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8  
 9  
 10 **UNITED STATES DISTRICT COURT**  
 11 **NORTHERN DISTRICT OF CALIFORNIA**  
 12 **SAN FRANCISCO DIVISION**

13 **IN RE CAPACITORS ANTITRUST**  
14 **LITIGATION**

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

15 **This Document Relates to:**  
16 **All Indirect Purchaser Actions**

**INDIRECT PURCHASER PLAINTIFFS’**  
**NOTICE OF MOTION AND MOTION**  
**FOR APPROVAL OF CLASS NOTICE**  
**PROGRAM OF SETTLEMENTS WITH**  
**SHINYEI AND TAITSU DEFENDANTS;**  
**MEMORANDUM OF POINTS AND**  
**AUTHORITIES IN SUPPORT**  
**THEREOF**

**Date:** August 12, 2021  
**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 August 12, 2021, 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 granting approval of their plan of notice to the proposed classes of proposed  
7 settlements with: (1) Defendants Shinyei Technology Co., Ltd. and Shinyei Capacitor Co., Ltd.  
8 (together, “Shinyei”); and (2) Defendant Taitso Corporation (“Taitso,” and together with Shinyei,  
9 the “Settling Defendants”). This motion is brought pursuant to Federal Rule of Civil Procedure  
10 (“Rule”) 23(e).

11 IPPs’ proposed notice program satisfies Rule 23, complies with due process, and  
12 constitutes “the best notice that is practicable under the circumstances[.]” Rule 23(c)(2)(B). IPPs’  
13 plan provides direct mail and email notice to class members whose contact information is  
14 available from records provided by non-party distributors produced during discovery in this  
15 litigation, an earned media program along with dissemination through social media outlets, and a  
16 case-specific website and toll-free telephone number class members may use to obtain more  
17 information. Taken together, the plan meets the requirements of Rule 23, satisfies any due process  
18 concerns, and will fairly apprise putative Settlement Class Members of the existence of the  
19 settlement and their options under it.

20 This motion is based upon this Notice; the Memorandum of Points and Authorities in  
21 Support; the Declaration of IPPs’ Notice Program expert, Eric Schachter from A.B. Data, Inc.,<sup>1</sup>  
22 and attached exhibits, along with the proposed notices themselves; and any further papers filed in  
23 support of this motion as well as arguments of counsel and all records on file in this matter.

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26  
27 <sup>1</sup> Declaration of Eric Schachter in Support of Motion for Approval of Class Notice Program  
28 (“Schachter Decl.”).

1 Dated: July 2, 2021

Respectfully Submitted,

2 **COTCHETT, PITRE & McCARTHY, LLP.**

3 By: /s/ Adam J. Zapala

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15 *Purchaser Plaintiffs*

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1 **STATEMENT OF THE ISSUES TO BE PRESENTED**

2 Whether the Court should approve the proposed class notice program and establish a  
3 schedule for final approval of IPPs’ proposed settlements.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. INTRODUCTION**

6 Indirect Purchaser Plaintiffs (“IPPs”) move for an order approving their proposed notice  
7 program of their settlements with the Shinyei and Taitso Defendants.<sup>2</sup>

8 The proposed notice program delivers plain and easy to understand information about the  
9 settlements. IPPs have retained a recognized national expert, A.B. Data, Inc., that has designed a  
10 notice program that addresses the specific nature of the settlements and the settlement classes at  
11 issue as a result of these settlements. The program includes (1) direct mail and email notice, (2) an  
12 earned media program, (3) a case-specific website, and (4) a case-specific toll-free number.<sup>3</sup> This  
13 multi-pronged approach provides the settlement classes with the best notice practicable under the  
14 circumstances and satisfies Rule 23 and due process. IPPs’ notice program will fairly apprise  
15 potential class members of the existence of the settlements and their options in relation to them.  
16 Additionally, although IPPs have already received, processed, and determined claims for the  
17 previous rounds of settlements, a claim form accompanies this motion, and is made available to  
18 class members so that new claimants from the relevant states, *i.e.*, California, Florida, Michigan,  
19 Minnesota, Nebraska, and New York, may make claims, or previous claimants making purchases  
20 from those states may supplement their claims, if they so desire. Accordingly, the Court should  
21 approve dissemination of class notice and establish a schedule for a final approval hearing on the  
22 settlements.

