UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE CAPACITORS ANTITRUST LITIGATION

MDL Case No. 17-md-02801-JD

Case No. 14-cv-03264-JD

SPECIAL MASTER'S REPORT AND RECOMMENDATION REGARDING VALUATION OF INCORPORATED CAPACITOR CLAIMS

Introduction and Procedural History

This report and recommendation addresses objections raised by two members of the Direct Purchaser Plaintiffs ("DPPs") class -- Cisco Systems, Inc. ("Cisco") and Aptiv Services US, LLC fka Delphi Automotive LLP ("Aptiv") (collectively "Objecting Members") -- to Class Counsel's proposed final valuation of their share of Second Round settlement proceeds. In its original allocation of Second Round settlement proceeds, Class Counsel had allocated 0% of settlement funds for Incorporated Capacitor claims. Cisco and Aptiv objected and that matter was referred by the Court to the Special Master, who addressed these issues in two reports. (MDL Dkt. No. 821 and MDL Dkt. No. 995). The Court adopted both reports, and directed Class Counsel to reallocate settlement funds to compensate Objecting Members' incorporated capacitor claims. MDL ECF No. 1339, Addressing Class Counsel's concerns about fairness to the class because of the higher litigation risk for incorporated capacitor claims, the Court agreed that Cisco and Aptiv should supply supplemental support for their claims per the Special Master's Report, which they did by letter on May 4, 2020. Class Counsel was directed to consider the information from Cisco and Aptiv and assess what if any discount rate should be applied to Objecting Members' incorporated capacitor claims as compared to claims for unincorporated capacitors. The Court supplemented its order to advise the parties that any remaining dispute regarding the Class Counsel's valuation should be submitted to the Special Master. MDL ECF No. 1343.

On July 23, 2020, Class Counsel submitted a revised allocation per the Court's order. The reallocation discounted Cisco's Incorporated Capacitor Claims by 95.875%, down to 3.175% of the amounts claimed. The reallocation also discounted Aptiv's Incorporated Capacitor claims by 87.5% down to 12.5% of what Aptiv claimed. Objecting Members filed an objection and letter-brief on July 31, 2020 contending that these discounts were unjustified and that none of their claims should be discounted to less than 85% of the rate for unincorporated capacitor claims (i.e., a maximum 15% discount). The Special Master held a status conference with the parties on August 4, 2020, at which they agreed to waive a hearing, and to allow the Special Master to rely exclusively on their respective written submissions to resolve this dispute. This Report and recommendation follows.

Background and Objections

Briefly, this matter arises from a general dispute about whether DPPs were entitled to receive settlement funds for claims they submitted relating to so-called Incorporated Capacitors. Incorporated Capacitor are capacitors combined into finished products assembled outside of the United States and then shipped to DPPs as original purchasers in the U.S. The Objecting Members sought a proportionate share of the settlement proceeds DPP Class members had received from capacitor manufacturers, Hitachi Chemical Co., Ltd., Hitachi AIC, Inc., and Hitachi Chemical Co. America, Ltd. ("Hitachi Chemical defendants" or "Hitachi"); and Soshin Electic Co., Ltd. and Soshin Electronics of America, Inc. ("Soshin defendants" or "Soshin") (collectively, "Settling Defendants"). Those manufacturers had settled the civil claims filed against them by all DPPs for $66.9 million ("the Second Round Settlement"). Class Counsel disagreed that Incorporated Capacitor claims were recoverable in the settlement and so proposed that Objecting Members receive none of the $43,485,000 (plus accrued interest) available for distribution for these specific claims. MDL Dkt. No. 381 at 6. Cisco objected that Class Counsel had wrongly excluded $142,070,717.01 in incorporated capacitor claims. Aptiv contended that Class Counsel disallowed $48,567,508.65 in incorporated capacitor claims. Both claimed that those funds should be allocated on a pro rata basis no different from their other claims for "unincorporated" or "raw" capacitors.[1]

