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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

IN RE RESISTORS ANTITRUST LITIGATION

This Document Relates to:

All Indirect Purchaser Actions

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

INDIRECT PURCHASER PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF SETTLEMENTS WITH ALL DEFENDANTS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

Date: December 12, 2019
Time: 10:00 a.m.
Place: Courtroom 11, 19th Floor
Judge: Hon. James Donato

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT, on December 12, 2019, at 10:00 a.m., or as soon thereafter as the matter may be heard, in the Courtroom of the Honorable James Donato, United States District Judge for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, California, the Indirect Purchaser Plaintiffs ("IPPs") will and hereby do move for (1) entry of an order granting final approval of proposed settlements with Defendants: (a) Panasonic Corporation and Panasonic Corporation of North America (together, "Panasonic"); (b) KOA Corporation and KOA Speer Electronics, Inc. (together, "KOA"); (c) ROHM Co. Ltd. and ROHM Semiconductor U.S.A., LLC (together, "ROHM"); (d) Kamaya Electric Co., Ltd. and Kamaya Inc. (together, "Kamaya"); and (e) Hokuriku Electric Industry Co. and HDK America, Inc. (together, "HDK") (collectively, "Settling Defendants"); (2) certification of the settlement classes; (3) and appointment of settlement class counsel. This motion is brought pursuant to Federal Rule of Civil Procedure ("Rule") 23 and the Northern District of California's Procedural Guidance for Class Action Settlements. The grounds for this motion are that the settlements with the Settling Defendants easily fall within the range of final approval, contain no obvious deficiencies, and are the result of serious, informed, and non-collusive negotiations.

In addition, IPPs' class notice program satisfied Rule 23, complied with due process, and constituted "the best notice practicable under the circumstances . . ." Rule 23(c)(2)(B). IPPs' plan provided direct mail notice to potential Class Members whose contact information was available from records provided by non-party distributors produced during the course of discovery in this litigation. The direct mail notice plan was supplemented by a robust publication program and media plan. Taken together, the plan exceeded the requirements of Rule 23, satisfied due process, and fairly apprised putative Settlement Class Members of the existence of the settlements and their options under them. As of the date of this filing, there has been only 25 requests for exclusion, and 1 non meritorious objection.

This motion is based upon this Notice; the Memorandum of Points and Authorities in Support; the Declaration of Adam J. Zapala and the attached exhibits; the Declaration of IPPs'

Notice Program Expert, Eric Schachter from A.B. Data, Inc. and attached exhibits; the Declaration of Tamarah P. Prevost; the Declarations of each of the IPP Class Representatives, Linkitz Systems, Inc. ("Linkitz"); Microsystems Development Technologies, Inc. ("Microsystems"); Nebraska Dynamics, Inc. ("Nebraska Dynamics"); MakersLED LLC; Top Floor Home Improvements ("Top Floor"); Angstrom, Inc. ("Angstrom"); In Home Tech Solutions, Inc. ("In Home Tech"); and Anthony Sakal, and any further papers filed in support of this motion, as well as arguments of counsel and all records on file in this matter.

Dated: November 6, 2019

Respectfully Submitted,

COTCHETT, PITRE & McCARTHY, LLP.

By: /s/ *Adam J. Zapala*

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STATEMENT OF THE ISSUES TO BE PRESENTED

1. Whether this Court should certify a Settlement Class of indirect purchasers of linear resistors;

2. Whether this Court should grant final approval of the IPP settlements with the Settling Defendants where the settlements recover over 100% of damages, as estimated by IPPs' expert (*see* Supplemental Brief in Support of Preliminary Approval, Dkt. 531; *see also* Declaration of Russell Lamb, Dkt. 531-1); and

3. Whether this Court should appoint Cotchett, Pitre & McCarthy LLP ("CPM") as Settlement Class Counsel for the purposes of final approval of the Proposed Settlements.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Indirect Purchaser Plaintiffs ("IPPs") move for final approval of the settlements[1] with the Settling Defendants. Under the settlements, IPPs have recovered $33.4 million, with each settlement being reached after many years of vigorous litigation and a full development of the parties' respective claims and defenses. The $33.4 million in recovery to the IPP class constitutes an excellent result, meriting final approval. As outlined in IPPs' Motion for Preliminary Approval, the recovery constitutes over 100% of IPPs' estimated damages.

Moreover, IPPs' notice program has been robust, reaching a minimum of 70 percent of likely Class Members.[2] Direct notice was sent to class members for whom addresses were available, and a state-of-the-art publication program ensured further notice. A simple and appealing settlement website made claims as easy to complete as possible and provided Class Members with detailed case information.

