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

13 **IN RE CAPACITORS ANTITRUST**
14 **LITIGATION**

MDL No. 17-md-02801-JD
Case No. 3:14-cv-03264-JD

15
 16 **This Document Relates to:**
 17 **All Indirect Purchaser Actions**

DECLARATION OF ADAM J. ZAPALA
IN SUPPORT OF INDIRECT
PURCHASER PLAINTIFFS’ MOTION
FOR PRELIMINARY APPROVAL OF
REVISED SETTLEMENTS WITH
SHINYEI AND TAITSU DEFENDANTS
AND FOR APPROVAL OF THE PLAN
OF ALLOCATION

Date: April 12, 2021
Time: 10:00 a.m.
Place: Courtroom 11, 19th Floor

1 I, Adam J. Zapala, declare as follows:

2 1. I am an attorney duly licensed to practice law in the State of California and
3 admitted to practice in this Court. I am a partner with the law firm of Cotchett, Pitre & McCarthy,
4 LLP (“CPM”) and Interim Lead Counsel for Indirect Purchaser Plaintiffs (“IPPs”) in this
5 litigation. The matters described herein are based on my personal knowledge, and if called as a
6 witness, I could and would testify competently thereto. I make this declaration pursuant to 28
7 U.S.C. § 1746.

8 2. I make this Declaration in support of IPPs’ motion for preliminary approval of
9 settlements with: (1) Defendants Shinyei Technology Co., Ltd. and Shinyei Capacitor Co., Ltd.
10 (together, “Shinyei”); and (2) Defendant Taitso Corporation (“Taitso,” and together with Shinyei,
11 the “Settling Defendants”).

12 3. The settlements subject to this Motion were reached after hard-fought litigation
13 and significant discovery and are the result of extensive arm’s-length negotiations, and with the
14 benefit of the Court’s guidance issued in conjunction with its Order denying preliminary approval
15 of earlier versions of these settlements. Counsel for IPPs believe these revised settlements are in
16 the best interests of the proposed classes. A true and correct copy of the revised proposed Shinyei
17 Settlement Agreement is attached hereto as **Exhibit 1**. A true and correct copy of the revised
18 proposed Taitso Settlement Agreement is attached hereto as **Exhibit 2**.

19 4. This case arises from an alleged conspiracy by the Defendants to fix, raise,
20 maintain and/or stabilize the price of capacitors sold in the United States. This case has been
21 heavily litigated, with multiple rounds of motions to dismiss and motions for summary judgment
22 filed and class certification currently on appeal before the Ninth Circuit. The case has featured
23 significant discovery challenges faced by IPPs, with respect to obtaining documents and
24 information from Defendants and witnesses residing abroad as well as obtaining relevant
25 documents and information from non-party capacitor distributors to prosecute the case.

26 5. Prior to reaching the versions of the settlements proposed in IPPs’ previous motion
27 for preliminary approval, IPPs engaged in settlement negotiations with the Settling Defendants for
28 over a six-month period to reach an accord on the appropriate monetary consideration. The

1 proposed settlements were only agreed upon after the exchange of information, continued
2 dialogue between the parties, and negotiation concerning appropriate financial consideration. The
3 final stages of these negotiations took place after the Court had denied class certification to the
4 IPP classes. Although IPPs appealed the Court's decision regarding class certification pursuant to
5 Fed. R. Civ. P. 23(f), it is well understood that Rule 23(f) petitions are often denied for an array of
6 reasons; and it was unclear whether the Court would permit IPPs to renew their motion for class
7 certification at this stage of the litigation. The Court's decision regarding class certification was a
8 material consideration in the parties' settlement discussions and posture. After the Court denied
9 preliminary approval of the earlier versions based on the geographic scope of the settlement
10 classes, the parties reconvened discussions over the course of several weeks and, through
11 negotiation and the exchange of several alternatives for moving forward, eventually concluded
12 that a renewed motion remained within the mutual interest of each side but would not be mutually
13 agreeable without revising the settlements themselves. IPPs on the one hand and Shinyei and
14 Taitso on the other finally agreed on a revised settlement to cover claims on behalf of IPP
15 claimants in each of the six states (California, Florida, Michigan, Minnesota, Nebraska, and New
16 York) represented by Class Representatives in this action who purchased film capacitors from
17 Defendants during the relevant period, and a reduction in settlement proceeds to reflect the
18 narrower scope of the corresponding release of claims.