In adopting the Special Master's Recommendation and Reports, the Court found that Objecting Members had made an adequate showing that their claims for incorporated capacitors were viable under the Sherman Act and the FTAIA, and thus should be allocated a share of the Second Round Settlement proceeds. The Court further adopted the portion of the Recommendation and Reports allowing Class Counsel to allocate funds for incorporated capacitor claims at a lower rate, to reflect their relative strength versus unincorporated capacitor claims. In particular, the Court acknowledged the heightened litigation risk (i.e., the higher uncertainty that the Objecting Members would have succeeded on the merits at trial with these claims), and that questions existed concerning what these Defendants knew or reasonably should have known about whether these products were being directed (shipped or sold) to U.S. claimants. Class Counsel therefore was granted some discretion to apply a lower recovery rate.

Finally, the Court adopted the Special Master's recommendation that before any reallocation was completed, the Objecting Members should be given the chance to supplement the record on Settling Defendants' actual or constructive knowledge of these capacitors. That submission and the reallocation that followed lie at the heart of this dispute.

Objecting Members' Submissions Regarding Settling Defendants' Knowledge

Objecting Members' Letter of May 4, 2020 details their evidence in support of claims that the Settling Defendants knew or should reasonably have known that the capacitors at issue in their

[1] Because all DPPs are, by definition, "direct purchasers," this Report and Recommendation uses the term "unincorportated capacitors" to refer to capacitors sold directly to the U.S. rather than Class Counsel's suggested term of "direct capacitors."

Incorporated Capacitor claims were in fact related to sales or shipments to U.S. purchasers ("May 4 Letter"). In addition to drawing on discovery already conducted in this matter, Objecting Members also submitted additional materials obtained by subpoena and third-party discovery. Objecting Members also urged in their letter that – to the extent that aspects of the record may be incomplete in some respects -- the Special Master grant Objecting Members the benefit of a lower standard of proof because the settlement had ended discovery, and thus denied them any additional evidence that was exclusively in the hands of Settling Defendants. May 4 Letter at 1.

Summarizing the evidence, Objecting Members assert that Settling Defendants either knew or should reasonably have foreseen that 48.6 percent of Cisco's total incorporated capacitor purchases and 33.24 percent of Aptiv's incorporated capacitor purchases were shipped into the United States. May 4 Letter at 3. Relying on joint-and-several liability principles in antitrust cases, Objecting Members further contend that it is sufficient to establish this level of knowledge by any Settling Defendant, to support all claims.

Reviewing the filings, Objecting Members have provided evidence that Aptiv contracted directly with several Defendants (including the Settling Defendants) and that some of its contracts expressly provide a U.S. address for Aptiv as either the buyer or the "ship to" location. May 4 letter, Ex. C at 6,10,1 4. They further note that representatives of certain Settling Defendants either acknowledged that Aptive made sales into the U.S.actually visited Aptiv's offices in the U.S. regarding capacitor sales and would naturally have gathered information about Aptiv's general purchasing needs contained in market research and trade reports. May 4 Ltr at 5. Aptiv's 2014 Annual Report in fact states that approximately 33 percent of its net sales were generated in the "North American market" (presumably the U.S., Canada, or Mexico), and that this was true from 2010-2015 as well.

Regarding Cisco, Objecting Members have produced evidence to support their claim that Cisco was a global customer and was known among Settling Defendants generally to utilize a set of contract manufacturers to produce many of the products it sold in the U.S., and that Settling Defendants both knew of this relationship and that a substantial share of sales were destined for the United States. May 4 Ltr at 6-7. Cisco's publicly available annual reports included information that would allow Settling Defendants to calculate Cisco's sales in the U.S.and that from 2006-2008 approximately 50 percent of all such sales were in U.S. destinations. Relying on the Declaration of Dwyer Lawhorn (Ex. O to the May 4 letter), Objecting Members note that it is possible to assess the relative percentage of those sales that related to finished products with incorporated capacitors. Id. at 7. Although they lack clear evidence that Settling Defendants performed these calculations, they assert that it is reasonable that a competent salesperson within some "[Settling] Defendant's company – for example, the main salesperson assigned to Cisco – knew (or should have known) the precise percentage of capacitors that would be incorporated into products eventually shipped into the United States." May 4, 2020 letter at 8, citing Ex. G. at Tr. 94-95) and Ex. K.

