
25 Fund, minus any amounts paid through this date to fund the costs of notice and administration.  
26 The remaining 50% of the Settlement Fund shall be paid no later than twenty-one days after the  
27 Effective Date.  
28

2.18 “Incentive Award” means the award that Plaintiffs will seek by application, and if approved by the Court will be payable to the Plaintiffs from the Settlement Fund for their roles as class representatives and the responsibility and work attendant to those roles.

2.19 “Notice” means the notice to be disseminated by the Settlement Administrator consistent with the Notice Plan attached hereto as **Exhibit D**, including, but not limited to, the Long-Form and Short-Form Notices attached hereto as **Exhibit B** and **Exhibit C**.

2.20 “Notice Date” means the date Notice is communicated to Settlement Class Members pursuant to Section 6 of this Settlement Agreement, which shall be no later than twenty-one (21) days after the Court grants Preliminary Approval of the Settlement Agreement and Settlement Plan.

2.21 “Notice Plan” means the settlement notice program developed by the Settlement Administrator as approved by the Court.

2.22 “Objection” means the written communication that must be sent to the Court and postmarked on or before the Objection/Exclusion Deadline by a Settlement Class member who wishes to object to the terms of the Settlement as defined in Section 5 below.

2.23 “Objection/Exclusion Deadline” is the date by which an Objection or Request for Exclusion by a Settlement Class member must be postmarked no later than sixty (60) days after the Notice is disseminated to the Settlement Class by the Settlement Administrator, or as otherwise ordered by the Court in its Preliminary Approval Order referred to in Section 5 of this Settlement Agreement.

2.24 “Plaintiffs” means class representatives Stanley F. Siddle and Michael E. Lipson.

2.25 “Preliminary Approval Order” means the order to be entered by the Court, substantially in the form attached hereto as **Exhibit E** which preliminarily approves the Settlement, certifies the Settlement Class, sets dates for the Final Approval Hearing, Objection/Exclusion Deadline, and Notice Date, and approves the Notice Plan and Claim Form.

2.26 “Product” or “Flashlights” means the Duracell-branded Durabeam Ultra LED flashlights model 350L bearing the dates code 1533, 1534, or 1535 manufactured by Technomate



1 and sold by Costco.

2 2.27 “Released Claims” means the claims released in accordance with Section 10 of this  
3 Settlement Agreement.

4 2.28 “Released Parties” means Defendants Duracell, Costco, Technomate, Pro-Tek, and  
5 any and all of their respective past, present, and future heirs, executors, administrators,  
6 predecessors, successors, assigns, parent companies, subsidiaries, divisions, joint venturers,  
7 entities in which Defendants have a controlling interest, holding companies, employees, agents,  
8 consultants, marketing partners, resellers, lead generators, telemarketers, independent contractors,  
9 insurers, reinsurers, directors, officers, partners, principals, attorneys, accountants, financial  
10 advisors, investors, investment bankers, underwriters, shareholders, members, managers, auditors,  
11 legal representatives, successors in interest, affiliates, trusts, and corporations; and each and all of  
12 the past, present, and future officers, directors, principals, representatives, employees, agents,  
13 shareholders, members, managers, attorneys, stockholders, successors, executors, claim service  
14 managers, subrogees, and assigns of any of the foregoing entities; and any and all of Defendants’  
15 manufacturers, distributors, licensees, agents, contractors, co-packers, customers, retailers and  
16 suppliers of the relevant Product.

17 2.29 “Replacement Flashlights” means flashlights Pro-Tek sent to purchasers of  
18 Flashlights as replacement upon purchasers’ complaint of performance issues with the Flashlights.

19 2.30 “Request for Exclusion” means the written communication that must be sent to the  
20 Settlement Administrator and postmarked on or before the Objection/Exclusion Deadline by a  
21 Settlement Class member who requests to be excluded from the Settlement Class as defined in  
22 Section 5 below.

23 2.31 “Settlement” or “Settlement Agreement” mean this Class Action Settlement  
24 Agreement, including all exhibits hereto.

25 2.32 “Settlement Administrator” means Postlethwaite & Netterville, which will provide  
26 Notice to the Settlement Class and administer the Claims process. The Settling Parties shall select  
27 a successor Settlement Administrator in the event one becomes necessary.  
28

1           2.33 “Settlement Bank Account” means an interest-bearing bank account (if possible)  
 2 at a bank chosen by the Settlement Administrator, in which the Settlement Fund shall be deposited  
 3 upon the Funding Date.

4           2.34 “Settlement Class” is defined as follows: All persons in the United States who, on  
 5 or before October 23, 2015, purchased from Costco a three-pack of Duracell 350L flashlights  
 6 bearing the date code 1533, 1534, or 1535 on the flashlight end cap. The Settlement Class  
 7 specifically excludes all person in the United States who have received three Replacement  
 8 Flashlights from Pro-Tek. Also excluded from the Settlement Class is any individual who timely  
 9 and validly opts out of the Settlement Class, as well as any retailers, wholesalers, and other  
 10 individuals or entities that purchased the Product for resale, as well as Defendants’ current and  
 11 former officers and directors, members of the immediate families of Defendant’s officers and  
 12 directors, Defendants’ legal representatives, heirs, successors, and assigns, any entity in which  
 13 any Defendant has a controlling interest, and the judicial officers to whom this Action is assigned.  
 14 Also excluded from the Settlement Class are any individuals to whom the Notice disseminated  
 15 was returned undeliverable (RUM) by mail to the Settlement Administrator *and* for whom there  
 16 is no valid email address, after reasonable efforts including skip tracing have been employed to  
 17 acquire a valid current physical and/or email address, and in the absence of a Claim being  
 18 otherwise received from such individuals by the Settlement Administrator.

