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17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 SAN FRANCISCO DIVISION

20 IN RE RESISTORS ANTITRUST
LITIGATION

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

21 This Documents Relates to:
22 DIRECT PURCHASER ACTIONS
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DIRECT PURCHASER PLAINTIFFS'
NOTICE OF POST-DISTRIBUTION
ACCOUNTING AND REQUEST FOR
RELEASE OF REMAINING
ATTORNEYS' FEES AND
AUTHORIZATION TO
REDISTRIBUTE REMAINING
SETTLEMENT FUNDS

Judge: Hon. James Donato

I. INTRODUCTION

Direct Purchaser Plaintiffs (“DPPs”) submit the attached Post-Distribution Accounting and respectfully request that the Court release the remaining 25% (\$2,512,500) of the awarded attorneys’ fees, which were withheld by the Court pending the filing of this Accounting. *See* Order Granting Direct Purchaser Plaintiffs’ Revised Motion for an Award of Attorneys’ Fees, Reimbursement of Expenses, and Service Award for the Class Representative (“Attorneys Fee Order”) at 2, ¶ 1 (ECF No. 587).

The Post-Distribution Accounting is described in the accompanying Supplemental Declaration of Settlement Administrator Jennifer M. Keough Regarding Distribution of Settlement Benefits and Final Accounting (“Keough Final Accounting Decl.”). The Post-Distribution Accounting and Keough Final Accounting Declaration reflect that **97.78%** of the Net Settlement Fund was deposited by Settlement Class Members following the initial distribution.

DPPs further request that this Court authorize the Settlement Administrator to perform a benefit redistribution of the remaining funds on a pro rata basis among Settlement Class Members who cashed their initial checks, and if funds still remain following the benefit redistribution, that the remaining amount be distributed as a *cy pres* award to be split between the American Antitrust Institute and the Public Justice Foundation, two organizations that have been approved as *cy pres* recipients in prior antitrust actions.

II. BACKGROUND AND SUMMARY OF POST-DISTRIBUTION ACCOUNTING

On March 24, 2020, this Court issued its Order Granting Direct Purchaser Plaintiffs’ Notice of Motion and Revised Motion for Final Approval of Class Action Settlements and Plan of Allocation. *See* ECF No. 586 (“Final Approval Order”). In the Final Approval Order, this Court approved of DPPs’ proposed Plan of Allocation, “proposing to pay putative Class Members on a pro rata basis based on the dollar value of approved purchases of linear resistors per Class Member during the settlement class period” *Id.*, ¶ 11. DPPs’ Plan of Allocation was described in the Declaration of Settlement Administrator Jennifer M. Keough in Support of Final Approval. *See* ECF No. 561-3, ¶¶ 36-38.

1 Concurrent with the issuance of the Final Approval Order, on March 24, 2020 this Court
2 issued the Attorneys' Fees Order, where the Court awarded DPP Class Counsel attorneys' fees of
3 \$10.05 million (20% of the \$50,250,000 Settlement Fund), but ordered that, of the total fees
4 awarded, "25% (*i.e.*, \$2,512,500) will be withheld pending further order of the Court, to be issued
5 after counsel have filed the Post-Distribution Accounting required by the N.D. Cal. Procedural
6 Guidance for Class Action Settlements." Attorneys' Fees Order at 2, ¶ 1.

7 As detailed in the attached Keough Final Accounting Declaration, the Settlement
8 Administrator, JND Legal Administration ("JND"), has now completed the initial distribution of
9 settlement funds, with a final void date of November 9, 2020 for the last-issued checks. *See* Keough
10 Final Accounting Decl., ¶¶ 12-17. The Northern District of California's *Procedural Guidance for*
11 *Class Action Settlements* directs that information about the distribution process be provided in Post-
12 Distribution Accounting in an easy-to-read chart.¹ The chart with this information is Exhibit A to the
13 Keough Final Accounting Declaration, and it is also copied below for the Court's convenience. In
14 addition, JND will post this chart to the Settlement Website – <http://www.resistorssettlements.com/> –
15 as required by the Procedural Guidance for Class Action Settlements.²

16 In sum, DPPs and JND have successfully distributed the vast majority of settlement funds to
17 class members. Four hundred eighty-five (485) payments have been cashed, totaling
18 \$37,112,949.00—a **cash rate of 97.78% of the Net Settlement Fund**. Based on the success of the
19 distribution process detailed in the Keough Declaration and chart—including the 97.78% cash rate—
20 DPPs respectfully request that the Court authorize the release of the remaining \$2,512,500 in
21 attorneys' fees awarded by this Court.

