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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12

13 IN RE CAPACITORS ANTITRUST LITIGATION
14 THIS DOCUMENT RELATES TO: THE DIRECT
15 PURCHASER CLASS ACTION
16

Master File No. 3:17-md-02801-JD
Civil Action No. 3:14-cv-03264-JD

**DIRECT PURCHASER CLASS'S
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT WITH
DEFENDANTS MATSUO
ELECTRIC CO., LTD., NIPPON
CHEMI-CON CORP. AND UNITED
CHEMI-CON, INC.**

17 Date: September 15, 2022
18 Time: 10:00 a.m.
19 Courtroom: 11, 19th Floor
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1 Dated: June 23, 2022

Respectfully Submitted,

2 JOSEPH SAVERI LAW FIRM, LLP

3 By: /s/ Joseph R. Saveri
4 Joseph R. Saveri

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1 **I. INTRODUCTION**

2 The Direct Purchaser Class (the “Class”) submits this memorandum in support of its motion
3 for final approval of the proposed settlement agreements (the “Settlement Agreements”) between the
4 Class and Defendants Matsuo Electric Co., Ltd. (“Matsuo”), Nippon Chemi-Con Corp. and United
5 Chemi-Con, Inc. (collectively, “Chemi-Con”; Matsuo and Chemi-Con together, the “Settling
6 Defendants”).

7 The settlements represent an excellent recovery for the Class and are well within the range of
8 recoveries warranting final approval. They create a non-contingent, all-cash fund of 165 million USD
9 (\$165,000,000), and any interest earned on that amount (the “Settlement Fund”). The settlement
10 amounts are a \$5,000,000 settlement with Matsuo, and a \$160,000,000 settlement with Chemi-Con.
11 Cumulatively, the sum total of all the settlements in this case to date significantly exceed the single
12 damages total as calculated by the Class’s expert (141.4% of single damages). The Class reached this
13 agreement by taking this case to trial, literally to the eve of handing it to the jury, after extensive arm’s-
14 length negotiations between experienced and informed counsel, years of litigation, including extensive
15 discovery, dispositive motions, pretrial preparation, and two jury trials.

16 The Court preliminarily approved the Settlements. MDL ECF No.¹ 1707. Final approval under
17 Federal Rule of Civil Procedure 23(e) is now warranted because each of the Settlements is fair, adequate,
18 and reasonable. Over seven years of hard-fought litigation, the Class successfully prosecuted the
19 litigation and developed the factual record to prove its claims, including bringing the case to trial twice,
20 with the second trial resulting in the Settlements now submitted to the Court for approval. The law
21 favors compromise and the settlement of complex class actions. Here, the parties reached these
22 Settlements in the midst of trial after difficult, arm’s-length negotiations between experienced and
23 informed counsel.

24 The Settling Defendants have satisfied their obligations to provide notice under the Class Action
25 Fairness Act. 28 U.S.C. § 1715. Declaration of Joseph R. Saveri (“Saveri Decl.”), ¶ 28.

26
27
28 ¹ “MDL ECF No. _____” citations to Case No. 3:17-md-02801.

1 The Class has complied with the Court-approved notice program and disseminated notice
 2 through direct mailings, publication notice, and online advertising. Mindful of the Court’s expressed
 3 interest in ensuring that as many Class members as possible receive direct notice of the Settlements and
 4 their potential claims, the Class has taken additional steps well beyond the minimum requirements of
 5 due process and Rule 23(c)(2)(B). To facilitate the settlement process, the Class has mailed Class
 6 members claim forms pre-populated with each’s annual capacitor purchases derived from Defendants’
 7 sales transaction data (the “Claim Forms”). Declaration of Kendall S. Zylstra (“Zylstra Decl.”), ¶ 7.
 8 The Class has also responded to many inquiries from class members regarding the claims process and
 9 participation in the Settlements. Saveri Decl., ¶ 24.

10 For the Settlements to be effectuated and the Settlement Funds distributed, the Court must
 11 finally approve the Class’s *pro rata* allocation plan. The Court granted preliminary approval and notice
 12 of the settlements has been provided to the Class. The Court should now grant final approval.

13 **II. CASE HISTORY**

14 **A. The Class’s Factual Allegations and Claims**

15 The Defendants in this action are 22 different corporate families that manufactured and sold
 16 capacitors in the United States and around the world. The Class alleges that at least as early as January
 17 1, 2002, Defendants entered into a price-fixing conspiracy with the purpose and effect of fixing, raising,
 18 and stabilizing the prices of their aluminum, tantalum, and film capacitors sold to United States
 19 purchasers. *See* Saveri Decl., ¶ 3.