19           2.35 “Settlement Fund” means Two Million Two Hundred Thousand Dollars  
 20 (\$2,200,000), which Technomate will pay in accordance with the terms of this Settlement  
 21 Agreement. The Settlement Fund will be used to pay Settlement Payments for all Authorized  
 22 Claims, the *Cy Pres* Distribution (if necessary), all attorneys’ fees, costs, and expenses related to  
 23 this Action, including all attorneys’ fees, costs and expenses related to the effort to secure final  
 24 judgment, all costs and expenses of the claims administrator, and any Incentive Award payments  
 25 ordered by the Court to be paid to Plaintiffs. This represents the total maximum amount of  
 26 Defendants’ obligation—to be paid by Technomate—to make payments pursuant to this  
 27 Agreement. The Parties further agree that Technomate is the only Party that is obligated to make  
 28

any payments to the Settlement Fund under the terms of this Agreement, that Duracell, Costco and Pro-Tek have no obligation to pay any amount to settle this case and that Plaintiffs and all members of the Settlement Class (other than those who are excluded or exclude themselves) are barred from seeking any such payment from Duracell, Costco and Pro-Tek. Any money remaining in the Settlement Fund upon paying all Settlement Payments, Class Counsel's Fees and Expenses, and the Settlement Administrator shall be paid to the *Cy Pres* Recipient(s). No portion of the Settlement Fund shall revert to Technomate or any of the Defendants herein.

2.36 "Settlement Payment" means the pro-rata amount to be paid for each Authorized Claim as described in Section 7.

2.37 "Settlement Website" means an internet website created and maintained by the Settlement Administrator to provide the Settlement Class with information relating to the Settlement, including relevant documents and electronic and printable form relating thereto, including the Claim form, which can be submitted online through an internet-based form or printed and mailed. The Internet URL of the Settlement website shall be [www.Flashlightsettlement.com](http://www.Flashlightsettlement.com) (subject to availability) and shall be provided in the Notice.

**3. Stipulation to Class Certification.** The Settling Parties hereby stipulate, for purposes of this Settlement only, that the requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(3) are satisfied and, subject to Court approval, the Settlement Class shall be certified for settlement purposes pursuant to the terms and conditions set forth in this Settlement Agreement. The Settling Parties stipulate and agree to certification of the Settlement Class for purposes of this Settlement only. Should the Court not grant Final Approval of the Settlement, for whatever reason, this stipulation to class certification shall become null and void.

**4. Preliminary Approval.**

4.1 On a date to be set by the Court, or by noticed motion, Plaintiff shall apply to the Court for entry of Preliminary Approval Order substantially in the form attached hereto as **Exhibit E**. The Preliminary Approval Order shall include provisions that:

4.1.1 Preliminarily approve this Settlement as falling within the range of

1                   reasonableness meriting possible final approval and satisfying Rule 23(e)(2) of the  
2                   Federal Rules of Civil Procedure;

3                   4.1.2 Provide Direct Notice to the Settlement Class in the manner  
4                   specified in this Settlement Agreement as set forth in Section 6 below;

5                   4.1.3 Preliminarily determine that Plaintiffs are members of the  
6                   Settlement Class and, for purposes of the Settlement Agreement, satisfy the  
7                   requirements of Rule 23 of the Federal Rules of Civil Procedure to appoint them  
8                   as class representatives of the Settlement Class;

9                   4.1.4 Certify the Settlement Class under Rule 23(b)(3) of the Federal  
10                  Rules of Civil Procedure for settlement purposes only;

11                  4.1.5 Appoint the Law Offices of Timothy Rumberger as Class Counsel  
12                  pursuant to Rule 23(g);

13                  4.1.6 Schedule the Final Approval Hearing;

14                  4.1.7 Set a briefing schedule for a Motion for Final Approval of the  
15                  Settlement and Motion for Approval of Attorneys' Fees and Expenses;

16                  4.1.8 Approve designation of Postlethwaite & Netterville as Settlement  
17                  Administrator;

18                  4.1.9 Establish a Notice Date and direct the Settlement Administrator to  
19                  cause Notice to be disseminated in the manner set forth in this Settlement  
20                  Agreement within twenty-one (21) days after entry of the Preliminary Approval  
21                  Order;

22                  4.1.10 Determine that the Notice to be sent to the Settlement Class: (a)  
23                  meets the requirements of Rule 23(c)(2) and Rule 23(e)(1) of the Federal Rules of  
24                  Civil Procedure and the Due Process Clause of the United States Constitution; (b)  
25                  is the best practicable notice under the circumstances; and (c) is reasonably  
26                  calculated to apprise Settlement Class members of the pendency of the Litigation  
27                  and their right to object and opt out of or participate in the Settlement within the  
28

1 timeframe provided herein;

2 4.1.11 Require members of the Settlement Class who wish to opt out of the  
3 Settlement to submit written Requests for Exclusion timely on or before the  
4 Objection/Exclusion Deadline to the Settlement Administrator, as specified in  
5 Section 5 of this Settlement Agreement;

6 4.1.12 Require Settlement Class members who wish to object to the  
7 fairness, reasonableness, or adequacy of the Settlement, Class Counsel's Fees and  
8 Expenses, or Plaintiffs' Incentive Awards to submit to the Court by the  
9 Objection/Exclusion Deadline, a statement of his or her Objection, as well as the  
10 specific reason for such Objection, including legal support the Settlement Class  
11 member wishes to bring to the Court's attention, and evidence the Settlement Class  
12 member wishes to introduce in support of his or her Objection;

13 4.1.13 Provide that any Settlement Class member who does not timely  
14 submit a written Request for Exclusion will be bound by all proceedings, orders,  
15 and judgments (including this Settlement and the Final Judgment) in this  
16 Litigation; and

17 4.1.14 Provide the Objection/Exclusion Deadline be a date that is at least  
18 sixty (60) days prior to the Final Approval Hearing.

