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

13
 14 **IN RE CAPACITORS ANTITRUST
 LITIGATION**

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

15
 16 **THIS DOCUMENT RELATES TO:**
 17 **ALL INDIRECT PURCHASER
 18 PLAINTIFF ACTIONS**

**INDIRECT PURCHASER PLAINTIFFS’
 UPDATE ON CLAIMS STATUS IN
 SUPPORT OF MOTION FOR FINAL
 APPROVAL OF SETTLEMENTS WITH
 ELNA, MATSUO, NICHICON, AND
 PANASONIC**

Date: April 16, 2020
 Time: 10:00 a.m.
 Place: Courtroom 11, 19th Floor
 Judge: Hon. James Donato

1 Indirect Purchaser Plaintiffs (“IPPs”) hereby submit this update to the Court with the most
2 current information regarding the claims administration process in the above-captioned case in
3 advance of the hearing on IPPs’ Motion for Final Approval of Settlements with Elna, Matsuo,
4 Nichicon, and Panasonic, currently scheduled for April 16, 2020 (MDL No. 3:17-md-02801, ECF
5 No. 1095).¹ Much of this updated information is also contained in the Declaration of Notice and
6 Settlement Administrator Eric Schachter of A.B. Data (“Schachter Decl.”) submitted herewith.

7 As detailed in Mr. Schachter’s declaration in support of final approval submitted on January
8 6, 2020, IPPs disseminated class notice in accord with this Court’s order and pursuant to the proposed
9 plan of class notice (“Schachter Final Approval Decl.”) (ECF No. 1063-7). This included, *inter alia*,
10 the dissemination of direct mail and email notice, publication notice in prominent publications and
11 newspapers, email blasts to subscriber lists, an internet banner advertisement campaign,
12 dissemination of a nationwide news release, the establishment of a settlement website, and the
13 establishment of a toll-free number to answer any class member questions. *Id.* This notice program
14 was extensive and successful in reaching the classes. *Id.* ¶¶ 21-23.

15 In connection with the notice plan, A.B. Data sent potential class members not only notice of
16 the settlements but also a claim form with corresponding purchase information for potential class
17 members derived from transactional data that was subpoenaed from capacitor distributors. *Id.* ¶¶ 5,
18 7. In other words, to make the submission of claims easier and more efficient for the IPP classes, A.B.
19 Data included pre-populated purchase information for that particular settlement class member, if
20 available. *Id.* If that settlement class member wished to supplement the pre-populated purchase
21 information with even more purchase data that was not captured by the subpoenaed distributor
22 transactional data, settlement class members could supplement the purchase information with
23 additional evidence.

24 As reflected in the accompanying Schachter Declaration, while A.B. Data is continuing to
25 audit the claims, including by continuing to screen out potentially fraudulent claims, it expects to
26 finalize that process in the next 90 to 120 days. IPPs can report the following:

27
28 ¹ All ECF references are to the MDL Docket, Case No. 3:17-md-02801.

- 1 • The total, cumulative pre-populated purchase amounts included in the claim forms
2 were \$716,982,842.67 and \$48,830,504.74 for electrolytic capacitors and film
3 capacitors, respectively. *See* Schachter Decl. ¶ 4. Thus far, claims have been made for
4 \$189,726,387.27 worth of electrolytic capacitors purchases and \$43,059,014.06 worth
5 of film capacitors purchases. *Id.* ¶ 6;
- 6 • The foregoing corresponds with claims rates of 26.46% and 88.18% for electrolytic
7 capacitors and film capacitors, respectively. *Id.* Such claims rates in an indirect
8 purchaser case are extremely positive and exceed the claims rates seen in other
9 consumer or indirect purchaser cases. *Id.*;
- 10 • To some degree, however, the foregoing claims rates are overstated. This is because
11 the total commerce for the Defendants for both electrolytic capacitors and film
12 capacitors is higher than the amounts reflected in the pre-populated claim forms. In
13 other words, the usable subpoenaed distributor data for purposes of the claim forms
14 did not capture all of the Defendants' sales of the relevant capacitors to the IPP classes;
- 15 • Notwithstanding the foregoing, even utilizing the Defendants' overall sales of the
16 relevant capacitors to distributors, the claims rates are still highly favorable:
 - 17 ○ For example, given that claims have been made for \$189,726,387.27 in
18 electrolytic capacitors purchases and \$43,059,014.06 in film capacitors
19 purchases, A.B. Data has estimated claims rates of 18.52% for electrolytic
20 capacitors and 35.29% for film capacitors, respectively, based on Defendants'
21 overall sales of such capacitors to distributors. *Id.* ¶ 7. These claims rates still
22 greatly exceed those in other typical consumer or indirect purchaser cases. *Id.*