Although the Class numbers in the hundreds of thousands, only one "objection" was asserted and 25 Class Members requested exclusion from the Class. The purchases of the Class Members opting out of the settlement constitute only 0.0011% of the indirect commerce in the

[1] *See* Declaration of Adam J. Zapala In Support of Indirect Purchaser Plaintiffs' Notice of Motion and Motion for Final Approval of Settlements with All Defendants ("Zapala Decl."), Exs. 1-5.
[2] *See* Declaration of Eric Schachter in Support of IPPs' Motion for Final Approval of Settlements with All Defendants ("Schachter Decl. ¶ 21).

case—a miniscule percentage, further demonstrating the strength of the settlements. The meritless, single objection, and the extraordinarily small number of opt-outs further militate in favor of final approval of the Proposed Settlements.

All relevant factors support finding the settlements fair, adequate, and reasonable, and worthy of final approval. IPPs successfully navigated many factual and legal challenges in prosecuting this case, but there is still much costly work to be done should these settlements not be approved. IPPs respectfully request that this Court grant final approval of their settlements for the reasons set forth herein.

II. BACKGROUND

This Court is intimately familiar with the facts of this case and IPPs refer the Court to the detailed procedural and litigation history described in IPPs' Motion for Attorneys' Fees; Reimbursement of Expenses; and Class Representative Incentive Awards, Dkt. 548 ("Fee Motion") pp. 3-8; Declaration of Adam J. Zapala in Support Thereof ("Zapala Decl., Fee Motion"), ¶¶ 7-61.

A. The Settlement Class

The proposed Settlement Agreements resolve all claims arising from the conspiracy to restrain competition for linear resistors against the Settling Defendants. The Settlement Class is defined as follows in each of the Settlement Agreements:

> All persons and entities in the United States who purchased one or more Linear Resistor(s), from a resistor distributor not for resale which a Defendant, its current or former subsidiary, or any of its co-conspirators manufactured and/or sold, between January 1, 2003 and August 20, 2015. Excluded from the Class are Defendants, their parent companies, subsidiaries and Affiliates, any coconspirators, Defendants' attorneys in this case, federal government entities and instrumentalities, states and their subdivisions, all judges assigned to this case, all jurors in this case and all persons and entities who directly purchased Linear Resistors from Defendants.[3]

B. The Settlement Consideration

The Settling Defendants will pay a cumulative amount of $33.4 million in cash under the terms of the proposed Settlement Agreements: Panasonic has paid $10 million; KOA $18.5 million; ROHM $2 million; Kamaya $2 million; and HDK $900,000. If approved, these

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[3] *See* Dkt. 545, at ¶ 1 (Order Granting IPPs' Motion for Preliminary Approval)

settlements will bring an end to this litigation and put significant money (over 100% of damages) into the hands of alleged cartel victims.

C. Release of Claims

The settlements release IPPs' claims against KOA, Panasonic, ROHM, Kamaya, and HDK that were asserted in the IPPs' Complaint based on the underlying facts of the case.[4] IPPs have not released any claims against the Settling Defendants that are unrelated to unfair competition claims.[5]

D. Notice to the Class

The class was notified by 1) direct notice; 2) publication; 3) email "blasts"; 4) digital banner advertisements; 5) a case-specific website; and 6) an earned media campaign through press releases to announce the proposed Settlements. Schachter Decl. ¶¶ 4-15.

First, direct notice was sent to 257,906 potential Class Members for whom addresses were available. *Id*. ¶ 5. A.B. Data updated addresses using the National Change of Address ("NCOA") database and any notice returned non-deliverable was mailed follow-up notice. *Id*. ¶ 5. A.B. Data had sufficient data to pre-populate 247,555 of the claim forms prior to mailing Notice packets. *Id*. ¶ 6.

Second, A.B. Data supplemented direct notice with an extensive media publication plan. For example, notice was published in the Wall Street Journal. *Id*. ¶ 8. *Third*, two separate email "blast" news releases were sent to 50,000 subscribers of *Penton Publications*, 41,000 of *EE Times*, and 63,000 of *Electronic Design*; each selected for their likelihood of reaching executive-level Class Member employees. *Id.* ¶¶ 9-10.

Fourth, A.B. Data placed "banner ads" on eight different websites and through Google Display Network, sources selected for their likelihood of reaching purchasers of linear resistors. *Id.* ¶¶ 11-12. That same day, A.B. Data disseminated a nationwide news release announcing the Proposed Settlement. *Id*.

[4] Zapala Decl., Ex. 1, ¶ 1(y); Ex. 2, ¶ 1(y); Ex. 3, ¶ 1(z); Ex. 4, ¶ 1(z); Ex. 5, ¶ 1(y).
[5] *Id*. Ex. 1, ¶ 14; Ex. 2, ¶ 1(y); Ex. 3, ¶ 14; Ex. 4, ¶ 14; Ex. 5, ¶ 14.