19 6. IPPs engaged in extensive settlement negotiations with Shinyei. The parties held
20 telephonic meetings and exchanged information and settlement proposals. The proposed
21 settlement was arrived at only after both sides had the opportunity to be fully informed regarding
22 the relative strengths and weaknesses of their positions, litigation risks, and issues involving
23 ability to pay. These negotiations were hard-fought. The settlement was reached after extensive
24 discovery, the exchange of expert reports and expert discovery regarding class certification, the
25 Court's decision denying class certification to the IPP classes, and after the parties had fully
26 briefed summary judgment. IPPs meanwhile calculated that Shinyei's sales to U.S. distributors
27 over the relevant time period were \$262,192.00. Shinyei disputes this figure and believes its sales
28 of film capacitors to distributors in the United States during the relevant period is far smaller.

1 7. IPPs negotiated with Taitso in conjunction with the negotiations with Shinyei. The
2 parties similarly held telephonic meetings and exchanged information and settlement proposals.
3 As with the settlement with Shinyei, the proposed settlement with Taitso was arrived at only after
4 both sides had the opportunity to be fully informed regarding the relative strengths and
5 weaknesses of their positions, litigation risks, and issues involving ability to pay. These
6 negotiations as well were hard-fought. The settlement was reached after extensive discovery, the
7 exchange of expert reports, expert discovery regarding class certification, the Court's decision
8 denying class certification to the IPP classes, and the parties had fully briefed summary judgment.
9 Furthermore, IPPs calculated that Taitso's sales to U.S. distributors during the relevant time
10 period were \$9,787.00.

11 8. IPPs and the Settling Defendants are represented by highly-skilled antitrust
12 counsel who are knowledgeable of the law and have extensive experience with complex antitrust
13 lawsuits. As the Court knows, IPPs and Defendants have been heavily litigating this case for six
14 years. The parties have conducted approximately 130 depositions during the course of this
15 litigation. Moreover, Defendants have produced at least 11,223,611 documents to IPPs,
16 comprised at least 28,331,064 pages. This information was in IPPs' possession over several years
17 and had been scoured extensively and analyzed at length prior to reaching the settlements.

18 9. Further, at the time of reaching the earlier proposed agreements as well as these
19 revised settlements, the parties had engaged in expert discovery and fully briefed the Defendants'
20 motions for summary judgment, as well as the IPPs' Rule 23(f) appeal of the Court's denial of
21 class certification. At the time of reaching this settlement, therefore, IPPs and the Settling
22 Defendants were well-informed about the facts, damages, and defenses relevant to this action, as
23 well as the scope and probable timeline of available recovery in light of the pending appeal,
24 offsets for prior settlements, the parties' ability to pay, and the total volume of commerce
25 attributable to the film capacitor conspiracy.

26 10. Moreover, throughout this litigation, the Settling Defendants (and the other
27 defendants) have vigorously contested this case, challenging IPPs' legal theories of liability,
28 whether the facts support Defendants' level of involvement in such a conspiracy, the suitability of

1 the class action mechanism for resolving IPPs' claims, the volume of commerce affected by the
2 Defendants' conduct, the relevance of related civil and criminal proceedings, and the damages for
3 which each Defendant may be liable.

4 11. IPPs' operative complaint (ECF No. 1589) alleges that the Settling Defendants
5 were involved in the film capacitor conspiracy from 2002 through such time as the
6 anticompetitive effects of defendants' conduct ceased. IPPs' Fifth Consolidated Complaint ¶¶ 2-3.

7 12. In connection with IPPs' motion for class certification, IPPs identified that the end
8 date of the conspiracy and its effects on the classes was February 28, 2014. Zapala Decl. ¶ 11;
9 ECF No. 1681. The settlements cover the time period from April 1, 2002 to February 28, 2014—
10 the same time periods that IPPs moved to certify in their motion for class certification.

11 13. These settlements do not contemplate further consideration in the form of
12 cooperation for the reason that with Shinyei and Taitso departing from the case, the only
13 remaining Defendants will be the two that previously defaulted, Nissei Electric Co., Ltd. and
14 Toshin Kogyo Co., Ltd. MDL ECF No. 540.

15 14. The foregoing settlements constitute fair and reasonable recoveries for the classes
16 in the view of Class Counsel.

17 I declare under penalty of perjury, under the laws of the United States of America, that the
18 foregoing is true and correct. Executed on July 2, 2021 in Burlingame, California.