20 **B. Procedural History and Discovery**

21 With these Settlements, the Class will have brought this case to a successful resolution against
 22 all Defendants that have responded to the complaint.² The case began when Plaintiff Chip-Tech, Ltd.
 23 filed the first capacitors price-fixing complaint in July 2014. ECF No.³ 1; *see also* Saveri Decl., ¶¶ 3-4
 24 The Class’s Third Amended Complaint, filed on September 6, 2017, is the operative pleading. ECF No.

25 _____
 26 ² Defendants Toshin Kogyo, LTD, and Nissei Electric Ltd. were properly served but failed to appear to
 27 defend themselves. The Court has entered default judgment against Toshin Kogyo, MDL ECF No. 116,
 and Lead Class Counsel intends to request the Court enter default judgment against Nissei forthwith.

28 ³ “ECF No. ___” citations to entries in Case No. 3:14-cv-03264.

1 1831; Saveri Decl., ¶ 4. On November 14, 2018, the Court certified the Direct Purchaser Class. ECF No.
2 2231.

3 The case has been tried⁴ and the Court is familiar with the facts of the case. In the four prior
4 rounds of settlements that the Court has approved, *e.g.*, ECF No. 1713; MDL ECF Nos. 249, 1422,
5 counsel for the Class (“Lead Class Counsel”) set forth its and the class representatives’ efforts in
6 prosecuting this action.⁵ MDL ECF No. 172, at 3-5. After two weeks of trial, the Class has settled with
7 the remaining defendants with total settlement amounts significantly exceeding single damages as
8 calculated by the Class’s experts. Saveri Decl., ¶¶ 18-19.

9 C. Prior Settlement History

10 On June 27, 2017, the Court granted final approval of the Class’s first round of settlements with
11 the NEC Tokin, Fujitsu, Nitsuko, Okaya, and ROHM defendants totaling \$32.6 million. ECF No. 1713.
12 On June 28, 2018, the Court granted final approval of the Class’s second round of settlements with the
13 Hitachi Chemical and Soshin defendants totaling \$66.9 million. ECF No. 2166. On May 16, 2019, the
14 Court granted final approval of the Class’s third round of settlements with the Nichicon and Rubycon
15 defendants totaling \$108 million plus up to an additional \$12 million in contingent payments based on
16 Rubycon’s financial results through fiscal year 2019. MDL ECF No. 587 at 11. On November 6, 2020,
17 the Court granted final approval of the Class’s fourth round of settlements with the AVX, ELNA, Holy
18 Stone, KEMET, Panasonic, Shinyei, Shizuki and Taitso defendants totaling \$232.05 million. MDL ECF
19 No. 1422. These settlements, and subsequent approval, demonstrate that Lead Class Counsel and the
20 named class representatives have diligently and successfully represented the Class.

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23 ⁴ Indeed, the case has been tried twice. The first trial occurred in March 2020 before it was interrupted
24 by the COVID-19 pandemic and mistrial was declared. Saveri Decl., ¶ 7. The case was tried a second
time beginning in November 2021.

25 ⁵ These substantial efforts have included extensive discovery, analyzing 39 million Bates-numbered
26 pages (mostly in Japanese) from over 100 document custodians, deposing over 90 individuals, and
27 trying the case in March 2020 before trial was interrupted by the COVID-19 pandemic. *Id.* Since the
28 time the Court granted final approval as to the fourth round of settlements, MDL ECF No. 1068, the
Class has diligently prepared the case for trial, engaged in mediation with the Matsuo and Chemi-Con
defendants, and presented two weeks of evidence at the second trial.

1 A summary of the distributions made for the first two rounds of settlements—including
 2 information concerning the total settlement funds, the total number of Class Members, the total
 3 number of notices directly mailed, the number and percentage of claim forms submitted, the average
 4 recovery per Class Member, the administrative costs, and the attorneys' fees and costs—is set forth in
 5 **Attachment A**. Lead Class Counsel estimates that the number and percentage of Class Members that
 6 will participate in this round of settlements are likely to be similar to those in the prior settlements.

7 **III. SUMMARY OF PROPOSED SETTLEMENT**

8 **A. Settlement Consideration—\$165 Million (\$165,000,000 USD)**

9 Pursuant to their Settlement Agreements⁶ described below, the Settling Defendants will make,
 10 or have already made, payments into an escrow account (the “Settlement Fund”), held and
 11 administered by Citibank, N.A. as an escrow agent. Saveri Decl., Ex. A at ¶ 17; Ex. B at ¶ 17.