19 **5. Requests for Exclusion and Objections to the Settlement.**

20 5.1 Any Settlement Class Member who does not wish to participate in the  
21 Settlement must submit a Request for Exclusion to the Settlement Administrator stating his  
22 or her intention to be "excluded" from the Settlement. The Request for Exclusion must  
23 contain the Settlement Class member's name, Costco membership number, current address,  
24 and telephone number. The Request for Exclusion must be either: (a) personally signed by  
25 the Settlement Class Member and dated, mailed, and postmarked to the Settlement  
26 Administrator on or before the Objection/Exclusion Deadline; or (b) electronically signed  
27 by the Settlement Class member and submitted to the Settlement Administrator through the  
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1 Settlement Website on or before the Objection/Exclusion Deadline. Multiple, so-called  
 2 “mass” or “class,” opt-outs shall not be allowed. The date of the postmark on the return  
 3 mailing envelope or date of online submission through the Settlement Website shall be the  
 4 exclusive means used to determine whether a Request for Exclusion has been timely  
 5 submitted. Any Settlement Class Member whose request to be excluded from the Settlement  
 6 Class is approved by the Court will not be bound by the Settlement and will have no right to  
 7 object, appeal, or comment thereon.

8           5.2 Any Settlement Class Member, on his or her own, or through an attorney hired at  
 9 his or her own expense, may object to the terms of the Settlement, Class Counsel’s Fee and  
 10 Expenses, or Plaintiffs’ Incentive Awards. Any such Objection must be in writing, comply with  
 11 Rule 23(e)(5)(A) of the Federal Rules of Civil Procedure, include the contents described in  
 12 Paragraph 5.3 below and must be sent to the Court before the Objection/Exclusion Deadline or as  
 13 the Court may otherwise direct. Any Objection that is not properly or timely raised is waived.

14           5.3 To be effective, Objections must be in writing and accompanied by documents or  
 15 other evidence, as well as any factual or legal argument the objecting Settlement Class member  
 16 intends to rely upon in making his or her Objection. All Objections must include (a) a reference,  
 17 in its first sentence to this Action; (b) the Objector’s full, legal name, residential address, telephone  
 18 number, email address, and Costco membership number (and the Objector’s lawyer’s name,  
 19 business address, telephone number, and email address if objecting through counsel); (c) a  
 20 statement describing the Objector’s membership in the Settlement Class, including a verification  
 21 under oath as to the date, and the location of the Costco warehouse from which the Product was  
 22 purchased, the date code on the end cap of one of the Flashlights in objector’s possession (if  
 23 available) and all other information required by the Claim Form; (d) a written statement of all  
 24 grounds for the objection, accompanied by any legal support for such objection; (e) copies of any  
 25 papers, briefs, or other documents upon which the objection is based; (f) a list of all persons who  
 26 will be called to testify in support of the objection; (g) a statement of whether the Objector intends  
 27 to appear at the Final Approval Hearing (note: if the objector intends to appear at the Final  
 28

Approval Hearing through counsel, the objection must also state the identity of all attorneys representing the objector who will appear at the Final Approval Hearing); (h) a list of the exhibits that the Objector may offer during the Final Approval Hearing, along with copies of such exhibits; and (i) the objector's signature. In addition, Settlement Class Members, if applicable, must include with their Objection (a) the identity of all counsel who represent the objector, including former or current counsel who may be entitled to compensation for any reason related to the objection; and (b) a detailed list of any other objections submitted by the Settlement Class Member, or his/her counsel, to any class actions submitted in any court, whether state or federal, in the United States in the previous five (5) years.

5.4 Any Settlement Class Member who fails to timely send to or file with the Court a written Objection setting forth all of the information required by this Section shall be precluded from objecting to the Settlement and foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by any means, including, but not limited to, through an appeal.

5.5 Any Party may request the Court, within its discretion, to exercise its right to set the deposition of an Objector or deem any Objection frivolous and award appropriate costs and fees to the Party or Parties opposing such Objection(s).

5.6 Any Settlement Class Member who fails to timely submit a Request for Exclusion or Objection as provided in this Settlement Agreement shall be bound by all subsequent proceedings, orders, and Final Judgment (including this Settlement) in the Litigation, even if he or she has pending, or subsequently initiates, any litigation, arbitration, or other proceeding against Defendants relating to the Released Claims.

5.7 If a Settlement Class Member submits both a Request for Exclusion and a Claim Form, the Request for Exclusion will control and the Claim Form will be deemed invalid.

## **6. Notice and Claims Process.**

6.1 The Notice shall:

6.1.1 Inform the Settlement Class Members that if they do not timely exclude themselves from the Settlement Class, they may be eligible to receive the

1 relief provided by the proposed Settlement Agreement;

2 6.1.2 Contain a short, plain statement of the background of the Litigation  
3 and the proposed Settlement;

4 6.1.3 Describe the proposed relief outlined in this Settlement Agreement;

5 6.1.4 Explain the impact the proposed Settlement will have on any  
6 existing or future litigation, arbitration, or other proceeding;

7 6.1.5 State that any relief to Settlement Class members is contingent upon  
8 the Court's granting Final Approval of the Settlement;

9 6.1.6 Contain the contact information for Class Counsel to answer  
10 questions; the address for the Settlement Website; and instructions on how to  
11 access the case docket via PACER or in person at any of the Court's locations.

12 6.1.7 State the date of the Final Approval Hearing, that the date may  
13 change without further notice to the class, and advise Class Members to check the  
14 Settlement Website or the Court's PACER site to confirm that the date has not been  
15 changed.

16 6.1.8 Constitute the best notice practicable under the circumstances  
17 consistent with Federal Rule of Civil Procedure 23(c).

18 6.2 In compliance with the Attorney General notification provision of the Class Action  
19 Fairness Act of 2005 ("CAFA"), 28 U.S.C. Section 1715, within ten (10) days after the Motion  
20 for Preliminary Approval is filed, the Settlement Administrator shall cause notice of this proposed  
21 Settlement to be served on the Attorney General of the United States and the Attorneys General  
22 of each State or territory. The Settlement Administrator shall file with the Court a certification  
23 stating the date(s) upon which such CAFA notices were sent.

24 6.3 Within twenty-one (21) days after entry of the Preliminary Approval Order, or on  
25 the date established by the Court in the Preliminary Approval Order, the Settlement Administrator  
26 shall provide Notice to the Settlement Class as set forth below:

27 6.3.1 Notice. On or before the twenty-first day after entry of the  
28



Preliminary Approval Order, the Settlement Administrator will cause the Short-Form Notice, in the form approved by the Court, to be distributed based on the Notice Plan, which is attached hereto as Exhibit D. The Short-Form Notice sent to the Automatic Payment Recipients will specify that they do not need to submit a Claim Form.