A.B. Data established a case-specific website, www.linearresistorsindirectcase.com, to aid Class Members in understanding the Proposed Settlements. The website describes the Settlements, links to the Notices, Settlement Agreements, IPPs' Attorney Fee Motion, and other pleadings and filings, and provides for online claim submission. *Id.* ¶ 14. A.B. Data established a toll-free phone number to answer questions regarding the settlements. *Id.* ¶ 15. It estimates the Notice Program reached a minimum of 70% of the Class and satisfied Rule 23. *Id.* ¶ 21.

E. Method of Distributing Relief

IPPs contemplate a *pro rata* distribution to each Class Member with damages claims from states permitting indirect recoveries. Class Members' recovery will be calculated based on the number of approved purchases of resistors during settlement class period. The Court approved this plan of allocation at preliminary approval, *see* Dkt. 545, ¶ 10, and has repeatedly approved a similar allocation plan in *Capacitors*.[6] Regarding distribution, the majority of Class Members' claim forms were pre-populated based on transactional data the IPPs received from non party distributors,[7] and funds will be paid after calculating Class Members' *pro rata* recovery in light of the aggregate claims submitted.

III. ARGUMENT

Final approval is a multi-step inquiry: *first*, the Court must certify the proposed settlement class and appoint settlement class counsel; *second*, it must determine that the settlement is "fair, reasonable, and adequate;"[8] and *third*, it must assess whether notice has been appropriate provided.

A. The Court Should Certify the Settlement Classes

At final approval, this Court must decide whether the proposed Settlement Classes meet Rule 23(a) and 23(b)(3)'s requirements. However, as the Ninth Circuit Court recently confirmed,

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[6] *See, e.g., In re Capacitors Antitrust Litig.*, No. 14-cv-3264, ECF No. 1934, ¶12 (N.D. Cal. Oct. 30, 2017).

[7] Because IPPs did not obtain transactional data from 100% of the distributor level of the distribution chain, the claim form gives the class members the option of supplementing the amount provided in the pre-populated claim form, with even more purchases of linear resistors, along with supporting evidence of those purchases.

[8] Rule 23(e)(2); *Adoma v. Univ. of Phoenix. Inc.*, 913 F. Supp. 2d 964, 972 (E.D. Cal. 2012).

"[t]he criteria for class certification are applied differently in litigation and settlement classes."[9] As discussed below, the Court should certify the classes.

1. The Settlement Classes Meet the Requirements of Rule 23(a)

IPPs explained at length in their Motion for Preliminary Approval why the requirements of Rule 23(a) are met, and this Court previously agreed, certifying the proposed Settlement Classes in preliminarily approving the Settlements. *See* Dkt. 545, ¶¶ 4-5. Nothing has changed since that time, and settlement class certification continues to be appropriate. Under Rule 23(a), the proponent of class certification must show that the proposed class meets the requirements of (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy.

These requirements are easily met here. *First*, the number of class members is in the hundreds of thousands, making joinder impracticable.[10] *Second*, the central, common questions underlying each of IPPs' claims in this case are whether defendants participated in a conspiracy to raise, fix, stabilize or maintain the prices of linear resistors sold in the United States, and the impact from this conspiracy.[11] *Third*, the Class Representatives have no interests that conflict with the Settlement Class. To the contrary, they are bound by the common interest of obtaining compensation for a shared injury, as further evidenced by the accompanying Declarations of each of the Class Representatives.[12] *Fourth*, Co-Lead Counsel has vigorously prosecuted the action since their appointment in 2015, and the Class Representatives have been actively involved in the litigation of this case.[13]

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[9] *In re Hyundai & Kia Fuel Econ. Litig*., 926 F.3d 539, 556 (9th Cir. 2019).

[10] *See Bellinghausen v. Tractor Supply Co*., 303 F.R.D. 611, 616 (N.D. Cal. 2014) (where "general knowledge and common sense" indicate a large class, "numerosity is satisfied.").

[11] *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) (common questions "will resolve an issue that is central to the validity of each one of the claims in one stroke.").

[12] *Torres v. Mercer Canyons, Inc*., 835 F.3d 1125, 1141 (9th Cir. 2016) ("[R]epresentative claims are 'typical' . . . if reasonably coextensive with those of absent class members.").

[13] *See* Class Representative Declarations, attached hereto; Zapala Decl., Fee Motion ¶¶ 7-75 (describing Class Counsel's efforts).