19
20 /s/ Adam J. Zapala
ADAM J. ZAPALA

EXHIBIT 1

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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

**IN RE CAPACITORS ANTITRUST
LITIGATION**

Case No. 3:14-cv-03264-JD

**This Document Relates to:
Indirect Purchaser Actions**

SETTLEMENT AGREEMENT

1 This Settlement Agreement (defined below) is made and entered into this 4th day of
2 June, 2021 (the “Execution Date”), by and among Shinyei Kaisha, Shinyei Technology Co., Ltd.,
3 Shinyei Capacitor Co., Ltd., Shinyei Kaisha Electronics (M) SDN. BHD., and Shinyei
4 Corporation of America (collectively, “Shinyei,” as defined below) and the Indirect Purchaser
5 Plaintiffs (“IPPs”), both individually and on behalf of the Class (defined below) in the above-
6 captioned action (“Action”). This Settlement Agreement is intended by IPPs and Shinyei (the
7 “Settling Parties” as defined below) to fully, finally, and forever resolve, discharge and settle the
8 Released Claims (defined below), upon and subject to the terms and conditions hereof.

9 **RECITALS**

10 WHEREAS, Indirect Purchaser Plaintiffs are prosecuting the Action on their own behalf
11 and on behalf of the Class against, among others, Shinyei and other Defendants and alleged co-
12 conspirators;

13 WHEREAS, Indirect Purchaser Plaintiffs allege, among other things, that Shinyei violated
14 the antitrust and consumer protection laws by conspiring to fix, raise, maintain, or stabilize the
15 prices of Capacitors, and these acts caused the Class to incur damages;

16 WHEREAS, Shinyei has denied and continues to deny each and all of Indirect Purchaser
17 Plaintiffs’ claims and allegations of wrongdoing; has not conceded or admitted any liability, or
18 that it violated or breached any law, regulation, or duty owed to the Indirect Purchaser Plaintiffs;
19 has denied and continues to deny all charges of wrongdoing or liability against it arising out of
20 any of the conduct, statements, acts or omissions alleged in the Action; and further denies the
21 allegations that the Indirect Purchaser Plaintiffs or any member of the Class were harmed by any
22 conduct by Shinyei alleged in the Action or otherwise;

23 WHEREAS, Indirect Purchaser Plaintiffs and Defendants have engaged in extensive
24 discovery regarding the facts pertaining to Indirect Purchaser Plaintiffs’ claims and Defendants’
25 defenses;

26 WHEREAS, Indirect Purchaser Plaintiffs and Shinyei agree that neither this Settlement
27 Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be
28

1 an admission or evidence of any violation of any statute or law or of any liability or wrongdoing
2 by Shinyei or of the truth of any of the claims or allegations alleged in the Action;

3 WHEREAS, Indirect Purchaser Plaintiffs' Class Counsel have concluded, after due
4 investigation and after carefully considering the relevant circumstances, including, without
5 limitation, the claims asserted in the Indirect Purchaser Plaintiffs' Fifth Consolidated Complaint
6 filed in Docket No. 3:14-cv-03264-JD, the legal and factual defenses thereto and the applicable
7 law, that it is in the best interests of the Indirect Purchaser Plaintiffs and the Class to enter into this
8 Settlement Agreement to avoid the uncertainties of litigation and to assure that the benefits
9 reflected herein are obtained for the Indirect Purchaser Plaintiffs and the Class, and, further, that
10 Indirect Purchaser Plaintiffs' Class Counsel consider the Settlement set forth herein to be fair,
11 reasonable and adequate and in the best interests of the Indirect Purchaser Plaintiffs and the
12 Class; and

13 WHEREAS, Shinyei has concluded, despite its belief that it is not liable for the claims
14 asserted against it in the Action and that it has good defenses thereto, that it will enter into this
15 Settlement Agreement in order to avoid further expense, inconvenience, and the distraction of
16 burdensome and protracted litigation, and thereby to put to rest this controversy with respect to
17 the Indirect Purchaser Plaintiffs and the Class and avoid the risks inherent in complex litigation;
18 and

19 WHEREAS, arm's length settlement negotiations have taken place between counsel for
20 Indirect Purchaser Plaintiffs and Shinyei, and this Settlement Agreement, which embodies all of
21 the terms and conditions of the Settlement between the Settling Parties, both individually and on
22 behalf of the Class, has been reached as a result of the Settling Parties' negotiations (subject to
23 the approval of the Court) as provided herein and is intended to supersede any prior agreements or
24 understandings between the Settling Parties.

