

# **Exhibit 1**

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

INES BURGOS and MONGKOL  
MAHAVONGTRAKUL, individually  
and on behalf of other similarly  
situated individuals,

Plaintiff,

vs.

SUNVALLEYTEK  
INTERNATIONAL, INC.,

Defendant.

Case Number: 4:18-cv-06910-HSG

The Hon. Haywood S. Gilliam

This Settlement Agreement (“Agreement”) is entered into by and among  
plaintiffs Ines Burgos (“Ms. Burgos”) and Mongkol Mahavonktrakul (“Mr. M.”)  
(collectively, “Plaintiffs”) and Defendant Sunvalleytek International, Inc.  
 (“Sunvalleytek” or “Defendant”), and resolves in full this Action. Capitalized terms

used herein are defined in Section II of this Agreement or indicated in parentheses elsewhere in this Agreement. Subject to Court approval as required by the applicable Federal Rules of Civil Procedure, and as provided herein, Plaintiffs and Defendant (collectively, “the Parties”) hereby stipulate and agree that, in consideration for the promises and covenants set forth in the Agreement and upon the entry by the Court of a Final Judgment and Order Approving Settlement and the occurrence of the Effective Date, this Action shall be settled and compromised upon the terms and conditions contained herein.

**I. RECITALS**

A. WHEREAS, on November 14, 2018 Plaintiffs filed a class action complaint against Defendant asserting violations of the California Legal Remedies Act, Cal. Civ. Code §§ 1750-1785 (“CLRA”); violations of the False Advertising Law (“FAL”), Cal. Bus. & Prof. Code § 17500, *et seq.*; violations of the Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200-17210; violations of the New York General Business Law New York (“GBL”) §§ 349, 350; violations of materially identical state consumer protection statutes; breach of express warranty; and unjust enrichment regarding Defendant’s manufacturing, marketing, and distributing for sale nationwide to consumers a number of Power Banks under the RAVPower label (the “Products”). On January 11, 2019, Defendant answered the complaint, denying the material allegations contained therein. Subsequently, on February 1, 2019, Plaintiffs filed an amended class action complaint (“FAC”), alleging the same claims, and on February 15, 2019, Defendant answered the FAC.

B. WHEREAS, the Parties have reached the resolution set forth in this Agreement, providing for, among other things, the settlement of the Action between and among Plaintiffs and Defendant on the terms and subject to the conditions set forth below; and

C. WHEREAS, Plaintiffs have determined that a settlement of this Action on the terms reflected in this Agreement is fair, reasonable, and adequate; and

1 D. WHEREAS, Defendant, to avoid the costs, disruption, and distraction  
2 of further litigation, and without admitting the truth of any allegations made in the  
3 Action, or any liability with respect thereto, has concluded that it is desirable that  
4 the claims against it be settled and dismissed on the terms reflected in this  
5 Agreement.

6 E. WHEREAS, Class members other than the named plaintiffs will not be  
7 bound by the agreement in any way, and the Agreement expressly preserves the  
8 rights of the class to bring claims for monetary relief.

9 NOW, THEREFORE, this Agreement is entered into by and among the  
10 Parties, by and through their respective counsel and representatives, and in  
11 consideration of the mutual promises, covenants, and agreements contained herein  
12 and for value received, the Parties agree that: (1) upon the Effective Date, the Action  
13 and all Released Claims shall be settled and compromised as between Plaintiffs and  
14 Defendant; and (2) upon final approval of the Agreement by the Court, a Final  
15 Judgment and Order Approving Settlement shall be entered dismissing the Action  
16 with prejudice and releasing all Released Claims against the Released Parties.

## 17 **II. DEFINITIONS**

18 A. As used in this Agreement and the attached exhibits (which are an  
19 integral part of the Agreement and are incorporated in their entirety by reference),  
20 the following terms shall have the meanings set forth below, unless this Agreement  
21 specifically provides otherwise:

22 1. “Action” means *Burgos, et al., v. Sunvalleytek*, No. cv 18-06910  
23 HSG (N.D.CA).

24 2. “Agreement” means this Settlement Agreement (including all  
25 exhibits attached hereto).

26 3. “Attorneys’ Fees and Expenses” means such attorneys’ fees and  
27 expenses as may be awarded by the Court to compensate Class Counsel (subject to  
28 Court approval), as described more particularly in Section VII of this Agreement.

1           4.     “Class Counsel” means D. Gregory Blankinship of Finkelstein,  
2 Blankinship, Frei-Pearson & Garber, LLP and Mario M. Choi and Laurence D. King  
3 of Kaplan Fox & Kilsheimer LLP.

4           5.     “Class Representatives” means Plaintiffs.

5           6.     “Court” means the U.S. District Court for the Northern District  
6 of California, in which the Action was filed and where the parties will seek approval  
7 of the Settlement.

8           7.     “Covered Products” means any size of any of the Power Banks  
9 designed for the primary purpose of use for portable charging of mobile phones, such  
10 devices consisting of a battery cell or cells, enclosed in a casing.

11          8.     “Days” means calendar days, except that, when computing any  
12 period of time prescribed or allowed by this Agreement, the day of the act, event, or  
13 default from which the designated period of time begins to run shall not be included.  
14 Further, when computing any period of time prescribed or allowed by this  
15 Agreement, the last day of the period so computed shall be included, unless it is a  
16 Saturday, a Sunday, or a legal holiday, in which event the period runs until the end  
17 of the next day which is not a Saturday, Sunday, or legal holiday. All calculations of  
18 days and times may be adjusted with the consent of all parties to permit compliance  
19 by Defendant with the Class Action Fairness Act, 28 U.S.C. §§ 1711-1715, including  
20 the notifications of appropriate regulators under 28 U.S.C. § 1715(b) and expiration  
21 of the 90-day review period in 28 U.S.C. § 1715 before the Final Approval Hearing  
22 is held to review and approve the Agreement.