12 The settlements between the Class and Matsuo and the Class and Chemi-Con benefit the Class
 13 and function in tandem. Based on Matsuo's financial condition, Lead Class Counsel determined the
 14 best course of action would be to first settle with Matsuo in order to bring Chemi-Con to the negotiating
 15 table to attempt to get the most favorable result possible for the class.⁷ Saveri Decl., ¶ 18. This included
 16 analysis of Matsuo's financial condition and a number of different proposals to structure the schedule of
 17 payments consistent with Matsuo's financial condition. *Id.* This course of action worked. *Id.* The
 18 settlement with Matsuo paved the way for the settlement with Chemi-Con because Chemi-Con was the
 19 only remaining Defendant, thus ensuring the best recovery for the Class. *Id.*

20 The settlements with the Settling Defendants total \$165,000,000, which, when accounting for
 21 mandatory trebling and offsets with the prior settlements, represents the equivalent of a jury verdict in
 22 the amount of \$201,516,666.67. Saveri Decl., ¶ 20. This does not account for the delay and uncertainty
 23

24 ⁶ The Settlement Agreements are attached to the Saveri Declaration. There are no other agreements
 relating to the settlement that are required to be identified under Fed. R. Civ. P. 23(e)(3).

25 ⁷ Additionally, Lead Class Counsel determined settlement with Matsuo would benefit the Class due to
 26 Matsuo's lack of U.S. assets and in light of the uncertainty of enforcing a treble-damages award in Japan
 27 under Japanese law. Saveri Decl., ¶ 18; *see generally* M. Waxman, *Enforcing American Private Antitrust*
 28 *Decisions in Japan: Is Comity Real?* 44 DEPAUL L. REV. 1119 (1995) (discussing comity concerns and
 other impediments to enforcement of treble damage judgments rendered in United States courts).

1 of likely appeals after a successful verdict if the Class recovered through a jury verdict as opposed to
2 settlement. *Id.* The Settling Defendants were represented by some of the best defense attorneys in the
3 nation, and the settlement reached with the Settling Defendants provides more than adequate recovery
4 for the Class while ensuring recovery is not delayed or diluted through further proceedings. *Id.*

5 **1. Matsuo's Settlement Consideration**

6 The Class and Matsuo executed an agreement effective March 16, 2022. Saveri Decl., ¶ 16; Ex.
7 A. The Class agreed to release its claims against Matsuo in exchange for a sum total of \$5,000,000 USD
8 in five equal payments: \$1,000,000 payable within 30 days of the execution of the Settlement
9 Agreement; \$1,000,000 payable within twelve (12) months of the execution of the Settlement
10 Agreement; \$1,000,000 payable within twenty-four (24) months of the execution of the Settlement
11 Agreement; \$1,000,000 payable within thirty-six (36) months of the execution of the Settlement
12 Agreement; and \$1,000,000 payable within forty-eight (48) months of the execution of the Settlement
13 Agreement. Saveri Decl., Ex. A, ¶ 17. In light of the trial, Matsuo has no further cooperation obligations
14 under its settlement agreement.⁸

15 **2. Chemi-Con's Settlement Consideration**

16 The Class and Chemi-Con executed an agreement effective March 16, 2022. Saveri Decl., ¶ 17;
17 Ex. B. The Class agreed to release its claims against the Chemi-Con defendants in exchange for a sum
18 total of \$160,000,000 USD in two payments: \$100,000,000 in cash payable by June 15, 2022, and
19 \$60,000,000 payable by December 14, 2022. Saveri Decl., Ex. B, ¶ 17. Chemi-Con's settlement is the
20 largest settlement to date with a defendant family. In light of the settlement amount, the extensive
21 discovery from Chemi-Con, and the stage of the case, Chemi-Con has no cooperation obligations under
22 its settlement agreement.

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27 ⁸ As additional settlement consideration, Matsuo made Satoshi Okubo available to testify at trial on
28 December 2, 2021. Saveri Decl., Ex. A, ¶ 21.