Objecting members furnish evidence that some non-Settling Defendants knew that Cisco was the end user in many sales to contract manufacturers (*id.* at 8), that they had specific knowledge concerning who end users were (*id.* at 9), and they knew that many of those end users were based

in the U.S. or planned to sell their finished products in the U.S.(*id.* at 9-11). They argue that the unlawful price-fixing agreement among all Defendants was formed in part to address the rise of contract manufacturing and creates a level of knowledge attributable to the non-Settling Defendants, and that was demonstrated by the actions of other (i.e., non-Settling) Defendants. May 4, 2020 ltr at 8-11. On that basis, Objecting Members initially urged that no discount be taken based on either the quality of these claims under existing federal law, or the quality of the evidence establishing that reasonable knowledge of the quantity of sales to the U.S. attributable to the Settling Defendants.

Class Counsel's Proposed Allocation for Cisco and Aptiv

As noted, following receipt of Objecting Members' submission, Class Counsel reallocated its original distribution. Specifically, instead of applying a 100% discount, it applied a still-dramatic set of discounts for both Cisco and Aptiv, reducing Cisco's claim by a whopping 96.875% and cutting Aptiv's nearly as much by 87.5%. In support of these discounts, Class Counsel explains that it reduced all claims by at least 50% because – taken as a whole -- claims were poorly substantiated. Class Counsel then applies additional discounts based upon: (1) Class Counsels' criticism that Objecting Members' evidence fails to prove that Settling Defendants' had actual or constructive knowledge of these U.S. sales/shipments, and; (2) Class Counsel's opinion that incorporated capacitor claims have a generally low likelihood of success on the merits versus non-incorporated capacitor claims.

Because many of the grounds for discounting apply in equal measure to Cisco and Aptiv alike, this Report and Recommendation first reviews in detail these arguments as they relate to Cisco. It then separately addresses the points of difference between Cisco and Aptiv presented by Class Counsel and how these affect the proposed allocation discount.

A. Discounts Applied to Cisco's Allocation of Settlement Proceeds for Incorporated Capacitor Claims Claims

With respect to Cisco's claims, Class Counsel details a series of large discounts that it applied based on general principles and estimates that – when compounded – produce an oddly precise allocation of 3.175% of Cisco's final submitted claims. Specifically, as noted, Class Counsel first proposes to discount the entire claim by 50% on the ground that the claims were incomplete and failed to include basic information distinguishing Cisco's incorporated capacitor claims from claims Cisco obtained by assignment and other direct capacitor claims. Class Counsel then reduces that remaining amount by half again (a 75% total discount) based on Cisco's failure to clearly establish that all capacitors contained in the finished products were indeed manufactured by the Defendants and that none of the capacitors were mingled in these products were produced by non-Defendant capacitor manufacturers in China or Taiwan. Class Counsel next halves the remaining claims again (a total 87.5% discount) to reflect ambiguity in the record about whether the Defendants actually knew their sales/shipments to the U.S. were destined for Cisco or only whether they were destined for some U.S. purchaser. Finally, Class Counsel reduces the remaining claims by an additional 75% (a total 96.825% discount) based on Class Counsel's

view that the hurdles Cisco faced in actually winning an incorporated capacitor claim made its chances of success on the merits 75% lower than for their unincorporated capacitor claims. The cumulative effect of these discounts reduces Cisco's total incorporated capacitors claims to only 3.125% of the submitted claims. We assess each of these discounts separately.