23          9.     “Effective Date” means:

24                   (a) if no appeal is taken from the Final Judgment and  
25 Order Approving Settlement, thirty (30) Days after the Court enters the  
26 Final Judgment and Order Approving Settlement; or

27                   (b) if an appeal is taken from the Final Judgment and  
28 Order Approving Settlement, the date on which all appellate rights

(including petitions for rehearing or re-argument, petitions for rehearing en banc, petitions for certiorari or any other form of review, and proceedings in the United States Supreme Court or any other appellate court) have expired, been exhausted, or been finally disposed of in a manner that affirms the Final Judgment and Order Approving Settlement. No appeal may be taken unless the Court issues an order or enters a judgment that materially differs from the Agreement.

10. “Final Approval Hearing” means the hearing to be conducted by the Court on such date as the Court may order to determine the fairness, adequacy, and reasonableness of the Agreement and to determine the Attorneys’ Fees and Expenses and any Service Awards. The Parties shall request the Court set the Final Approval Hearing no earlier than ninety (90) Days after the Notice Date.

11. “Final Judgment and Order Approving Settlement” means the Final Judgment and Order Approving Settlement to be entered by the Court to be submitted by the Parties, substantially in the form of Exhibit 1:

- a. approving the Settlement as fair, adequate, and reasonable;
- b. confirming the certification of the Settlement Class;
- c. dismissing the Action with prejudice;
- d. discharging the Released Parties of and from all further liability for the Released Claims;
- e. permanently barring and enjoining the Releasing Parties from instituting, filing, commencing, prosecuting, maintaining, continuing to prosecute, directly or indirectly, as an individual or collectively, representatively, derivatively, or on behalf of them, or in any other capacity of any kind whatsoever, any action in any state court, any federal court, before any regulatory authority, or in any other tribunal, forum, or proceeding of

any kind against the Released Parties that asserts any Released Claims;

- f. expressly preserving the rights of the class, other than the Releasing Parties, to bring claims for monetary relief; and
- g. issuing such other findings and determinations as the Court and/or the Parties deem necessary and appropriate to implement the Agreement.

12. “Motion for Approval of Settlement” means the motion, to be filed by Plaintiffs, and not opposed by Defendant, for Approval of this Agreement and all supporting papers/exhibits attached thereto.

13. “Released Claim(s)” and “Released Parties” mean those claims and parties released of liability under Section VI.

14. “Service Award(s)” means the payment, subject to Court approval, of Five Thousand Dollars (\$5,000) each, to Plaintiffs Ines Burgos and Mongkol Mahavongtrakul.

15. “Sunvalleytek’s Counsel” or “Defendant’s Counsel” means Kimberly Donovan and Robert Andris of GCA Law Partners.

B. Other capitalized terms in this Agreement, but not specifically defined in Section II(A), shall have the meanings ascribed to them elsewhere in this Agreement.

### **III. CERTIFICATION OF THE SETTLEMENT CLASS FOR SETTLEMENT PURPOSES AND DISMISSAL OF ACTIONS.**

A. The Parties stipulate and agree to (a) certification of the Action as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure solely for purposes of the Settlement and for no other purposes; (b) appointment of Plaintiffs as Class Representatives solely for purposes of the Settlement and for no other purposes; and (c) appointment of Class Counsel solely for purposes of the Settlement and for no other purposes pursuant to Rule 23(g) of the Federal Rules of Civil

1 Procedure.

2 Any certification of this Action pursuant to the terms of this Settlement shall  
3 not constitute, and shall not be construed as, an admission on the part of Defendant  
4 that the Action is appropriate for class treatment, in whole or in part, pursuant to the  
5 Federal Rules of Civil Procedure. This Settlement is without prejudice to the rights  
6 of Defendant to oppose certification of the Settlement Class should this Settlement  
7 not be approved or if it is terminated pursuant to the terms of this Agreement, and  
8 without prejudice to the rights of Defendant as it relates to the certified classes or  
9 any other class certification proceedings, whether pending now or in the future.

10 B. Upon approval of the Settlement by the Court, the Final Judgment and  
11 Order Approving Settlement substantially in the form agreed by the Parties,  
12 providing for the dismissal of the Action with prejudice, will be entered by the Court.

13 **IV. SETTLEMENT RELIEF (INJUNCTIVE)**

14 A. As part of the consideration for this Agreement, Sunvalleytek agrees to

- 15 1. Change the product label to say the words “battery capacity” in  
16 conjunction with the mAh number (where the mAh number is the  
17 sum of the nominal rated capacity of the internal battery cells of  
18 the Power Bank)
- 19 2. Change the user guide specifications to say the words “battery  
20 capacity” in conjunction with the mAh number (where the mAh  
21 number is the sum of the nominal rated capacity of the internal  
22 battery cells of the Power Bank)
- 23 3. Change the product description in the Amazon listings to convey  
24 that the specified mAh is the sum or total of the nominal rated  
25 capacity of the internal battery cells; and
- 26 4. Change the Amazon listing the bullet points to say “xxxx mAh  
27 internal battery capacity” or “internal battery capacity xxxx mAh”  
28 (where xxxx represents the number that is the sum of the nominal



1 rated capacity of the internal battery cells in the power banks.)

2 B. Nothing in this Agreement shall preclude Sunvalleytek from making  
3 further changes to any of its product labels or marketing: (1) that Sunvalleytek  
4 reasonably believes are necessary to comply with the National Advertising  
5 Division's rules, guidelines, or decisions, or any other statute, regulation, or other  
6 law of any kind; (2) that are permitted by product changes or additional testing or  
7 development work and/or to ensure Sunvalleytek provides accurate product  
8 descriptions; or (3) that are more detailed than those required by this Agreement.

