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 12 **UNITED STATES DISTRICT COURT**  
 13 **NORTHERN DISTRICT OF CALIFORNIA**  
 14 **SAN FRANCISCO DIVISION**

15 **IN RE CAPACITORS ANTITRUST**  
16 **LITIGATION**

**MDL No. 17-md-02801-JD**  
**Case No. 3:14-cv-03264-JD**

17 **This Document Relates to:**  
18 **All Indirect Purchaser Actions**

**INDIRECT PURCHASER PLAINTIFFS’**  
**NOTICE OF MOTION AND MOTION**  
**FOR AUTHORIZATION TO DISBURSE**  
**NET SETTLEMENT FUNDS;**  
**MEMORANDUM OF POINTS AND**  
**AUTHORITIES IN SUPPORT**  
**THEREOF**

**Date:** December 22, 2022  
**Time:** 10:00 a.m.  
**Place:** Courtroom 11, 19<sup>th</sup> Floor

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT**, on December 22, 2022, at 10:00 a.m., or as soon  
3 thereafter as the matter may be heard, in the Courtroom of the Honorable James Donato, United  
4 States District Judge for the Northern District of California, located at 450 Golden Gate Avenue,  
5 San Francisco, California, the Indirect Purchaser Plaintiffs (“IPPs”) will and hereby do move for  
6 entry of an order (1) authorizing approval of the Authorized Claims<sup>1</sup> received by the Court-  
7 appointed claims administrator, A.B. Data (“Claims Administrator”) on or before November 4,  
8 2022; (2) establishing a minimum payment of \$1.00 to all claimants with Authorized Claims; and  
9 (3) authorizing distribution of the net settlement funds<sup>2</sup> consistent with the fully approved  
10 settlements following the steps recommended by Class Counsel and the Claims Administrator.

11 As laid out in the accompanying memorandum, IPPs have settled with all litigating  
12 Defendants, and each of these settlements has received final approval. IPPs now propose  
13 disbursement of the net settlement funds from the settlements with all settling Defendants, *viz.*:  
14 (1) NEC TOKIN Corp. and NEC TOKIN America Inc.; (2) Nitsuko Electronics Corporation; (3)  
15 Okaya Electric Industries Co., Ltd.; (4) Hitachi Chemical Co., Ltd, Hitachi AIC Inc., and Hitachi  
16 Chemical Co. America, Ltd.; (5) Soshin Electric Co., Ltd. and Soshin Electronics of America,  
17 Inc.; (6) Holystone Enterprise Co., Ltd, Holy Stone Holdings Co., Ltd, Holy Stone Polytech Co.,  
18 Ltd, and Milestone Global Technology, Inc.; (7) Nippon Chemi-Con Corp. and United Chemi-  
19 Con Corp.; (8) Rubycon Corp. and Rubycon America Inc.; (9) Elna Corporation, Ltd. and Elna  
20 America, Inc.; (10) Matsuo Electric Corporation, Ltd.; (11) Nichicon Corporation and Nichicon  
21 America Corporation; (12) Panasonic Corporation; (13) Shinyei Technology Co., Ltd. and  
22 Shinyei Capacitor Co., Ltd. (“Shinyei”); and (14) Taitso Corp. (“Taitso”).

23 This motion is based upon this Notice; the Memorandum of Points and Authorities in  
24 Support thereof; the Declaration of Eric Schachter and exhibits thereto; and any further papers  
25 filed in support of this motion as well as arguments of counsel and all records on file in this  
26 matter.

27 <sup>1</sup> IPPs define all terms in the Memorandum of Points and Authorities.

28 <sup>2</sup> The net settlement funds means the total settlement funds less attorney’s fees, reimbursement of litigation costs, incentive awards, and settlement administration costs.