6.3.2 Settlement Website. On or before the Notice Deadline, the Settlement Administrator shall establish the Settlement Website, [www.FlashlightSettlement.com](http://www.FlashlightSettlement.com), from which Settlement Class Members may download or print the Long-Form Notice, a complete copy of this Settlement Agreement and the Preliminary Approval Order, and submit a Claim Form. The Settlement Website shall include the deadlines for filing Claims, Requests for Exclusion from the Settlement Class, Objections, the date of the Final Approval Hearing, and other information pertaining to the Settlement, a voice-recorded Interactive Voice Response (“IVR”) telephone number, a Frequently Asked Questions (“FAQs”) page, and an interactive function that permits Settlement Class members to download a Claim Form online or file a Claim Form via the Settlement Website or by mail and post-marked by the Claims Deadline. The Settlement Administrator shall establish the Settlement Website using the website name [www.Flashlightsettlement.com](http://www.Flashlightsettlement.com). The Website shall be operative no later than the Notice Date and shall be accessible for a period of not fewer than sixty (60) days following the Effective Date.

6.3.3 Toll-Free IVR. On or before the Notice Deadline, the Settlement Administrator shall establish a Toll-Free IVR phone number with script recordings of information about this Settlement, including information about the Claim Form, utilizing the relevant portions of the language contained in the Notice and Claim Form. The Toll-Free number shall remain open and accessible through the Claim Deadline. The Settlement Administrator shall make reasonable provision for Class

Counsel to be promptly advised of recorded messages left on the Toll-Free number by potential Settlement Class members concerning the Litigation or the Settlement so that Class Counsel may timely and accurately respond to such inquiries; provided, however, the Settlement Administrator shall review the recorded messages before providing them to Class Counsel and if one or more of the messages requests a blank Claim Form or other similar administrative assistance only, then the Settlement Administrator shall handle such administrative request(s), but the Settlement Administrator shall provide all other messages to Class Counsel for any further response to the Settlement Class member.

6.4 The Settlement Administrator will help implement the terms of this Settlement Agreement and the Preliminary Approval Order. The Settlement Administrator shall be responsible for administrative tasks, including, without limitation, (a) arranging, as set forth in this Section and in the Preliminary Approval Order, for distribution of Class Notice, and Claim Forms (in forms approved by the Court) when requested by Settlement Class Members, to Settlement Class members, either electronically to known email addresses provided by Costco or by first class mail to such Settlement Class Members. The Settlement Administrator will perform a search of the National Change of Address database prior to mailing to the Settlement Class members for whom no current/valid email address is known, and mail to the appropriate addresses, thereafter making a reasonable search for current/valid mailing addresses concerning any mail returned as undeliverable either electronically or by the U.S. Postal Service (b) answering inquiries from Settlement Class members or forwarding such inquiries to Class Counsel or its designee, (c) receiving and maintaining on behalf of the Court and the Parties any Settlement Class member correspondence regarding Requests for Exclusion from the Settlement or Objections to the Settlement, (d) posting on the Settlement Website Class Notice, Claim Forms, and other related documents, (e) receiving and processing Claims and distributing Settlement Payments to Claimants and Automatic Payment Recipients, (f) answering inquiries and providing information reasonably requested by Defendants, and (g) otherwise assisting with implementation and

1 administration of the Settlement.

2 6.5 The Settlement Administrator shall be responsible for reviewing and  
3 administering all Claims to determine their validity. The Settlement Administrator shall reject any  
4 claim that does not comply in any material respect with the instructions on the Claim Form or the  
5 terms of the Settlement, or is submitted after the Claims Deadline.

6 6.6 Claims Process:

7 6.6.1 The Settlement Administrator shall retain copies of all claims  
8 submitted and all documentation of claims approved or denied and all Settlement  
9 Payments made. The Settlement Administrator agrees to be subject to the direction  
10 and authority of the Court with respect to the administration of the Settlement and  
11 the payment of Settlement Funds to Authorized Claimants pursuant to the terms of  
12 this Settlement Agreement. This Settlement contemplates the use of both automatic  
13 payments to Automatic Payment Recipients, as well as a claims process for  
14 Claiming Recipients.

15 6.6.2 Claim Forms may be completed and submitted by U.S. mail or  
16 online at the Settlement Website. Claim Forms may also be requested by calling  
17 the Toll-Free number provided by the Class Action Settlement Administrator or by  
18 writing to the Settlement Administrator.

19 6.6.3 To be eligible for a Settlement Payment, a Claiming Recipient must  
20 timely submit a signed and completed Claim Form containing his or her name,  
21 mailing address, email address, Costco membership number, unique claim  
22 identification number and verification that a Product was purchased for personal  
23 use. Claim Forms must be postmarked or submitted online no later than the Claims  
24 Deadline. Automatic Payment Recipients will receive a Settlement Payment after  
25 the Effective Date if they do not exclude themselves from the Settlement.

26 6.6.4 The contract with the Settlement Administrator shall obligate the  
27 Settlement Administrator: (a) to describe accurately and neutrally, and shall train  
28

and instruct its employees and agents to describe accurately and objectively, the provisions of the Settlement in communications with Settlement Class Members; and (b) to provide prompt, accurate, and objective responses to inquiries from Class Counsel, Defendants, or Defendants' Counsel.

6.7 All disputes relating to the Settlement Administrator's ability and need to perform its duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of the Settlement until all payments and obligations contemplated by the Settlement have been fully carried out.

6.8 Within five (5) calendar days after the Claims Deadline, the Settlement Administrator shall provide the Settling Parties with a declaration attesting to completion of the notice process set forth in this Section.

6.9 The Settlement Administrator shall cooperate with the Parties to provide data for the post-distribution accounting required by the Court within 21 days after the distribution of the Settlement Fund as contemplated by the Northern District of California's Procedural Guidance for Class Action Settlements.