9 **V. RELEASES**

10 A. The Agreement shall be the sole and exclusive remedy for any and all  
11 Released Claims of all Releasing Parties against all Released Parties. No Released  
12 Party shall be subject to liability of any kind to any Releasing Party with respect to  
13 any Released Claim. Upon the Effective Date, and subject to fulfillment of all the  
14 terms of this Agreement, the Releasing Parties shall be permanently barred and  
15 enjoined from initiating, asserting, and/or prosecuting any Released Claim against  
16 any Released Party in any court or any forum.

17 B. The following terms have the meanings set forth herein:

18 1. "Released Claims" means any and all actions, claims, demands,  
19 rights, suits, and causes of action of whatever kind or nature that could reasonably  
20 have been, or in the future might reasonably be asserted by, Plaintiffs or Defendant,  
21 either in the Action or in any action or proceeding in this Court or in any other court  
22 or forum, against the Released Parties, including damages, costs, expenses,  
23 penalties, and attorneys' fees, known or unknown, suspected or unsuspected, in law  
24 or equity arising out of or relating to legal claims made by Plaintiffs out of or relating  
25 to the allegations in the Action or Defendant's labeling, marketing, advertising,  
26 packaging, promotion, manufacture, sale, and distribution of all Covered Products  
27 as alleged in the Action. For avoidance of doubt, this includes, all such claims that  
28 relate in any way to this Action or the capacity of internal cells of the batteries as

1 measured in mAh, statements that were or are contained on the Covered Products or  
2 otherwise relate to the labeling, marketing, advertising, packaging, promotion,  
3 manufacture, sale, and distribution of the Covered Products with respect to capacity  
4 in conjunction with mAh, including future identical statements about Covered  
5 Products, which have been asserted or which could reasonably have been asserted  
6 by the Releasing Parties in the Action, including but not limited to claims alleging  
7 any type of bad faith, frivolous or vexatious litigation, fraud, misrepresentation,  
8 breach of warranty, unjust enrichment, or unfair trade practice under any state or  
9 federal law (including all claims for injunctive or equitable relief), but not including  
10 claims for personal injury or attorney's fees or costs (other than the attorney's fees  
11 and costs the Court may award pursuant to this Settlement).

12           2.     "Released Parties" means Plaintiffs and Sunvalleytek, including  
13 all of their respective predecessors, successors, assigns, parents, subsidiaries,  
14 divisions, departments, and affiliates, and any and all of their past, present, and  
15 future officers, directors, employees, stockholders, partners, agents, servants,  
16 successors, attorneys, insurers, representatives, licensees, licensors, subrogees, and  
17 assigns. It is expressly understood that, to the extent a Released Party is not a Party  
18 to the Agreement, all such Released Parties are intended third-party beneficiaries of  
19 the Agreement.

20           3.     "Releasing Parties" means Plaintiffs Ines Burgos and Mongkol  
21 Mahavongtrakul and Sunvalleytek

22           C.     On the Effective Date, each Releasing Party shall be deemed to have  
23 released and forever discharged each of the Released Parties of and from any and all  
24 liability for any and all Released Claims.

25           D.     With respect to any and all Released Claims, and upon the Effective  
26 Date without further action, for good and valuable consideration, Plaintiffs and  
27 Sunvalleytek shall fully, finally, and forever expressly waive and relinquish with  
28 respect to the Released Claims, any and all provisions, rights, and benefits of Section

1 1542 of the California Civil Code and any and all similar provisions, rights, and  
2 benefits conferred by any law of any state or territory of the United States or  
3 principle of common law that is similar, comparable, or equivalent to Section 1542  
4 of the California Civil Code, which provides:

5           **“A general release does not extend to claims that the**  
6           **creditor or releasing party does not know or suspect to**  
7           **exist in his or her favor at the time of executing the**  
8           **release and that, if known by him or her, would have**  
9           **materially affected his or her settlement with the**  
10           **debtor or released party.”**

11  
12           E.     On the Effective Date, each of the Released Parties shall be deemed to  
13 have released and forever discharged each of the Releasing Parties and their  
14 respective counsel, for all Released Claims, except to enforce terms and conditions  
15 contained in this Agreement.

16           F.     Absent class members or members of the putative class or the  
17 settlement class shall not release any claims, and are not bound in any way, under  
18 this Settlement.

19           G.     The Parties agree that the Court shall retain exclusive and continuing  
20 jurisdiction over the Parties and the Settlement Class Members to interpret and  
21 enforce the terms, conditions, and obligations under the Agreement.

22  
23 **VI.   ATTORNEYS’ FEES AND EXPENSES**  
24 **AND PLAINTIFFS’ SERVICE AWARDS.**

25           A.     Any award by the Court of Attorneys’ Fees and Expenses and  
26 Plaintiffs’ Service Awards will be paid by Defendant.

27           B.     Class Counsel shall make an application for an award of Attorneys’  
28 Fees for work on this case (not to include any work on any related cases) not  
exceeding \$315,000. Defendant may oppose that application except that it shall not

1 propose to pay an amount less than \$45,000.

2 C. Class Counsel shall make an application for an award of Expenses that  
3 does not exceed \$20,000. Expenses shall be costs actually incurred and paid in  
4 relation to this case. Defendant may not oppose that application.

5 D. The Attorneys' Fees and Expenses awarded by the Court shall be paid  
6 to Class Counsel within thirty (30) Days after the Effective Date.

7 E. Class Counsel shall make an application for Plaintiffs' Service Awards  
8 in the amount of Five Thousand Dollars (\$5,000.00) to each of the Plaintiffs, which  
9 Defendant will not oppose. Defendant will pay the Settlement Award within thirty  
10 (30) Days of the Effective Date.

11 **VII. FINAL JUDGMENT AND ORDER APPROVING SETTLEMENT.**

12 This Agreement is subject to and conditioned upon the issuance by the Court  
13 of the Final Judgment and Order Approving Settlement that finally certifies the  
14 Settlement Class for the purposes of this Settlement, grants final approval of the  
15 Agreement, and provides the relief specified herein, which relief shall be subject to  
16 the terms and conditions of the Agreement and the Parties' performance of their  
17 continuing rights and obligations hereunder. So long as the Court approves the  
18 material terms of this Agreement, all Parties are bound by the Agreement.