23  
24 \_\_\_\_\_  
25 <sup>2</sup> IPPs are concurrently filing a Motion for Preliminary Approval of these settlements.  
Information contained in this memorandum supplements and supports IPPs’ Motion for  
Preliminary Approval.

26 <sup>3</sup> Class members have also already received three prior rounds of notice approved by the Court  
27 (Dkt. 1457 (Jan. 30, 2017) (order approving notice program for Round 1 settlements), Dkt. 2152,  
MDL Dkt. 227 (May 25, 2018) (order approving notice program for Round 2 settlements); Dkt.  
28 2414, MDL Dkt. 836 (Aug. 12, 2019) (order approving notice program for Round 3 settlements).

1 **II. FACTUAL AND PROCEDURAL BACKGROUND**

2 The cumulative settlement fund established by the proposed two settlements with the  
3 Settling Defendants is \$300,000.<sup>4</sup> IPPs’ settlements in this action – those from prior rounds plus  
4 this round – total \$81,150,000. *See* IPPs’ Statement Regarding Status of Settlements, Dkt. 2261,  
5 MDL Dkt. 444.

6 IPPs propose to give notice to the following proposed class:

7 All persons and entities in the Indirect Purchaser States (as defined herein)  
8 who, during the period from January 1, 2002 to February 28, 2014,  
9 purchased one or more Capacitor(s) from a distributor (or from an entity  
10 other than a Defendant) that a Defendant or alleged co-conspirator  
11 manufactured. Excluded from the Class are Defendants; their parent  
12 companies, subsidiaries and Affiliates; any co-conspirators; Defendants’  
13 attorneys in this Action; federal government entities and instrumentalities,  
14 states and their subdivisions; all judges assigned to this Action; all jurors  
15 in this Action; and all Persons who directly purchased Capacitors from  
16 Defendants.

17 . . .  
18 “Indirect Purchaser States” means California, Florida, Michigan,  
19 Minnesota, Nebraska, and New York.

20 Declaration of Adam J. Zapala in support of Indirect Purchaser Plaintiffs’ Motion for Preliminary  
21 Approval of Settlements with Shinyei and Taitso Defendants and for Approval of the Plan of  
22 Allocation (“Zapala Decl.”), Ex. 1, Shinyei Settlement Agreement, ¶¶ 1(f), 1(u); Zapala Decl., Ex.  
23 2, Taitso Settlement Agreement, ¶¶ 1(f), 1(u).

24 **A. Attorneys’ Fees and Reimbursement of Litigation Expenses**

25 In light of the settlement amounts and fee awards previously approved, IPPs will notify  
26 the class that they will not seek an award of attorney’s fees in connection with these settlements.  
27 Schachter Decl., Ex. 2 (short-form notice); *id.*, Ex. 3 (long-form notice).

28 **B. Claim Forms**

In connection with this round of notice, IPPs will make available to class members claim  
forms substantially identical to forms this Court previously approved in connection with the  
previous rounds of settlements. IPPs will use a claim form that allows claimants from the relevant  
states included in the settlement class to confirm they made qualifying purchases and affords

<sup>4</sup> A fuller background on the case is set forth in IPPs’ concurrently-filed motion for preliminary approval of the settlements.

1 them an opportunity to disclose an estimated amount of such purchases, which interim class  
2 counsel and the settlement notice and claims administrator will then check against the extensive  
3 purchase data they already possess, to the extent it exists for a particular class member, obtained  
4 from capacitors distributors during the course of litigation. Class members from the relevant  
5 states will also be invited to provide additional purchase information to the extent the information  
6 had not been captured by the distributor data. A copy of IPPs' proposed claim form can be found  
7 as Exhibit 4 to the Declaration of Eric Schacter. In addition to the foregoing, to the extent a class  
8 member from one of the relevant states already submitted a claim form in connection with the  
9 previous rounds of settlements, their claim will be automatically rolled over into this round of  
10 settlements and they will not be required to re-submit their claim form or re-verify purchase  
11 information.

### 12 C. Settlement Administration

13 A.B. Data, Inc. is the settlement notice and claims administrator. A.B. Data has  
14 implemented the notice programs and substantially completed the claims administration process  
15 for the first three rounds of IPP settlements. A.B. Data was initially selected by counsel after an  
16 extensive competitive bidding process. Interim class counsel solicited and received proposals  
17 from six nationally recognized class action notice and claims administrators. Beyond this case,  
18 Cotchett, Pitre, & McCarthy, LLP has also engaged A.B. Data, Inc. in five other matters over the  
19 last several years: *In re Resistors Antitrust Litig.*, No. 3:15-cv-03820-JD (N.D. Cal.); *In re: Vizio*  
20 *Consumer Privacy Litig.*, No. 8:16-ml-02693-JLS-KES (C.D. Cal.); *In re Lithium Ion Batteries*  
21 *Antitrust Litig.*, No. 4:13-md-2420-YGR (N.D. Cal.); *In re Qualcomm Antitrust Litig.*, No. 5:17-  
22 md-2773-LHK (N.D. Cal.); and *Fair v. Archdiocese of San Francisco*, No. CGC-15-549563 (S.F.  
23 Superior Court). Like the other rounds of settlements in this litigation, the \$300,000 in settlement  
24 funds will be paid out on a pro rata basis to claimants with qualifying purchases from the relevant  
25 states. These claimants are also participants in the previous settlements, which means that the  
26 \$300,000 will be added on top of whatever pro rata payment is due to class members with  
27 qualifying purchases from California, Florida, Michigan, Minnesota, Nebraska, and New York.

1 **III. THE COURT SHOULD APPROVE IPPS' NOTICE PLAN**

2 **A. IPPIs Have Retained Experienced and Competent Notice Experts**

3 IPPIs' proposed notice provider in this case is A.B. Data, Inc. It has provided notice and  
4 claims administration services with respect to all of the other settlements in this matter. A.B. Data  
5 has been appointed as notice, claims, and/or settlement administrator in large consumer, civil  
6 rights, insurance, antitrust, ERISA, securities, and wage and hour cases, administering some of  
7 the largest and most complex class action settlements of all time. *See* Schachter Decl. ¶¶ 3-4.  
8 Representative examples of A.B. Data's experience are set forth at Exhibit 1 to the Schachter  
9 Declaration filed in support of this motion.

10 Given IPPIs' extensive notice programs submitted in connection with the Rounds 1, 2, and  
11 3 settlements and the smaller comparative monetary value of these Round 4 settlements, including  
12 the narrower geographic scope of these settlements, IPPIs propose the following notice program:  
13 (1) direct mail and email notice, (2) an earned media program, (3) a case-specific website, and (4)  
14 a case-specific toll-free number. As set forth in more detail below, IPPIs' notice program will  
15 fairly apprise potential class members of the existence of the settlement agreements and their  
16 options in relation to the proposed settlements.

17 **B. Notice Program Elements**

18 **1. Direct Mail and Email Component**

19 The Notice program includes direct mail and email notice to class members through  
20 productions from non-party distributors. A.B. Data will process the addresses through the national  
21 change of address ("NCOA") database and, using any updated information available in the  
22 NCOA database, will send a short-form notice directly to those potential class members.  
23 Schachter Decl. ¶ 9. A copy of the proposed short-form notice is attached as Exhibit 2 to the  
24 Schachter Declaration. A copy of the claim form is attached as Exhibit 4 to the Schachter  
25 Declaration. Further analysis will be performed of any mail returned non-deliverable after use of  
26 the NCOA database and follow up direct mail notice will be provided where appropriate.  
27 Schachter Decl. ¶ 9. To the extent email contact information is available from non-party  
28

1 distributors, A.B. Data will send out the notice packet via email to such putative class members.  
2 *Id.*

### 3 **2. Earned Media Program**

4 As a cost-efficient means to supplement the direct notice program to reach class members  
5 who may not have received direct notice, IPPs also propose an earned media program. A.B. Data  
6 will disseminate a news release via the PR Newswire distribution service to announce the notice  
7 of settlements. This news release will be distributed via Business Wire to more than 10,000  
8 newsrooms, including print, broadcast, and digital media, across the United States. It will also be  
9 distributed to trade publications relevant to the industries and fields concerned that were identified  
10 after an extensive analysis by A.B. Data. *Id.* ¶ 10.

### 11 **3. Dedicated Settlement Website**

12 The case-specific settlement website is identified in the notice and will continue to operate  
13 through this round of settlements and to the conclusion of the case. *Id.* ¶ 13. The website provides  
14 class members with the opportunity to get detailed information about the Settlements and relevant  
15 documents, including the notice documents, the Preliminary Approval Order, the Settlement  
16 Agreements, and other relevant filings and Court Orders. *Id.* ¶ 12.

### 17 **4. Toll-Free Number**

18 The case-specific toll-free telephone number will appear on both the Short Form Notice  
19 and the Long Form Notice. *Id.* ¶ 13. The toll-free number will be set up with an automated  
20 interactive voice response system that will present callers with a series of choices to hear pre-  
21 recorded information about the Settlements. *Id.* If callers need further help, they will have an  
22 opportunity to speak with a live operator during business hours. *Id.*

### 23 **5. Best Practicable Notice**

24 IPPs' proposed settlement notice and claims administrator, who is experienced in the  
25 administration of such settlements and has previously administered prior rounds of settlements in  
26 this action, has opined that the proposed Program is the best practicable under the circumstances and  
27 is designed to effectively reach class members to provide them with the information necessary to  
28

1 understand their rights and options. *Id.* ¶ 14. The notice meets the requirements of Rule 23 and  
 2 communicates information by complying “with the plain language requirement.” *Id.*

### 3                   **6.       The Proposed Forms of Notice Comply with Rule 23 and Due Process**

4           Finally, the proposed short-form notice is attached to the Schachter Declaration as Exhibit  
 5 2. The proposed long-form notice is attached to the Schachter Declaration as Exhibit 3. As  
 6 explained in the Schachter Declaration, these notices address each of Rule 23’s requirements in a  
 7 clear and easily understood manner. Accordingly, the Notice Program and accompanying forms  
 8 are reasonable and adequate under the circumstances, and are fairly calculated to apprise class  
 9 members of their rights under the settlement. *See id.*

### 10                   **C.       Legal Standard for Notice**

11           Rule 23 requires that notice be given in a reasonable manner to all class members who  
 12 would be bound by a proposed settlement. Rule 23(e). Further, “the Court must direct to class  
 13 members the best notice that is practicable under the circumstances, including individual notice to  
 14 all members who can be identified through reasonable effort.” Rule 23(c)(2)(B). Notice of a  
 15 proposed settlement is adequate and satisfies Rule 23 and due process if it “fairly apprise[s] the  
 16 prospective members of the class of the terms of the proposed settlement and of the options that  
 17 are open to them in connection with the proceedings.” *Walsh v. CorePower Yoga LLC*, No. 16-cv-  
 18 05610-MEJ, 2017 U.S. Dist. LEXIS 20974 (N.D. Cal. Feb. 14, 2017) (*citing Eisen v. Carlisle &*  
 19 *Jacquelin*, 417 U.S. 156, 174 (1974)). Class notice must afford potential class members the ability  
 20 to “make an informed decision about their participation [in the litigation].” MANUAL FOR  
 21 COMPLEX LITIGATION, FOURTH, § 21.311, at 289.

### 22                   **D.       IPPs’ Proposed Notice Program Comports with the Requirements of Rule 23** 23                   **and Due Process**

24           In the context of Rule 23(b)(3) actions, “the court must direct to class members the best  
 25 notice that is practicable under the circumstances,” and that notice “must clearly and concisely  
 26 state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the  
 27 class certified; (iii) the class claims, issues or defenses; (iv) that a class member may enter an  
 28 appearance through an attorney if the member so desires; (v) that the court will exclude from the

1 class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and  
2 (vii) the binding effect of a class judgment on members under Rule 23(c)(3).” Rule 23(c)(2)(B).

3 While Rule 23 requires that reasonable efforts be made to reach all class members, it does  
4 not require that each individual actually receive notice. *Silber v. Mabon*, 18 F.3d 1449, 1454 (9th  
5 Cir. 1994). A class settlement notice satisfies due process if it contains a summary sufficient to  
6 “apprise interested parties of the pendency of the action and to afford them an opportunity to  
7 present their objections.” *UAW v. GMC*, 497 F.3d 615, 629 (6th Cir. 2007) (*quoting Mullane v.*  
8 *Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). A settlement notice need only be a  
9 summary, not a complete source of information. *See, e.g., Petrovic v. AMOCO Oil Co.*, 200 F.3d  
10 1140, 1153 (8th Cir. 1999); *In re “Agent Orange” Prod. Liab. Litig.*, 818 F.2d 145, 170 (2d Cir.  
11 1987); *Mangione v. First USA Bank*, 206 F.R.D. 222, 233 (S.D. Ill. 2001). The Ninth Circuit  
12 requires a general description of the proposed settlement. *Churchill Vill., L.L.C. v. GE*, 361 F.3d  
13 566, 575 (9th Cir. 2004); *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1374-75 (9th Cir.  
14 1993); *Mendoza v. United States*, 623 F.2d 1338, 1351 (9th Cir. 1980).

15 IPPs’ proposed notice program meets these standards. The notice program begins by  
16 providing direct mail and email notice to class members for whom contact information was  
17 obtained in non-party distributors’ data that IPPs received during the course of discovery. While  
18 direct notice is typically considered the best form of notice under Rule 23(c)(3), the proposed  
19 notice program adds further components to reach as many members of the Settlement Classes as  
20 possible. This approach is adequate and reasonable under the circumstances. *Ross v. Trex Co.*,  
21 2013 U.S. Dist. LEXIS 29081, \* 6 (N.D. Cal. Mar. 4, 2013) (“Courts have consistently  
22 recognized that due process does not require that every class member receive actual notice . . .  
23 Due Process does not entitle a class member to ‘actual notice,’ but rather to the best notice  
24 practicable, reasonably calculated under the circumstances to apprise him of the pendency of the  
25 class action and give him a chance to be heard.”); *accord In re Prudential Ins. Co. of Am. Sales*  
26 *Practices Litig.*, 177 F.R.D. 216, 231 (D.N.J. 1997); *Bissonette v. Enter. Leasing Companywest*,  
27 No. 10-CV-00326-LRH-WGC, 2014 U.S. Dist. LEXIS 132634 (D. Nev. 2014) (“Under this ‘best  
28

1 notice practicable’ standard, courts retain considerable discretion to tailor notice to the relevant  
 2 circumstances . . .”).

3           Additionally, as the Schachter Declaration makes clear, the contents of the notices  
 4 themselves meet the requirements of Rule 23(c)(2)(B) and are provided in plain language that is  
 5 understandable to the classes. The proposed long form notice includes (1) the case name and case  
 6 number; (2) a description of the case; (3) a description of the settlement classes; (4) a description  
 7 of the settlement agreements, including the monetary consideration; (5) the name of Interim Lead  
 8 Counsel for IPPs; (6) a description of the releases being provided; (7) the final approval hearing  
 9 date; (8) information about the final approval hearing; (9) information about the deadline for  
 10 filing objections to the settlement agreements; (10) information about the deadline for filing  
 11 requests for exclusion from the settlement classes; (11) that a class member can enter an  
 12 appearance through an attorney if the member so desires; (12) the consequences of exclusion or  
 13 remaining in the settlement classes; and (13) guidance on obtaining further information about the  
 14 proposed settlement agreements. Schachter Decl., Ex. 3. This includes all information required by  
 15 Rule 23(c)(2)(B) and more.

16           **E.       The Court Should Establish a Schedule for the Notice Program and Final**  
 17           **Approval of the Settlements**

18           If the Court grants IPPs’ concurrently-filed motion for preliminary approval of the  
 19 settlements and grants this motion to approve a class notice program, a schedule should be  
 20 established for the completion of the notice program, objections and requests for exclusion, and  
 21 the briefing for attorneys’ fees, reimbursement of reasonable litigation expenses, and for final  
 22 approval. IPPs propose the following schedule:

Event	Time
Notice Program	Initiation of class notice program 14 days after order preliminarily approving settlements and approving IPPs’ class notice program (“Orders”)
Exclusion and Objection Deadline	60 days after Orders
Deadline to Submit Claims	60 days after Orders

Event	Time
Motion for Final Approval and Response to Objections (if any)	75 days after Order
Final Approval Hearing	100 days after Order

**IV. CONCLUSION**

For the foregoing reasons, IPPs respectfully request that this Court enter an order: (1) approving IPPs’ proposed notice program, and (2) setting a schedule for notice and final approval.

Dated: July 2, 2021

Respectfully Submitted:

*/s/ Adam J. Zapala*  
 \_\_\_\_\_  
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