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2. The Proposed Settlements Satisfy Predominance and Superiority Under Rule 23(b)(3)

a. Common Questions of Law and Fact Under Rule 23(b)(3) Predominate

Rule 23(b)(3) requires a finding that common questions of law or fact predominate over any questions affecting only individual members, and that a class action is a superior vehicle for relief.[14] The Settlement Class satisfies Rule 23(b)(3). "Even if just one common question predominates, the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately."[15]

In horizontal price-fixing cases like this, questions as to the existence of the alleged conspiracy and the occurrence of price-fixing are readily found to predominate.[16] Resolution of IPPs' claims here depend principally on whether Defendants participated in a price-fixing conspiracy that caused an artificial increase to the market price of linear resistors. Thus, if IPPs proved these elements using common evidence, a jury could find that every Class Member suffered a resulting injury. If Class Members brought individual claims, each would rely on the same cartel evidence, and prove damages using the same econometric model.

b. A Class Action Is the Superior Method Under Rule 23(b)(3) for Resolving These Claims

Resolution of IPPs' claims through a class action is unquestionably superior. Litigating every Class Member's claims separately would waste both judicial and party resources, given that the vast majority of evidence would be identical.[17] And Individual Class Members would

[14] *See In re TFT-LCD Antitrust Litig*., 267 F.R.D. 291, 314 (N.D. Cal. 2010) ("[I]f common questions are found to predominate in an antitrust action . . . courts generally have ruled that the superiority prerequisite of Rule 23(b)(3) is satisfied."); *In re High-Tech Emp. Antitrust Litig*., 985 F. Supp. 2d 1167, 1227 (N.D. Cal. 2013) (same).

[15] *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016); *see also Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) ("when "[c]onfronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.")

[16] *See, e.g.*, *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 300 (3d Cir. 2011); *Amchem*, 521 U.S. at 625 (predominance under Rule 23(b)(3) is "readily met" in antitrust cases"); *Flat Panel,* 267 F.R.D. 291 at 310 (collecting cases)

[17] *See Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1023 (9th Cir. 1998).

lack an incentive to bring their own cases given high expert costs related to litigating complex antitrust theories of liability and damages.

B. The Court Should Appoint Cotchett, Pitre, & McCarthy LLP As Settlement Class Counsel for Final Approval

When certifying a class for settlement purposes, the Court should appoint Settlement Class Counsel.[18] The Court already appointed CPM as such in granting preliminary approval,[19] and prior briefing reflects "(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) [CPM's] experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) [CPM's] knowledge of the applicable law; and (iv) the resources [committed] to representing the class."[20] CPM is recognized as one of the top litigation firms in the country, with acknowledged antitrust expertise. This Court has had the opportunity to personally observe CPM's litigation skill and knowledge of antitrust law, as well as the resources CPM has committed to this case. CPM should be appointed Settlement Class Counsel.

C. This Court Should Approve the Proposed Settlement as Fair, Reasonable, and Adequate.

The Ninth Circuit adopts a "strong judicial policy that favors settlements" in complex class actions,[21] because they "promote the amicable resolution of disputes and lighten the increasing load of litigation faced by the federal courts."[22] This Court may exercise its "sound discretion" when deciding whether to grant final approval, yet he Ninth Circuit advises that "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties. . . must be limited. . .to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement,

[18] Fed. R. Civ. P. 23(g)(1); *see also Bellinghausen*, 303 F.R.D. at 618.
[19] Dkt. 545, ¶ 7.
[20] Fed. R. Civ. P. 23(g)(1)(A); *see* Dkt. 514, at 17; Zapala Decl., Fee Motion, Ex. 1.
[21] *Hyundai*, 926 F.3d at 556; *In re Syncor ERISA Litig*., 516 F.3d 1095, 1101 (9th Cir. 2008).
[22] *Sullivan*, 667 F.3d at 311.

taken as a whole, is fair, reasonable, and adequate."[23] And Rule 23(e)(2) as recently amended provides that the fairness inquiry must consider whether:

> (A) the class representatives and class counsel have adequately represented the class;
> (B) the proposal was negotiated at arm's length;
> (C) the relief provided for the class is adequate, taking into account:
> (i) the costs, risks, and delay of trial and appeal;
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing classmember claims;
> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
> (iv) any agreement required to be identified under Rule 23(e)(3); and
> (D) the proposal treats class members equitably relative to each other.

The Advisory Committee emphasized these provisions are "the primary considerations that should always matter to the decision whether to approve the proposal."[24] The Proposed Settlement is fair, reasonable, and adequate under all governing standards.

1. Rule 23(e)(2)(A): The Class Representatives and Class Counsel have Vigorously Represented the Class

Rule 23(e)(2)(A) requires this Court to consider the adequacy of class representatives and class counsel's representation of the class. The Advisory Committee Notes explain that the aim is to "identify . . . procedural concerns, looking to the conduct of the litigation and of the negotiations leading up to the proposed settlement," such as the nature and amount of discovery, or outcomes in other cases which "may indicate whether counsel negotiating on behalf of the class had an adequate information base." [25] Ninth Circuit law recommends similar considerations.[26]

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[23] *See Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff'd*, 661 F.2d 939 (9th Cir. 1981) (class settlement "left to the sound discretion of the trial judge"); *Officers for Justice v. Civil Serv. Comm'n of City & Cty. of SF*, 688 F.2d 615, 625 (9th Cir. 1982).