19 **VIII. REPRESENTATIONS AND WARRANTIES.**

20  
21 A. Sunvalleytek represents and warrants: (1) that it has the requisite  
22 corporate power and authority to execute, deliver, and perform the Agreement and  
23 to consummate the transactions contemplated hereby; (2) that the execution,  
24 delivery, and performance of the Agreement and the consummation by it of the  
25 actions contemplated herein have been duly authorized by necessary corporate  
26 action on the part of Sunvalleytek; and (3) that the Agreement has been duly and  
27 validly executed and delivered by Sunvalleytek and constitutes its legal, valid, and  
28 binding obligation.

1 B. Plaintiffs represent and warrant that they are entering into the  
2 Agreement on behalf of themselves individually, of their own free will, and without  
3 the receipt of any consideration other than what is provided in the Agreement or  
4 disclosed to, and authorized by, the Court. Plaintiffs represent and warrant that they  
5 have reviewed the terms of the Agreement in consultation with Class Counsel and  
6 believe them to be fair and reasonable. Class Counsel represent and warrant that  
7 they are fully authorized to execute the Agreement on behalf of Plaintiffs.

8 C. The Parties warrant and represent that no promise, inducement, or  
9 consideration for the Agreement has been made, except those set forth herein. No  
10 consideration, amount, or sum paid, accredited, offered, or expended by  
11 Sunvalleytek in its performance of this Agreement constitutes a fine, penalty,  
12 punitive damage, or other form of assessment for any claim against it.

13 **IX. NO ADMISSIONS, NO USE.**

14 The Agreement and every stipulation and term contained in it is conditioned  
15 upon final approval of the Court and is made for settlement purposes only, pursuant  
16 to Federal Rule of Evidence 408. Whether or not consummated, this Agreement  
17 shall not be: (a) construed as, offered in evidence as, received in evidence as, and/or  
18 deemed to be, evidence of a presumption, concession, or an admission by Plaintiffs,  
19 Sunvalleytek, any Settlement Class Member or Releasing or Released Party, of the  
20 truth of any fact alleged or the validity of any claim or defense that has been, could  
21 have been, or in the future might be asserted in any litigation or the deficiency of  
22 any claim or defense that has been, could have been, or in the future might be  
23 asserted in any litigation, or of any liability, fault, wrongdoing, or otherwise of such  
24 Party; or (b) construed as, offered in evidence as, received in evidence as, and/or  
25 deemed to be, evidence of a presumption, concession, or an admission of any  
26 liability, fault, or wrongdoing, or in any way referred to for any other reason, by  
27 Plaintiffs, Defendant, any Releasing Party or Released Party in the Action or in any  
28 other civil, criminal, or administrative action or proceeding other than such

proceedings as may be necessary to effectuate the provisions of the Agreement.

**X. TERMINATION OF THIS AGREEMENT.**

A. Either Party may terminate this Agreement by providing written notice to the other Party within ten (10) Days of the occurrence of any of the following:

1. The Court does not enter an Order conforming in all material respects to Exhibit 1 hereto, and/or the Parties are required to make a change to the Settlement Agreement that either Party deems material.

2. The Court does not certify the Action under Rule 23(b)(2) for settlement purposes as defined herein or the Court's Order is reversed, vacated, or modified in any material respect by another court; or

3. The Court does not enter the Final Judgment and Order Approving Settlement in all material respects as defined herein and in the form agreed by the Parties, or, if entered, such Final Judgment and Order Approving Settlement is reversed, vacated, or modified in any material respect by another court before the Effective Date.

B. It is expressly agreed that neither the failure of the Court to enter the Attorneys' Fees and Expenses Award, the Service Awards, nor the amount of any attorneys' fees and costs or incentive awards that may be finally determined and awarded, shall provide a basis for termination of this Agreement.

C. In the event this Agreement terminates for any reason, all Parties shall be restored to their respective positions as of immediately prior to the date of execution of this Agreement.

**XI. MISCELLANEOUS PROVISIONS.**

A. Entire Agreement: The Agreement, including all Exhibits hereto, shall constitute the entire Agreement among the Parties with regard to the Agreement and shall supersede any previous agreements, representations, communications, and

1 understandings among the Parties with respect to the subject matter of the  
2 Agreement. The Agreement may not be changed, modified, or amended except in a  
3 writing signed by one of Class Counsel and one of Defendant's Counsel and, if  
4 required, approved by the Court. The Parties contemplate that the Exhibits to the  
5 Agreement may be modified by subsequent agreement of Defendant and Class  
6 Counsel, or by the Court. The Parties may make non-material changes to the  
7 Exhibits to the extent deemed necessary, as agreed to in writing by all Parties.

8       B.     Governing Law: The Agreement shall be construed under and governed  
9 by the laws of the State of California, in which the Court is located, applied without  
10 regard to laws applicable to choice of law.

11  
12       C.     Execution in Counterparts: The Agreement may be executed by the  
13 Parties in one or more counterparts, each of which shall be deemed an original but  
14 all of which together shall constitute one and the same instrument. Facsimile  
15 signatures or signatures scanned to PDF and sent by e-mail shall be treated as  
16 original signatures and shall be binding.

17  
18  
19       D.     Notices: Whenever this Agreement requires or contemplates that one  
20 Party shall or may give notice to the other, notice shall be provided in writing by  
21 first class U.S. Mail and email to:  
22  
23  
24  
25  
26  
27  
28

1. If to Plaintiffs or Class Counsel:

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LLP**

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*Attorneys for Plaintiffs and the Class*

2. If to Defendant or its Counsel

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randris@gcalaw.com  
Telephone: (650) 428-3900  
Facsimile: (650) 428-3901

*Attorneys for Defendant*

E. Stay of Proceedings: Upon the execution of this Agreement, all discovery and other proceedings in this Action shall be stayed until further order of the Court, except for proceedings that may be necessary to implement the Agreement or comply with or effectuate the terms of this Settlement Agreement.