22 Moreover, JND has recommended, subject to Court approval, performing a benefit
23 redistribution on a pro rata basis among Settlement Class Members who cashed their initial checks.
24 ECF No. 561-3, ¶ 38. The remaining funds from uncashed checks following the initial distribution

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26 ¹ *See* U.S. District Court, Northern District of California, Procedural Guidance for Class Action
27 Settlements, at Post-Distribution Accounting, ¶ 1.a,
<https://www.cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements> (last visited
28 Nov. 20, 2020).

² *See id.*, ¶ 2.

1 now totals \$842,892.42. Keough Final Accounting Decl., ¶ 17. Therefore, DPPs seek authorization
2 to perform a supplemental distribution in accordance with JND’s recommendations.

3 JND has further proposed (*see* ECF No. 561-3, ¶ 38), and DPPs now request, that if there are
4 any remaining funds after this supplemental distribution, the Court approve distribution of any
5 remaining amount as a *cy pres* award to be split between the American Antitrust Institute and the
6 Public Justice Foundation. Given the 97.78% claims rate from the first distribution, and DPPs’
7 request to perform a supplemental distribution to those Class Members who previously accepted
8 funds during the original distribution, the value of undistributed funds (if any) following DPPs’
9 proposed supplemental distribution, is almost certain to be small compared to the administrative cost
10 of performing a third distribution.

11 The American Antitrust Institute is an “an independent, nonprofit organization devoted to
12 promoting competition that protects consumers, businesses, and society. [It serves] the public
13 through research, education, and advocacy on the benefits of competition and the use of antitrust
14 enforcement as a vital component of national and international competition policy.”³ The Public
15 Justice Foundation is a national not-for-profit that educates the public and supports cutting-edge
16 litigation “to combat social and economic injustice, protect the Earth’s sustainability, and challenge
17 predatory corporate conduct and government abuses.”⁴ In the Ninth Circuit, to approve a *cy pres*
18 distribution, there must be a “driving nexus between the plaintiff class and the *cy pres* beneficiaries.
19 . . . That is to say, a *cy pres* award must be guided by (1) the objectives of the underlying statute(s)
20 and (2) the interests of the silent class members, and must not benefit a group too remote from the
21 plaintiff class.”⁵ DPPs respectfully submit these organizations are appropriate *cy pres* beneficiaries
22 of any residual funds remaining after a supplemental distribution to Class Members because they
23 seek to further the objectives of the Sherman Anti-Trust Act on which the lawsuit is based, including
24

25 ³ *See* American Antitrust Institute, <https://www.antitrustinstitute.org/about-us/> (last visited Nov.
20, 2020).

26 ⁴ *See* The Public Justice Foundation, <https://www.publicjustice.net/missionpublic-justice-foundation>, and <https://www.publicjustice.net/who-we-are/> (last visited Nov. 20, 2020).

27 ⁵ *See Richards v. Chime Fin., Inc.*, No. 19-CV-06864-HSG, 2020 WL 6318713, at *9 (N.D. Cal.
28 Oct. 28, 2020) (internal citations and quotation marks omitted).

1 protection of consumers, businesses, and the public from corporate malfeasance, including violations
 2 of the antitrust laws, which is in the interests of Class Members, who DPPs allege were victims of
 3 defendants' price-fixing. Other courts agree. Both organization have been *cy pres* beneficiaries in
 4 antitrust actions.⁶

