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

14 **IN RE RESISTORS ANTITRUST**  
15 **LITIGATION**

**Case No. 3:15-cv-03820-JD**

16 **INDIRECT PURCHASER PLAINTIFFS’**  
**NOTICE OF MOTION AND MOTION FOR**  
 17 **AUTHORIZATION TO DISBURSE**  
**SETTLEMENT FUNDS; MEMORANDUM**  
 18 **OF POINTS AND AUTHORITIES IN**  
**SUPPORT**

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

19  
 20 **Date:** May 27, 2021  
 21 **Time:** 10:00 a.m.  
 22 **Place:** Courtroom 11, 19<sup>th</sup> Floor  
 23 **Judge:** Hon. James Donato

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

2 **PLEASE TAKE NOTICE THAT**, on May 27, 2021, at 10:00 a.m., or as soon thereafter  
3 as the matter may be heard, in the Courtroom of the Honorable James Donato, United States  
4 District Judge for the Northern District of California, located at 450 Golden Gate Avenue, San  
5 Francisco, California, the Indirect Purchaser Plaintiffs (“IPPs”) will and hereby do move an order  
6 authorizing (1) distribution of the net settlement funds based on the Authorized Claims received by  
7 the Claims Administrator on or before April 1, 2021; (2) establishment of a minimum payment of  
8 \$1.00 to all claimants with Authorized Claims; and (3) disbursement of settlement funds from the  
9 finally approved settlements with Defendants: Panasonic Corporation and Panasonic Corporation  
10 of North America (together, “Panasonic”); KOA Corporation and KOA Speer Electronics, Inc.  
11 (together, “KOA”); ROHM Co. Ltd. and ROHM Semiconductor U.S.A., LLC (together,  
12 “ROHM”); Kamaya Electric Co., Ltd. and Kamaya Inc. (together, “Kamaya”); and Hokuriku  
13 Electric Industry Co. and HDK America, Inc. (together, “HDK”) (collectively, “Settling  
14 Defendants”). This motion is brought pursuant to Federal Rule of Civil Procedure (“Rule”) 23 and  
15 the Northern District of California’s Procedural Guidance for Class Action Settlements.

16  
17 Dated: April 21, 2021

Respectfully Submitted,

18 **COTCHETT, PITRE & McCARTHY, LLP.**

19 By: /s/ Adam J. Zapala

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1 **STATEMENT OF THE ISSUES TO BE PRESENTED**

2 1. Whether the Court should authorize, consistent with the recommendation of Class  
3 Counsel and the Claims Administrator, the approval of claims received after November 12, 2019,  
4 the claims deadline stated in the Indirect Purchaser Plaintiffs’ settlement approval moving papers,  
5 but on or before the Claims Administrator’s recommended cutoff date of April 1, 2021.

6 2. Whether the Court should authorize, consistent with the recommendation of Class  
7 Counsel and the Claims Administrator, a minimum payment amount of \$1.00 to all claimants that  
8 submitted valid claims.

9 3. Whether the Court should authorize the disbursement of net settlement proceeds  
10 consistent with the finally approved settlements given that the Claims Administrator has finalized  
11 all of its work and is prepared to distribute the funds to Settlement Class Members.

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I. INTRODUCTION**

14 The Indirect Purchaser Plaintiffs (“IPPs”) move for an order authorizing the disbursement  
15 of the net settlement funds pursuant to the five settlement agreements reached in this action, all of  
16 which have been fully and finally approved by this Court. Order, ECF No. 585. The gross  
17 settlements total \$33.4 million. Mot. for Final Approval, ECF No. 565. After an extensive claims  
18 administration process undertaken for the purpose of identifying qualified claimants and purchase  
19 amounts, IPPs now seek to distribute the net settlement proceeds after allocations for attorneys’  
20 fees, reimbursement of litigation costs, incentive awards, and settlement administration costs,  
21 consistent with the Court’s prior Order. ECF No. 585.

22 The concurrently filed declaration of Eric Schachter (“Schachter Decl.”), Vice President of  
23 the Class Action Administration division at Court-appointed Claims Administrator A.B. Data, Ltd.  
24 (“A.B. Data”), confirms that settlement administration in this action has strictly adhered to the  
25 process approved by the Court in granting final approval. That process is now complete. Schachter  
26 Decl. ¶ 4. The approved claims together account for 21% of the commerce from subpoenaed  
27 records of the distributors and which was pre-populated on the claims forms. *Id.* ¶ 6. A.B. Data has  
28 determined that certain claims should be rejected, following an audit process in which each

1 claimant whose claims were not approved on first review had an opportunity to present  
2 supplemental information and contest the determination. All such issues have now been resolved  
3 and there are no remaining challenges or objections. *Id.* ¶¶ 7-8. The claims process has therefore  
4 come to an end and IPPs are eager to disburse settlement funds to the Class expeditiously.