F. Good Faith: The Parties agree that they will act in good faith and will not engage in any conduct that will or may frustrate the purpose of this Agreement. The Parties further agree, subject to Court approval as needed, to reasonable extensions of time to carry out any of the provisions of the Agreement.

G. Binding on Successors: The Agreement shall be binding upon, and inure to the benefit of, the heirs of the Released Parties.

H. Arm's-Length Negotiations: The determination of the terms and conditions contained herein and the drafting of the provisions of this Agreement has been by mutual understanding after negotiation, with consideration by, and



1 participation of, the Parties hereto and their counsel. This Agreement shall not be  
2 construed against any Party on the basis that the Party was the drafter or participated  
3 in the drafting. Any statute or rule of construction that ambiguities are to be resolved  
4 against the drafting party shall not be employed in the implementation of this  
5 Agreement and the Parties agree that the drafting of this Agreement has been a  
6 mutual undertaking.

7 I. Waiver: The waiver by one Party of any provision or breach of the  
8 Agreement shall not be deemed a waiver of any other provision or breach of the  
9 Agreement.

10 J. Variance: In the event of any variance between the terms of this  
11 Agreement and any of the Exhibits hereto, the terms of this Agreement shall control  
12 and supersede the Exhibit(s).

13 K. Exhibits: All Exhibits to this Agreement are material and integral parts  
14 hereof, and are incorporated by reference as if fully rewritten herein.

15 L. Implementation Before Effective Date: The Parties may agree in  
16 writing to implement the Agreement, or any portion thereof, after the entry of the  
17 Final Judgment and Order Approving Settlement, but prior to the Effective Date.

18 M. Modification in Writing: This Agreement may be amended or modified  
19 only by written instrument signed by one of Class Counsel and Defendant's Counsel.  
20 Amendments and modifications may be made without additional notice to the  
21 Settlement Class Members unless such notice is required by the Court.

22 N. Integration: This Agreement represents the entire understanding and  
23 agreement among the Parties and supersedes all prior proposals, negotiations,  
24 agreements, and understandings related to the subject matter of this Agreement. The  
25 Parties acknowledge, stipulate, and agree that no covenant, obligation, condition,  
26 representation, warranty, inducement, negotiation, or undertaking concerning any  
27 part or all the subject matter of this Agreement has been made or relied upon except  
28 as set forth expressly herein.

1 O. Retain Jurisdiction: The Court shall retain jurisdiction with respect to  
2 the implementation and enforcement of the terms of this Agreement, and all Parties  
3 hereto submit to the jurisdiction of the Court for purposes of implementing and  
4 enforcing the agreement embodied in this Agreement.

5 IN WITNESS WHEREOF, each of the Parties hereto has caused the  
6 Agreement to be executed on its behalf by its duly authorized counsel of record, all  
7 as of the day set forth below.

8  
9 Dated: \_\_\_\_\_

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

10 Kimberly A. Donovan  
11 GCA Law Partners

12 *Attorney for Sunvalleytek*  
13 *International, Inc.*

14  
15 Dated: \_\_\_\_\_

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

16  
17  
18  
19  
20  
21 Dated: \_\_\_\_\_

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

22 D. Greg Blankinship  
23 Finkestein, Blankinship, Frei-Pearson  
24 & Garber, LLP

25 *Attorney for Plaintiffs and for the*  
26 *Settlement Class Members*  
27  
28

1  
2 Dated: \_\_\_\_\_

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

3 Laurence D. King

4 Kaplan Fox & Kilsheimer LLP

5 *Attorney for Plaintiffs and for the*  
6 *Settlement Class Members*

7  
8 Dated: \_\_\_\_\_

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

9 Mario M. Choi

10 Kaplan Fox & Kilsheimer LLP

11 *Attorney for Plaintiffs and for the*  
12 *Settlement Class Members*

13  
14 Dated: \_\_\_\_\_

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

15 Plaintiff Ines Burgos

16  
17 Dated: \_\_\_\_\_

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

18 Plaintiff Mongkol Mahavongtrakul

19  
20 Dated: \_\_\_\_\_

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

21 Alan Fung, Corporate Secretary

22 *Signatory for Sunvalleytek*

23 *International, Inc.*  
24  
25  
26  
27  
28

*Attorney for Plaintiffs and for the  
Settlement Class Members*

Dated: 4/15/2020

By: Ines Burgos  
Plaintiff Ines Burgos

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Plaintiff Mongkol Mahavongtrakul

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Alan Fung, Corporate Secretary  
*Signatory for Sunvalleytek  
International, Inc.*

*Attorney for Plaintiffs and for the  
Settlement Class Members*

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Plaintiff Ines Burgos

Dated: 4/17/2020

By: Mongkol Mahavongtrakul  
Plaintiff Mongkol Mahavongtrakul

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Alan Fung, Corporate Secretary  
*Signatory for Sunvalleytek  
International, Inc.*

Dated: \_\_\_\_\_

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


Kimberly A. Donovan  
GCA Law Partners

*Attorney for Sunvalleytek  
International, Inc.*

Dated: \_\_\_\_\_


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

Dated: May 6, 2020

By:   
D. Greg Blankinship  
Finkestein, Blankinship, Frei-Pearson  
& Garber, LLP

*Attorney for Plaintiffs and for the  
Settlement Class Members*

Dated: 5/6/2020

By:   
Laurence D. King  
Kaplan Fox & Kilsheimer LLP  
*Attorney for Plaintiffs and for the  
Settlement Class Members*