6.10 Costs of Notice and Administration. The Settlement Fund will be used to pay the cost of Notice and claims administration in an amount not to exceed \$220,000, or a lesser or greater amount as ordered by the Court or as required to reasonably administer the Settlement Fund.

## **7. Settlement Consideration,**

7.1 Class Counsel and Plaintiffs believe the Settlement confers substantial benefits upon the Settlement Class, as identified below, particularly as weighed against the risks associated with the inherent uncertain nature of a litigated outcome; the complex nature of the Litigation in which Class Counsel have reviewed internal and confidential documents; the difficulty and complexity of calculating actual economic harm allegedly attributable to purportedly false representations relating to the Products; and the length and expense of continued proceedings through trial and appeals. Based on their evaluation of such factors, Class Counsel and Plaintiffs

1 have determined the Settlement, based on the terms set forth herein, is in the best interests of the  
 2 Settlement Class.

3 7.2 The Settlement includes cash payments as set forth below.

4 7.2.1 Settlement Administrator will issue Settlement Payments from the Settlement Fund  
 5 on a pro rata allocation to each Automatic Payment Recipient and Claiming  
 6 Recipient for each three-pack of Flashlights purchased. The allocation to each  
 7 Automatic Payment Recipient and Claiming Recipient shall be determined after  
 8 payment of notice and administration costs, Class Counsel's Fees and Expense,  
 9 Plaintiffs' Incentive Awards and tax expenses. No proof of purchase will be  
 10 required for Claiming Recipients beyond a timely and properly submitted Claim  
 11 Form. The monetary relief describe in this paragraph is to be paid from the  
 12 Settlement Fund. Settlement Payments will expire ninety (75) days from the date on  
 13 which they are issued.

14 7.2.2 In the event that the cumulative amount of any/all uncashed checks  
 15 from this initial distribution, divided by the total number of recipients who cashed  
 16 their initial distribution checks, exceeds \$5 per recipient, the Settlement  
 17 Administrator shall issue a second round of Settlement Payments from the  
 18 remaining balance of the Settlement Fund to each Automatic Payment Recipient  
 19 and Claiming Recipient in pro rata allocation to such Class Members' original  
 20 claim amounts. Any amount in the Settlement Fund after payment of Settlement  
 21 Administration costs, Class Counsel's Fees and Expense, Plaintiffs' Incentive  
 22 Awards, tax expenses, and Settlement Payments will be distributed as the *Cy Pres*  
 23 Distribution. Settlement Payments may be accomplished through multiple  
 24 distributions to Class Members.

25 7.3 Cy Pres Distribution

26 7.3.1 Following any secondary distribution as detailed in Section 7.2.2,  
 27 to the extent that any Settlement Payments remain uncashed after the expiration  
 28

1 date, the Settlement Administrator will pay any such funds to the *Cy Pres*  
 2 Recipient(s), subject to the Court's approval. If there is more than one *Cy Pres*  
 3 Recipient, the remaining amounts will be distributed in equal amounts to each *Cy*  
 4 *Pres* Recipient.

5 7.4 The Settlement Fund Shall be maintained by the Settlement Administrator, which  
 6 will act as the escrow agent for and place the Settlement Fund--with the exception of those funds  
 7 required under Section 7.5.1--in the Settlement Bank Account.

8 7.5 The Settlement Fund shall be funded in three steps.

9 7.5.1 First, within fourteen (14) days of Preliminary Approval,  
 10 Technomate shall deposit funds with the Settlement Administrator, which shall be  
 11 used to pay the initial "hard" costs of notice and administration (i.e. postage,  
 12 printing, etc.) as negotiated between Technomate and the Settlement  
 13 Administrator.

14 7.5.2 Second, no later than the twenty-one (21) days prior to the Final  
 15 Approval Hearing, Technomate shall deposit into the Settlement Bank Account the  
 16 50% of the Settlement Fund as defined above less any amounts already paid to the  
 17 Settlement Administrator.

18 7.5.3 Third, no later than twenty-one (21) days after the Effective Date,  
 19 Technomate shall deposit into the Settlement Bank Account the remaining 50% of  
 20 the Settlement Fund. Under no circumstances will Technomate (or any other  
 21 Defendant) be obligated to pay any amounts outside of the Settlement Fund.

22 7.6 The Settlement Fund shall be used to pay in full and in the following order: (a) any  
 23 necessary taxes and tax expenses; (b) all costs associated with the Settlement Administrator,  
 24 including costs of providing Notice to Settlement Class Members, processing Claims, and all costs  
 25 relating to providing necessary notices in accordance with the Class Action Fairness Act of 2005,  
 26 28 U.S.C. Sections 1715 *et seq.*; (c) Class Counsel's Fee and Expenses as ordered by the Court to  
 27 Class Counsel under Section 8 of this Settlement Agreement; (d) any Incentive Award made by  
 28

the Court to the Plaintiffs under Section 8 of this Settlement Agreement; and (e) payments to Authorized Claimants and any others as allowed by this Settlement Agreement and approved by the Court. The Settlement Fund, which shall be funded solely by Technomate, represents the limit and extent of Defendants' obligations under the Settlement Agreement.

7.7 The Settlement Administrator shall send correspondence to any applicable claimant explaining rejection of his or her Claim no later than fifteen (15) days after the Claims Deadline. If any claimant whose Claim Form has been rejected, in whole or in part, desires to contest such rejection, the claimant must within ten (10) business days from receipt of the rejection, transmit to the Settlement Administrator by e-mail or U.S. mail a notice and statement of reasons indicating the claimant's grounds for contesting the rejection, along with any supporting documentation, and requesting further review by the Settlement Administrator in consultation with Class Counsel and counsel for Defendants of the denial of the claim. If Class Counsel and counsel for Defendants cannot agree on a resolution of the claimant's notice contesting the rejection, the disputed claim shall be presented to the Court or a referee appointed by the Court for summary and non-appealable resolution.