1 Dated: November 17, 2022

**COTCHETT, PITRE & McCARTHY, LLP**

2 By: /s/ Elizabeth T. Castillo

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16 *Purchaser Plaintiffs*

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**STATEMENT OF THE ISSUES TO BE PRESENTED**

1  
2 1. Whether the Court should authorize, consistent with the recommendation of Class  
3 Counsel and the Claims Administrator, the approval of claims received after February 18, 2022,  
4 the claims deadline stated in IPPs' settlement approval moving papers, but on or before the  
5 Claims Administrator's recommended cutoff date of November 4, 2022.

6 2. Whether the Court should authorize, consistent with the recommendation of Class  
7 Counsel and the Claims Administrator, a minimum payment amount of \$1.00 to all claimants that  
8 submitted valid claims.

9 3. Whether the Court should authorize the disbursement of net settlement funds  
10 consistent with the finally approved settlements given that the Claims Administrator has finished  
11 reviewing and auditing claims and is prepared to distribute the funds to Settlement Class  
12 Members.

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

The Indirect Purchaser Plaintiffs (“IPPs”) move for an order authorizing the disbursement of the net settlement funds pursuant to the 14 settlement agreements reached in this action, all of which have been fully and finally approved by this Court. Orders, Civil ECF No. 1934, MDL ECF Nos. 628, 1344, 1665. The gross settlements total \$80,790,000. Mot. for Final Approval, MDL ECF No. 1657. After an extensive claims administration process undertaken for the purpose of identifying qualified claimants and purchase amounts, IPPs now seek to distribute the net settlement proceeds after allocations for attorney’s fees, reimbursement of litigation costs, incentive awards, and settlement administration costs, consistent with the Court’s prior Orders.

The concurrently filed declaration of Eric Schachter (“Schachter Decl.”), Vice President of the Class Action Administration division at Court-appointed Claims Administrator, A.B. Data, Ltd. (“A.B. Data”), confirms that settlement administration in this action has strictly adhered to the process approved by the Court in its Orders granting final approval of the proposed settlements. That process is now complete. Schachter Decl. ¶ 4. Evaluated in percentage terms against the class commerce from subpoenaed records of the distributors and which was pre-populated on the claim forms, the approved claims (“Authorized Claims”) account for 45% of the total amount of identified commerce in electrolytic capacitors, and 106% of the total amount of identified commerce in film capacitors. *Id.* ¶ 7. (The greater than 100% result is explained by certain subpoenaed distributors not having had data available for the entire period for which they were requested to produce records. *Id.* ¶ 7, fn. 1. A robust audit process, described below, confirmed purchases in amounts greater than reflected in the distributor data for some class members.) These results are better than the rates typically seen in class action litigation and significantly better than rates often seen in consumer or indirect purchaser actions. *Id.* ¶ 7.

A.B. Data has determined that certain claims should be rejected, following an audit process in which each claimant whose claims were not approved on first review had an opportunity to present supplemental information and contest the determination. *Id.* ¶ 8. The Claims Administrator working in conjunction with Class Counsel has reached final

1 determinations on all claims and issued final determination letters to the limited number of  
2 claimants whose claims were rejected on second review. *Id.* ¶¶ 8-9. The claims process has  
3 therefore come to an end and IPPs are eager to distribute the net settlement funds to settlement  
4 class members expeditiously.

5 Class Counsel agrees with two further recommendations by A.B. Data concerning how to  
6 complete the final allocation prior to disbursement to class members. First, while the previously  
7 established claims filing deadline was February 18, 2022, A.B. Data received late though valid  
8 claims after that date and has determined that including those claimants that submitted claims  
9 before November 4, 2022 in the allocation will not delay administration and final disbursement.  
10 *Id.* ¶ 10. Accordingly, A.B. Data recommends that such claims be approved and included. *Id.*  
11 Second, A.B. Data has recommended setting a minimum *pro rata* payment amount of \$1.00 for  
12 all claimants that submitted valid claims before November 4, 2022 to increase the likelihood  
13 checks will be cashed and to avoid sending out payments in *de minimis* amounts that would be  
14 lower than the cost of administration and postage. *Id.* ¶ 10(a).

