

1 ADAM J. ZAPALA (State Bar No. 245748)
ELIZABETH T. CASTILLO (State Bar No. 280502)
2 JAMES G. DALLAL (State Bar No. 277826)
COTCHETT, PITRE & MCCARTHY, LLP
3 840 Malcolm Road, Suite 200
Burlingame, CA 94010
4 Telephone: (650) 697-6000
Facsimile: (650) 697-0577
5 azapala@cpmlegal.com
ecastillo@cpmlegal.com
6 jdallal@cpmlegal.com

7 *Interim Lead Counsel for Indirect Purchaser Plaintiffs*

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

14 **IN RE CAPACITORS ANTITRUST**
15 **LITIGATION**

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

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

INDIRECT PURCHASER PLAINTIFFS’
NOTICE OF POST-DISTRIBUTION
ACCOUNTING AND REQUEST FOR
RELEASE OF REMAINING
ATTORNEYS’ FEES

1 **I. INTRODUCTION**

2 The Indirect Purchaser Plaintiffs (“IPPs”) hereby submit this Post-Distribution
3 Accounting, along with the supporting declaration of Eric Schachter (“Schachter Decl.”) of A.B.
4 Data, the Court-appointed claims administrator, and the exhibit attached thereto, pursuant to the
5 Procedural Guidance for Class Action Settlements.

6 Concurrently, and in accord with this Court’s previous orders, IPPs respectfully request
7 that the Court release the remaining 25% of attorneys’ fees (\$1,934,375) that it awarded in
8 connection with the Round 3 Settlements, ECF No. 2693¹ (“Attorneys’ Fees Order”), plus
9 proportional interest.

10 This Post-Distribution Accounting and the supporting materials demonstrate that IPPs’
11 claims administration process has been a resounding success, delivering settlement funds to the
12 class and ensuring maximal participation. The Post-Distribution Accounting and the Schachter
13 Declaration reflect that 98.5% of the Net Settlement Fund has already been deposited by
14 Settlement Class Members. Schachter Decl. ¶ 7. As the secondary check void date for outstanding
15 checks is set for nearly a month away on September 2, 2023, that percentage may improve even
16 further. *Id.*²

17 Moreover, IPPs were able to achieve these impressive claims rates by engaging in an
18 outreach program to the class, along pre-populating the claim forms with purchase information
19 received from non-party discovery in the case. *Id.* ¶ 2. Out of an aggregate of \$716,982,842.67 in
20 purchase volume reflected in claim forms for the electrolytic capacitors at issue in the case, class
21 members submitted claims amounting to \$332,706,843.32, for a corresponding claims rate of
22 approximately 46%. *Id.* As the Schachter Declaration makes clear, this is an impressive claims
23 rate for indirect purchaser litigation. And for the aggregate of \$48,830,504.74 reflected in claim
24 forms for the film capacitors at issue in the litigation, class members submitted claims amounting

25 _____
26 ¹ References herein to “ECF No. ___” are to the docket in Case No. 3:14-cv-3264.

27 ² The initial check void date for the vast majority of claimants was July 13, 2023. In the interim,
28 some class members requested that the claims administrator reissue them checks and the void date
for those reissued checks is September 2, 2023.

1 to \$55,069,025.81 in purchases, for a corresponding claims rate of approximately 112%.³ *Id.*; see
 2 also Declaration of Eric Schachter, ECF No. 2974-1 at ¶ 7. In the court-appointed claims
 3 administrator’s opinion, these are excellent claims rates. *Id.*

4 For the small amount of Net Settlement Funds that remain uncashed, which currently
 5 stands at \$742,268.96 (approximately 1.5%), the IPPs are not requesting that the Court take any
 6 action now. As noted, the void date for some outstanding checks that were reissued, as a result of
 7 re-mailings to a certain subset of claimants, is September 2, 2023, and those class members
 8 continue to cash their checks. After that date, IPPs will submit a further summary to the Court
 9 specifying the amount of Net Settlement Funds that remain uncollected. If sufficient funds remain
 10 available, IPPs and A.B. Data may recommend that the Court authorize a secondary distribution.
 11 Alternatively, IPPs will propose an appropriate *cy pres* recipient for the Court’s consideration.

12 **II. BACKGROUND AND SUMMARY OF POST-DISTRIBUTION ACCOUNTING**

13 On March 23, 2022, the Court issued an Order granting final approval of IPPs’ settlements
 14 with the last two actively litigating Defendants in this action. ECF No. 2921 (“Order Granting
 15 Indirect Purchaser Plaintiffs’ Motion for Final Approval with the Shinyei and Taitso
 16 Defendants”). On December 19, 2022, the Court issued its Order authorizing IPPs to proceed with
 17 the proposed disbursement of Net Settlement Funds. ECF No. 2977.

18 Previously, on July 17, 2020, in connection with the Round 3 Settlements, the Court
 19 issued an Order approving the request of IPP Class Counsel for \$7,737,500 in attorney’s fees, but
 20 awarded only 75% of that amount as of that date, with the remaining 25% to be disbursed to Class
 21 Counsel “by a further order of the Court, to be issued after counsel have filed the Post-
 22 Distribution Accounting required by the N.D. Cal. Procedural Guidance for Class Action
 23 Settlement.” Attorneys’ Fees Order at 2.