3. The Class

On February 28, 2019, the Court entered an Order Granting the Class’s Motion for Approval of Plan for Notice of Pendency of Class Action, ECF No. 2282, certifying and defining the Class as follows:

All persons (including individuals, companies, or other entities) that purchased Capacitors (including through controlled subsidiaries, agents, affiliates, or joint ventures) directly from any of the Defendants, their subsidiaries, agents, affiliates, or joint ventures from January 1, 2002 to December 31, 2013 (the “Class Period”), and such persons are: (a) inside the United States and were billed or invoiced for capacitors by one or more Defendants during the Class Period (*i.e.*, where capacitors were “billed to” persons within the United States); or (b) outside the United States and were billed or invoiced for capacitors by one or more Defendants during the Class Period, where such capacitors were imported into the United States by one or more Defendants (*i.e.*, where the capacitors were “billed to” persons outside the United States but “shipped to” persons within the United States).

Excluded from the Class are: (1) Defendants (and their subsidiaries, agents, and affiliates); (2) shareholders holding more than 10% equity interest in Defendants; (3) each member of the Class that timely requests exclusion by “opting out”; (4) governmental entities; and (5) the judges and chambers staff in this case, including their immediate families. *Id.* The Settlement Agreements use the same class definition. Saveri Decl., Ex. A at 3-4, ¶ f; *id.*, Ex. B at 4, ¶ f.

4. Release of Claims

In exchange for the valuable consideration being provided by the Settling Defendants, the Class will release the Settling Defendants from all claims related to any of the alleged conduct giving rise to this litigation concerning the direct purchase of Capacitors in the United States or for delivery in the United States. Saveri Decl., Ex. A, ¶ 12; *id.*, Ex. B, ¶ 11. The releases in the Settlement Agreements are co-extensive with the scope of the claims included in the Class definition. *Id.* The Class as certified by the Court (ECF No. 2282) is consistent with the Class definitions in the Settlement Agreements. Those that excluded themselves in accordance with the terms of the 2019 Notice of Certification of Class of Direct Purchasers of Capacitors are also excluded. MDL ECF No. 577. The settlements with the Settling Defendants will resolve the Class’s claims with all defendants who appeared to defend themselves. As set forth in note 2, *supra*, default judgment has already been entered against Toshin

1 Kogyo, MDL ECF No. 116, and the Class intends to request the Court to enter default judgment against
2 Nissei forthwith.

3 **IV. THE CLASS'S SETTLEMENTS WITH THE SETTLING DEFENDANTS ARE FAIR,**
4 **REASONABLE, AND ADEQUATE, AND SHOULD BE GRANTED FINAL APPROVAL**

5 A class action may be dismissed, compromised, or settled only with the approval of the Court.
6 Fed. R. Civ. P. 23(e). The Rule 23(e) settlement approval procedure includes: (1) preliminary approval
7 of the proposed settlement; (2) dissemination of notice of the settlement to all affected class members;
8 and (3) a fairness hearing at which class members may be heard regarding the settlement, and at which
9 counsel may introduce evidence and present argument concerning the fairness, adequacy, and
10 reasonableness of the settlement. *See* 4 William B. Rubenstein, *Newberg on Class Actions* §§ 13:39 *et seq.*
11 (5th ed. 2014). This procedure safeguards class members' due process rights and enables the Court to
12 fulfill its role as the guardian of class interests. *Id.*

13 The law favors the compromise and settlement of class action suits. *See, e.g., Carlin v.*
14 *DairyAmerica, Inc.*, 380 F. Supp. 3d 998, 1009 (E.D. Cal. 2019); *Officers for Just. v. Civ. Serv. Comm'n*,
15 688 F.2d 615, 635 (9th Cir. 1982); *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 576 (9th Cir. 2004).
16 In exercising such discretion, courts should give

17 proper deference to the private consensual decision of the parties. . . .
18 [T]he court's intrusion upon what is otherwise a private consensual
19 agreement negotiated between the parties to a lawsuit must be limited to
20 the extent necessary to reach a reasoned judgment that the agreement is
21 not the product of fraud or overreaching by, or collusion between, the
22 negotiating parties, and that the settlement, taken as a whole, is fair,
23 reasonable and adequate to all concerned.

24 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) (citation and quotations omitted).

25 In evaluating a proposed class action settlement, the Court must balance:

26 (1) the strength of the plaintiffs' case; (2) the risk, expense, complexity,
27 and likely duration of further litigation; (3) the risk of maintaining class
28 action status throughout the trial; (4) the amount offered in settlement;
(5) the extent of discovery completed and the stage of the proceedings;
(6) the experience and views of counsel; (7) the presence of a
governmental participant; and (8) the reaction of the class members to
the proposed settlement.