5 Class Counsel agrees with the recommendations by A.B. Data concerning how to complete  
6 the final allocation prior to disbursement to Class Members. First, while the previously established  
7 claims filing deadline was November 12, 2019, A.B. Data received valid claims after that date and  
8 has determined that including those claimants that submitted claims before April 1, 2021 in the  
9 allocation will not delay administration and final disbursement. *Id.* ¶ 9. Accordingly, A.B. Data  
10 recommends that such claims be approved and included. Second, A.B. Data has recommended  
11 setting a minimum *pro rata* payment amount of \$1.00 for all claimants that submitted valid claims,  
12 to increase the likelihood checks will be cashed and to avoid sending out payments in *de minimis*  
13 amounts that would be lower than the cost of administration and postage. *Id.* ¶ 10(a).

14 Finally, based on all of the foregoing and the extensive claims administration process, the  
15 IPPs respectfully request entry of an order authorizing final disbursement of the net settlement  
16 fund on a *pro rata* basis based on the qualified purchase amounts reflected in Exhibit A to the  
17 Schachter Declaration.

## 18 **II. BACKGROUND**

19 On September 5, 2015, IPPs filed their complaint alleging that the Defendants conspired to  
20 fix, raise, stabilize or maintain prices of linear resistors. The case progressed through three years of  
21 hard-fought litigation, after which the IPPs reached settlements with all five sets of Defendants  
22 totaling some \$33.4 million. Mot. for Final Approval, ECF No. 565 at 10. The IPPs moved for  
23 final approval on November 6, 2019, and the Court finally approved the settlements on March 24,  
24 2020. ECF No. 585. In doing so, the Court found that IPPs had “implemented the Court-approved  
25 notice plan.” *Id.* at 3. The Court further found “that IPPs’ proposed Plan of Allocation, proposing  
26 to pay putative Class Members on a *pro rata* basis based on qualifying purchases of linear resistors  
27 and on the type and extent of injury suffered by each class member in those states which permit  
28 indirect purchase claims is fair, reasonable, and adequate.” *Id.* 5 (*citing In re Citric Acid Antitrust*

1 *Litig.*, 145 F. Supp. 2d 1152, 1154 (N.D. Cal. 2001)). That same day, the Court entered final  
2 judgments of dismissal with prejudice with respect to all five Defendants. ECF Nos. 588 (KOA  
3 Defendants), 589 (Panasonic Defendants), 590 (ROHM Defendants), 591 (Kamaya Defendants),  
4 592 (HDK Defendants).

### 5 **III. ARGUMENT**

6 Settlement administration in this action has reached the stage at which the net settlement  
7 fund may be distributed proportionally to Class Members that have submitted valid claims. A.B.  
8 Data has completed its audit and rendered final determinations on all claims submitted. Schachter  
9 Decl. ¶ 4.

10 Following the Court's Order preliminarily approving the settlements, ECF No. 544, A.B.  
11 Data mailed each entity or person reasonably believed to fall within the Settlement Class a  
12 customized Notice Packet pre-populated with purchase data reflecting that entity or person's total  
13 purchases of linear resistors, as established in the distributor data. *Id.* ¶ 5. The total commerce  
14 accounted for in the pre-populated forms sent to potential Settlement Class Members reflected  
15 \$258,440,850.37. *Id.* The mailing advised recipients that each potential Settlement Class Member  
16 had the option to agree to the pre-populated purchase data or to supplement its claim by submitting  
17 supporting documentation. *Id.* A.B. Data received and processed all Claim Forms in accordance  
18 with the Court's Orders and the underlying settlement agreements. *Id.* ¶ 6. A.B. Data compiled  
19 aggregate claimed linear resistors purchases of \$54,887,413.43, amounting to a rate of 21% in  
20 comparison to the pre-populated amounts. *Id.* As the Schachter Declaration notes, this outcome  
21 confirms the effectiveness of the Court-approved Notice Plan and A.B. Data's implementation  
22 thereof. *Id.*

23 A comprehensive listing of all Authorized Claims, anonymized to identify each claimant by  
24 claim number rather than by entity name, is attached as Exhibit A to the Schachter Declaration. *Id.*  
25 An IPP Settlement Class Member may ascertain the accepted linear resistor purchase amounts  
26 associated with its authorized claim by referring to the row for its assigned claim number in  
27 Exhibit A. All putative Settlement Class Members had an opportunity to contest these figures and  
28 no further challenges remain at this time. *Id.* ¶¶ 5, 8.

1 During the claims processing and documentation review, A.B. Data identified a certain  
2 number of deficient claims that failed to provide information required by the Claim Form, or that  
3 appeared to be submitted by entities not reasonably believed to be among those included within the  
4 Court-approved settlement class definition or that were otherwise ineligible. *Id.* ¶ 7. Upon reaching  
5 a determination that a claim should be rejected, A.B. Data sent each affected claimant a Notice of  
6 Ineligibility explaining the basis for the determination of deficiency or ineligibility and offering  
7 guidance where applicable on potential avenues for resolving the issue identified. *Id.* Certain  
8 claimants responded by submitting supplemental information sufficient to perfect their claims. *Id.*  
9 ¶ 8. For those claimants that failed to do so, A.B. Data sent a Final Determination Letter to advise  
10 them of the final finding of deficiency or ineligibility and offering a final opportunity to contest  
11 that determination. *Id.*