15 Based on all of the foregoing and the extensive claims administration process, the IPPs  
16 respectfully request entry of an order authorizing final disbursement of the net settlement funds  
17 on a *pro rata* basis (subject to the \$1.00 minimum set forth *supra*) based on the qualified purchase  
18 amounts reflected in Exhibit A to the Schachter Declaration.

## 19 **II. BACKGROUND**

20 On October 17, 2014, IPPs filed their initial complaint alleging that the Defendants  
21 conspired to fix, raise, stabilize or maintain prices of electrolytic capacitors and film capacitors in  
22 two distinct, though similar and related, conspiracies. The case progressed through over six years  
23 of hard-fought litigation, after which the IPPs reached settlements with the final two remaining  
24 actively litigating Defendants, and therefore have now amassed settlement funds through four  
25 rounds of settlements totaling \$80.79 million. Mot. for Final Approval, MDL ECF No. 1657 at 9.  
26 The IPPs moved for final approval of this fourth and final round of settlements on March 10,  
27 2022, and the Court finally approved these settlements on March 23, 2022. MDL ECF No. 1665.  
28 In doing so, the Court found that notice by IPPs to the settlement classes “was the best notice



1 practicable under the circumstances” and “satisfied due process and provided adequate  
2 information to the Settlement Class of all matters relating to the Settlements and fully satisfied the  
3 requirements of Rule 23(c)(2) and 23(e)(1).” *Id.* at 2. The Court also found “IPPs’ proposed Plan  
4 of Allocation, which proposes to pay putative Class Members . . . with qualifying purchases on a  
5 pro rata basis, is fair, reasonable, and adequate,” and observed, “The Court has approved the basic  
6 structure of this Plan of Allocation in connection with earlier settlements in this Action.” *Id.* at 3.

7 Settlement administration in this action has reached the stage at which the net settlement  
8 funds may be distributed to settlement class members who have submitted valid claims. A.B. Data  
9 has completed its audit and rendered final determinations on all claims submitted. Schachter Decl.  
10 ¶ 4.

11 Prior to the Court’s Order preliminarily approving the last round of settlements, A.B. Data  
12 had already mailed each entity or person reasonably believed to fall within the definition of  
13 potential settlement class members a customized Notice Packet pre-populated with purchase data  
14 reflecting that entity or person’s total purchases of electrolytic capacitors and film capacitors as  
15 established in the non-party transactional-level distributor data subpoenaed by IPPs. *Id.* ¶ 5. The  
16 total commerce accounted for in the pre-populated forms A.B. Data sent to potential settlement  
17 class members reflected \$716,982,842.67 and \$48,830,504.74 in aggregate purchases of  
18 electrolytic capacitors and film capacitors, respectively, received from the non-party distributors  
19 during discovery. *Id.* Following the Court’s Order preliminarily approving the latest round of  
20 settlements, ECF No. 1665, A.B. Data provided direct notice to potential settlement class  
21 members of additional settlements reached with the Shinyei and Taitso Defendants. *Id.* ¶ 6.

22 The initial mailing advised recipients that each potential settlement class member had the  
23 option to agree to the pre-populated purchase data or to supplement its claim by submitting the  
24 Claim Form accompanied by supporting documentation. *Id.* ¶ 5. The additional mailing provided  
25 a further opportunity for class members covered by the last round of settlements to submit claims  
26 if they had not done so previously. *Id.* ¶ 6. A.B. Data received and processed all Claim Forms in  
27 accordance with the Court’s Orders and underlying settlement agreements. *Id.* ¶ 7. A.B. Data  
28 compiled aggregate claimed purchases of \$329,251,610.66 and \$52,026,725.41 in purchases of

1 electrolytic capacitors and film capacitors, respectively. *Id.* These figures represent claims rates of  
2 approximately 45% and 106% based on claimed purchases of electrolytic capacitors and film  
3 capacitors as compared to all known purchases as reflected in distributor data obtained by IPPs.  
4 *Id.* As the Schachter Declaration notes, this outcome confirms the effectiveness of the Court-  
5 approved notice plan and A.B. Data's implementation thereof. *Id.*