1. Legitimacy of Incorporated Capacitor Claim Submission

Class Counsel argues first that Cisco's proposed total claim is overstated by at least 50%, and should therefore be reduced by that percentage even before applying any litigation risk discount. Specifically, Class Counsel contends that Cisco's submission was inadequate because it did not distinguish among its claims for purchases through contract manufacturers, claims based on certain purchases Cisco made directly, and claims Cisco holds by assignment. July 23 ltr at 4. Class Counsel also complains that Cisco's evidence is unreliable because, in the past, it has given inconsistent answers about what types of claims are covered in its pre-populated claim form. Notably, Cisco's claim changed multiple times over the course of these proceedings. *Id.* Class Counsel contends essentially that the overall sloppiness of Cisco's submissions leaves Class Counsel at risk of possibly paying the same claims twice, and that it is within its rights to disqualify all claims to zero on this basis. Letter of July 23 at 4-5. Nevertheless, Class Counsel proposes to give Cisco "the benefit of the doubt that Cisco will be able to provide: a) a clear demarcation of which claims constitute its Incorporated Capacitor claims and which claims constitute claims that Cisco has assignment agreements for; and (b) supporting invoice numbers or invoices for its Incorporated Capacitor claims.

Regardless of the possible merit of Class Counsel's concern about the precision of Cisco's claims, those concerns come too late because Class Counsel already waived them. As noted in the Special Master's Supplemental Report and Recommendation, the parties stipulated over a year ago that "the data included in the spreadsheets that [Objecting Members] submitted are accurate" for their second round claims. MDL Dkt. No. 391, Ex. F at 2 Para. A). Class Counsel could not have stipulated to the accuracy of the data supporting these incorporated capacitor claims if it had not at least satisfied itself that these were indeed claims for capacitors purchased by Cisco in finished products sold or shipped to the U.S. Cisco has since only reduced its claim. Accordingly, it would be inappropriate now for Class Counsel to discount Cisco's claims by 50% and demand that Cisco produce invoice numbers and sub-classifications to receive those funds, when Class Counsel has already stipulated to the accuracy of an even higher figure.[2]

[2] Likewise, Class Counsel also asserts that included among Cisco's incorporated capacitor claims are some Direct Capacitor Purchases. Those purchases are not specified however and there is no example offered that any such stray entry was also included as a direct purchase, and so would actually be double-counted. Moreover, Class Counsel's objection seems to cut the other way. Beside the fact that Class Counsel already stipulated to the accuracy of these claims, it is unclear how this misclassification would be of concern to Class Counsel. If anything, incorporated capacitor claims are paid at a discounted rate relative to unincorporated capacitor claims. By submitting those claims as incorporated capacitor claims (rather than unincorporated ones) and agreeing that they are subject to a discount, Cisco is essentially reducing its demand for apportionment.

Notwithstanding the stipulation, however, the Special Master undertook additional inquiry on this point. Because overpayment of one class claimant from a fixed settlement amount would necessarily result in the underpayment of others, the Special Master wanted to ensure that the decision would not have an unduly harsh result that would undermine the fairness of this settlement based on the earlier stipulation. Accordingly, the Special Master performed a spot-check of Cisco's claims to assess if they were so vague or poorly documents that they could readily result in vast overpayments. In the Special Master's view, the quality and detail of Cisco's claims do not differ significantly from the type of submissions provided by other claimants or claims approved in other settlements in this matter.

For the foregoing reason, the Special Master recommends that the Court deny the 50% discount proposed by the Class Counsel on the basis of the claims not being properly presented. The Special Master further recommends that no lesser discount be granted on this basis, because the parties properly stipulated to the accuracy of these claims and that stipulation does not, on inspection, manifestly undermine the fairness of this settlement for other claimants.

2. Tracing of Cisco's Incorporated Capacitor Claims

Class counsel next seeks to impose a 50% discount on Cisco's claims because "it may be the case that the finished goods may incorporate capacitors from many sources, including from capacitor manufacturers that are not Defendants in this case." July 23 Letter at 6. Class Counsel contends that the failure to show that every capacitor in a finished product purchased by Cisco through a foreign agent acting on its behalf disrupts the "chain of causation" required to validate the claim.