12 A comprehensive listing of all Rejected Claims, anonymized to identify each putative  
13 claimant by claim number rather than entity name, is attached as Exhibit D to the Schachter  
14 Declaration. *Id.* Each claimant with a rejected claim has already received a customized Notice of  
15 Ineligibility and Final Determination Letter. As shown in Exhibit D, the reasons include  
16 withdrawal of the claim, submission of duplicate claims, failure to claim a non-zero purchase  
17 amount, missing or inadequate documentation, and, most commonly, that the claimant had  
18 ineligible purchases. As noted, all disputes regarding claims deemed deficient or ineligible by A.B.  
19 Data have now been resolved. *Id.*

20 **A. The Court Should Authorize Payment of Claims Submitted by April 1, 2021.**

21 A.B. Data confirms that claims received after the previously approved November 12, 2019  
22 claim filing deadline “did not cause any delay in the processing of the administration overall.” *Id.*  
23 ¶ 9. The same is true for perfected claims and corrective correspondence. *Id.* A.B. Data has  
24 therefore recommended, and Class Counsel concurs, that the Court approve A.B. Data’s  
25 determination to accept these limited late claims, perfected claims, and corrective correspondence  
26 received by April 1, 2021. *Id.* A.B. Data also reports that processing of any similar claims or  
27 communications received after April 1, 2021 would indeed delay the administration, and on that  
28 basis, recommends that claims or communications received after April 1, 2021 be rejected as late.



1 The IPPs note that the additional claims accepted as Authorized Claims are otherwise valid  
2 in every relevant sense. These claims arise from eligible purchases of linear resistors during the  
3 relevant time and are within the settlement class definition. Therefore, permitting these claims is  
4 consistent with the policy goals of Federal Rule of Civil Procedure 23(e)(2)(D), which requires a  
5 court considering a proposed settlement to assess whether it “treats class members equitably  
6 relative to each other.” The IPPs respectfully recommend that acceptance of these late claims be  
7 approved.

8 **B. The Court Should Authorize the Recommended Minimum Payment Amount.**

9 A.B. Data has further reported that settlement payouts of less than \$1.00 are “economically  
10 impractical as compared to the cost to print and mail the check, and are more likely to not be  
11 cashed by the recipient.” Schachter Decl. ¶ 10(a). A.B. Data also notes that the setting of a  
12 minimum payment is common in class action claims administration, and here, would have only an  
13 insignificant effect on other payees since only a “few hundred” claims will be subject to the \$1.00  
14 minimum. *Id.*, and *see id.* Ex. A (listing 2,921 Authorized Claims).

15 Class Counsel agrees. Pretrial settlement of class action lawsuits is governed by equitable  
16 considerations, and the proposed \$1.00 minimum payment to all settlement class members with  
17 Authorized Claims will resolve the economic impracticality concern and serve the worthy goal of  
18 increasing class member participation while imposing a very limited effect on other class  
19 members. *See generally* NEWBERG ON CLASS ACTIONS § 12:15 (5th ed.) (endorsing both  
20 “distribution based on flat amounts” and “*pro rata* distribution” as acceptable methods and  
21 advising, “The goal of any distribution method is to get as much of the available damages remedy  
22 to class members as possible and in as simple and expedient a manner as possible.”); MANUAL FOR  
23 COMPLEX LITIGATION, FOURTH § 21.66 (embracing case-specific approaches and teaching that “[a]  
24 default award may be appropriate for those who can establish membership in the class but cannot,  
25 or prefer not to, submit detailed claims,” and that “[a]udit and review procedures will depend on  
26 the nature of the case.”). The IPPs therefore request approval of the \$1.00 minimum payment.

**C. The Court Should Authorize a Final Disbursement of Settlement Proceeds.**

The audit and tabulation of Authorized Claims is now complete. Schachter Decl. ¶¶ 4, 6-9. The Claims Administrator has followed the Court’s prior orders and has presented a detailed plan, fully supported and endorsed by Class Counsel, for final distribution of the net settlement funds to members of the IPP settlement class with Authorized Claims. *Id.* ¶ 10.

The IPPs respectfully request that the Court authorize a final disbursement consistent with the Schachter Declaration. Consistent with the Northern District of California’s Procedural Guidance on Class Action Settlements, within 21 days of this Court’s order authorizing distribution and the mailing of settlement checks, Class Counsel will submit a Post-Distribution Accounting detailing the status of actual distribution.

**IV. CONCLUSION**

Settlement administration in this action has followed the process contemplated by Class Counsel and approved by the Court, as reflected in the update offered by the Claims Administrator, and the net settlement fund is now ready for disbursement. The IPPs respectfully request that the Court authorize payment of late claims as outlined herein, establish a minimum payment amount as set forth herein, and permit final disbursement of settlement funds to the IPP class, consistent with the procedural steps outlined in paragraph 10 of the Schachter Declaration.

Dated: April 21, 2021

Respectfully Submitted,

**COTCHETT, PITRE & McCARTHY, LLP**

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