25 **AGREEMENT**

26 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among
27 the Settling Parties, by and through their undersigned attorneys of record, in consideration of the
28 covenants, agreements, and releases set forth herein and for other good and valuable

1 consideration, that the Action and the Released Claims as against Shinyei shall be finally and
2 fully settled, compromised and dismissed on the merits and with prejudice, without costs as to
3 Indirect Purchaser Plaintiffs, the Class, or Shinyei, upon and subject to the approval of the Court,
4 following notice to the Class, on the following terms and conditions:

5 **Definitions**

6 1. As used in this Settlement Agreement, the following terms shall have the
7 meanings specified below:

8 (a) “Action” means *In re Capacitors Antitrust Litigation* – All Indirect
9 Purchaser Actions, Case No. 3:14-cv-03264-JD, and each of the cases brought on behalf of
10 indirect purchasers previously consolidated and/or included as part of Docket No. 3:14-cv-
11 03264-JD.

12 (b) “Affiliates” means entities controlling, controlled by or under common
13 control with a Releasee or Releasor.

14 (c) “Authorized Claimant” means any Indirect Plaintiff Purchaser who, in
15 accordance with the terms of this Settlement Agreement, is entitled to a distribution consistent
16 with any Distribution Plan or order of the Court ordering distribution to the Class.

17 (d) “Capacitors” means electronic components that store electric charges
18 between one or more pairs of conductors separated by an insulator. It includes electrolytic,
19 aluminum, tantalum and/or film capacitors.

20 (e) “Claims Administrator” means the claims administrator(s) to be selected
21 by Class Counsel.

22 (f) “Class” is defined as all persons and entities in the Indirect Purchaser
23 States (as defined herein) who, during the period from January 1, 2002 to February 28, 2014,
24 purchased one or more Capacitor(s) from a distributor (or from an entity other than a Defendant)
25 that a Defendant or alleged co-conspirator manufactured. Excluded from the Class are
26 Defendants; their parent companies, subsidiaries and Affiliates; any co-conspirators; Defendants’
27 attorneys in this Action; federal government entities and instrumentalities, states and their
28 subdivisions; all judges assigned to this Action; all jurors in this Action; and all Persons who

1 directly purchased Capacitors from Defendants.

2 (g) “Class Counsel” means the law firm of Cotchett, Pitre & McCarthy, LLP.

3 (h) “Class Member” means a Person who falls within the definition of the
4 Class and who does not timely and validly elect to be excluded from the Class in accordance with
5 the procedure to be established by the Court.

6 (i) “Court” means the United States District Court for the Northern District of
7 California.

8 (j) “Defendant” or “Defendants” means Hitachi Chemical Co., Ltd., Hitachi
9 AIC Inc., Hitachi Chemical Co. America, Ltd., Nippon Chemi-Con Corp., United Chemi-Con,
10 Inc., Rubycon Corp., Rubycon America Inc., Panasonic Corp., Panasonic Corp. of North America,
11 SANYO Electric Co., Ltd., SANYO Electronic Device (U.S.A.) Corp., Elna Co., Ltd. and Elna
12 America Inc., Matsuo Electric Co., Ltd., NEC TOKIN Corp., NEC TOKIN America Inc.,
13 Nichicon Corp., Nichicon America Corp., Fujitsu Media Devices, Ltd., Nissei Electric Co., Ltd.,
14 Nitsuko Electronics Corp., Okaya Electric Industries Co., Ltd., Shinyei Technology Co., Ltd.,
15 Shinyei Capacitor Co., Ltd., Soshin Electric Co., Ltd., Taitso Corp., Toshin Kogyo Co., Ltd.,
16 Holy Stone Enterprise Co., Ltd., Holy Stone Holdings Co., Ltd., Holy Stone Polytech Co., Ltd.,
17 and Milestone Global Technology, Inc.

18 (k) “Distribution Plan” means any plan or formula of allocation of the Gross
19 Settlement Fund, to be approved by the Court, whereby the Net Settlement Fund shall in the
20 future be distributed to Authorized Claimants.

21 (l) “Document” is synonymous in meaning and equal in scope to the usage of
22 this term in Fed. R. Civ. P. 34(a), including, without limitation, electronic or computerized data
23 compilations. A draft of non-identical copy is a separate document within the meaning of this
24 term.