Dated: \_\_\_\_\_

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

Mario M. Choi  
Kaplan Fox & Kilsheimer LLP

Dated: \_\_\_\_\_

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

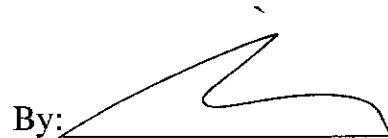
Kimberly A. Donovan  
GCA Law Partners

*Attorney for Sunvalleytek  
International, Inc.*

Dated: \_\_\_\_\_

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

Dated: May 6, 2020

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

D. Greg Blankinship  
Finkestein, Blankinship, Frei-Pearson  
& Garber, LLP

*Attorney for Plaintiffs and for the  
Settlement Class Members*

Dated: \_\_\_\_\_

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

Laurence D. King  
Kaplan Fox & Kilsheimer LLP  
*Attorney for Plaintiffs and for the  
Settlement Class Members*

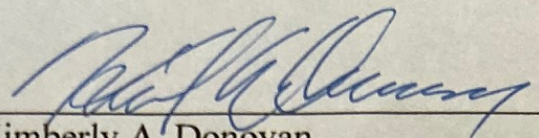
Dated: May 6, 2020

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

Mario M. Choi  
Kaplan Fox & Kilsheimer LLP



Dated: \_\_\_\_\_

By:   
Kimberly A. Donovan  
GCA Law Partners

*Attorney for Sunvalleytek  
International, Inc.*

Dated: \_\_\_\_\_

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

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
D. Greg Blankinship  
Finkestein, Blankinship, Frei-Pearson  
& Garber, LLP

*Attorney for Plaintiffs and for the  
Settlement Class Members*

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Laurence D. King  
Kaplan Fox & Kilsheimer LLP  
*Attorney for Plaintiffs and for the  
Settlement Class Members*

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Mario M. Choi  
Kaplan Fox & Kilsheimer LLP



*Attorney for Plaintiffs and for the  
Settlement Class Members*

Dated: \_\_\_\_\_


By: \_\_\_\_\_  
Plaintiff Ines Burgos

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Plaintiff Mongkol Mahavongtrakul

5/6/2020

Dated: \_\_\_\_\_

By:  \_\_\_\_\_  
Allen ~~Alan Fung~~, Corporate Secretary  
Signatory for Sunvalleytek  
International, Inc.

# **Exhibit 1**

KAPLAN FOX & KILSHEIMER LLP  
Laurence D. King (SBN 206423)  
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FINKELSTEIN, BLANKINSHIP,  
FREI-PEARSON & GARBER, LLP  
D. Greg Blankinship (*pro hac vice*)  
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gblankinship@fbfglaw.com  
Telephone: (914) 298-3290  
Facsimile: (914) 522-5561

*Attorneys for Defendant*

*Attorneys for Plaintiffs*

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

INES BURGOS and MONGKOL  
MAHAVONGTRAKUL, individually and on  
behalf of other similarly situated individuals,  
  
Plaintiff,

vs.

SUNVALLEYTEK INTERNATIONAL,  
INC.,  
  
Defendant.

Case Number: 4:18-cv-06910-HSG

Honorable Haywood S. Gilliam

**[PROPOSED] ORDER AND JUDGMENT**

WHEREAS, this matter came before the Court for hearing on \_\_\_\_\_, 2020 (the “Settlement Hearing”), on motion of Plaintiffs in the above-captioned action (the “Action”) to, among other things, determine (i) whether the terms and conditions set forth in the Settlement Agreement dated as of May 6, 2020 (the “Settlement Agreement”) are fair, reasonable, and

adequate and should be approved by the Court and (ii) whether a Judgment providing, among other things, for the entry of an injunction and the dismissal with prejudice of the Action against Defendant as provided for in the Settlement Agreement, should be entered; and

WHEREAS, on May 6, 2020, the Class Representatives moved for approval of the Settlement and the grant of Service Awards; and

WHEREAS, on June 11, 2020, Class Counsel moved for an award of Class Counsel's Fees and Expenses in the amount of \$313,000 and \$20,000 (respectively); and

WHEREAS, the Settlement Hearing was duly held before this Court on \_\_\_\_\_, 2020; and

WHEREAS, this Court has considered all matters submitted to it at the Settlement Hearing and all papers filed and proceedings had herein and otherwise being fully informed in the premises and good cause appearing therefore.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Settlement Agreement is incorporated by reference in this Judgment as though fully set forth herein. All capitalized terms used herein shall have the meanings set forth in the Settlement Agreement.

2. The Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Class Members.

3. Pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure, and for the purposes of the Settlement only, the Action is hereby finally certified as a class action on behalf of all persons who may purchase any of the Covered Products within the United States

4. .

5. The Court finds, for the purposes of the Settlement only, that the prerequisites for a class action under Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the number of Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law or fact common to the Class; (c) the claims of the Class Representatives are typical of the claims of the Class they seek to represent; (d) the Class Representatives and Class Counsel have and will fairly and adequately represent the interests

1 of the Class; and (e) Defendant has acted or refused to act on grounds that apply generally to the  
2 Class, so that final injunctive relief is appropriate with respect to the class as a whole.

3 6. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes  
4 of the Settlement only, plaintiffs Ines Burgos and Mongkol Mahavongtrakul are certified as the  
5 Class Representatives and D. Greg Blankinship of the law firm of Finkelstein, Blankinship, Frei-  
6 Pearson & Garber, LLP and Mario M. Choi and Laurence D. King of the law firm Kaplan Fox &  
7 Kilsheimer LLP are certified as Class Counsel.

8 7. The Court finds also that the appropriate state and federal officials were timely  
9 notified of the Settlement Agreement under the Class Action Fairness Act of 2005 (CAFA), 28  
10 U.S.C. § 1715, and that ninety (90) days have passed without comment or objection from any  
11 government entity.