1 *Churchill Vill.*, 361 F.3d at 575. Here, the balance of these factors decidedly weighs in favor of final
2 approval of the Settlements. *See Manual for Complex Litigation*, § 21.62 (4th ed. 2008).

3 **A. The Proposed Settlements Are Procedurally Sound and Presumptively Fair**

4 The proposed Settlement Agreements here are the product of arm’s-length negotiations reached
5 in the midst of jury trial between attorneys who are highly experienced in complex antitrust class actions
6 and well-informed about the facts and legal issues of this case. *See Saveri Decl.*, ¶¶ 7, 16-20. As here,
7 post-certification settlement agreements reached after meaningful discovery and through arms-length
8 negotiations conducted by capable counsel are presumptively fair. *In re Heritage Bond Litig.*, No. 02-ML-
9 1475 DT, 2005 WL 1594403, at *9 (C.D. Cal. June 10, 2005).

10 Lead Class Counsel’s substantial advancement of the litigation to trial, the procedural posture of
11 the case, and familiarity with the evidence further indicate that the Settlement Agreements are fair and
12 reasonable. *See Hanlon*, 150 F.3d at 1026.

13 **1. The Proposed Settlements Are Within the Range of Reasonableness**

14 The Settlement Agreements, which provide for significant cash payments, afford important
15 relief to Class members, and the consideration offered by each of the Settling Defendants is well within
16 reasonable range. Damages in a price-fixing antitrust conspiracy case generally are based on the amount
17 of the overcharge resulting from anticompetitive activity and are usually measured as a percentage of
18 total sales. The percentage recovered from the Settling Defendants far exceeds the percentage
19 recovered in many other antitrust class action settlements. *See, e.g., In re Dynamic Random Access*
20 *Memory (DRAM) Antitrust Litig.*, No. M-02-1486 PJH, slip. op. (N.D. Cal. Nov. 1, 2006); *In re Auto.*
21 *Refinishing Paint Antitrust Litig.*, MDL No. 1426, 2004 WL 1068807, at *2 (E.D. Pa. May 11, 2004); *see*
22 *also In re Packaged Seafood Prods. Antitrust Litig.*, Case No. 3:15-md-002670-DMS-MDD, 2022 WL
23 228823, at *6 (S.D. Cal. Jan. 26, 2022) (finding settlement totaling \$20 million “compares favorably to
24 other antitrust and class action settlements”) (citing, *inter alia*, *Carlin.*, 380 F. Supp. 3d at 1011 (“Courts
25 regularly approve class settlements where class members recover less than one quarter of the maximum
26 potential recovery amount.”); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (finding
27 settlement that provided plaintiffs one-sixth of their potential recovery to be fair and adequate)).
28

1 Together, the Settling Defendants agreed to pay a total of \$165,000,000. Saveri Decl. ¶ 20. This brings
 2 the total settlement fund to \$604,550,000, which significantly exceeds the total amount of overcharges
 3 as estimated by the Class’s expert by all Defendants. The total settlement fund represents
 4 approximately 141.4% of single damages as calculated by the Class’s expert, which is a remarkable result
 5 for an antitrust case of this type. Saveri Decl. ¶ 20.

6 Also weighing in favor of final approval is Lead Class Counsel’s experience and success in
 7 similar class actions. Lead Class Counsel have worked on large, complex cases for decades, including
 8 antitrust and consumer protection class action cases. Saveri Decl., ¶ 5; *id.*, Ex. C. The judgment of
 9 experienced counsel regarding a settlement reached by arm’s-length negotiations should be given
 10 significant weight and a presumption of reasonableness. *See Linney v. Cellular Alaska P’ship*, Nos. C-96-
 11 3008 DLJ, C-97-0203 DLJ, C-97-0425 DLJ & C-97-0457 DLJ, 1997 WL 450064, at *5-6 (N.D. Cal. July
 12 18, 1997); *see also Quiruz v. Specialty Commodities, Inc.*, Case No. 17-cv-03300-BLF, 2020 WL 6562334,
 13 at *7 (N.D. Cal. Nov 9, 2020) (citing *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal.
 14 1980)).

15 These settlements with the Settling Defendants would conclude the lawsuit and have ensured
 16 recovery for the Class exceeding single damages as calculated by the Class’s expert. These settlements
 17 are comfortably within the range of reasonableness.