25 (m) “Effective Date” means the first date by which all of the following events
26 and conditions have been met or have occurred:

27 (1) All parties have executed this Settlement Agreement;

28 (2) The Court has preliminarily approved the Settlement Agreement, certified

1 the settlement Class for purposes of effectuating this Settlement, and approved the motion
2 after providing notice to the Class as defined herein;

3 (3) The Court has entered a Final Judgment; and

4 (4) The Final Judgment (as more fully described in ¶ 7 of the Settlement
5 Agreement) has become final, with the occurrence of the following: (A) the entry by the Court of
6 a final order approving the Settlement Agreement under Rule 23(e) of the Federal Rules of Civil
7 Procedure together with entry of a final judgment dismissing the Action and all claims therein by
8 the Class against Shinyei with prejudice as to all Class Members (the "Final Judgment"), and (B)
9 the expiration of the time for appeal or to seek permission to appeal from the Court's approval of
10 the Settlement Agreement and entry of the Final Judgment or, if an appeal from an approval and
11 Final Judgment is taken, the affirmance of such Final Judgment in its entirety, without
12 modification, by the court of last resort to which an appeal of such Final Judgment may be taken,
13 provided, however, a modification or reversal on appeal of any amount of Class Counsel's fees
14 and expenses awarded by the Court from the Settlement Fund or any plan of allocation or
15 distribution of the Settlement Fund shall not be deemed a modification of all or part of the terms
16 of this Settlement Agreement or the Final Judgment. It is agreed that neither the provisions of
17 Rule 60 of the Federal Rules of Civil Procedure nor the All Writs Act, 28 U.S.C. § 1651, shall be
18 taken into account in determining the above-stated times.

19 (n) "Electrolytic Capacitor" means a capacitor that uses an electrolyte (an
20 ionic conducting liquid) as one of its plates to achieve a relatively larger capacitance per volume.
21 It includes but is not limited to the following: circular polymer aluminum electrolytic capacitors,
22 rectangular polymer aluminum capacitors, rectangular polymer tantalum capacitors, non-polymer
23 aluminum electrolytic capacitors, and non-polymer electrolytic double-layer capacitors.

24 (o) "Film Capacitor" means a capacitor that uses insulating plastic film and
25 one of two conductive materials, propylene or polyester. It includes but is not limited to the
26 following: (1) film and aluminum foil capacitors, (2) film and other metal capacitors, (3) layered
27 capacitors, and (4) surface-mount capacitors (i.e., capacitors without leads).

28 (p) "Escrow Agent" means the agent jointly designated by Class Counsel and

1 Shinyei, and any successor agent.

2 (q) “Execution Date” means the first date set forth above in this Settlement
3 Agreement, which is June 4, 2021.

4 (r) “Final” means, with respect to any order of court, including, without
5 limitation, the Judgment, that such order represents a final and binding determination of all
6 issues within its scope and is not subject to further review on appeal or otherwise. Without
7 limitation, an order becomes “Final” when: (a) no appeal has been filed and the prescribed time
8 for commencing any appeal has expired; or (b) an appeal has been filed and either (i) the appeal
9 has been dismissed and the prescribed time, if any, for commencing any further appeal has
10 expired, or (ii) the order has been affirmed in its entirety and the prescribed time, if any, for
11 commencing any further appeal has expired. For purposes of this Settlement Agreement, an
12 “appeal” includes appeals as of right, discretionary appeals, interlocutory appeals, proceedings
13 involving writs of certiorari or mandamus, and any other proceedings of like kind. Any appeal or
14 other proceeding pertaining solely to any order adopting or approving a Distribution Plan, and/or
15 to any order issued in respect of an application for attorneys’ fees and expenses consistent with
16 this Settlement Agreement, shall not in any way delay or preclude the Judgment from becoming
17 Final.

18 (s) “Gross Settlement Fund” or “Settlement Fund” means the Settlement
19 Amount plus any interest that may accrue.

20 (t) “Indirect Purchaser Plaintiffs” means Michael Brooks, CAE Sound, Steve
21 Wong, Toy-Knowlogy Inc., AGS Devices, Co., AGS Devices, Ltd., J&O Electronics, Nebraska
22 Dynamics, Inc., Angstrom, Inc., MakersLED, and In Home Tech Solutions, Inc., as well as any
23 other Person added as an Indirect Purchaser Plaintiff in the Action.

24 (u) “Indirect Purchaser States” means California, Florida, Michigan,
25 Minnesota, Nebraska, and New York.

26 (v) “Judgment” means the order of judgment and dismissal of the Action with
27 prejudice.