7.8 The Settlement Administrator will initiate making Settlement Payments directly to Automatic Payment Recipients and Claiming Recipients within thirty (30) calendar days after the Effective Date. The Settlement Administrator will offer claimants the option of receiving their payments digitally or via a standard check. A claimant electing to receive a digital payment will be able to select from a list of popular payment network options (*e.g.* Paypal, digital debit card, direct push to retailer accounts, or another retail eCard). Three (3) business days after the expiration of all Settlement Payment checks and the deadline to accept digital payments--including any such checks or digital payments made in the form of a secondary distribution under Section 7.2.2 the Settlement Administrator will make a *Cy Pres* Distribution of any remaining funds in the Settlement Fund.

## **8. Attorneys' Fees, Litigation Expenses and Enhancement/Individual Payments.**

8.1 Defendants will not oppose Class Counsel's application to the Court for up to 25%

of the Settlement Fund as attorney's fees and reasonable litigation costs of the Settlement Fund, nor will Defendants oppose the Class Counsel's application to the Court to allow a reasonable Incentive Award to the named Plaintiffs of up to \$2,200 each. To the extent the Court does not approve any or all of the amount of attorneys' fees, litigation expenses, and/or enhancement/individual payments sought by Class Counsel, any amount disallowed by the Court will remain in the Settlement Fund for distribution in accordance with this Settlement Agreement. Class Counsel shall file a motion for an award of attorneys' fees and incentive awards with the Court at least Fourteen (14) days before the Objection/Exclusion Deadline.

8.2 Class Counsel's Fees and Expenses and any Incentive Awards granted by the Court shall be paid within thirty (30) days of the Effective Date or as ordered by the Court. This Settlement, for purposes of clarification, is not dependent or conditioned upon the Court approving Class Counsel's request for Fees and Expenses or an Incentive Award to the named Plaintiffs, or awarding the particular amounts sought by Class Counsel. In the event the Court declines Class Counsel's requests or awards less than the amounts sought, the settlement will continue to be effective and enforceable.

## **9. Condition of Settlement, Effect of Disapproval, Cancellation, or Termination.**

9.1 In the event this Settlement Agreement is not approved by the Court or the Settlement set forth herein is terminated or fails to become effective in accordance with its terms, the Settling Parties shall be restored to their respective pre-settlement positions in the Litigation, including with regard to any agreements concerning tolling and similar agreements, and this entire Settlement Agreement shall become null and void. The entire amount deposited into the Settlement Fund (to the extent it was deposited) shall be promptly returned to Technomate.

9.2 The Settling Parties and their counsel agree to cooperate fully with one another and to use their best efforts to effectuate the Settlement, including, without limitation, in seeking Preliminary Approval and Final Approval of the Settlement, carrying out the terms of this Settlement Agreement, and promptly agreeing upon and executing all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement. The Parties



1 shall cooperate in good faith and undertake all reasonable actions and steps in order to accomplish  
2 the events described in this Settlement Agreement.

3 **10. Release of Claims.**

4 10.1 As of the Effective Date the Settlement, the Released Parties shall be released of  
5 and from any and all claims asserted or which could have been asserted in the Litigation involving  
6 any allegations of misrepresentation, omission, fraud or breach of warranty or any other theory  
7 concerning the Product, including, without limitation, arising from, under or relating to any law  
8 or jurisdiction, including state, federal, or local law or otherwise. Members of the Settlement  
9 Class will waive all claims concerning the Products if they do not opt-out of the Settlement.

10 10.2 Notwithstanding the above, the Court shall retain continuing jurisdiction over the  
11 Settling Parties and the Settlement Agreement with respect to the future performance of the terms  
12 of the Settlement Agreement, and to assure that all payments and other actions required of any of  
13 the Parties by the Settlement are properly made or taken. All Settling Parties hereto submit to the  
14 jurisdiction of the Court for purposes of implementing and enforcing the terms embodied in this  
15 Settlement Agreement.

16 **11. The Parties' Right to Terminate.** Defendants' and Plaintiffs' willingness to settle  
17 this Litigation on a classwide basis and to agree to the certification of the Settlement Class is  
18 dependent upon achieving finality in this Litigation, and the desire to avoid further expense in this  
19 Litigation. Consequently, Defendants and Plaintiffs' shall each have the right in their sole  
20 discretion to terminate this Settlement Agreement, declare it null and void, and have no further  
21 obligations under this Settlement Agreement to any other party or counsel if any of the following  
22 conditions subsequently occurs: (1) the Court fails or declines to grant Preliminary Approval and  
23 the basis or bases for such denial cannot be readily modified or fixed by the Parties; (2) the Court  
24 fails or declines to grant Final Approval and the basis or bases for such denial cannot be readily  
25 modified or fixed by the Parties; (3) the Effective Date does not occur for any reason, including  
26 the entry of an order by any court that would require either modification or termination of the  
27 Settlement Agreement or Final Approval Order; (4) if the percentage of Settlement Class Members  
28

1 who properly and timely exercise their right to opt out of the Settlement Class exceeds 10% of the  
 2 total number of Settlement Class members, (5) any of the other conditions described in this  
 3 Settlement, including any Exhibits, as a basis for termination or cancellation occur. In the event  
 4 of such a termination, the Settlement shall be considered null and void and any Court orders  
 5 approving certification of the Settlement Class and any other orders entered pursuant to this  
 6 Agreement shall be deemed null and void and vacated and shall not be used in or cited by any  
 7 person or entity in support of claims or defenses or in support or in opposition to a class  
 8 certification motion; the Parties shall return to the *status quo ante* in the Litigation, as if the Parties  
 9 had not entered into this Settlement. In such an event, the fact of this Settlement and that  
 10 Defendants did not oppose certification of any class under the Settlement, shall not be used or  
 11 cited by any person or entity, including in any contested proceeding relating to certification of any  
 12 proposed class. In addition, in the event of such a termination, all of the Parties' respective pre-  
 13 Settlement claims and defenses will be preserved, including all defenses to class certification.  
 14 Further, if either party elects to terminate the Settlement pursuant to this section, the parties agree  
 15 to conduct good faith settlement discussions during a 60-day period following the termination,  
 16 which shall include a renewed mediation. If, after that 60-day period, a resolution is not reached,  
 17 the case will go back into active litigation.