This line of argument fails for the same reason as the prior basis for applying a discount. Again, Class Counsel "stipulated to the accuracy of the numbers presented by Objecting Members for final sales of incorporated capacitors." While Class Counsel might have been able to justify a particular set of discounts by providing a granular analysis in its original review of these claims or in performing its discounts earlier this year, it did not do so. Class Counsel clearly was capable of identifying issues that fell outside the stipulation, because it expressly did so with respect to a dispute about duplicative claims for NCC and UCC. Given Class Counsel's prior stipulation, and it's generalized and unexplained attempt to now remove effectively 75% of all claims from that stipulation, the Special Master recommends that this discount should also be disallowed.

3. Proof of Actual or Constructive Knowledge By Settling Defendants of Cisco's Capacitor Claims

As noted, both the Report and Recommendation and the Court's Order that followed, concluded that Objecting Members must offer evidence establishing that Settling Defendants were actually or constructively aware that capacitors being sold to parties overseas were ultimately intended for sale or shipment to U.S. purchasers in finished goods. Accordingly, the Objecting Members devoted most of their May 4 letter to describing evidence submitted to establish that some Settling Defendants were aware that Aptiv and Cisco purchased some number of capacitors

through contract manufacturers or other third parties, and that records available to one or more Settling Defendants revealed the general dimensions of the purchases by Cisco and Aptiv.

Class Counsel acknowledges the evidence submitted by Objecting Members does in fact show generally that Defendants knew some of their capacitors were ultimately destined for the United States. Class Counsel does not contest that such knowledge by one Settling Defendant is attributable to all Settling Defendants based on the principle of joint-and-several liability in antitrust. Class Counsel *does* object, however, that Objecting Members' showing should fail because it is still too imprecise. Specifically, Class Counsel asserts that even if Settling Defendants knew that some capacitors they were selling were intended for ultimate sale/shipping to the U.S. in finished products, the evidence does not establish that the Settling Defendants knew which U.S. customer the finished good was being sent to. As Class Counsel recognizes, however, there is circumstantial evidence that Defendants were aware that Cisco was tracking pricing response for these purchases, which would suggest that Cisco was engaged in such purchases. July 23 ltr at 7. Moreover, Class Counsel acknowledges that at least one court in this district considered similar circumstances sufficient to create a fact issue. Id. citing *In re Optical Disk Drive Antitrust Litig.*, No. 10-md-02143-RS, 2017 WL 11513316, at *4 (N.D. Cal. Dec. 18, 2017). Accordingly, because Cisco provided support to show that at least one Defendant directed Cisco's incorporated capacitors at a U.S. import market, Class Counsel determined not to deny the claim in whole, but rather to discount Cisco's claims by 50% again.

Cisco objects to Class Counsel's applying any discount based on lack of full knowledge and objects to Class Counsel's selective review of the evidence. For example, Cisco disputes that it made no showing that Defendants were familiar with Cisco's involvement in receiving incorporated capacitor sales in the U.S. Cisco states that Class Counsel simply ignores key evidence that it fully met its burden. In particular, it points to the sworn declaration of Cisco's Senior Global Supply Commodity Manager, Dwyer Lawhorn. See May 4 ltr. at Ex. O. Cisco notes that Mr. Lawhorn attested that his management unit in California negotiated key provisions, payment terms, and pricing for capacitors for Cisco relating to direct purchases and purchases by its contract manufacturers. *Id.*. Cisco further observes that Mr. Lawhorn's involvement was well-known to Defendants, relying on testimony from a Panasonic senior executive, Kazushi "Jack" Nakatani, that he knew both Mr. Lawhorn and his position at Cisco. July 31 Ltr at 2. Finally, Cisco emphasizes that the vast majority of its capacitor purchases, approximately 85%, were for finished products to be produced by contract manufacturers for shipment or sale to the U.S., and that it is unreasonable to believe that Defendants were unaware of the details of such a lucrative market.