Post-Distribution Accounting Chart⁷

Total Settlement Fund (including interest accrued)	\$50,476,456.35
Total Number of Class Members (after analysis and consolidation)	816
Total Number of Class Members to Whom Notice Was Sent and Not Returned as Undeliverable	722
Total Number of Claim Forms (submitted by Class Members and Non-Class Members)	634
<ul style="list-style-type: none"> • Number of Disputed Claims Submitted by Class Members 	8
<ul style="list-style-type: none"> • Percentage of Disputed Claims Submitted by Class Members 	0.98%
Number of Opt-Out Requests Received	1
<ul style="list-style-type: none"> • Number of Class Members Included in Opt Out Request 	10
Percentage of Class Members Opting Out of Settlements	1.23%
Number of Objections Received	0
Percentage of Class Members Objecting to Settlements	0.00%
Average Settlement Payment	\$56,566.08
Median Settlement Payment	\$1,183.26
Largest Amount Paid to a Class Member	\$4,963,335.30
Smallest Amount Paid to a Class Member	\$0.03
Methods of Notice	Mail and E-mail
Total Number of Mailed Notices to Class Members	787
<ul style="list-style-type: none"> • Number of Class Members with a Mailed Notice Not Returned as Undeliverable 	628
<ul style="list-style-type: none"> • Total Undeliverable Mailed Notices 	159
<ul style="list-style-type: none"> • Total Records Not Mailed a Notice Due to Bad Address 	29

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 24 ⁶ See, e.g., *In Re Publ'n Paper Antitrust Litig.*, No. 3:04MD1631SRU, 2009 WL 2351724, at *2
 25 (D. Conn. July 30, 2009) (awarding, as *cy pres* distribution, the residual amount following
 26 distribution of settlement funds to class members to, *inter alia*, American Antitrust Institute and
 27 Public Justice, as these are "charitable institutions designed to guard against antitrust injury and
 28 protect consumers"); *In re Visa Check/MasterMoney Antitrust Litig.*, No. 96-cv-5238(JG), 2011 WL
 5029841, at *9 (E.D.N.Y. Oct. 24, 2011) (awarding remaining settlement funds as *cy pres* award to
 organizations including American Antitrust Institute).

⁷ As explained in the text, this chart is also Exhibit A to the Keough Final Accounting Declaration, concurrently submitted herewith.

Total Number of Emailed Notices to Class Members	389
• Number of Class Members with Delivered Email Notices	173
• Number of Class Members with Undeliverable Email Notices	216
Methods of Payment to Class Members	Check or Wire
• Total Number of Class Members Sent Payment	671
• Total Number of Class Members Issued Initial Payment by Check	664
○ Number of Initial Checks Delivered via FedEx with Signature Requirement	181
○ Number of Initial Checks Delivered via USPS	483
• Total Number of Class Members Issued Initial Payment by Wire	7
Number of Checks Not Cashed	186
Value of Checks Not Cashed	\$842,892.40
Number of Payments Cashed (by Check or Wire)	485
Value of Payments Cashed (by Check or Wire)	\$37,112,949.00
Number of Outstanding Checks Returned as Undeliverable	45
Cy Pres Payment	TBD
Total Administration Costs	\$654,353
Class Representative Service Award	\$2,500
Approved Attorneys' Fees	\$10,050,000
• Attorneys' Fees Paid	\$7,537,500
Approved Attorneys' Expenses	\$1,813,761.93
• Attorneys' Expenses Paid	\$1,813,761.93
Attorneys' Fees as a Percentage of Settlement Fund Before Interest	20.0%
Attorneys' Fee Multiplier	1.21
Net Settlement Fund	\$37,955,841.42
Percentage of Net Settlement Fund Cashed	97.78%

III. CONCLUSION

For the foregoing reasons, DPPs respectfully request that the Court authorize the release of the remaining \$2,512,500 in attorneys' fees awarded by this Court, which were withheld pending further order of the Court, to be issued after the filing of this Post-Distribution Accounting. DPPs further request that this Court order the Settlement Administrator to perform a supplemental distribution on a pro rata basis among Settlement Class Members who cashed their initial checks, and

1 if funds still remain after that supplemental distribution, that the remaining amount be distributed as
2 a *cy pres* award to the American Antitrust Institute and the Public Justice Foundation.