6 A comprehensive listing of all Authorized Claims, anonymized to identify each claimant  
7 by claim number rather than by entity name, is attached as Exhibit A to the Schachter  
8 Declaration. *Id.* An IPP settlement class member may ascertain the accepted electrolytic capacitor  
9 and film capacitor purchase amounts associated with its authorized claims by referring to the row  
10 for its assigned claim number in Exhibit A. Cite. All settlement class members had an opportunity  
11 to contest these figures and final determinations have been made with respect to all claims,  
12 including all requests for a review. *Id.* ¶¶ 5, 9.

13 During claims processing and documentation review, A.B. Data identified a certain  
14 number of deficient claims that failed to provide information required by the Claim Form, or that  
15 appeared to be submitted by entities not reasonably believed to be among those included within  
16 the Court-approved settlement class definitions or that were otherwise ineligible. *Id.* ¶ 8. Upon  
17 reaching a determination that a claim should be rejected, A.B. Data sent each affected claimant a  
18 Notice of Ineligibility explaining the basis for the determination of deficiency or ineligibility and  
19 offering guidance where applicable on potential avenues for resolving the issue identified. *Id.*  
20 Certain claimants responded by submitting supplemental information sufficient to perfect their  
21 claims. *Id.* ¶ 9. For those claimants unable to do so, A.B. Data sent a Final Determination Letter  
22 to advise affected claimants of the final finding of deficiency or ineligibility and offering a final  
23 opportunity to contest that determination. *Id.*

24 A comprehensive listing of all Rejected Claims, anonymized to identify each claimant by  
25 claim number rather than entity name, is attached as Exhibit D to the Schachter Declaration. *Id.*  
26 Each claimant with a rejected claim has already received a customized Notice of Ineligibility and  
27 Final Determination Letter, and may additionally review the reason for rejection by referring to  
28 the row for its assigned claim number in Exhibit D. As shown in Exhibit D, the reasons include

1 withdrawal of the claim, submission of duplicate claims, failure to claim a non-zero purchase  
2 amount, missing or inadequate documentation, and, most commonly, that the claimant had  
3 ineligible purchases outside the scope of the settlements. As noted, A.B. Data has reached final  
4 determinations with respect to all claims deemed deficient or ineligible. *Id.*

### 5 **III. ARGUMENT**

#### 6 **A. The Court should authorize payment of claims submitted by November 4, 2022.**

7 A.B. Data confirms that claims received after the previously approved February 18, 2022  
8 claim filing deadline but on or before November 4, 2022 “did not cause any delay in the  
9 processing of the administration overall.” *Id.* ¶ 10. The same is true for perfected claims and  
10 corrective correspondence. *Id.* A.B. Data has therefore recommended, and Class Counsel concurs,  
11 that the Court approve A.B. Data’s determination to accept these limited late claims, perfected  
12 claims, and corrective correspondence received by November 4, 2022. *Id.* A.B. Data also reports  
13 that processing of any similar claims or communications received after November 4, 2022 would  
14 indeed delay the administration, and on that basis recommends that claims or communications  
15 received after November 4, 2022 be rejected as late and invalid.

16 The IPPs note that the additional claims accepted into the set of Authorized Claims are  
17 otherwise valid in every relevant sense. They arise from eligible purchases of the electrolytic  
18 capacitors and film capacitors at issue in the lawsuit during the relevant time periods and are  
19 within the settlement class definition. Because the claims represent valid purchases, it is in the  
20 interests of justice to pay them. *See, e.g., In re Orthopedic Bone Screw Prods. Liab. Litig.*, 246  
21 F.3d 315, 316-317 (3d Cir. 2001). Furthermore, permitting these claims is consistent with the  
22 policy aims of Federal Rule of Civil Procedure 23(e)(2)(D), which requires a court considering a  
23 proposed settlement to assess whether it “treats class members equitably relative to each other.”  
24 The Court enjoys broad discretion to render decisions on the acceptance of late claims. *In re*  
25 *Gypsum Antitrust Cases*, 565 F.2d 1123, 1128 (9th Cir. 1977); *and see* Order Authorizing  
26 Distribution of Fourth Round Settlement Funds, MDL ECF No. 1530 (authorizing payment of  
27 claims received after claims deadline in class notice in DPP action). The IPPs respectfully  
28 recommend that acceptance of these late claims be approved.