28 (w) “Net Settlement Fund” means the Gross Settlement Fund, less the

1 payments set forth in ¶ 17.

2 (x) “Shinyei” means Shinyei Kaisha, Shinyei Technology Co., Ltd., Shinyei
3 Capacitor Co., Ltd., Shinyei Kaisha Electronics (M) SDN. BHD., and Shinyei Corporation of
4 America, and their respective past, present and future direct and indirect parents, members,
5 subsidiaries, and Affiliates, and the past, present, and future respective officers, directors,
6 employees, managers, members, partners, agents, shareholders (in their capacity as
7 shareholders), attorneys and legal representatives, assigns, servants, and representatives, and the
8 predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.

9 (y) “Notice, Administrative and Claims Administration Costs” means the
10 reasonable sum of nonrefundable settlement money to be paid out of the Gross Settlement Fund
11 to pay for notice to the Class and related administrative and claims administration costs.

12 (z) “Person(s)” means an individual, corporation, limited liability corporation,
13 professional corporation, limited liability partnership, partnership, limited partnership,
14 association, joint stock company, estate, legal representative, trust, unincorporated association,
15 government or any political subdivision or agency thereof, and any business or legal entity and
16 any spouses, heirs, predecessors, successors, representatives or assignees of any of the foregoing.

17 (aa) “Proof of Claim and Release” means the form to be sent to the Class, upon
18 further order(s) of the Court, by which any member of the Class may make claims against the
19 Gross Settlement Fund.

20 (bb) “Released Claims” means any and all manner of claims, demands, rights,
21 actions, suits, causes of action, whether class, individual or otherwise in nature, fees, costs,
22 penalties, injuries, damages whenever incurred, liabilities of any nature whatsoever, known or
23 unknown (including, but not limited to, “Unknown Claims”), foreseen or unforeseen, suspected
24 or unsuspected, asserted or unasserted, contingent or non-contingent, in law or in equity, under the
25 laws of any jurisdiction, which Releasors or any of them, whether directly, representatively,
26 derivatively, or in any other capacity, ever had, now have or hereafter can, shall or may have,
27 relating in any way to any conduct on or before the Effective Date and arising out of or related in
28 any way in whole or in part to any facts, circumstances, acts, or omissions by Releasees which

1 were alleged or which could have been alleged in the Action, including but not limited to any
2 conduct by Releasees regardless of where it occurred at any time on or before the Effective Date
3 concerning, arising out of or related to (1) the purchase, pricing, selling, discounting, marketing,
4 manufacturing and/or distributing of Capacitors; (2) any agreement, combination or conspiracy
5 to raise, fix, maintain or stabilize the prices of film capacitors or restrict, reduce, alter or allocate
6 the supply, quantity or quality of Capacitors or concerning the development, manufacture,
7 supply, distribution, transfer, marketing, sale or pricing of Capacitors, or any other restraint of
8 competition alleged in the Action or that could have been or hereafter could be alleged against
9 the Releasees relating to Capacitors, or (3) any other restraint of competition relating to
10 Capacitors that could have been or hereafter could be alleged against the Releasees as a violation
11 of the Sherman Act or any other antitrust, unjust enrichment, unfair competition, unfair practices,
12 trade practices, price discrimination, unitary pricing, racketeering, civil conspiracy or consumer
13 protection law, whether under federal, state, local or foreign law provided however, that nothing
14 herein shall release: (i) claims involving any negligence, personal injury, breach of contract,
15 bailment, failure to deliver lost goods, damaged or delayed goods, product defect, securities or
16 similar claim relating to any Capacitors; and (ii) claims for damages under the state or local laws
17 of any jurisdiction other than an Indirect Purchaser State, as defined herein in this Settlement
18 Agreement.

19 (cc) "Releasees" refers jointly and severally, individually and collectively to
20 Shinyei as defined in ¶ 1(x) above.

21 (dd) "Releasers" refers jointly and severally, individually and collectively to
22 the Indirect Purchaser Plaintiffs and each and every member of the Class on their own behalf and
23 on behalf of their respective past, present, and/or future direct and indirect parents, members,
24 subsidiaries and Affiliates, and their past, present and/or future officers, directors, employees,
25 agents, attorneys and legal representatives, servants, and representatives, and the predecessors,
26 successors, heirs, executors, administrators and assigns of each of the foregoing.