18 **2. The Settlements Resulted from Informed, Arm’s-Length Negotiations** 19 **Between the Settling Defendants and the Class’s Experienced Counsel**

20 In determining whether to approve a class action settlement, “‘the district court must reach a
 21 reasoned judgment that the proposed agreement is not the product of fraud or overreaching by, or
 22 collusion among, the negotiating parties.’” *Class Plaintiffs v. City of Seattle*, 955 F.2d. 1268 1290 (9th
 23 Cir. 1992). Where a proposed class settlement “has been reached after meaningful discovery, after arm’s
 24 length negotiation, conducted by capable counsel, it is presumptively fair.” *Cicero v. DirectTV, Inc.*, No.
 25 EDCV 07-1182, 2010 WL 2991486, *3 (C.D. Cal. Jul. 27, 2010) (citing *M. Berenson Co. v. Faneuil Hall*
 26 *Marketplace, Inc.*, 671 F. Supp. 819, 822 (D. Mass. 1987)). This is especially true here as the settlements
 27 were reached in the midst of jury trial, on the day that closing arguments were scheduled to be given.
 28

1 *See Low v. Trump Univ., LLC*, Nos. 10-cv-00940-GPC-WVG, 2016 WL 7387292, at *4 (S.D. Cal. Dec.
 2 20, 2016). Indeed, the judgment of experienced counsel regarding a settlement reached by arm’s-length
 3 negotiations should be given significant weight and a presumption of reasonableness. *See Linney*, 1997
 4 WL 450064, at *5-6.

5 **V. THE COURT-APPROVED NOTICE PROGRAM SATISFIES RULE 23 AND DUE**
 6 **PROCESS AND HAS BEEN FULLY IMPLEMENTED**

7 Fed. R. Civ. P. 23(e)(1) provides that a court must direct notice in a “reasonable manner” to
 8 class members to be bound by a proposed settlement. When a proposed Rule 23(b)(3) class settlement is
 9 presented for court approval, the Federal Rules require class members to receive the best notice that is
 10 practicable under the circumstances, including individual notice to all members who can be identified
 11 through reasonable effort. Fed. R. Civ. P. 23(c)(2)(B); *see also Phillips Petrol. Co. v. Shutts*, 472 U.S. 797,
 12 812 (1985). “[T]he class must be notified of a proposed settlement in a manner that does not
 13 systematically leave any group without notice.” *Officers for Justice*, 688 F.2d at 624 (citations omitted).
 14 These requirements ensure that class notice procedures comply with the demands of due process. *See*
 15 *Rannis v. Recchia*, 380 F. App’x 646, 650 (9th Cir. 2010). The notice provided to class members in this
 16 case comports with due process and satisfies the Federal Rules. *See* Fed R. Civ. P. 23(c)(2), 23(e)(1).

17 **A. The Notice and Notice Program Satisfy Rule 23 and Due Process Requirements**

18 The notice to Class members in this case comports with due process and satisfies all applicable
 19 requirements, as preliminarily determined by the Court. MDL ECF No. 1707, ¶ 10.

20 **1. The Class Fully Implemented the Court-Approved Notice Program**

21 In accordance with the Court-approved notice program, Lead Class Counsel employed the lists
 22 of direct purchasers taken from all of the transactional sales databases to date. *See* Zylstra Decl., ¶ 7.
 23 The transactional data contained Class member names, their mailing addresses, and their annual
 24 capacitors purchase amounts from each Defendant during the relevant period. *See id.* This information
 25 was then used to generate and populate Claim Forms for potential Class members identified from
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 27
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1 Defendants' transactional data.⁹ *See id.* Each Claim Form contains pre-populated information regarding
 2 the recipient's annual capacitors purchases from each Defendant between 2002 and 2015. The Class
 3 mailed 3,000 Claim Forms on June 13, 2022. *See Zylstra Decl.*, ¶¶ 7-8. Class members receiving the pre-
 4 populated Claim Forms can submit additional information to the claims administrator if they believe the
 5 capacitors purchase information is incorrect. *See id.*, ¶ 10. The Summary Notice was published in the
 6 national edition of *The Wall Street Journal* on June 13, 2022. The paper's daily circulation at that time
 7 was 810,058. *See Zylstra Decl.*, ¶ 6.

8 Lead Class Counsel directed Rust to update and maintain the Claims Website to provide Class
 9 members and the public information about the claims process. *See Zylstra Decl.*, ¶ 12. The Long Form
 10 Notice is posted on the Claims Website (www.capacitorsantitrustsettlement.com).