3 DATED: November 20, 2020

HAGENS BERMAN SOBOL SHAPIRO LLP

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21 *Co-Lead Class Counsel for Direct Purchaser Plaintiffs*
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE RESISTORS ANTITRUST
LITIGATION

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

This Documents Relates to:
DIRECT PURCHASER ACTIONS

[PROPOSED] ORDER REGARDING
POST-DISTRIBUTION ACCOUNTING,
RELEASE OF REMAINING
ATTORNEYS' FEES, AND
SETTLEMENT FUND
REDISTRIBUTION

1 This matter comes before the Court on Direct Purchaser Plaintiffs' (DPPs) Notice of Post-
2 Distribution Accounting and Request for Release of Remaining Attorneys' Fees and Authorization to
3 Redistribute Remaining Settlement Funds (Notice). Having considered the Post-Distributing
4 Accounting and DPPs' Notice, the Court orders:

- 5 1. The release of the remaining \$2,512,500 in attorneys' fees that was awarded by this
6 Court to Class Counsel for DPPs, which had been withheld pending further order of
7 the Court, to be issued after counsel filed the Post Distribution Accounting required
8 by the N.D. Cal. Procedural Guidance for Class Action Settlements. *See* ECF No. 587.
- 9 2. The DPPs' Settlement Administrator to perform a benefit redistribution on a pro rata
10 basis among Settlement Class Members who cashed their initial checks, and if
11 settlement funds still remain following this benefit redistribution, the remaining
12 amount shall be distributed as a *cy pres* award 50% to the American Antitrust Institute
13 and 50% to the Public Justice Foundation.

14 **IT IS SO ORDERED.**

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16 DATED: _____

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18 HONORABLE JAMES DONATO
19 UNITED STATES DISTRICT COURT JUDGE
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE RESISTORS ANTITRUST
LITIGATION

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

This Document Relates to:
DIRECT PURCHASER ACTIONS

**SUPPLEMENTAL DECLARATION OF
SETTLEMENT ADMINISTRATOR
JENNIFER M. KEOUGH REGARDING
DISTRIBUTION OF SETTLEMENT
BENEFITS AND FINAL ACCOUNTING**

I, JENNIFER M. KEOUGH, declare as follows:

1. I am the Chief Executive Officer (“CEO”) of JND Legal Administration (“JND”), a legal administration services provider with its headquarters located in Seattle, Washington. JND has extensive experience with all aspects of legal administration and has administered settlements in hundreds of class action cases. As CEO of JND, I am involved in all facets of our Company’s operations, including monitoring the implementation of our notice and claims administration programs. JND was chosen as the Settlement Administrator¹ in this case after participating in a competitive bidding process.

¹ Capitalized terms used and not otherwise defined in this Declaration shall have the meanings given such terms in the Settlement Agreements with HDK, Kamaya-Walsin, Panasonic, ROHM, and KOA.

1 2. This Supplemental Declaration is based on my personal knowledge and information
2 provided to me by experienced JND employees and Counsel for Direct Purchaser Plaintiffs (“Class
3 Counsel”), and if called on to do so, I could and would testify competently thereto.

4 3. This Supplemental Declaration is intended to supplement my Declaration in Support
5 of Final Approval, dated October 7, 2019, and my Declaration Regarding Status of Claims, dated
6 November 15, 2019 (together, the “Declarations”). The Declarations provided details regarding,
7 among other things, the notice mailing in this matter, claims received, disputed claims, exclusions
8 received and objections received. The Declarations are incorporated by reference herein and pertinent
9 information in the Declarations is summarized in the Post-Distribution Accounting, attached hereto as
10 **Exhibit A**, which provides the information required by the Northern District of California’s
11 *Procedural Guidance for Class Action Settlements*. See
12 <https://www.cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements>, at Post-
13 Distribution Accounting, ¶ 1 (requiring specific information about the settlement distribution process
14 be provided in an easy-to-read chart). This chart will be posted on the Settlement Website –
15 <http://www.resistorssettlements.com> – as required by the *Procedural Guidance for Class Action*
16 *Settlements*. See *id.*, ¶ 1.b.

17 **Court Approval of Distribution**

18 4. On March 24, 2020, the Court entered the Order Granting Direct Purchaser Plaintiffs’
19 Notice and Motion and Revised Motion for Final Approval of Class Action Settlements and Plan of
20 Allocation (“Order”) and the Order Granting Direct Purchaser Plaintiffs’ Revised Motion for an Award
21 of Attorneys’ Fees, Reimbursement of Expenses, and Service Award for the Class Representative,
22 approving the distribution of payments to Class Counsel, the Class Representative, and the Settlement
23 Class.