27 (ee) "Settlement" means the settlement of the Released Claims set forth herein.
28

1 (ff) “Settlement Agreement” means this settlement agreement dated June 4,
2 2021.

3 (gg) “Settlement Amount” means One Hundred Fifty Thousand U.S. Dollars
4 (\$150,000.00).

5 (hh) “Settling Parties” means, collectively, the Indirect Purchaser Plaintiffs (on
6 behalf of themselves and the Class) and Shinyei.

7 (ii) “Unknown Claims” means any Released Claim that an Indirect Purchaser
8 Plaintiff and/or Class Member does not know or suspect to exist in his, her or its favor at the time
9 of the release of the Releasees that if known by him, her or it, might have affected his, her or its
10 settlement with and release of the Releasees, or might have affected his, her or its decision not to
11 object to this Settlement. Such Unknown Claims include claims that are the subject of California
12 Civil Code § 1542 and equivalent, similar or comparable laws or principles of law. California
13 Civil Code § 1542 provides:

14 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
15 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
16 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
17 EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR
18 HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
19 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

20 **Preliminary Approval Order, Notice Order and Settlement Hearing**

21 2. ***Reasonable Best Efforts to Effectuate this Settlement.*** The Settling Parties: (a)
22 acknowledge that it is their intent to consummate this Settlement Agreement; and (b) agree to
23 cooperate to the extent reasonably necessary to effectuate and implement the terms and conditions
24 of this Settlement Agreement and to exercise their reasonable best efforts to accomplish the
25 terms and conditions of this Settlement Agreement.

26 3. ***Motion for Preliminary Approval.*** At a time to be determined by Class Counsel,
27 subject to ¶ 7, Class Counsel shall submit this Settlement Agreement to the Court and shall apply
28 for entry of a Preliminary Approval Order, requesting, *inter alia*, preliminary approval of the

1 Settlement. The motion shall include (a) the proposed Preliminary Approval Order, and (b) a
2 request for certification of the Class for settlement purposes pursuant to Federal Rule of Civil
3 Procedure 23.

4 4. ***Proposed Notice.*** At a time to be determined in their sole discretion, Class
5 Counsel shall submit to the Court for approval a proposed form of, method for and schedule for
6 dissemination of notice to the Class. To the extent practicable and to the extent consistent with
7 this paragraph, Class Counsel may seek to coordinate this notice program with other settlements
8 that may be reached in the Action in order to reduce the expense of notice. This motion shall
9 recite and ask the Court to find that the proposed form of and method for dissemination of the
10 notice to the Class constitutes valid, due and sufficient notice to the Class, constitutes the best
11 notice practicable under the circumstances, and complies fully with the requirements of Federal
12 Rule of Civil Procedure 23.

13 5. ***Claims Administrator.*** Indirect Purchaser Plaintiffs shall retain a Claims
14 Administrator, which shall be responsible for the claims administration process including
15 distribution to Class Members pursuant to a court-approved plan of distribution. The fees and
16 expenses of the Claims Administrator shall be paid exclusively out of the Settlement Fund. In no
17 event shall Shinyei be separately responsible for any fees or expenses of the Claims
18 Administrator unless so specified in this agreement.

19 6. ***Requests for Exclusion (Opt Outs).*** Any Class Member that wishes to seek
20 exclusion from the Settlement Class by “opting out” must timely submit a written request for
21 Exclusion to the Claims Administrator (a “Request for Exclusion”). To be effective, such
22 Requests for Exclusion must state: the Settlement Class Member’s full legal name, address and
23 telephone number; that the Class Member purchased Capacitors indirectly from one or more
24 Distributor who themselves purchased from one of the Defendants during the Class Period; and
25 that the Class Member (1) wants to be excluded from the *In re Capacitors Antitrust Litigation* –
26 Indirect Purchaser Actions class action settlement with Shinyei and (2) understands that by so
27 doing, the Class Member will not be able to get any money or benefits from the settlement with
28 Shinyei under the Settlement Agreement. All Requests for Exclusion must be signed and dated

1 by the Class Member or its officer or legal representative, and be (1) mailed to the Claims
2 Administrator via First Class United States Mail (or United States Mail for overnight delivery)
3 and postmarked by a date certain to be specified on the Notice, or (2) received by the Claims
4 Administrator by that date, provided, however, that if a Class Member mails the Opt-Out
5 Statement pursuant to option (1), it will be effective only if received by the Claims Administrator
6 on or before ten (10) calendar days after the end of the Opt-Out Period. Persons who opt out are
7 not entitled to any monetary award from the Settlement Fund.