1           **B. The Court should authorize the recommended minimum payment amount.**

2           A.B. Data has further reported that settlement payouts of less than \$1.00 are  
3 “economically impractical as compared to the cost to print and mail the check, and are more  
4 likely to not be cashed by the recipient.” Schachter Decl. ¶ 11(a). A.B. Data also notes that setting  
5 of a minimum payment is common in class action claims administration, and here would have  
6 only an insignificant effect on other payees since only a “few hundred” claims will be subject to  
7 the \$1.00 minimum. *Id.*, and *see id.* Ex. A (listing over 8,000 Authorized Claims).

8           Class Counsel agrees. Pretrial settlement of class action lawsuits is governed by equitable  
9 considerations, and the proposed \$1.00 minimum payment to all settlement class members with  
10 Authorized Claims here will resolve the economic impracticality concern and serve the worthy  
11 goal of increasing class member participation while imposing only very limited effect on other  
12 class members. Courts have repeatedly approved class action settlements featuring minimum  
13 settlement payments for class members. *See, e.g., In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D.  
14 136, 143 (D.N.J. 2013); *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 498 (S.D.N.Y.  
15 2009); *Mehling v. N.Y. Life Ins. Co.*, 248 F.R.D. 455, 463-64 (E.D. Pa. 2008). *See generally*  
16 NEWBERG ON CLASS ACTIONS § 12:15 (5th ed.) (endorsing both “distribution based on flat  
17 amounts” and “*pro rata* distribution” as acceptable methods and advising, “The goal of any  
18 distribution method is to get as much of the available damages remedy to class members as  
19 possible and in as simple and expedient a manner as possible.”); MANUAL FOR COMPLEX  
20 LITIGATION, FOURTH § 21.66 (embracing case-specific approaches and teaching that “[a] default  
21 award may be appropriate for those who can establish membership in the class but cannot, or  
22 prefer not to, submit detailed claims,” and that “[a]udit and review procedures will depend on the  
23 nature of the case.”). The IPPs therefore request approval of the \$1.00 minimum payment.

24           **C. The Court should authorize a final disbursement of settlement proceeds.**

25           Audit and tabulation of Authorized Claims is now complete. Schachter Decl. ¶¶ 4, 7-10.  
26 The Claims Administrator has followed the Court’s prior instructions and has presented a detailed  
27 plan, fully supported and endorsed by Class Counsel, for final distribution of the net settlement  
28 funds to members of the IPP settlement classes with Authorized Claims. *Id.* ¶ 11.

1 The IPPs respectfully request that the Court authorize a final disbursement consistent with  
2 the Schachter Declaration. Consistent with the Northern District of California’s Procedural  
3 Guidance on Class Action Settlements, within 21 days of the mailing of settlement checks  
4 following this Court’s order authorizing distribution, Class Counsel will submit a Post-  
5 Distribution Accounting detailing the status of actual distribution.

6 **IV. CONCLUSION**

7 Settlement administration in this action has followed the process contemplated by Class  
8 Counsel and approved by the Court, as reflected in the update offered by the Claims  
9 Administrator, and the net settlement funds are now ready for disbursement. The IPPs respectfully  
10 request that the Court authorize payment of late claims as outlined herein, establish a minimum  
11 payment amount as set forth herein, and permit final disbursement of settlement funds to the IPP  
12 settlement classes, consistent with the procedural steps outlined in paragraph 11 of the Schachter  
13 Declaration.

14 Dated: November 17, 2022

Respectfully Submitted:

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