11 Lead Class Counsel also directed Rust to run banner advertisements that linked to the Claims
 12 Website on 5 different electronics industry-focused web sites. The banner advertisements run from June
 13 13, 2022, through July 10, 2022. *See id.*, ¶ 11.

14 Class Counsel's efforts satisfy or exceed the requirements of Rule 23(c)(2)(B) and due process.¹⁰

15 VI. THE COURT SHOULD FINALLY APPROVE THE CLASS'S ALLOCATION PLAN

16 A plan of allocation of class settlement funds is subject to the fair, reasonable and adequate
 17 standard that applies to approval of class settlements. *In re Citric Acid Antitrust Litig.*, 145 F. Supp. 2d
 18 1152, 1154 (N.D. Cal. 2001). A plan of allocation that compensates class members based on the type and
 19 extent of their injuries is generally considered reasonable. *Id.*

20 The Class proposes that the Court approve the same plan of allocation that the Court approved
 21 for the First Round, Second Round, Third Round, and Fourth Round Settlements. *See, e.g.*, ECF No.

23 ⁹ Rust has informed the Class that it does not yet know the number of claims that were returned and
 24 undeliverable. As in the past, Rust will research and identify updated addresses. The Class continues to
 25 update the class member list with information received from Defendants as well and direct contact from
 class members.

26 ¹⁰ Actual notice is not required. While Lead Class Counsel and the claims administrator have made
 27 every effort to give individual notice to all identifiable Class members, those Class members need not
 28 actually receive such notice to be bound by the Settlements if the Court finally approves them. *See*
Briseno v. ConAgra Foods, Inc., 844 F.3d 1121, 1128-29 (9th Cir. 2017).

1 1667 at 9. The Class’s preliminary approval motion sets forth a plan for *pro rata* distribution of the cash
2 Settlement Fund to the Settlement Class after payment of the attorney’s fees and expenses. *See* MDL
3 ECF No. 1667 at 14-15. The plan is impartial; no Class member is favored over others. Such *pro rata*
4 distribution has frequently been determined by Courts to be fair, adequate, and reasonable. *See, e.g., In*
5 *re Cathode Ray Tube (CRT) Antitrust Litig.*, No. C-07-5944 JST, 2016 WL 3648478, at *15 (N.D. Cal.
6 July 7, 2016). Moreover, the Court’s Preliminary Approval Order provisionally found the Class’s *pro*
7 *rata* allocation plan to be “sufficiently fair, reasonable, and adequate” and approved it.¹¹ *See* MDL ECF
8 No. 1707, ¶ 7. Accordingly, the Court should grant final approval of the *pro rata* allocation plan.

9 VII. THE CLASS WILL PROVIDE CLASS MEMBERS’ RESPONSE

10 Pursuant to the Northern District of California’s *Procedural Guidance for Class Action Settlements*,
11 the Class will file with the Court information about class members’ responses. Accordingly, the Class
12 will provide this information in a supplemental filing when available. Saveri Decl., ¶ 29.

13 VIII. CONCLUSION

14 For the reasons set forth above, the Class respectfully requests that the Court: (1) grant final
15 approval to the Settlements; (2) find the Class’s dissemination of notice to be in accordance with the
16 Court-approved notice program and with Rule 23 and due process requirements; (3) grant final approval
17 of the Class’s *pro rata* allocation plan; and (4) direct this action be dismissed with prejudice as to the
18 Settling Defendants.

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27 ¹¹ Indeed, the Class’s notice and allocation plan has been effective. The amount of checks cashed in
28 each of the prior rounds of settlement exceeds 99.7%. Saveri Decl., ¶ 27.

1 Dated: June 23, 2022

Respectfully Submitted,

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20 *Lead Counsel for the Direct Purchaser Class*

ATTACHMENT A: Prior Settlement History

In re Capacitors Antitrust Litig.,
Case No. 3:17-md-02801-JD
ROUND 2: Approved June 28, 2018
All figures are best estimates

	% Total Settlement	
Settlement	\$66,900,000	100%
Distribution to Class	\$43,652,604	65.3%
Claims		
Participation rate	78.5% of commerce	
Class members	3,041 (known)	
Notices mailed	3,041	
Claims submitted	681	
Approved claims	425	
Average distribution	\$102,712*	
Cy Pres	\$0	0.0%
Attorney fees awarded	\$16,725,000	25.0%
Lodestar	\$70,764,474	
Hours	xx,xxx	
Multiplier	0.24	
Costs and Expenses	\$6,690,000	10.0%
Claims Administration	\$158,415	0.2%
Publication Costs	\$71,472	0.1%

*Projected number as distributions have not yet been made.