23 To put the foregoing claims rates into their appropriate context, as several studies have
24 indicated, claims rates in typical consumer class action litigation hover from around 2% to 5%, and
25 sometimes much lower. *See In re Static Random Access Memory (SRAM) Antitrust Litigation*, No.
26 07-md-01819-CW (N.D. Cal.) (2.98% in the indirect purchaser action); *In re Dynamic Random*
27 *Access Memory (DRAM) Antitrust Litigation*, No. 02-md-01486-PJH (N.D. Cal.) (claims rate of
28 .25%); *In re TFT-LCD (Flat Panel) Antitrust Litigation*, No. 07-md-01827-SI (N.D. Cal.) (claims

1 rate of .13%); *In re Electronic Books Antitrust Litigation*, No. 11-md-02293 DLC (S.D.N.Y.) (1%
 2 claims rate); *Edwards v. National Milk Producers Federation*, No. 11-cv-04766-JSW (N.D. Cal.)
 3 (2.07% claims rate). Similarly, in the *Vizio* privacy litigation settlement that recently received final
 4 approval, the district court commented favorably regarding a 4.65% claims rate. *See In re Vizio, Inc.*
 5 *Consumer Privacy Litigation*, No. 16-ml-02693-JLS-KES (C.D. Cal. July 31, 2019), ECF No. 337.²

6 In addition to the foregoing, as stated in the accompanying Schachter Declaration:

- 7 • There are 7,273 businesses or individuals that submitted additional information,
 8 seeking to supplement the purchase amounts in their pre-populated forms that A.B.
 9 Data is still in the process of evaluating; and
- 10 • There are an additional 99 businesses or entities seeking additional transactional data
 11 information from A.B. Data to further support their claims. Schachter Decl. ¶ 8.

12 If additional information regarding the claims process comes to light in advance of the final
 13 approval hearing that would be helpful to the Court, IPPs will provide it.

14
 15 DATED: April 9, 2020

Respectfully submitted,

16 /s/ Adam J. Zapala

17 Joseph W. Cotchett
 18 Adam J. Zapala

19 ² Likewise, the Consumer Financial Protection Bureau reported in a study examining federal
 20 consumer financial class settlements approved between 2008 and 2012 a weighted average claims
 21 rate of 4 percent. *See* Consumer Fin. Protection Bureau, *Arbitration Study: Report to Congress,*
 22 *Pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act § 1028(a)* (2015), p. 17.
 23 Available at [https://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-](https://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf)
 24 [2015.pdf](https://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf). *See also* Bolch Judicial Institute, *Guidelines and Best Practices Implementing 2018*
 25 *Amendments to Rule 23 Class Action Settlement Provisions*, Duke Law School (August 2018), at 15
 26 (recognizing “courts have concluded that the opportunity to recover meaningful relief by availing
 27 themselves of a claims process that is procedurally fair, even though many fail to do so, is ‘actual
 28 value’ to the class members”); *Hall v. Bank of Am., N.A.*, No. 1:12-cv-22700-FAM, 2014 WL
 7184039, at *8 (S.D. Fla. Dec. 17, 2014) (“There may be many reasons or no reasons why class
 members decide to participate in a settlement, e.g., a desire not to be involved in litigation, ideological
 disagreement with the justice system, their individual experiences with [a product], or sympathy for
 the defendant. . . . Whatever the underlying reason, that is a decision to be made by each class
 member. Those decisions, however, do not affect whether the settlement provided to the Class is fair,
 adequate, and reasonable.”).

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