18 **12. Settlement Administrator.** The parties have jointly chosen Postlethwaite &  
 19 Netterville to act as the Settlement Administrator after counsel for Technomate and/or Plaintiffs  
 20 obtained at least three competitive bids from qualified administrators.

21 **13. Settlement Data.** Costco will provide the Settlement Administrator data  
 22 concerning all Class Members, including name, email address, street address, the number of  
 23 Products purchased and the dates of purchase, to enable the Settlement Administrator to administer  
 24 the Settlement. This information will be deemed Confidential under the protective order (Dkt. 80)  
 25 entered in this case, and will be used solely for the purposes of administering this Settlement.

26 **14. Apportionment of Settlement Sum.** The payments made from the Settlement  
 27 Fund to Settlement Class Members shall be considered a partial refund based on the retail purchase  
 28

1 amounts paid by each Settlement Class Member for the Flashlights, without Defendants or Class  
2 Counsel making any representations or guarantees as to the taxability of any of the funds.

3 **15. Other Lawsuits.** Until the Settlement is finally approved, the Settling Parties will  
4 cooperate and use reasonable efforts to effectuate the terms of the Settlement, including but not  
5 limited to obtaining the dismissal, transfer, or stay of any pending or subsequently-filed class or  
6 collective action lawsuit that alleges any of the claims released under the Settlement.

7 **16.**

8 **17. No Admission.** Neither the Class Action Settlement Agreement, nor the  
9 Settlement Documents, nor the Settlement shall be construed as an admission concerning any fact  
10 or issue of law by any of the Settling Parties

11 **18. Good Faith.** The parties will diligently and in good faith work toward drafting  
12 and obtaining preliminary and final approval of a settlement according to the terms discussed in  
13 this Class Action Settlement Agreement.

14 **19. Authority.** Each attorney signing below represents that he or she has been  
15 authorized to execute this Class Action Settlement Agreement on behalf of that attorney's  
16 client(s).

17 **20. Entire Agreement.** This Settlement Agreement contains the entire agreement  
18 among the Settling Parties and supersedes any prior agreements or understandings between them.  
19 All terms of this Settlement Agreement are contractual and not mere recitals and shall be construed  
20 as if drafted by all Parties. The presumption found in California Civil Code Section 1654 (and  
21 equivalent, comparable, or analogous provisions of the laws of the United States of America or  
22 any State or territory thereof, or of the common law or civil law) that uncertainties in a contract  
23 are interpreted against the party causing an uncertainty to exist is hereby waived by all Parties.

24 **21. Amendments.** This Settlement Agreement may be amended or modified only by  
25 a written instrument signed by Class Counsel and Defendants' Counsel. Amendments and  
26 modifications (including to time periods, hearing dates and deadlines) may be made without  
27 additional notice to the Settlement Class members unless such notice is required by the Court.  
28

22. **Effective Date.** This Settlement Agreement shall be deemed to have been executed upon the last date of execution by the undersigned.

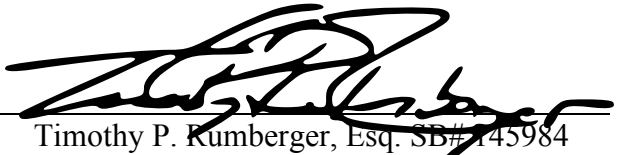
23. **Counterparts.** This Settlement Agreement may be executed in counterparts, each of which shall constitute an original.

24. **Severability.** Should any part, term or provision of this Settlement Agreement be declared or determined by any court or tribunal to be illegal or invalid, the Settling Parties agree that the Court may modify such provision to the extent necessary to make it valid, legal and enforceable. In any event, such provision shall be separable and shall not limit or affect the validity, legality or enforceability of any other provision hereunder.


**IN WITNESS THEREOF**, the Settling Parties hereto have caused this Settlement Agreement to be executed by their duly authorized representatives.

**UNDERSTOOD AND AGREED:**

DATED: July \_\_\_\_, 2020

By:   
 Timothy P. Rumberger, Esq. SB# 145984  
**LAW OFFICES OF TIMOTHY P. RUMBERGER**  
 1339 Bay Street, Alameda, California 94501  
 Phone: (510) 841-5500. Fax: (510) 521-9700  
 E-mail: tim@rumbergerlaw.com  
*Attorneys for the Representative Plaintiffs  
 and the Plaintiff Class(es)*

DATED: July 23, 2020

By:   
 David S. Almeida, Esq. (*Pro Hac Vice*)  
 Suzanne M. Alton de Eraso (*Pro Hac Vice*)  
 Mark S. Eisen, Esq. SB# 289009  
 Krista M. Enns, Esq. SB# 206430  
 Reed Lyon, Esq. SB# 288361  
**BENESCH, FRIEDLANDER, COPLAN & ARONOFF**

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[saltondeeraso@beneschlaw.com](mailto:saltondeeraso@beneschlaw.com)  
[meisen@beneschlaw.com](mailto:meisen@beneschlaw.com)  
*Attorneys for Defendant The Duracell Company*

DATED: July \_\_\_\_, 2020

By: \_\_\_\_\_  
S. STEWART HASKINS II (*Pro Hac Vice*)  
JENNIFER R. VIROSTKO (*Pro Hac Vice*)  
**KING & SPALDING, LLP**  
1180 Peachtree Street N.E., Ste. 1600  
Atlanta, GA 30309-3521  
Telephone: +1 404 572 4600  
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E-mail: [shaskins@kslaw.com](mailto:shaskins@kslaw.com);  
[jvirostko@kslaw.com](mailto:jvirostko@kslaw.com)  
*Attorney for Defendant Costco Wholesale Corp.*