12 8. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby  
13 approves the settlement as set forth in the Settlement Agreement and finds that settlement,  
14 including but not limited to the terms of the Settlement Agreement governing, are, in all respects,  
15 fair, reasonable, and adequate, and in the best interests of the Class Members, including the Class  
16 Representatives. This Court further finds that the settlement set forth in the Settlement Agreement  
17 is the result of arm's-length negotiations between experienced counsel representing the interests  
18 of the Settling Parties, and that Class Counsel has concluded that the proposed settlement is fair,  
19 reasonable, and adequate. Accordingly, the settlement embodied in the Settlement Agreement is  
20 hereby approved in all respects and shall be consummated in accordance with the terms and  
21 provisions of the Settlement Agreement.

22 9. The Action and all claims asserted therein are dismissed with prejudice and without  
23 costs, as such costs are identified in 28 U.S.C. § 1920.

24 10. Class Counsel are hereby awarded attorneys' fees ("Class Counsel Fees") of  
25 \$\_\_\_\_\_, which sum the Court finds to be fair and reasonable. In making this award, the Court  
26 has considered and found that:  
27  
28

1 (a) The Action involves complex factual and legal issues, was actively prosecuted, and,  
2 in the absence of the Settlement, would involve further lengthy proceedings with uncertain  
3 resolution of the complex factual and legal issues;

4 (b) D. Greg Blankinship and his firm of Finkelstein, Blankinship, Frei-Pearson &  
5 Garber, LLP and Mario M. Choi and Laurence D. King and his firm of Kaplan Fox & Kilsheimer  
6 LLP skillfully and zealously pursued the Action on behalf of the Class Representatives and the  
7 Class;

8 (c) The hourly rates charged by Class Counsel are reasonable;

9 (d) Had Class Counsel not achieved the Settlement, there would remain a significant  
10 risk that the Class Representatives and the Class would recover nothing from the Defendant;

11 (e) The amount of the Class Counsel Fees awarded herein is consistent with awards in  
12 similar cases;

13 (f) Class Counsel shall be responsible for allocating and distributing the Attorneys'  
14 Fees and Expenses to Plaintiffs' Counsel; and

15 (g) Class Counsel are hereby awarded expenses ("Class Counsel Expenses") of  
16 \$20,000, which sum the Court finds to be fair and reasonable. Class Counsel shall be responsible  
17 for allocating and distributing the Attorneys' Fees and Expenses to Plaintiffs' Counsel.

18 11. The Court finds that an award to the Class Representatives for their time and effort  
19 in representing the Class in the prosecution of the Action is fair and reasonable, and thus awards  
20 each of the Class Representatives a Service Award in the amount of \$5,000.00.

21 12. This Order and Judgment, the Settlement Agreement, any of its terms and  
22 provisions, any of the negotiations or proceedings connected with it, and any of the documents or  
23 statements referred to therein:

24 (a) shall not be offered or received against Defendant or any other Released Party as  
25 evidence of, or construed as, or deemed to be evidence of any presumption, concession, or  
26 admission by Defendant or Released Parties with respect to the truth of any fact alleged by the  
27 Class Representatives or the validity of any claim that was or could have been asserted against any  
28

1 Defendant or Released Parties in the Action or in any litigation, or of any liability, fault,  
2 misconduct, or wrongdoing of any kind of any of the Defendant or Released Parties;

3 (b) Shall not be offered or received against Defendant or Released Parties as evidence  
4 of a presumption, concession, or admission of any liability, fault, misconduct, or wrongdoing by  
5 any Defendant or the Released Parties or against the Class Representatives or any Settlement Class  
6 Members as evidence of any infirmity in the claims of the Class Representatives or the other  
7 Settlement Class Members;

8 (c) Shall not be offered or received against Defendant or Released Parties, or against  
9 the Class Representatives or any other Settlement Class Members, as evidence of a presumption,  
10 concession, or admission with respect to any liability, fault, misconduct, or wrongdoing of any  
11 kind, or in any way referred to for any other reason as against any Defendant or Released Parties,  
12 in any other civil, criminal, regulatory or administrative action or proceeding, other than such  
13 proceedings as may be necessary to effectuate the provisions of the Settlement Agreement and this  
14 Order and Judgment; provided, however, that Defendant or any of the other Released Parties may  
15 refer to this Order and Judgment and the Settlement Agreement to effectuate the protection from  
16 liability granted them thereunder;

17 (d) Shall not be construed against any Defendant or Released Parties, or against the  
18 Class Representatives or any other Settlement Class Members as an admission, concession, or  
19 presumption that the consideration to be given hereunder represents the amount which could be or  
20 would have been recovered after trial; and

21 (e) Shall not be construed against the Class Representatives or any other Settlement  
22 Class Members as an admission, concession, or presumption that any of their claims are without  
23 merit or that damages would not be recoverable under the Complaint or Amended Complaint in  
24 this Action.

25 13. The Court reserves jurisdiction, without affecting in any way the finality of this  
26 Order and Judgment, over (a) the implementation and enforcement of this Settlement; (b)  
27 enforcing and administering this Order and Judgment; and (c) other matters related or ancillary to  
28 the foregoing.

1           14. In the event that this Order and Judgment does not become Final or the Settlement  
2 is terminated pursuant to the terms of the Settlement Agreement, then this Order and Judgment  
3 shall be rendered null and void to the extent provided by and in accordance with the Settlement  
4 Agreement, and shall be vacated to the extent provided by the Settlement Agreement and, in such  
5 event: (a) all Orders entered and releases delivered in connection herewith shall be null and void  
6 to the extent provided by and in accordance with the Settlement Agreement; and (b) the fact of the  
7 Settlement shall not be admissible in any trial of the Action and the Settling Parties shall be deemed  
8 to have reverted to their respective status in the Action immediately prior to November 14, 2018.

9           15. Without further order of the Court, the parties may agree to reasonable extensions  
10 of time to carry out any of the provisions of the Settlement Agreement.