24
 25
 26 ³ As the Schachter Declaration explains, a result exceeding 100% is not entirely unexpected
 27 because the distributor data provided to the parties in discovery did not include all class period
 28 purchases by eligible members of the indirect purchaser class. For example, many distributors that
 received Rule 45 subpoenas did not have purchase data spanning the entire class period.

1 As detailed in the Declaration of Eric Schachter filed herewith, the court-appointed claims
 2 administrator, A.B. Data has now completed its distribution of Net Settlement Funds to eligible
 3 class members pursuant to the Court-approved plan. The initial check void date was July 13,
 4 2023, and the void date for checks reissued pursuant to class member request is September 2,
 5 2023. The Northern District of California's Procedural Guidance for Class Action Settlements⁴
 6 directs that information regarding the claims administration process be provided in an easy-to-
 7 read chart. The chart with the information is attached to the Schachter Declaration as Exhibit A.
 8 This chart will also be posted on IPPs' settlement website, www.capacitorsindirectcase.com, and
 9 has been provided in this document below for the Court's convenience.

10 IPPs and A.B. Data have successfully distributed the vast majority of the Net Settlement
 11 Funds to class members, who have already received 98.5% of the total amount originally
 12 available. As class members continue to cash checks, this percentage will continue to increase.
 13 Only 1.5% of the original Net Settlement Funds (\$742,268.96) remains to be distributed.
 14 Moreover, participation rates confirm a successful outreach effort. The average payout thus far is
 15 over \$6,000.

Total Gross Settlement Fund (combined settlements)	\$80,790,000.00
Total Amount of Pre-Populated Purchase Information Included in Claim Forms (Film Capacitors)	\$48,830,504.74
Total Amount of Claimed by Settlement Class Members (Film Capacitors)	\$55,069,025.81
Claims Rate Percentage Based on Purchase Amount Claimed (Film Capacitors)	112%
Total Amount of Pre-Populated Purchase Information Included in Claim Forms (Electrolytic Capacitors)	\$716,982,842.67
Total Amount of Claimed by Settlement Class Members (Electrolytic Capacitors)	\$332,706,843.32
Claims Rate Percentage Based on Purchase Amount Claimed	46%
Total Number of Identified Putative Class Members (after analysis and consolidation)	504,773

26
 27 ⁴ Available at: www.cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements
 28 (last visited August 2, 2023).

1	Total Number of Putative Class Members to Whom Notice Was Sent and Not Returned as Undeliverable	425,615
2	Number of Opt-Out Requests Received	709
3	• Percentage of Class Members Opting Out of Settlements	<1%
4	Number of Objections Received	0
5	• Percentage of Class Members Objecting to Settlements	0%
6	Average Class Member Payment	\$6,161.32
7	Median Class Member Payment	\$6.34
8	Smallest Amount Paid to a Class Member	\$1.00
9	Methods of Notice	Mail/Media
10	Methods of Payment to Class Members	Check or Wire
11	Total Number of Class Member Payments Sent	8,352
12	Total Number of Class Members Payments by Check	8,141
13	Total Number of Class Members Payments by Wire	211
14	Number of Payments Cashed (by Check or Wire)	6,456
15	Value of Payments Cashed (by Check or Wire)	\$50,717,055.61
16	Number of Checks Not Yet Cashed	1,896
17	Value of Checks Not Yet Cashed	\$742,268.96
18	Cy Pres Payment	N/A
19	Total Notice and Settlement Administration Costs	\$2,210,102.32
20	Class Representatives Service Awards	\$50,000 (total)
21	Approved Attorneys' Fees (combined settlements)	\$20,122,500.00
22	Approved Attorneys' Expenses (combined settlements)	\$8,005,259.31
23	Attorneys' Fees as a Percentage of Settlement Fund	25%
24	Attorneys' Fee Lodestar Total	\$30,794,306.00
25	Attorneys' Fee Multiplier	0.65

26 Based on the success of this process, IPPs respectfully request that the Court authorize the
 27 release of the remaining 25% of the attorney fee award, or \$1,934,375, plus proportional interest.
 28

1 Finally, at the recommendation of the claims administrator, once the further check void
2 date has passed, IPPs will provide an update to the Court regarding any remaining Net Settlement
3 Funds and will in consultation with A.B. Data provide a further recommendation as to whether a
4 secondary distribution, or *cy pres* distribution, is appropriate. See Schachter Decl. ¶ 7.

5 **III. CONCLUSION**

6 IPPs will provide a further update after September 2, 2023, and respectfully request that
7 the Court authorize release of the remaining attorneys’ fees in accordance with its prior Order
8 directing that 25% of the fee request await filing of this post-distributing accounting. IPPs are
9 available to participate in a hearing on this matter should the Court find it appropriate to hold one.

10 Dated: August 10, 2023

Respectfully Submitted:

11 */s/ Adam J. Zapala*

12 Adam J. Zapala

Elizabeth T. Castillo

13 James G. Dallal

COTCHETT, PITRE & McCARTHY, LLP

14 840 Malcolm Road, Suite 200

Burlingame, CA 94010

15 Telephone: (650) 697-6000

16 Facsimile: (650) 697-0577

azapala@cpmlegal.com

17 ecastillo@cpmlegal.com

jdallal@cpmlegal.com

18 *Interim Lead Counsel for Indirect Purchaser Plaintiffs*