DATED: July \_\_\_\_, 2020

By: \_\_\_\_\_  
Philip A. Toomey, Esq. SB# 89598  
Robert A. Orozco, Esq. SB# 201532  
**LEECH TISHMAN FUSCALDO & LAMPL, INC.**  
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El Segundo, CA 90245  
Phone: (424) 218-3903  
Email: [PToomey@LeechTishman.com](mailto:PToomey@LeechTishman.com)  
[ROrozco@LeechTishman.com](mailto:ROrozco@LeechTishman.com)  
*Attorneys for Pro-Tek Industries, LLC.*

DATED: July \_\_\_\_, 2020

By: \_\_\_\_\_  
Frederic G. Ludwig, III, Esq., SB#205332  
**LUDWIG, APC**  
12463 Rancho Bernardo Road, No. 532  
San Diego, CA 92128  
Phone: (619) 929-0873  
E-mail: [Eric.Ludwig@ludwigiplaw.com](mailto:Eric.Ludwig@ludwigiplaw.com)  
*Attorneys for Defendant Technomate Manufactory Ltd.*  
*\*Specially appearing*



**DATED: July 31, 2020**

**PLAINTIFF SANTELY F. SADDLE**

By: Henry F. Hill

**DATED: July 31, 2020**

**PLAINTIFF MICHAEL E. LIPSON**

By: mtc jones

**DATED: July 23, 2020**

**DEFENDANT THE DURACELL COMPANY**

Signature: Lee Z White  
 Date: 10/20/14, 12:41 PM  
 By: Email: [white.lee@duke.edu](mailto:white.lee@duke.edu)

**Name:** Leo White

**Title:** Chief IP & Associate General Counsel

**DATED:** July \_\_\_\_, 2020

**DEFENDANT COSTCO WHOLESALE CORPORATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

**Title:** \_\_\_\_\_

**DATED:** July \_\_, 2020

**DEFENDANT TECHNOMATE  
MANUFACTORY, LTD.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

**Title:** \_\_\_\_\_

**DATED: July \_\_, 2020**

**PRO-TEK INDUSTRIES, LLC**

By: \_\_\_\_\_

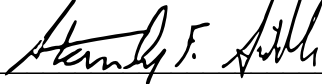
**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_



1 DATED: July \_\_\_\_, 2020

**PLAINTIFF SANTELY F. SIDDLE**

By: 

2  
3  
4 DATED: July \_\_\_\_, 2020

**PLAINTIFF MICHAEL E. LIPSON**

By: \_\_\_\_\_

5  
6  
7  
8 DATED: July 23, 2020

**DEFENDANT THE DURACELL COMPANY**

By: \_\_\_\_\_

10 Name: Leo White

11 Title: Chief IP & Associate General Counsel

12  
13 DATED: July \_\_\_\_, 2020

**DEFENDANT COSTCO WHOLESALE CORPORATION**

By: \_\_\_\_\_

16 Name: \_\_\_\_\_

17 Title: \_\_\_\_\_

18 DATED: July \_\_\_\_, 2020

**DEFENDANT TECHNOMATE MANUFACTORY, LTD.**

By: \_\_\_\_\_

21 Name: \_\_\_\_\_

22 Title: \_\_\_\_\_

23 DATED: July \_\_\_\_, 2020

**PRO-TEK INDUSTRIES, LLC**

By: \_\_\_\_\_

26 Name: \_\_\_\_\_

27 Title: \_\_\_\_\_

1 DATED: July \_\_\_\_, 2020

**PLAINTIFF SANTELY F. SIDDLE**

By: \_\_\_\_\_

4 DATED: July \_\_\_\_, 2020

**PLAINTIFF MICHAEL E. LIPSON**

By: \_\_\_\_\_

8 DATED: July \_\_\_\_, 2020

**DEFENDANT THE DURACELL COMPANY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

13 DATED: July \_\_\_\_, 2020

**DEFENDANT COSTCO WHOLESALE CORPORATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

18 DATED: July \_\_\_\_, 2020

**DEFENDANT TECHNOMATE MANUFACTORY, LTD.**

For and on behalf of  
鐵明製品有限公司  
By: TECHNOMATE MANUFACTORY LIMITED

Name: Chen Chieh  
Authorized Signature(s)

Title: Director

23 DATED: July \_\_\_\_, 2020

**PRO-TEK INDUSTRIES, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



1 DATED: July \_\_\_\_, 2020

PLAINTIFF SANTELY F. SIDDLE

By: \_\_\_\_\_

2  
3  
4 DATED: July \_\_\_\_, 2020

PLAINTIFF MICHAEL E. LIPSON

By: \_\_\_\_\_

5  
6  
7  
8 DATED: July \_\_\_\_, 2020

DEFENDANT THE DURACELL COMPANY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

9  
10  
11  
12  
13 DATED: July 6, 2020

DEFENDANT COSTCO WHOLESALE CORPORATION

By: James E Pruitt

Name: James E Pruitt

Title: Counsel

14  
15  
16  
17  
18 DATED: July \_\_\_\_, 2020

DEFENDANT TECHNOMATE MANUFACTORY, LTD.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

19  
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23 DATED: July \_\_\_\_, 2020

PRO-TEK INDUSTRIES, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

1 DATED: July \_\_\_\_, 2020

PLAINTIFF SANTELY F. SIDDLE

By: \_\_\_\_\_

2  
3  
4 DATED: July \_\_\_\_, 2020

PLAINTIFF MICHAEL E. LIPSON

By: \_\_\_\_\_

5  
6  
7  
8 DATED: July \_\_\_\_, 2020

DEFENDANT THE DURACELL COMPANY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

9  
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11  
12  
13 DATED: July \_\_\_\_, 2020

DEFENDANT COSTCO WHOLESALE CORPORATION

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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16  
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18 DATED: July \_\_\_\_, 2020

DEFENDANT TECHNOMATE MANUFACTORY, LTD.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

19  
20  
21  
22  
23 DATED: July 23, 2020

PRO-TEK INDUSTRIES, LLC

By: Michael Shapiro

Name: Michael Shapiro

Title: President

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*Attorneys for Defendant The Duracell Company*

DATED: July \_\_\_\_, 2020

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DATED: July 23, 2020

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