[24] Rule 23(e)(2), 2018 Advisory Committee Notes. Prior to Rule 23's amendments, courts weighed factors such as: (1) the strength of plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining a class action; (4) the settlement amount; (5) the extent of discovery completed; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members. *In re Bluetooth Headset Prods. Liability Litig*., 654 F.3d 935, 946 (9th Cir. 2011).

[25] *See* Rule 23, Notes of Advisory Comm., Subdivision (e)(2), Paragraphs (A) and (B) (2018).

[26] *Bluetooth*, 654 F.3d at 946 ("extent of discovery" should be evaluated"); *In re Mego Fin. Corp. Secs. Litig*., 213 F.3d 454, 459 (9th Cir. 2000) (fairness presumed with "sufficient discovery and genuine arms-length negotiation.").

1 The extensive efforts undertaken by Class Counsel have been previously described and
2 IPPs will not re-state them in full yet again.[27] Nonetheless, suffice it to say that IPPs conducted
3 extensive party and non-party discovery, engaged in substantial motion practice, and consulted
4 extensively with experts during the course of this litigation.[28] And the impressive efforts
5 undertaken by each of the Class Representatives make clear their motivation to serve the Class.[29]
6 The Class Representatives and Class Counsel had the information they needed to negotiate
7 intelligently on behalf of the Class. The experienced views of counsel and their intimate
8 knowledge of the strengths and weaknesses of the case given the lengthy litigation history
9 strongly weigh in favor of final approval.[30]

10 **2. Rule 23(e)(2)(B): Class Counsel negotiated the settlements at arm's**
11 **length.**

12 Rule 23(e)(2)(B) instructs courts to consider whether "the proposal was negotiated at
13 arm's length." As described thoroughly in IPPs' Attorney Fee Motion, the Settlement
14 Agreements were negotiated at arm's length amongst experienced and sophisticated counsel, and
15 there are no obvious signs of collusion.[31] The Federal Rules advise courts to consider any
16 attorneys' fees agreement, "with respect to both the manner of negotiating the fee award and its
17 terms."[32] The Ninth Circuit identifies three related signs as potentially indicative of collusion or
18 procedural unfairness: (a) attorneys' fees that are disproportionate to the settlement; (b) a "clear
19 sailing" arrangement paying attorneys' fees separately from class funds; or (c) when fees not
20 awarded to plaintiffs' counsel revert to defendants rather than the class.[33] None of these signs of
21 behavior are present. The Proposed Settlements are non-reversionary. The funds will cover costs
22 and fees and compensate the class based on a *pro rata* formula, a formula that is routinely
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24 [27] *See* IPPs' Fee Motion; Preliminary Approval Motion, Dkt. 548, 514.
[28] Zapala Decl., Fee Motion, Dkt. 548, ¶¶ 7-61.
25 [29] *See* Declarations of each IPP Class Representative, attached hereto to this Motion.
[30] *See Bluetooth*, 654 F.3d at 946 (importance of deferring to the experience and views of
26 counsel); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008) (same)
[31] *See* Zapala Decl., Fee Motion, ¶¶ 62-75. Moreover, IPPs' Proposed Settlement with KOA was
27 overseen by a mediator, lending especially to fairness. *See* Advisory Committee Notes to Rule
23(e)(2)(A) and (B).
28 [32] Advisory Committee Notes to Rule 23(e)(2)(A) and (B).
[33] *Hyundai*, 926 F.3d at 569; *Bluetooth*, 654 F.3d at 946.

approved in price-fixing cases. There is no "clear sailing" provision, and no payment of fees separate and apart from the class funds.[34] In sum, all procedural considerations, including the advanced procedural stage of the litigation, support a conclusion that negotiations occurred at arm's length, without collusion.

3. Rule 23(e)(2)(C): The relief provided by the settlements represents an excellent recovery, taking into account the costs, risks, and delay of trial and appeal.

Rule 23(e)(2)(C) asks the court to consider whether "the relief provided for the class is adequate," taking into account four enumerated factors, each of which supports approval here.

Costs, Risks, and Delay of Trial and Appeal.[35] The first factor is analogous to the Ninth Circuit's consideration of the risk, expense, complexity, and likely duration of further litigation, while also examining the strength of plaintiffs' case, the risk of maintaining class action status throughout the trial, and the amount offered in settlement.[36] IPPs' recovery here is excellent in light of the risks and the Settling Defendants' relevant commerce during the class period. IPPs' settlements here secure ***approximately 139%*** of their damages. IPPs expert estimated a 5.75% overcharge paid by IPPs on resistors IPPs' $33.4 million settlement equates to **8.04%** of the total $415.3 million in cumulative commerce in the case.[37] As such, these Proposed Settlements constitute 139% of IPPs' estimated damages: an overwhelmingly positive result for the class.