Having examine the relevant exhibits in the Lawhorn Declaration, the Special Master concludes that they adequately establish general knowledge by the Settling Defendants of the existence Cisco's purchase of incorporated capacitors through third parties, and some general understanding of the dimensions of Cisco's incorporated capacitor purchases. At the same time, the evidence is vague in some important respects as to the proportion of sales that are going to the United States specifically. In some cases the relevant documents refer to sales in the "United States and Canada" or "Americas". *Id.* at Ex. A. Although the documents back out a figure for U.S. sales alone, it is not clear how those numbers were derived, let alone that any defendant would have been able to perform a similar evaluation. The Special Master believes this justifies

some discount, based on ambiguity over the general amount of their sales that a Settling Defendant could reasonably foresee being destined for the U.S.

4. **Litigation Risk**

Finally, Class Counsel asserts that while Courts have acknowledged the legal viability of incorporated capacitor claims, these claims remain largely untested. Class Counsel notes that no civil jury has ever had to decide such a matter, and that this type of claim presents special and difficult burdens for Plaintiffs. Class Counsel emphasizes that those challenges are compounded by the fact that Cisco does not purchase incorporated capacitors through subsidiaries and thus would have had to convince a jury of all of the various links required via its agents to connect the sales back to itself. On that basis, Class Counsel has discounted Cisco's claims by 75% relative to the value of an unincorporated purchaser claim.

Cisco responds that most of Class Counsel's arguments relate to general litigation risk or duplicative complaints about the amount of evidence. July 30 ltr. Cisco notes that while there may be somewhat higher litigation risk, this is difficult to quantify and should not be greater than 15% in any case. *Id.* at 1. As for Class Counsel's complaints about the quality of Cisco's evidence to persuade a jury, Cisco notes that Class Counsel already proposed a discount for this earlier in its reallocation, and it would be unfair to penalize Cisco twice for any shortcomings in its evidence supporting the claims.

The Special Master generally agrees with Cisco's position. The fact that most antitrust cases tend to settle, and that no jury to date has been called upon to actually decide an incorporated component case, says more about the nature of antitrust litigation than about the particular difficulty of proving incorporated capacitor claims. Given the lack of caselaw, it seems a stretch to demand that the Special Master accept Class Counsel's raw assertion that an incorporated capacitor claim has one-fourth the chance of succeeding as an unincorporated capacitor claim would. The Special Master is also aware that the quality of evidence here is necessarily limited by the fact that a settlement was reached. Cisco did not have the opportunity to complete its discovery, let alone fully prepare its case for trial, and it is not necessary to do so to meet its burden here.

All that being said, there is no doubt a higher litigation risk for incorporated capacitor claims than for unincorporated capacitor claims. First, an incorporated capacitor claim is, by definition, more attenuated, and so the plaintiff not only needs to show more evidence including the nature of the relationship with third-party manufacturers, the knowledge of the manufacturer that the capacitors were intended for sale/shipment to the United States, and a more complex tracing of capacitors back to the manufacturer. Class Counsel is correct that these factors would justify it settling such claims at a lower figure per claim. Moreover, it may take into consideration the quality of evidence about the claims themselves that it received from Cisco in this context. Cisco has a duty in seeking its share of the proceeds to demonstrate to Class Counsel that its claims are valid and were properly traced. The fact that Class Counsel stipulated to accept the ultimate figures for Cisco's claims as valid, doesn't mean they were sufficient to convince a jury. Since the Special Master has not recommended a discount generally based on the quality of

evidence Cisco has provided to substantiate or trace the claims, there would be nothing duplicative about considering these same concerns when applying a discount for litigation risk.