24 5. Pursuant to the Settlement Agreements, an Escrow Account was established in the
25 amount of \$50,250,000, with interest accrued bringing the total available funds to \$50,476,456.35 at the
26 time of distribution. On May 11, 2020, JND received \$50,138,506.78 via wire transfer from the Escrow
27

28

1 Account into the established In re Resistors Settlements Fund (representing the total funds less
2 \$337,949.57 in settlement administration costs paid to JND at that point).

3 **Class Counsel Fees and Expenses**

4 6. On March 24, 2020, the Court awarded Class Counsel \$10,050,000 in attorneys' fees and
5 \$1,889,492.86 in expenses in its Order Granting Direct Purchaser Plaintiffs' Revised Motion for an
6 Award of Attorneys' Fees, Reimbursement or Expenses, and Service Award for the Class
7 Representative.

8 7. On May 15, 2020, Class Counsel filed a Notice Concerning Reducing Reimbursed
9 Expenses for Class Counsel and Increasing Distribution to the Settlement Class pursuant to which Class
10 Counsel reduced their expenses from \$1,889,492.86 to \$1,813,761.93.

11 8. On June 2, 2020, JND issued payments to Class Counsel in the amounts of \$7,537,500
12 for fees and \$1,813,761.93 for reimbursement of expenses. The remaining 25 percent (\$2,512,500) of
13 their fees will be issued after Post-Distribution Accounting, as directed by the Court. *See* ECF No. 587.

14 **Class Representative's Service Award**

15 9. On March 24, 2020, the Court approved the Service Award of \$2,500.00 for the Class
16 Representative Schuten Electronics in its Order Granting Direct Purchaser Plaintiffs' Revised Motion
17 for an Award of Attorneys' Fees, Reimbursement or Expenses, and Service Award for the Class
18 Representative.

19 10. On June 2, 2020, JND distributed \$2,500.00 to Class Representative Schuten
20 Electronics.

21 **Administrative Expenses**

22 11. As of the date of this Declaration, JND has received \$472,986.10 in administration costs.
23 JND estimates a total of \$654,353.00 in administrative notice and distribution expenses for this Action,
24 in accordance with the Declaration of Settlement Administrator Jennifer M. Keough Regarding Status
25 of Claims filed on November 15, 2019, and the Order Granting Direct Purchaser Plaintiffs' Revised
26 Motion for an Award of Attorneys' Fees, Reimbursement or Expenses, and Service Award for the Class
27 Representative on March 24, 2020.

Benefit Distribution

1
2 12. As set forth in the November 15, 2019 Declaration of Settlement Administrator Jennifer
3 M. Keough Regarding Status of Claims, the Net Settlement Fund (\$37,955,841.42) was calculated by
4 reducing the Gross Settlement Fund (\$50,476,456.35) by \$10,050,000.00 in attorneys' fees,
5 \$1,813,761.93 in attorneys' expenses, \$2,500.00 in a service award to the Class Representative,
6 \$604,353.00 in estimated notice administration costs, and \$50,000.00 in anticipated distribution costs.
7 The Net Settlement Fund was distributed to 671 Class Members on a *pro rata* basis, according to their
8 purchase amount. Settlement awards range from \$0.03 to \$4,963,335.30 and the median settlement
9 award is \$1,183.26.

10 13. JND commenced distribution to Class Members on June 26, 2020. In the initial
11 distribution, 483 checks were mailed by USPS, 181 checks by FedEx, and seven (7) Class Members
12 were issued payment by wire transfer. Class Members were provided with a 90-day period to deposit
13 their checks before they became void after September 24, 2020.

14 14. Of the 664 checks distributed, 103 were returned as undeliverable. JND undertook
15 extensive address research and worked with Class Counsel to identify updated address information for
16 Class Members whose payments were returned to JND as undeliverable and, to the extent updated
17 addresses were obtained, payments were promptly reissued. JND also conducted extensive outreach via
18 phone and e-mail to Class Members whose payments were not returned as undeliverable but had not
19 been negotiated. JND answered Class Member questions, reminded them to cash their checks and,
20 where appropriate, reissued payments.

21 15. On October 5, 2020, JND sent a reminder notice postcard ("Postcard Notice") to 155
22 Class Members whose payment was not returned to JND as undeliverable but remained uncashed.
23 The Postcard Notice informed Class Members that they could request a replacement check if they
24 contacted JND by October 19, 2020.

25 16. On October 27, 2020, following the Postcard Notice campaign, JND reissued checks
26 to four (4) Class Members who requested a replacement check (in an amount totaling \$25,183.77).
27
28

1 These four (4) checks were issued with a 14-day void date, with a final void date of November 9,
2 2020.

3 17. As of the date of this Declaration, 485 payments have been cashed, totaling
4 \$37,112,949.00 (a cash rate of 97.78% of the Net Settlement Fund of \$37,955,841.42). Thus,
5 \$842,892.42 of the Net Settlement Fund remains uncashed.

6 18. Upon approval by the Court, any uncashed checks will be redistributed on a pro rata
7 basis among Class Members who cashed their initial checks or received payment by wire. Any
8 remaining funds after this re-distribution will be paid to a *cy pres* recipient approved by the Court.

9
10 I declare under penalty of perjury under the laws of the United States that the foregoing is true and
11 correct.

12 Executed on November 20, 2020 at Seattle, Washington.

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15 _____
16 JENNIFER M. KEOUGH
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EXHIBIT A

Exhibit A - Post-Distribution Accounting

Total Settlement Fund (including interest accrued)	\$50,476,456.35
Total Number of Class Members (after analysis and consolidation)	816
Total Number of Class Members to Whom Notice Was Sent and Not Returned as Undeliverable	722
Total Number of Claim Forms (submitted by Class Members and Non-Class Members)	634
<ul style="list-style-type: none"> • Number of Disputed Claims Submitted by Class Members 	8
<ul style="list-style-type: none"> • Percentage of Disputed Claims Submitted by Class Members 	0.98%
Number of Opt-Out Requests Received	1
<ul style="list-style-type: none"> • Number of Class Members Included in Opt Out Request 	10
Percentage of Class Members Opting Out of Settlements	1.23%
Number of Objections Received	0
Percentage of Class Members Objecting to Settlements	0.00%
Average Settlement Payment	\$56,566.08
Median Settlement Payment	\$1,183.26
Largest Amount Paid to a Class Member	\$4,963,335.30
Smallest Amount Paid to a Class Member	\$0.03
Methods of Notice	Mail and E-mail
Total Number of Mailed Notices to Class Members	787
<ul style="list-style-type: none"> • Number of Class Members with a Mailed Notice Not Returned as Undeliverable 	628
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• Total Number of Class Members Sent Payment	671
• Total Number of Class Members Issued Initial Payment by Check	664
○ Number of Initial Checks Delivered via FedEx with Signature Requirement	181
○ Number of Initial Checks Delivered via USPS	483
• Total Number of Class Members Issued Initial Payment by Wire	7
Number of Checks Not Cashed	186
Value of Checks Not Cashed	\$842,892.40
Number of Payments Cashed (by Check or Wire)	485
Value of Payments Cashed (by Check or Wire)	\$37,112,949.00
Number of Outstanding Checks Returned as Undeliverable	45
Cy Pres Payment	TBD
Total Administration Costs	\$654,353
Class Representative Service Award	\$2,500
Approved \$ W W R E C H \ V ¶	\$10,050,000
• \$ W W R U Q H \ V ¶) H H V 3 D L G	\$7,537,500
Approved \$ W W R E C H \ V ¶	\$1,813,761.93
• \$ W W R U Q H \ V ¶ ([S H Q V H V 3 D L G	\$1,813,761.93
\$ W W R E C H \ V ¶ Percentage of Settlement Fund Before Interest	20.0%
\$ W W R U Q H \ V ¶ ([S H Q V H V 3 D L G	1.21
Net Settlement Fund	\$37,955,841.42
Percentage of Net Settlement Fund Cashed	97.78%