And there are significant risks: the potential that no classes are certified, or are certified for a shorter time period or for a smaller geographic scope; that Settling Defendants, already operating on slim margins, become insolvent during the litigation; that IPPs cannot sufficiently prove damages at trial. These are just a few of the risks to IPPs' success. Even at this point, IPPs believe that the settlements reflect a fair compromise in light of the potential trial recovery, the costs of litigation which would be taken from the settlement funds, and the delay in payment to the class. These cases are particularly risky and challenging, with courts recognizing that antitrust

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[34] Indeed, the class notice informed Class Members that Class Counsel would seek attorneys' fees up to 30 percent of the settlement fund; when only 25% is actually being requested. *Compare* Schachter Decl. Prelim. App; Ex. 2; with Fee Motion, Dkt. 548.
[35] Rule 23(e)(2)(C)(i).
[36] *Bluetooth*, 654 F.3d at 947-48 (identifying these factors).
[37] Zapala Decl., Prelim. App. ¶¶ 16-21; s*ee* Dkt. 531, Lamb Decl. ¶ 14, Dkt. 531-1.

1 cases are "arguably the most complex action to prosecute."[38] Even where liability is proven,
2 IPPs could legitimately "recover[] no damages, or only negligible damages, at trial, or on
3 appeal."[39]

4 **Effectiveness of Distribution**. Rule 23(e)(2)(C) also inquires into the method for
5 distribution of the settlement proceeds, "including the method of processing class-member
6 claims."[40] As noted, Settlement Funds will be paid to Class Members on a pro rata basis to those
7 Class Members who purchased resistors in a state that permits indirect damages. This approach
8 has been widely accepted in this District and beyond.[41] And IPPs' proposed claims process
9 maximizes the effectiveness of distribution by using pre-populated claim forms when possible.
10 This factor favors approval.

11 **Terms of Proposed Attorneys' Fees.** The terms of any proposed attorneys' fees award,
12 including the timing of payment is a third factor under Rule 23(e)(2)(C). The Settlement
13 Agreements provide that any Court-awarded fees will be paid from the Gross Settlement Fund.[42]
14 As detailed in their Motion, IPPs requested a total award of $8,350,000 in attorneys' fees plus
15 interest, which represents 25% percent of the total recovery in this case. There are no terms about
16 fees in the Settlement Agreements, and each are subject to this Court's approval.

17 **Other Agreements**. The last factor of Rule 23(e)(2)(C) instructs courts to consider "any
18 agreement required to be identified under Rule 23(e)(3)," such as "related undertakings that,
19 although seemingly separate, may have influenced the terms of the settlement by trading away

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[38] *In re Linerboard Antitrust Litig.*, MDL No. 1261, 2004 WL 1221350, at *10 (E.D. Pa. June 2, 2004); *see also In re Auto. Refinishing Paint Antitrust Litig*., 617 F. Supp. 2d 336, 341 (E.D. Pa. 2007) (the "antitrust class action is arguably the most complex action to prosecute").

[39] *See Wal-Mart Stores, Inc. v. Visa U.S.A., Inc*., 396 F.3d 96, 118 (2d Cir. 2005) ("antitrust litigation is replete" with plaintiffs' success on liability, but little or no damages at trial."); *In re Superior Beverage/Glass Container Consol. Pretrial*, 133 F.R.D. 119, 127 (N.D. Ill. 1990) ("None of these risks should be underestimated.").

[40] *See* Advisory Notes to Rule 23(e)(2)(C) and (D) (claims method should "facilitate[] filing legitimate claims.")

[41] *See In re Citric Acid Antitrust Litig*., 145 F. Supp. 2d 1152, 1154 (N.D. Cal. 2001) ("A plan of allocation that reimburses class members based on the type and extent of their injuries is generally reasonable."); *In re Omnivision Technologies, Inc*., 559 F. Supp. 2d 1036, 1045-46 (N.D. Cal. 2008) (finding "it is reasonable to allocate . . .based on the extent of their injuries or the strength of their claims on the merits."); *In re Lloyds' Am. Trust Fund Litig*., No. 96 Civ.1262 RWS, 2002 U.S. Dist. LEXIS 22663, at *54 (S.D.N.Y. Nov. 26, 2002) ("*Pro rata* . . . appear[s] to be the fairest method").

[42] Zapala Decl., Ex. 1, ¶ 28; Ex. 2, ¶ 25; Ex. 3, ¶ 28; Ex. 4, ¶ 28; Ex. 5, ¶ 28.

possible advantages for the class in return for advantages for others."[43] IPPs have entered into no such agreements. This factor supports final approval.