Based on the Special Master's review of the information submitted to Class Counsel by Cisco, it does appear that there is greater litigation risk in proving its claims based on work conducted by contract manufacturers. Accordingly, the Special Master believes the proposed "maximum" discount of 85% is still insufficient. While speculating about the outcome of a trial based on only a fraction of the evidence is a necessarily inexact science, both sides have nonetheless attempted to do so themselves. Based on the principles described above and its own review of the supporting exhibits, the Special Master recommends a 35% discount for Cisco based on both special litigation risk for these claims generally and its own unique risk given that a vast percentage of its claims were through contract manufacturers and/or assignees where evidentiary issues are likely more difficult. On that basis, the Special Master recommends that Class Counsel's allocation should be revised to entitle Cisco to 65% of the value of an incorporated capacitor claim relative to claims for unincorporated capacitors.

B. **Class Counsel's Assessment of Aptiv's Claims**

In most ways, Class Counsel's assessment of Aptiv's claims track its approach to discounting Cisco's claims. It applies the same discount for each category as it did for Cisco with the exception of Defendants' likely knowledge that Aptiv's purchases were destined for the U.S. The principal difference relied on by Class Counsel for making that distinction relates to the fact that Aptiv's incorporated capacitor claims are more straightforward because there are fewer links to prove. Unlike Cisco, all of Aptiv's claims for incorporated capacitors were for purchases made by Aptiv's foreign affiliates directly which were then incorporated and shipped in a finished product to Aptiv in the United States. Defendants acknowledged that they knew Aptiv was located in the United States and indeed visited Aptiv facilities in the United States. Accordingly, Class Counsel concedes that "it is reasonable to expect that Defendants would know that some capacitors sold to Aptiv affliates abroad would be incorporated as finished goods destined for the United States." July 31 Lettter at 10, Fn. 3.

The distinction Class Counsel draws is valid, but not necessarily its implication. Based on the obvious differences between Cisco and Aptiv's approaches, it would be tempting to apply a lesser discount to Aptiv's incorporated capacitor claims than to Cisco's. But that is not the appropriate task here for Class Counsel or for the Special Master. Class Counsel has adopted a policy of distributing settlement proceeds pro rata among claimants in proportion to their total claims for all unincorporated capacitor claims in this case. That is true despite the fact that some DPP class members likely have supplied better evidence or had less complicated proof of their claims than others. Class Counsel has not drawn distinctions among unincorporated capacitor claimants on that basis and so it would not be appropriate to draw them here when it comes to incorporated capacitor claimants. The specific task is to distinguish Cisco and Aptiv's allocation rate for incorporated capacitor claims from all DPP Class members rate for unincorporated capacitor claims; it is not to distinguish Aptiv and Cisco's rates from each other.

In settling upon an appropriate discount rate for Cisco and Aptiv's claims, the Special Master notes that Cisco and Aptiv's submissions together merely demonstrate the range of ways in

which incorporated capacitor claims can arise – through direct agents, indirect agents, or assignees – and how some approaches may be more difficult to prove. Accordingly, the discount established for Cisco, which has a broader range of incorporated capacitor arrangements, appears to be the more appropriate measure for incorporated capacitor claims generally. Accordingly, just as Class Counsel applies a 100% allocation for each class member's proportionate share of an incorporated capacitor settlement, Class Counsel should apply a 65% allocation of this settlement for each class member's proportionate unincorporated capacitor claims.

Conclusion

The Special Master recommends that the Court sustain Cisco and Aptiv's Objections, and adjust Class Counsel's reallocation of the Second Round Settlement accordingly. Specifically, the Special Master recommends that Aptiv and Cisco's claims be valued at 65% of the proportionate rate that DPPs receive for unincorporated capacitor claims. This discount reflects the litigation risk associated with establishing the additional elements of an incorporated capacitor claim, the relatively uncertain treatment of these claims in a litigated case, and the responsibility of Class Counsel to seek fairness to the class as a whole.

Dated: 11/30/2020

JEFFREY L. BLEICH
Special Master