In re Capacitors Antitrust Litig.,
Case No. 3:17-md-02801-JD
ROUND 1: Approved June 27, 2017
All figures are best estimates

	% Total Settlement	
Settlement	\$32,600,000	100.0%
Distribution to Class	\$21,287,673*	65.3%
Claims		
Participation rate	66.2% of commerce	
Class members	2,279 (known)	
Notices mailed	2,279	
Claims submitted	719	
Approved claims	282	
Average distribution	\$47,582*	
Cy Pres	\$0	0.0%
Residual (uncashed)	\$447	
Attorney fees awarded	\$8,150,000	25.0%
Lodestar	\$44,444,689	
Hours	105,345.8	
Multiplier	0.18	
Costs and Expenses	\$3,260,000	10.0%
Claims Administration	\$185,308	0.6%
Publication Costs	\$75,872	0.2%

*Projected number as not all payments and distributions have been made

In re High-Tech Employee Antitrust Litig.,
Case No. 11-cv-2509 (N.D. Cal.)
Final Approval granted September 2, 2015
All figures are best estimates

	% Total Settlement	
Settlement	\$435,000,000*	100.0%
Distribution to Class	\$384,300,156	88.3%
Claims		
Participation rate	99.9% of commerce	
Class members	64,466	
Notices mailed	64,466	
Claims submitted	64,410	
Approved claims	64,410	
Average distribution	\$5,966	
Cy Pres	\$0	0.0%
Attorney fees awarded	\$45,822,312	10.5%
Lodestar	\$18,720,707	
Hours	37,131	
Multiplier	2.45	
Costs and Expenses	\$4,539,844	1.0%
Claims Administration	\$360,000	less than 0.1%

* Resolution of the case proceeded in two rounds. The first round distributed \$20 million to class members who filed claims. The second round distributed \$415 million to the full list of class members, without a claims process.

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In Re Titanium Dioxide Antitrust Litigation
Case No. 1:10-cv-00318-RDB (D. Md.)
Final Approval granted December 13, 2013
All figures are best estimates

	% Total Settlement	
Settlement	\$163,500,000	100%
Distribution to Class	\$104,014,824	63.6%
Claims		
Participation rate	53.1% of class members*	
Class members	650 (known)*	
Notices mailed	5,877**	
Claims submitted	643	
Approved claims	345***	
Average distribution	\$301,497	
Cy Pres	\$0	0.0%
Attorney fees awarded	\$54,500,000	33.3%
Lodestar	\$22,812,576	
Hours	45,585.33	
Multiplier	2.39	
Costs and Expenses	\$4,555,205	4.4%
Claims Administration	\$112,010	less than 0.1%
Publication Costs	\$75,872	less than 0.1%

* Estimate created by Plaintiffs' expert based on Defendants' transactional data.
 ** Containing all unique addresses obtained from Defendants.
 *** Claimants were required to provide proofs of claim, which were verified by the claims administrator.

In re Cipro Cases I & II, JCCP Case Nos. 4154 & 4220 (San Diego Sup. Ct.)
IPP Settlement with Bayer approved
November 18, 2013
All figures are best estimates

	% Total Settlement	
Settlement	\$74,000,000	100.0%
Distribution to Class	\$45,902,769	62.0%
Class Representative Incentive Awards		
	\$40,000	
Claims		
Participation rate	20.2% of commerce	
Class members	unknown	
Notices mailed	N/A*/44,929** ¹	
Claims submitted	7,907*/463**	
Approved claims	2,951*/295**	
Average distribution	\$14,150 ²	
	\$124*	
	\$154,651**	
Cy Pres	\$0	0.0%
Residual	\$262,155 ³	
Attorney fees awarded	\$24,642,000	33.3%
Lodestar	\$9,856,800 (curr. rates)	
	\$8,214,000 (hist. rates)	
Hours	20,344	
Multiplier	2.5 (curr. rates)	
	3.0 (hist. rates)	
Costs and Expenses	\$2,501,241	3.4%
Claims Administration	\$383,118	0.5%
Publication Costs	\$459,136	0.6%

* Consumer
 ** Third-party Payor
¹ The claims administrator sent notices to 44,929 potential class member third-party payors.
² Average distribution amount, including consumer and third-party payors.
³ Residual funds from uncashed checks. Court ordered to be transferred to litigation fund.