4. Rule 23(e)(2)(D): The settlements treat class members equitably.

The Proposed Settlements do not contemplate any unwarranted preferential treatment of Class Representatives or segments of the class, a consideration identified by Rule 23(e)(2)(D).[44] The Court approved IPPs' proposed *pro rata* allocation plan because it "does not unfairly favor any Class Member, or group of Class Members, to the detriment of others." The allocation plan has not been objected to; this factor weighs in favor of final approval.[45]

5. The Reaction of Class Members to the Proposed Settlements Favors Final Approval.

The reaction of Class Members is an important factor in determining the fairness of a proposed settlement.[46] IPPs' notice program reached hundreds of thousands of consumers who purchased linear resistors. Yet, only 25 requests for exclusion were received, and one objection, by Mr. James Joyce.[47] The numbers speak for themselves, and strongly support granting final approval.

a. The Minimal Requests for Exclusion Favor Approval of the Proposed Settlements

As noted, only 25 individuals or entities requested exclusion from the settlements, and their the opt-out purchases represent 0.0011% of total sales at issue in this case. This miniscule number is a testament to the fairness of the Proposed Settlements.

b. The Only Objection to the Proposed Settlement is Meritless

The grounds for the sole objection are unclear, and the objector ignored Class Counsel's attempts to clarify it.[48] Of the 257,906 individuals to whom Direct Notice was sent, the objection rate is 0.0003%. This ratio alone supports approval. [49] Mr. Joyce's 7-sentence letter appears to

[43] Rule 23(e) 2003 Advisory Committee Notes.
[44] *See* Rule 23(e)(2) 2018 Advisory Committee Notes.
[45] *See* Dkt. 545, ¶ 10.
[46] *Bluetooth*, 654 F.3d at 946.
[47] Schachter Decl., Ex. F.
[48] Dkt. 556 (objection) Declaration of Tamarah P. Prevost, ¶¶ 4-6.
[49] Moreover, the opt-out rate is 0.0097%, which also supports a finding of fairness. *Nat'l Rural Telcomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) (collecting cases and finding absence of a large number of objections "raises a strong presumption" of fairness);

1 object to the requested attorneys' fees on the basis that his individual recovery would be small
2 in comparison and that the terms of the settlement are purportedly "not available" and/or are too
3 "vague."[50] Because IPPs' class notice reserved the right to seek 30% in attorneys' fees, yet Class
4 Counsel only sought 25% in its Motion, Class Counsel attempted to provide notice of this to the
5 Objector.[51] The Objector never responded. *Id*.

6 Regardless, the objection is misplaced. *First*, IPPs' attorney fee request only seeks 25%
7 of the settlement fund, which is the benchmark for attorneys' fees in the Ninth Circuit.[52] The
8 requested fee would also constitute a relatively significant negative multiplier of Class Counsel's
9 lodestar.[53] Under well-established law in this District, the Ninth Circuit, and in similar cases,
10 such a request cannot be considered excessive.[54] *Second*, as noted, the objection is post-marked
11 *before* IPPs' filed their Attorney Fee Motion (July and August).[55] It is possible the objection
12 relates to the 30% attorneys' fees request "ceiling" provided the notice, rather than the 25%
13 award Class Counsel is actually seeking. As a consequence, Mr. Joyce's objection may already
14 be obviated. Either way, IPPs' request is eminently reasonable under Ninth Circuit standards.[56]
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16 *Village L.L.C. v. Gen. Elec*., 361 F.3d 566, 577 (9th Cir. 2004) (affirming settlement with 45
17 objections out of 90,000 notices sent); *In re LinkedIn User Privacy Litig*., 309 F.R.D. 573, 589 (N.D. Cal. 2015) (57 opt-outs and six objectors of a 798,000 member class an "overall positive"
18 reaction); *Garner v. State Farm Mut. Auto. Ins*., No. CV 08 1365 CW (EMC), 2010 U.S. Dist. LEXIS 49477, at *15 (N.D. Cal. April 22, 2010) (0.4% opt-out rate supports fairness).

19 [50] Dkt. 556. Mr. Joyce's objection states: "I was not harmed by Defendants. My purchase total over the timeframe indicated is so small as to be inconsequential."

20 [51] Prevost Decl., ¶¶ 4-6.

[52] *See Resnick v. Frank (In re Online DVD-Rental Antitrust Litig.)*, 779 F.3d 934, 949 (9th Cir.
21 2015) ("in this circuit, the benchmark percentage is 25%"); *see also* Fee Motion, Dkt. 548, fn. 4-8 (collecting cases).

22 [53] Fee Motion, Dkt. 548, at 13-14, explaining a 25% fee award would equate to 73% of IPP Counsel's lodestar.

23 [54] *See, e.g., CRT Antitrust Litig*., No. C-07-5944 JST, 2016 WL 4126533 (N.D. Cal. Aug. 3, 2016) (30% fee award in IPP settlement); *In re TFT-LCD (Flat Panel) Antitrust Litig.,* Nos. M
24 07-1827 SI, 1827, 2013 U.S.Dist. LEXIS 49885 (N.D.Cal. Apr. 1, 2013) (28.6% in IPP settlement); *In re Static Random Access Memory (SRAM) Antitrust Litig.*, No. 07-md- 1819-
25 CW (N.D. Cal. Oct. 14, 2011), ECF No. 1407 (33% in IPP settlement); *Hyundai*, 926 F.3d at 570 (noting upward departures are not unusual in high-risk cases); *Vizcaino v. Microsoft Corp*.,
26 290 F.3d 1043, 1047-48 (9th Cir. 2002) (no abuse of discretion for 28% fee award given 'risk' in litigating); *In re Pac. Enters. Secs. Litig*., 47 F.3d 373, 379 (9th Cir. 1995) (33% fee award
27 affirmed "because of the complexity of the issues and the risks").

[55] *Compare* Schachter Decl., Prelim. App., Ex. F, dated July 19, 2019, *with* Fee Motion, dated August 13, 2019.

28 [56] *See Online DVD*, 779 F.3d at 949 ("in this circuit, the benchmark percentage is 25%"); *see also* IPPs' Fee Motion, fn. 4-8 (collecting cases).

A 25% benchmark for attorneys' fees has been consistently affirmed; and in consideration of the risk and benefits conferred by Class Counsel's work, is a reasonable request.

Further, Mr. Joyce's objection regarding the alleged unavailability of the "full details" of the settlement contradicts the record.[57] The full text of the Settlement Agreements, and all relevant court documents were available via the class website and on the ECF/PACER system. If Mr. Joyce's complaint is with the Notice program generally, the Court approved both IPPs' proposed notice program and the form of the Notice as "the best notice practicable under the circumstances,"[58] and for good reason. IPPs' Notice Plan was thoroughly vetted by A.B. Data, experts in class notice, who have opined that it meets constitutional requirements of due process.[59] Class Members had several ways to ask questions, including via the case website, toll free phone number, or by emailing or calling A.B. Data or Class Counsel. These safeguards were designed to prevent any alleged confusion with the Settlement Terms.[60]

Third, the objection concerning the size of the Objector's individual "purchase total" is contrary to the purposes of Rule 23, as Mr. Joyce's smaller damages based on his limited purchases would make pursuing an individual action difficult. In any event, the Objector's argument that the settlement is too *large* is both uncommon and contradictory. This fact shows that the settlements should be approved. In sum, the sole objection falls far short of satisfying the burden required to reject settlements of this size,[61] and the overall reaction of the class strongly favors approval of the settlement.

C. IPPs Provided Adequate Notice Under Rule 23(b)(3).

Class actions brought under Rule 23(b)(3) must satisfy the notice provisions of Rule 23(c)(2), and upon settlement, notice must be directed to all class members who would be bound by the proposal.[62] This requires the best notice practicable "to all members who can be identified

[57] Dkt. 556; *Hyundai*, 926 F.3d at 567.
[58] Dkt. 545, ¶¶ 12-13 (finding also the Proposed Notice meets due process requirements.)
[59] Schachter Decl. Prelim. App. ¶ 21.
[60] *Id*. Mr. Joyce's failure to return Class Counsel's phone calls also calls into question his claimed confusion with the settlement terms. *See* Prevost Decl. ¶¶ 4-6.
[61] Rule 23(e)(5)(A) ("objection must state with specificity the grounds for the objection.").
[62] Rule 23(e)(l)(B); *Hyundai*, 926 F.3d at 567 (class must be notified "in a reasonable manner").

through reasonable effort."[63] Notice must "present information about a proposed settlement neutrally, simply, and understandably" and is "satisfactory if it generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard."[64]

IPPs' notice campaign was procedurally and substantively successful. The Court-appointed notice administrator, A.B. Data, implemented a multifaceted direct and indirect notice campaign, estimated to have reached a minimum of 70% percent of the class. Schachter Decl. ¶¶ 3-15. And the content of the Notices simply and neutrally informed Class Members of the nature of the action, terms of the Proposed Settlements, and their objection and exclusion rights. *Id.* ¶ 18. Class Members had ample opportunity to ask questions via the class website and toll-free telephone number. *Id.* ¶¶ 14-15. In sum, the notice program complied with all Rule 23 requirements and A.B. Data opines that the constitutional notice requirements have been met. *Id.* ¶¶ 20-22.

IV. CONCLUSION

For the foregoing reasons, IPPs respectfully request that this Court enter an order: 1) certifying the proposed Settlement Class; 2) finding the settlements "fair, reasonable, and adequate," 3) determining that appropriate notice and other requirements have been met under the Constitution, and other governing law, and 4) overruling the sole objection as groundless.

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Respectfully Submitted:

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[63] Rule 23(c)(2)(B) (notice requirements for classes certified under Rule 23(b)(3)).
[64] *Hyundai*, 926 F.3d at 564.