11           16. There is no just reason for delay in the entry of this Order and Judgment and  
12 immediate entry by the Clerk of the Court is expressly directed.

13           NOW, THEREFORE, THE COURT HEREBY ENTERS THE FOLLOWING  
14 INJUNCTION:

15           A. Sunvalleytek will:

16           1. Change the product label to say the words “battery capacity” in conjunction with  
17 the mAh number (where the mAh number is the sum of the nominal rated capacity of the internal  
18 battery cells of the Power Bank);

19           2. Change the user guide specifications to say the words “battery capacity” in  
20 conjunction with the mAh number (where the mAh number is the sum of the nominal rated  
21 capacity of the internal battery cells of the Power Bank);

22           3. Change the product description in the Amazon listings to convey that the  
23 specified mAh is the sum or total of the nominal rated capacity of the internal battery cells; and

24           4. Change the Amazon listing the bullet points to say “xxxx mAh internal battery  
25 capacity” or “internal battery capacity xxxx mAh” (where xxxx represents the number that is the  
26 sum of the nominal rated capacity of the internal battery cells in the power banks).

27           B. Nothing in this Order shall preclude Sunvalleytek from making further changes  
28 to any of its product labels or marketing: (1) that Sunvalleytek reasonably believes are necessary



1 to comply with the National Advertising Division's rules, guidelines, or decisions, or any other  
2 statute, regulation, or other law of any kind; (2) that are permitted by product changes or  
3 additional testing or development work and/or to ensure Sunvalleytek provides accurate product  
4 descriptions; or (3) that are more detailed than those required by this Order.

5 NOW, THEREFORE, WITH RESPECT TO RELEASES, THE COURT HEREBY  
6 ORDERS THE FOLLOWING:

7 1. The Settlement Agreement, as incorporated in this Order, shall be the sole and  
8 exclusive remedy for any and all Released Claims of all Releasing Parties against all Released  
9 Parties. No Released Party shall be subject to liability of any kind to any Releasing Party with  
10 respect to any Released Claim. Upon the Effective Date, and subject to fulfillment of all the  
11 terms of this Agreement, the Releasing Parties shall be permanently barred and enjoined from  
12 initiating, asserting, and/or prosecuting any Released Claim against any Released Party in any  
13 court or any forum.

14 2. "Released Claims" means any and all actions, claims, demands, rights, suits, and  
15 causes of action of whatever kind or nature that could reasonably have been, or in the future  
16 might reasonably be asserted by, Plaintiffs or Defendant, either in the Action or in any action or  
17 proceeding in this Court or in any other court or forum, against the Released Parties, including  
18 damages, costs, expenses, penalties, and attorneys' fees, known or unknown, suspected or  
19 unsuspected, in law or equity arising out of or relating to legal claims made by Plaintiffs out of  
20 or relating to the allegations in the Action or Defendant's labeling, marketing, advertising,  
21 packaging, promotion, manufacture, sale, and distribution of all Covered Products as alleged in  
22 the Action. For avoidance of doubt, this includes, all such claims that relate in any way to this  
23 Action or the capacity of internal cells of the batteries as measured in mAh, statements that were  
24 or are contained on the Covered Products or otherwise relate to the labeling, marketing,  
25 advertising, packaging, promotion, manufacture, sale, and distribution of the Covered Products  
26 with respect to capacity in conjunction with mAh, including future identical statements about  
27 Covered Products, which have been asserted or which could reasonably have been asserted by  
28

1 the Releasing Parties in the Action, including but not limited to claims alleging any type of bad  
2 faith, frivolous or vexatious litigation, fraud, misrepresentation, breach of warranty, unjust  
3 enrichment, or unfair trade practice under any state or federal law (including all claims for  
4 injunctive or equitable relief), but not including claims for personal injury or attorney's fees or  
5 costs (other than the attorney's fees and costs the Court may award pursuant to this Settlement).

6 3. "Released Parties" means Plaintiffs and Sunvalleytek, including all of their  
7 respective predecessors, successors, assigns, parents, subsidiaries, divisions, departments, and  
8 affiliates, and any and all of their past, present, and future officers, directors, employees,  
9 stockholders, partners, agents, servants, successors, attorneys, insurers, representatives,  
10 licensees, licensors, subrogees, and assigns. It is expressly understood that, to the extent a  
11 Released Party is not a Party to the Agreement, all such Released Parties are intended third-party  
12 beneficiaries of the Agreement.

13 4. "Releasing Parties" means Plaintiffs Ines Burgos and Mongkol Mahavongtrakul  
14 and Sunvalleytek.

15 5. On the Effective Date, each Releasing Party shall be deemed to have released and  
16 forever discharged each of the Released Parties of and from any and all liability for any and all  
17 Released Claims.

18 6. With respect to any and all Released Claims, and upon the Effective Date without  
19 further action, for good and valuable consideration, Plaintiffs and Sunvalleytek shall fully,  
20 finally, and forever expressly waive and relinquish with respect to the Released Claims, any and  
21 all provisions, rights, and benefits of Section 1542 of the California Civil Code and any and all  
22 similar provisions, rights, and benefits conferred by any law of any state or territory of the United  
23 States or principle of common law that is similar, comparable, or equivalent to Section 1542 of  
24 the California Civil Code, which provides:

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

7. On the Effective Date, each of the Released Parties shall be deemed to have released and forever discharged each of the Releasing Parties and their respective counsel, for all Released Claims, except to enforce terms and conditions contained in this Agreement.

8. Absent class members or members of the putative class or the settlement class shall not release any claims, and are not bound in any way, under this Settlement.

9. The Court shall retain exclusive and continuing jurisdiction over the Parties and the Settlement Class Members to interpret and enforce the terms, conditions, and obligations under the Agreement.

Dated: \_\_\_\_\_, 2020

HONORABLE HAYWOOD S. GILLIAM  
UNITED STATES DISTRICT JUDGE  
UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA