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13  
14 **UNITED STATES DISTRICT COURT**  
15  
16 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
17  
18 **SAN FRANCISCO DIVISION**  
19

20 **IN RE CAPACITORS ANTITRUST**  
21 **LITIGATION**

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

24 **THIS DOCUMENT RELATES TO:**  
25  
26 **ALL INDIRECT PURCHASER**  
27 **PLAINTIFF ACTIONS**

28 **INDIRECT PURCHASER PLAINTIFFS'**  
**NOTICE OF MOTION AND MOTION**  
**FOR FINAL APPROVAL OF**  
**SETTLEMENTS WITH THE SHINYEI**  
**AND TAITSU DEFENDANTS;**  
**MEMORANDUM OF POINTS AND**  
**AUTHORITIES IN SUPPORT**

Date: March 24, 2022  
Time: 10:00 a.m.  
Place: Courtroom 11, 19th Floor  
Judge: Hon. James Donato

1 **NOTICE OF MOTION AND MOTION**

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

3 **PLEASE TAKE NOTICE** that the Honorable James Donato will hear this Motion at the  
4 United States District Court for the Northern District of California, 450 Golden Gate Avenue,  
5 Courtroom 11, 19<sup>th</sup> Floor, San Francisco, California, on March 24, 2022 at 10:00 a.m.

6 Pursuant to Federal Rule of Civil Procedure (“Rule”) 23(e), the Indirect Purchaser Plaintiffs  
7 (“IPPs”) seek entry of an order:

8 1. Granting final approval of the proposed settlements with Shinyei Technology Co., Ltd.  
9 and Shinyei Capacitor Co., Ltd. (together, “Shinyei”) and Taitso Corp. (“Taitso”) (collectively,  
10 “Settlements”).

11 2. Dismissing IPPs’ claims against the Shinyei and Taitso Defendants from the IPP  
12 actions (“Action”) with prejudice; and

13 3. Granting final approval of IPPs’ plan of allocation of the Settlements (“Plan of  
14 Allocation”) among the certified settlement class members (“Class Members”).

15 The Court should grant this motion because (a) the Settlements are fair, reasonable, and  
16 adequate and satisfy Rule 23(e); (b) the Settlements are the product of arm’s-length negotiations; (c)  
17 the Court-approved notice program satisfied Due Process and Rule 23 and was implemented in accord  
18 with the Court’s order (ECF No. 1552); (d) the Plan of Allocation is fair, reasonable, and adequate;  
19 (e) and no Class Member has objected to the Settlements.

20 This Motion is based on this Notice of Motion and Motion, the following Memorandum of  
21 Points and Authorities, the accompanying Declaration of Elizabeth T. Castillo and the Settlements  
22 Agreements attached as exhibits thereto, the accompanying Declaration of Eric Schachter and the  
23 exhibits attached thereto, the Court’s October 21, 2021 Order Granting IPPs’ Motion for Preliminary  
24 Approval of Revised Settlements with Shinyei and Taitso Defendants (ECF No. 1551<sup>1</sup>), the Court’s  
25 October 21, 2021 Order Granting IPPs’ Motion for Approval of Class Notice Program (ECF No.

26  
27  
28 <sup>1</sup> Unless otherwise noted, all references to ECF numbers shall refer to documents filed in MDL  
No. 3:17-md-02801-JD.

1 1552), the [Proposed] Order submitted herewith, the statements of counsel and the parties, any papers  
2 filed in reply, and all papers and records on file in the Action.

3  
4 DATED: March 10, 2022

Respectfully submitted,

5 /s/ Elizabeth T. Castillo

6 Joseph W. Cotchett

7 Adam J. Zapala

8 Elizabeth T. Castillo

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**STATEMENT OF ISSUE TO BE DECIDED**

Whether this Court should grant final approval of the Settlements with the Shinyei and Taitso Defendants and the Plan of Allocation given that they are fair, reasonable, and adequate, satisfy all applicable requirements and, after proper notice to the certified settlement class (“Settlement Class”) in accordance with Due Process and Rule 23, no Class Member objected.



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to Rule 23(e) and the Court’s orders granting preliminary approval of the Settlements,  
4 certification of the settlement class, and approval of the settlement class notice program (“Notice  
5 Program”), IPPs submit this memorandum in support of final approval of the Settlements with the  
6 Shinyei and Taitso Defendants (collectively, “Settling Defendants”).

7 The Shinyei and Taitso Settlements are fair, reasonable, and adequate given the Settling  
8 Defendants’ relevant sales and the estimated damages attributable to them in the Action (*discussed*  
9 *infra*). The Settlements provide for a settlement fund of \$300,000 (“Settlement Fund”). The  
10 Settlements, in combination with the prior three rounds of settlements,<sup>1</sup> bring the total IPP recovery  
11 to \$80,790,000. The Settlements provide monetary relief and finality for the Settlement Class, whose  
12 members would otherwise face delay and uncertainty in this Action given the adverse decision on  
13 class certification (ECF No. 1421), IPPs’ petition for permission to appeal that order (*Indirect*  
14 *Purchaser Plaintiffs v. Shinyei Technology Co., Ltd., et al.*, No. 20-80157 (9th Cir. Nov. 17, 2020),  
15 ECF No. 1-3), and IPPs’ intent to seek leave from the Court to file a renewed class certification motion  
16 in the absence of the Settlements (ECF No. 1439 at § I(A)(1)).

17 In addition to the monetary recoveries these settlements represent, the reaction of the  
18 Settlement Class has been overwhelmingly and uniformly positive. Despite Class Members numbering  
19 over 23,000,<sup>2</sup> and a Notice Program that this Court has approved and found sufficient, not a single  
20 Class Member objected. Declaration of Elizabeth T. Castillo ¶ 17 (“Castillo Decl.”); Declaration of  
21 Eric Schachter ¶ 12 (“Schachter Decl.”). IPPs have received a miniscule number of opt-outs—two  
22 individuals and one entity (and its wholly owned subsidiaries)—another indication that the Settlements

23 \_\_\_\_\_  
24 <sup>1</sup> In addition to Shinyei and Taitso, IPPs have settled with NEC Tokin Corp. and NEC Tokin  
25 America Inc., Nitsuko Electronics Corporation, and Okaya Electric Industries Co, Ltd. (collectively,  
26 “Round 1 Settlements”); Hitachi Chemical Co., Ltd., Hitachi AIC, Hitachi Chemical Co. America,  
27 Holy Stone Enterprise Co., Ltd., Holy Stone Holdings Co., Ltd., Holy Stone Polytech Co., Ltd., and  
28 Milestone Global Technology, Inc., Nippon Chemi-Con Corp. and United Chemi-Con Corp., Rubycon  
Corp. and Rubycon America Inc., and Soshin Electric Co., Ltd. (collectively, “Round 3 Settlements”);  
and ELNA, Matsuo, Nichicon, and Panasonic (collectively, “Round 3 Settlements”).

<sup>2</sup> Declaration of Dr. Russell Lamb in Support of IPPs’ Motion for Preliminary Approval of  
Settlements and Approval of Plan of Allocation at ¶ 11 (ECF No. 1527-4).

1 are fair, reasonable, adequate, and warrant approval. Castillo Decl. ¶ 16; Schachter Decl. ¶ 11.  
 2 Approval of these Settlements will make possible the prompt and efficient coordinated distribution to  
 3 all Class Members of all settlement proceeds from all Defendants from previous rounds of settlements.

## 4 **II. FACTUAL AND PROCEDURAL HISTORY**

### 5 **A. Factual History**

6 This Action arises from alleged conspiracies by Defendants to fix, raise, maintain, and/or  
 7 stabilize the price of capacitors sold in the United States. All parties have heavily litigated this Action,  
 8 including through multiple motions to dismiss, myriad discovery disputes, class certification, and  
 9 summary judgment. These preliminarily approved Settlements are therefore the result of a fair  
 10 evaluation of the merits of the Action after seven years of extensive litigation and discovery. As  
 11 previously stated, Class Counsel<sup>3</sup> is not seeking an award of attorney's fees in connection with these  
 12 last two Settlements in light of the fee awards previously approved by the Court (ECF No. 1528 at §  
 13 II(A)).

14 To achieve the Shinyei and Taitso Settlements, Class Counsel and Settling Defendants'  
 15 counsel engaged in extensive arm's-length negotiations. Castillo Decl. ¶ 3. After years of hard-fought  
 16 litigation, significant discovery, summary judgment briefing, an adverse class certification decision,  
 17 and a prior denial of preliminary approval of the Settlements, this Court entered orders preliminarily  
 18 approving these Settlements (ECF No. 1551) and approving the Notice Program (ECF No. 1552). In  
 19 these orders, the Court also certified Settlement Class (ECF No. 1551 ¶ 3) and set a deadline by which  
 20 class members could opt-out or object (ECF No. 1552 ¶¶ 6, 9).

21 IPPs have complied with the Court order approving the Notice Program, including  
 22 dissemination of notice in various forms. Schachter Decl. ¶¶ 3-10. Even considering the multi-layered  
 23 Notice Program, no Class Member objected, and an extremely small number of Class Members opted  
 24 out. *Id.* ¶¶ 11-12.

### 25 **B. The Settlement Agreements**

26 The terms of the Settlements are described in detail in IPPs' preliminary approval motion and  
 27

28 <sup>3</sup> "Class Counsel" collectively refers to CPM and the law firms and attorneys that assisted CPM in the prosecution of this Action.

1 the Court's order granting preliminary approval, which are incorporated herein by reference (ECF  
2 Nos. 1527, 1551). In exchange for a cash payment of \$150,000 from each of the Settling Defendants  
3 (for a total of \$300,000), the Settlements release claims for alleged price fixing of capacitors sold to  
4 IPPs through distributors. Castillo Decl. ¶¶ 12-13, Exs. A-B. In preliminarily approving the  
5 Settlements with the Settling Defendants and approving the Notice Program, the Court certified the  
6 Settlement Class and directed IPPs to implement the Notice Program (ECF Nos. 1551, 1552).

7 **C. Status of Claims Administration for These Settlements and for All**  
8 **Settlements**

9 As detailed in the Schachter Declaration, IPPs disseminated class notice in accord with this  
10 Court's order and pursuant to the proposed notice program. Schachter Decl. ¶¶ 3-10. This included,  
11 *inter alia*, the dissemination of direct email and mail notice, a nationwide news release, the  
12 establishment of a settlement website, and the establishment of a toll-free number to answer any class  
13 member questions. *Id.* This notice program was extensive and successful in reaching potential Class  
14 Members. *Id.* ¶ 16.

15 The notice provider and claims administrator, A.B. Data, provided direct notice of the  
16 Settlements to all potential Class Members who could be reasonably identified. *Id.* ¶ 4. Although the  
17 Settlements are limited to Class Members in six indirect purchaser states (*i.e.*, California, Florida,  
18 Michigan, Minnesota, Nebraska, and New York), A.B. Data provided direct notice to potential Class  
19 Members in in all states to effectively reach the greatest practicable number of Class Members and  
20 provide them with every reasonable opportunity to understand that their legal rights are affected. *Id.*  
21 It has been A.B. Data's experience that businesses that purchase certain products may, on occasion,  
22 do so through divisions, subsidiaries, related entities, or units that might be located in other states,  
23 including the six states at issue here, potentially entitling them to share in the Settlements for those  
24 purchases. *Id.* Limiting direct notice to potential Class Members in the six states would neither have  
25 been significantly more efficient nor cost-effective. *Id.*

26 Pursuant to the instructions on the Claim Form and the Long-Form Notice, qualified claimants  
27 that previously submitted a claim that qualified for a payment under the terms of this settlement were  
28 not required to resubmit another Claim Form to receive a benefit from the Settlements. *Id.* ¶ 13. As

1 reflected in the accompanying Schachter Declaration, while A.B. Data is continuing to review the  
 2 claims, including by continuing to screen out potentially fraudulent claims, IPPs can report that, taking  
 3 into account the newly claiming purchasers, together with Class Members that previously submitted  
 4 claims from the six indirect purchaser states at issue, A.B. Data has identified 5,869 claims received.  
 5 *Id.* ¶¶ 14-15. The foregoing corresponds to a claims rate of 25.52% based on an estimated 23,000 Class  
 6 Members. *Id.* ¶ 14; *see, supra*, at fn. 2. This is an excellent claims rate based on A.B. Data’s experience  
 7 in other matters. *Id.*

### 8 **III. ARGUMENT**

#### 9 **A. Legal Standard for Final Approval of Class Action Settlements**

10 A class action may not be dismissed, compromised, or settled without approval of the Court.  
 11 Fed. R. Civ. P. 23(e). The settlement approval process includes three steps: (1) certification of a  
 12 settlement class and preliminary approval of the proposed settlement; (2) dissemination of notice to  
 13 affected class members; and (3) a formal fairness or final approval hearing, at which class members  
 14 may be heard regarding the settlement. *Vasquez v. Coast Valley Roofing*, 670 F. Supp. 2d 1114, 1124–  
 15 25 (E.D. Cal. 2009); *see also* MANUAL FOR COMPLEX LITIGATION, Fourth § 23.63 (2004). This  
 16 procedure safeguards class members’ Due Process rights and enables the Court to fulfill its role as a  
 17 fiduciary to the class. William B. Rubenstein, Albert Conte & Herbert Newberg, 4 NEWBERG ON CLASS  
 18 ACTIONS §§ 13:39–40 (5th ed. 2014).

19 The Court completed the first two steps when it granted preliminary approval of the  
 20 Settlements, certified the Settlement Class, and approved the Notice Program (ECF Nos. 1551, 1552).  
 21 IPPs’ notice provider, A.B. Data, designed the Notice Program, which was extensive and thorough.  
 22 Class Counsel worked with A.B. Data to provide the “best notice that [was] practicable under the  
 23 circumstances.” Fed. R. Civ. P. 23(c)(2)(B); *see also* Schachter Decl. ¶ 16. In particular, the Notice  
 24 Program mailed and emailed notice to Class Members using addresses made available to Class  
 25 Counsel through third-party distributor data; disseminated a news release via Business Wire; posted  
 26 notice on the settlement website (<https://www.capacitorsindirectcase.com/>); and set up a toll-free  
 27 number for potential class members to obtain information about the Settlements. Schachter Decl. ¶¶  
 28

1 3-10. The Notice Program was successful. *Id.* ¶ 16. As expected, the Notice Program fully complied  
2 with Rule 23 and Due Process. *Id.*

3 **B. The Class Settlements Are Fair, Reasonable, and Adequate, and Should be**  
4 **Approved**

5 Rule 23(e) requires the district court to determine whether a proposed settlement is “fair,  
6 reasonable, and adequate.” *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 944 (9th Cir. 2015)  
7 (citation omitted). To determine whether a settlement agreement meets these standards, a district court  
8 must balance a number of factors, including:

9 (1) the strength of the plaintiff’s case; (2) the risk, expense, complexity, and likely  
10 duration of future litigation; (3) the risk of maintaining class action status throughout  
11 the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and  
12 the stage of the proceedings; (6) the experience and views of counsel; (7) the presence  
of a governmental participant; and (8) the reaction of class members to the proposed  
settlement.

13 *Id.* at 944 (quoting *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)). These factors  
14 favor granting final approval of the Settlements as set forth, *infra*.

15 The law favors compromises and settlements of class action suits. *See, e.g., Churchill Vill.*, 361  
16 F.3d at 576; *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). “[T]he decision  
17 to approve or reject a settlement is committed to the sound discretion of the trial judge because he is  
18 ‘exposed to the litigants and their strategies, positions and proof.’” *Hanlon v. Chrysler Corp.*, 150 F.3d  
19 1011, 1026 (9th Cir. 1998) (quoting *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 628 (9th  
20 Cir. 1982)). “Where, as here, a proposed class settlement has been reached after meaningful discovery,  
21 after arm’s length negotiation, conducted by capable counsel, it is presumptively fair.” *M. Berenson*  
22 *Co. v. Faneuil Hall Marketplace, Inc.*, 671 F. Supp. 819, 822 (D. Mass. 1987). The Court should find  
23 that the Settlements are fair, adequate, and reasonable within the meaning of Rule 23(e).

24 **C. The Settlements Reflect the Position of the Parties at the Time the**  
25 **Agreements were Reached**

26 The Settlements reflect the parties’ positions at the time the parties entered the agreements.  
27 Courts have noted that legal uncertainty supports approval of a settlement. *See, e.g., Browning v.*  
28 *Yahoo! Inc.*, No. 04-CV-01463-HRL, 2007 WL 4105971, at \*10 (N.D. Cal. Nov. 16, 2007) (“[L]egal

1 uncertainties at the time of settlement—particularly those which go to fundamental legal issues—favor  
 2 approval”). Here, multiple legal uncertainties existed when the parties reached the Settlements in late  
 3 2020. After the adverse decision on class certification (ECF No. 1421), IPPs petitioned for permission  
 4 to appeal that decision (*Indirect Purchaser Plaintiffs v. Shinyei Technology Co., Ltd., et al.*, No. 20-  
 5 80157 (9th Cir. Nov. 17, 2020), ECF No. 1-3).<sup>4</sup> Furthermore, IPPs would have sought leave from the  
 6 Court to file a renewed motion for class certification (ECF No. 1439 at § I(A)(1)).

### 7 **1. The Settlements Eliminate Risk to the Class**

8 The risks, expense, complexity, and likely duration of further litigation likewise support the  
 9 Court’s final approval of the Settlements. As stated above, at the time of the Settlements, IPPs’ petition  
 10 for permission to appeal the adverse class certification decision was pending in the Ninth Circuit, and  
 11 IPPs were prepared to seek leave to file a renewed class certification motion. Furthermore, if the IPPs  
 12 succeeded in certifying the class, the class continued to face litigation risk in the form of summary  
 13 judgment on the merits,<sup>5</sup> trial, and potential appeals. As a result of these Settlements with the last  
 14 remaining Defendants in the Action,<sup>6</sup> IPPs have eliminated the risk that the class may not be certified  
 15 for litigation purposes, or that summary judgment could be granted on certain issues.

16 While IPPs believe their case is strong and that the Court would have granted a renewed class  
 17 certification motion (or the Ninth Circuit would have granted IPPs’ permission to appeal the adverse  
 18 class certification decision, even though such grants are rare), there are no guarantees. The Settlements  
 19 eliminate the risks if the Action was to proceed against the Settling Defendants. IPPs bear the burden  
 20 of establishing liability, impact, and damages. *See, e.g., Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396  
 21 F.3d 96, 118 (2d Cir. 2005) (“Indeed, the history of antitrust litigation is replete with cases in which

22 \_\_\_\_\_  
 23 <sup>4</sup> Without granting the petition, the Ninth Circuit has agreed to hold a determination of IPPs’  
 24 petition in abeyance pending final approval of the Settlements. *See, e.g., Order, Indirect Purchaser*  
 25 *Plaintiffs v. Shinyei Technology Co., Ltd., et al.*, No. 20-80157 (9th Cir. Dec. 28, 2020), ECF No. 15.

26 <sup>5</sup> Although the parties have fully briefed the summary judgment motion (ECF Nos. 685 (motion),  
 27 795 (opposition), 890 (reply)), the Court has not heard oral argument or ruled on it yet. The Court also  
 28 welcomed the Defendants to file renewed motions for summary judgment. Tr. of Zoom Video Conf.  
 Proc. 3:2-6 (Dec. 10, 2020).

<sup>6</sup> IPPs also sued Toshin Kogyo, Ltd. and Nissei Electric Co. Ltd., though counsel for these  
 Defendants have not appeared for several years or at all in this Action. The Court entered default as  
 to Toshin Kogyo, Ltd. in 2018 (ECF No. 340), and IPPs reasonably expect the Court to enter default  
 as to Nissei Electric Co. Ltd. as well.

1 antitrust plaintiffs succeeded at trial on liability, but recovered no damages, or only negligible  
 2 damages, at trial, or on appeal” (quoting *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D.  
 3 465, 475 (S.D.N.Y. 1998)); *In re Sumitomo Copper Litig.*, 189 F.R.D. 274, 282–283 (S.D.N.Y. 1999).  
 4 The Settlements are in the best interest of the Settlement Class because they eliminate risks of  
 5 continued litigation against the last two remaining Defendants, add to the monetary amounts available  
 6 for recovery by qualified claimants, and resolve all IPPs’ claims thereby expediting distribution of  
 7 long-awaited funds to Class Members. The Settlements therefore bring closure to this seven-year-old  
 8 case. The foregoing circumstances suggest that further litigation would have been costly and uncertain  
 9 and would have delayed any potential relief for the class. By contrast, the Settlements provide the  
 10 Settlement Class with timely, certain, and meaningful recovery.

## 11 2. The Settlements Provide Relief for the Class

12 The cumulative settlement fund of \$80,790,000 is substantial and provides considerable relief  
 13 to the electrolytic and film settlement classes. While the two Settlements that are the subject of this  
 14 motion provide for a cash payment of only \$300,000, this is a substantial amount given Settling  
 15 Defendants’ very small U.S. film capacitor market shares and that the Settlements are limited to Class  
 16 Members in six indirect purchaser states: California, Florida, Michigan, Minnesota, Nebraska, and  
 17 New York.<sup>7</sup> The cumulative settlement value here compares favorably to settlements finally approved  
 18 in other recent price-fixing cases in the Ninth Circuit. *See, e.g., In re Online DVD-Rental Antitrust*  
 19 *Litig.*, 779 F.3d at 941 (approving \$27.25 million settlement).

20 Additionally, the Settlements accurately reflect the percentages of total sales of the Settling  
 21 Defendants in the United States. As outlined in the motion for preliminary approval of the Settlements,  
 22 including the expert declaration of Dr. Russell L. Lamb, Ph.D. accompanying that motion, the Shinyei  
 23 Settlement represents 57.21% of Shinyei’s *total* sales of capacitors to U.S. distributors during the class

24 \_\_\_\_\_  
 25 <sup>7</sup> The class definitions in the Settlements are limited to only states in which IPPs alleged a Class  
 26 Representative made a relevant purchase *and* for which IPPs sought to certify a litigation class. IPPs’  
 27 Fifth Consolidated Compl. ¶¶ 29-39 (listing the Class Representatives and from which states); ¶¶  
 28 394(a)-(g) (similarly listing the state classes and including California, Florida, Michigan, Minnesota,  
 Nebraska, and New York); ¶¶ 415-442 *et seq.* (bringing state law indirect purchaser claims for states  
 including California, Florida, Michigan, Minnesota, Nebraska, and New York); IPPs’ Mot. for Class  
 Certification at 2 (ECF No. 1681), *id.* App’x B (ECF No. 1681-2).

1 period and 618.95% of the estimated damages attributable to Shinyei during the same period (ECF  
 2 Nos. 1527 at 13, 1527-4). Castillo Decl. ¶ 7. The Taitso Settlement represents 1,532.65% of Taitso’s  
 3 sales of capacitors to U.S. distributors during the class period and 16,581.73% of the estimated  
 4 damages attributable to Taitso during the same period (ECF No. 1527 at 13). *Id.* ¶ 10. This is because  
 5 both Shinyei and Taitso had limited sales in the U.S. and were small players in the market. These  
 6 percentages compare favorably with recent antitrust class settlements. *See, e.g., Fisher Bros. v.*  
 7 *Mueller Brass Co.*, 630 F. Supp. 493, 499 (E.D. Pa. 1985) (recoveries equal to 0.1%, 0.2%, 0.3%,  
 8 0.65%, 0.88%, 2%, and 2.4% of defendants’ total sales). Thus, despite the Settlements being lower in  
 9 absolute value, they nonetheless compare favorably given Shinyei and Taitso’s modest sales in the  
 10 U.S. market. The value of the Settlements reflects the balance of the broader harm inflicted by the  
 11 conspiracy as well as other developments in the litigation.

### 12 3. The Advanced Stage of the Proceedings Supports Final Approval

13 The extent of discovery completed and the stage of the proceedings support approval. The  
 14 factual investigation, significant discovery, and legal analyses in the seven-plus years of this litigation  
 15 were substantial. Class settlements are more likely fair if negotiated and agreed to following extensive  
 16 discovery. *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 967 (9th Cir. 2009); *see also Jaffe v.*  
 17 *Morgan Stanley & Co.*, No. C 06-3903 TEH, 2008 WL 346417, at \*9 (N.D. Cal. Feb. 7, 2008). When  
 18 parties have “a good grasp on the merits of [the] case before settlement talks beg[*i*n,” negotiations  
 19 are more likely to achieve fair results. *Rodriguez*, 563 F.3d at 967.

20 After multiple amendments to the complaint, a series of motions to dismiss, and two rounds of  
 21 summary judgment regarding the Foreign Trade Antitrust Improvements Act, IPPs received and  
 22 processed over 500 gigabytes of discovery from Defendants, which included over 15 million  
 23 documents, and taken depositions of 144 fact and 30(b)(6) witnesses from Defendants, nonparties, and  
 24 experts, which provided Class Counsel with the information needed to reach fair and reasonable  
 25 settlements.<sup>8</sup> The progress in the litigation and the exchange of voluminous information confirm IPPs  
 26

27 <sup>8</sup> IPPs’ request for fees and expenses in connection with the prior round of settlements provides a  
 28 detailed summary of the work performed by IPPs in the Action. *See* IPPs’ Motion for Attorneys’  
 Fees, Expenses, and Service Awards at 3, 10 (ECF No. 1011); Decl. of Adam J. Zapala in Support



1 and Defendants had a solid understanding of their respective cases to “make an informed decision  
2 about settlement.” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000).

3 As the foregoing demonstrates, the status of the proceedings and the substantial discovery that  
4 occurred favor approval the Settlements. The Settlements were achieved well into discovery and, as a  
5 result, Class Counsel were well-informed about the liability evidence, affected commerce at issue, and  
6 the associated risks to the class should litigation proceed. Class Counsel’s well-informed approach  
7 and the advanced stage of the litigation lead to reaching fair, adequate, and reasonable Settlements  
8 with Settling Defendants. *Rodriguez*, 563 F.3d at 967.

9 **4. The Settlements Are the Product of Arm’s Length Negotiations Between**  
10 **the Parties, and the Recommendation of Experienced Counsel Favors**  
11 **Approval**

12 When evaluating class action settlements, “the district court must reach a reasoned judgment  
13 that the proposed agreement is not the product of fraud or overreaching by, or collusion among, the  
14 negotiating parties. . . .” *City of Seattle*, 955 F.2d 1290 (internal quotation marks omitted). As noted,  
15 *supra*, the parties have vigorously litigated this Action. IPPs and Defendants have continually disputed  
16 pleadings, motions, and discovery requests. IPPs applied that same zealous advocacy in reaching the  
17 Settlements with the Settling Defendants. Negotiations over the Settlements took place over many  
18 months and involved numerous exchanges of confidential information and settlement proposals.  
19 Castillo Decl. ¶¶ 8, 11. The parties also engaged in further rounds of negotiations and revised the  
20 Settlements pursuant to the Court’s instructions at the March 18, 2021 hearing after the Court initially  
21 denied preliminary approval (ECF No. 1490). *Id.* The present Settlements were reached only after both  
22 sides became fully informed of the relative strengths and weaknesses of their positions, and  
23 corresponding litigation risks. *Id.* The long process IPPs and the Settling Defendants endured in  
24 reaching these agreements shows that they are the product of arms-length negotiations and not  
25 collusion. There is little doubt that the settlements were contested, fair, and conducted in utmost good  
26 faith. Because these Settlements are the products of arms-length negotiations conducted by  
27 experienced counsel who reached terms both sides find beneficial to their respective parties, the Court

28 Thereof ¶¶ 21-51 (ECF No. 1011-2). As stated, *supra*, IPPs are not seeking an award of attorney’s  
fees in connection with these last two Settlements.

1 should find the Settlements to be fair, adequate, and reasonable. *Garner v. State Farm Mut. Auto. Ins.*  
2 *Co.*, No. CV 08 1365 CW EMC, 2010 WL 1687832, at \*13 (N.D. Cal. Apr. 22, 2010).

3 Furthermore, Class Counsel's views weigh in favor of final approval. Counsel's judgment on  
4 the fairness of settlements is entitled to "great weight." *Nat'l Rural Telecomms.*, 221 F.R.D. at 528.  
5 The Court appointed competent and experienced counsel who have done extensive work in complex  
6 litigation, including extensive work in antitrust class actions around the country. *See* Order Appointing  
7 Interim Lead Class Counsel (Case No. 3:14-cv-03264, ECF No. 319). Class Counsel are therefore able  
8 to make informed and highly sophisticated assessments about the risks and possible recoveries in this  
9 Action. Class Counsel endorses the Settlements as fair, adequate, and reasonable. While IPPs believe  
10 they have meritorious claims, the Settling Defendants all assert that they have strong defenses that  
11 would eliminate their liability and/or damage exposure to the Settlement Class. The adverse class  
12 certification decision highlighted the litigation risks in the Action. The parties entered the Settlements  
13 to eliminate the burden, expense, and risks of further litigation.

#### 14 **5. There Are No Government Participants**

15 Besides the Antitrust Division of the U.S. Department of Justice, which has been investigating  
16 the capacitor industry since 2014, there is no other government participant in this Action.

#### 17 **6. Class Members' Overwhelmingly Positive Reaction Favors Final** 18 **Approval**

19 In determining the fairness and adequacy of a proposed settlement, the Court also should  
20 consider "the reaction of the class members to the proposed settlement." *Churchill Vill.*, 361 F.3d at  
21 575; *Hanlon*, 150 F.3d at 1026. "It is established that the absence of a large number of objections to a  
22 proposed class action settlement raises a strong presumption that the terms of a proposed class action  
23 settlement are favorable to the class members." *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221  
24 F.R.D. 523, 529 (C.D. Cal. 2004) (collecting cases); *see also In re Fleet/Norstar Sec. Litig.*, 935 F.  
25 Supp. 99, 107 (D.R.I. 1996). Following the Notice Program, through which IPPs presented the  
26 Settlement Class with the material terms of the Settlements, only three exclusion requests and no  
27 objections were received. Schachter Decl. ¶ 11. The Settlement Class includes large, sophisticated  
28 companies that purchase standalone capacitors from distributors. These entities can (and often do)

1 assert objections in this type of litigation. Their approval of the Settlements demonstrates their value  
2 to the Class.

3 The three exclusion requests submitted by two individuals and one entity on behalf of itself  
4 and its wholly-owned subsidiaries represent an extremely small fraction of the Settlement Class as a  
5 whole, demonstrating the Class's overall positive reaction to the Settlements. Given the limited  
6 number of opt-outs, this Court should recognize the Classes' overwhelmingly favorable reaction to  
7 the Settlements.

#### 8 **D. IPPs Implemented the Court Ordered Class Notice Program**

9 Before final approval of a class action settlement, the Court must find class members were  
10 notified in a reasonable manner. Fed. R. Civ. P. 23(e)(1). When a settlement class is certified under  
11 Rule 23(b)(3), class members should receive "the best notice that is practicable under the  
12 circumstances." Fed. R. Civ. P. 23(b)(3); *see also Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812  
13 (1985). Notice must describe "the terms of the settlement in sufficient detail to alert those with adverse  
14 viewpoints to investigate and to come forward and be heard." *Lane v. Facebook, Inc.*, 696 F.3d 811,  
15 826 (9th Cir. 2012). Here, the Court-approved and IPP-implemented Notice Program comports with  
16 Due Process and is the best practicable under the circumstances. *See generally*, Schachter Decl.

17 The robust and multifaceted Notice Program provided both Long Form and Short Form  
18 Notices. *See, e.g., id.* ¶¶ 9, 11, 13. The notices plainly describe who qualifies as members of the  
19 Settlement Class and plainly provide class members with information about excluding themselves  
20 from or objecting to the Settlements. *Id.* ¶¶ 11-12. The Program also provided notice by mail, email,  
21 and a nationwide news release. *Id.* ¶¶ 4-8. IPPs additionally provided the Class with a settlement  
22 website, [www.capacitorsindirectcase.com](http://www.capacitorsindirectcase.com), at which Class Members could learn more about the  
23 settlement terms, important dates, and even register as members of the Settlement Class. *Id.* ¶ 9. The  
24 Court's Order approving the Notice Program found that the notice plan was the best notice practicable  
25 under the circumstances under Rule 23(c)(2)(B) and met all Due Process requirements (ECF No. 1552  
26 at ¶ 2).

27 In turn, IPPs implemented the Court-approved Notice Program. IPPs obtained substantial  
28 distributor sales data through Rule 45 subpoenas in connection with prior settlement rounds. Schachter

1 Decl. ¶ 7. The data included customer information, which IPPs provided to A.B. Data to disseminate  
2 direct notice for those potential Class Members where contact information was available. *Id.* Notices  
3 for all rounds of settlements, including the one at issue involving the Shinyei and Taitso Settlements,  
4 used third-party distributor sales data to maximize notice to potential Class Members. Concerning  
5 direct notice of the Settlements, A.B. Data, provided direct notice of the Settlements to all potential  
6 Class Members who could be reasonably identified. *Id.* ¶ 4. Although the Settlements are limited to  
7 Class Members in six indirect purchaser states (*i.e.*, California, Florida, Michigan, Minnesota,  
8 Nebraska, and New York), A.B. Data provided direct notice to potential Class Members in in all states  
9 to effectively reach the greatest practicable number of Class Members and provide them with every  
10 reasonable opportunity to understand that their legal rights are affected. *Id.* Limiting direct notice to  
11 potential Class Members in the six states would neither have been significantly more efficient nor  
12 cost-effective. *Id.* It has been A.B. Data’s experience that businesses that purchase certain products  
13 may, on occasion, do so through divisions, subsidiaries, related entities, or units that might be located  
14 in other states, including the six states at issue here, potentially entitling them to share in the  
15 Settlements for those purchases. *Id.*

16 A.B. Data sent notice via email to the extent email contact information for potential Class  
17 Members was available; otherwise, it sent notice via mail. *Id.* ¶¶ 5-6. A.B. Data caused the Short-  
18 Form Notice formatted as an email to be emailed to 9,184 known potential Class Member email  
19 addresses. *Id.* ¶ 5. To maximize deliverability, A.B. Data used certain best practices, such as avoiding  
20 attachments and certain key words likely to trigger SPAM. Of the 9,184 emails sent, 8,411 were  
21 successfully delivered. *Id.*

22 A.B. Data also caused the Short-Form Notice formatted as a postcard (“Postcard Notice”) to  
23 be mailed via First-Class Mail, postage prepaid, to 425,698 potential Class Members. *Id.* ¶ 6. As of  
24 the date of this Declaration, the USPS has returned 81,116 Postcard Notices to A.B. Data as  
25 undeliverable as addressed (“UAA”). *Id.* Of the UAA Postcard Notices, 98 included updated addresses  
26 provided by the USPS and were promptly re-mailed. *Id.* Of the 81,116 UAA Postcard Notices that did  
27 not include updated addresses, A.B. Data identified 29,542 updated addresses using third-party  
28

1 information providers to which we subscribe and promptly re-mailed Postcard Notices to the updated  
2 mailing addresses. *Id.*

3 Regarding earned media relating to the Settlements, A.B. Data issued a nationwide news  
4 release announcing the Settlements distributed via Business Wire. *Id.* ¶ 8. Through earned media,  
5 publicity relating to the Settlements grew organically and through the editorial influence of various  
6 media outlets.

7 Finally, A.B. Data has also maintained the settlement website and the toll-free telephone  
8 helpline to provide the latest information to potential Class Members. *Id.* ¶¶ 8-9. IPPs and A.B. Data  
9 satisfied Due Process by providing the best notice practicable under the circumstances that is  
10 consistent with the requirements of Rule 23, Ninth Circuit precedent, and Due Process. *Id.* ¶ 16.

11 **E. The Plan of Allocation is Fair, Reasonable, and Adequate and Should be**  
12 **Approved**

13 “Approval of a plan for the allocation of a class settlement fund is governed by the same legal  
14 standards that are applicable to approval of the settlement; the distribution plan must be ‘fair,  
15 reasonable and adequate.’” *In re Citric Acid Antitrust Litig.*, 145 F. Supp. 2d 1152, 1154 (N.D. Cal.  
16 2001). When allocating funds, “[i]t is reasonable to allocate the settlement funds to class members  
17 based on the extent of their injuries or the strength of their claims on the merits.” *In re Omnivision*  
18 *Technologies, Inc.*, 559 F. Supp. 2d 1036, 1045-46 (N.D. Cal. 2008) (approving securities class action  
19 settlement allocation on a “per-share basis”); *Four in One Co. v. S.K. Foods, L.P.*, 2:08-CV-3017 KJM  
20 EFC, 2014 WL 4078232, at \* (E.D. Cal. Aug. 14, 2014) (approving “plan of allocation providing for  
21 a pro rata distribution of the net settlement fund based on verified claimants’ volume of qualifying  
22 purchases” as “fair, adequate, and reasonable”).

23 Courts, including this one, have frequently found *pro rata* distributions fair, adequate, and  
24 reasonable (ECF No. 628; Case 3:14-cv-03264-JD, ECF No. 1934) (approving Plan of Allocation in  
25 connection with prior settlements rounds). *See also In re Cathode Ray Tube (CRT) Antitrust Litig.*,  
26 2015 U.S. Dist. LEXIS 170525, at \*198-200 (N.D. Cal. Dec. 17, 2015) (approving *pro rata* plan of  
27 allocation based on proportional value of price-fixed component in finished product); *In re Dynamic*  
28 *Random Access Memory (DRAM) Antitrust Litig.*, No. M-02-1486 PJH, Dkt. No. 2093, at \*2 (Oct. 27,

1 2010) (order approving *pro rata* distribution); *In re Vitamins Antitrust Litig.*, No. 99-197 TFH, 2000  
2 U.S. Dist. LEXIS 8931, at \*32 (D.D.C. Mar. 31, 2000) (“Settlement distributions, such as this one,  
3 that apportions funds according to the relative amount of damages suffered by class members have  
4 repeatedly been deemed fair and reasonable.”) (citations omitted); *In re Lloyds’ Am. Trust Fund Litig.*,  
5 No. 96 Civ.1262 RWS, 2002 U.S. Dist. LEXIS 22663, at \*54 (S.D.N.Y. Nov. 26, 2002) (“Pro rata  
6 allocations provided in the Stipulation are not only reasonable and rational, but appear to be the fairest  
7 method of allocating the settlement benefits.”); *In re PaineWebber Ltd. P’ships Litig.*, 171 F.R.D. 104,  
8 135 (S.D.N.Y. 1997), *aff’d* 117 F.3d 721 (2d Cir. 1997) (“[A] *pro rata* distribution of the Settlement  
9 on the basis of Recognized Loss will provide a straightforward and equitable nexus for allocation and  
10 will avoid a costly, speculative and bootless comparison of the merits of the Class Members’ claims.”).

11 Here, allocation of the Settlement Fund will be *pro rata* based on the type and extent of injury  
12 suffered by each class member in the six indirect purchaser states (*i.e.*, California, Florida, Michigan,  
13 Minnesota, Nebraska, and New York). The Settlement Class here is not limited to purchasers from  
14 Shinyei and Taitso alone. Due to joint and several liability, class members who purchased from any  
15 conspiring Defendant are eligible to participate in the recovery, including of amounts from prior  
16 settlements (Case No. No. 3:14-cv-03264, ECF Nos. 1934, 2334, 2693). All funds from the Shinyei  
17 and Taitso Settlements will therefore allocated on a *pro rata* basis to purchasers in these six states with  
18 qualifying purchases. The \$300,000 from these Settlements will be added to amounts collected for  
19 claimants from California, Florida, Michigan, Minnesota, Nebraska, and New York in the previously  
20 approved settlements.

21 The *pro rata* distribution to each Class Member with damages claims from the six indirect  
22 purchaser states that are included in the settlement class will be based upon the number of approved  
23 purchases of film capacitors during the settlement class period, a dynamic that ties recovery to each  
24 Class Member to the volume and type of its purchases. This distribution is a reasonable and fair way  
25 to compensate the Settlement Class, and this basic structure has been approved as to the other rounds  
26 of settlements in this Action. This plan of allocation is “fair, adequate, and reasonable” and merits  
27 approval by the Court. *Citric Acid*, 145 F. Supp. at 1154.