8 7. ***Motion for Final Approval and Entry of Final Judgment.*** Prior to the date set by
9 the Court to consider whether this Settlement should be finally approved, Class Counsel shall
10 submit a motion for final approval of the Settlement by the Court. The Settling Parties shall
11 jointly seek entry of the Final Approval Order and Judgment:

12 (a) certifying the Settlement Class, as defined in this Settlement Agreement, pursuant
13 to Federal Rule of Civil Procedure 23, solely for purposes of this Settlement;

14 (b) fully and finally approving the Settlement contemplated by this Settlement
15 Agreement and its terms as being fair, reasonable and adequate within the meaning of Federal
16 Rule of Civil Procedure 23 and directing its consummation pursuant to its terms and conditions.

17 (c) finding that the notice given to the Class Members constituted the best notice
18 practicable under the circumstances and complies in all respects with the requirements of Federal
19 Rule of Civil Procedure 23 and due process;

20 (d) directing that the Action be dismissed with prejudice as to Shinyei and, except as
21 provided for herein, without costs;

22 (e) discharging and releasing the Releasees from all Released Claims;

23 (f) permanently barring and enjoining the institution and prosecution, by Indirect
24 Purchaser Plaintiffs and Class Members, of any other action against the Releasees in any court
25 asserting any claims related in any way to the Released Claims;

26 (g) reserving continuing and exclusive jurisdiction over the Settlement, including all
27 future proceedings concerning the administration, consummation and enforcement of this
28 Settlement Agreement;

1 (h) determining pursuant to Federal Rule of Civil Procedure 54(b) that there is no just
2 reason for delay and directing entry of a final judgment as to Shinyei; and

3 (i) containing such other and further provisions consistent with the terms of this
4 Settlement Agreement to which the parties expressly consent in writing.

5 8. **Stay Order.** Upon the Execution Date, the Action shall be stayed as against
6 Shinyei only. Should the Action be tried against any Defendants other than Shinyei, the parties
7 specifically agree that any findings therein shall not be binding on or admissible in evidence
8 against Shinyei or prejudice Shinyei in any way in any future proceeding involving Shinyei.

9 9. Upon the date that the Court enters an order preliminarily approving the
10 Settlement, Indirect Purchaser Plaintiffs and members of the Class shall be barred and enjoined
11 from commencing, instituting or continuing to prosecute any action or any proceeding in any
12 court of law or equity, arbitration tribunal, administrative forum or other forum of any kind
13 worldwide based on the Released Claims. Nothing in this provision shall prohibit the Indirect
14 Purchaser Plaintiffs or Class Counsel from continuing to participate in discovery in the Action
15 that is initiated by other plaintiffs.

16 **Releases**

17 10. **Released Claims.** Upon the Effective Date, the Releasors (regardless of whether
18 any such Releasor ever seeks or obtains any recovery by any means, including, without
19 limitation, by submitting a Proof of Claim and Release, any distribution from the Gross
20 Settlement Fund) by virtue of this Settlement Agreement shall be deemed to have, and by
21 operation of the Judgment shall have fully, finally and forever released, relinquished and
22 discharged all Released Claims against the Releasees.

23 11. **No Future Actions Following Release.** The Releasors shall not, after the
24 Effective Date, seek (directly or indirectly) to commence, institute, maintain or prosecute any
25 suit, action or complaint or collect from or proceed against Shinyei or any other Releasee
26 (including pursuant to the Action) based on the Released Claims in any forum worldwide, whether
27 on his, her, or its own behalf or as part of any putative, purported or certified class of purchasers
28 or consumers.

1 12. ***Covenant Not to Sue.*** Releasors hereby covenant not to sue the Releasees with
2 respect to any such Released Claims. Releasors shall be permanently barred and enjoined from
3 instituting, commencing or prosecuting against the Releasees any claims based in whole or in
4 part on the Released Claims. The Settling Parties contemplate and agree that this Settlement
5 Agreement may be pleaded as a bar to a lawsuit, and an injunction may be obtained, preventing
6 any action from being initiated or maintained in any case sought to be prosecuted by or on behalf
7 of Indirect Purchaser Plaintiffs or Class Members with respect to the Released Claims.

8 13. ***Waiver of California Civil Code § 1542 and Similar Laws.*** The Releasors
9 acknowledge that, by virtue of the execution of this Settlement Agreement, and for the
10 consideration received hereunder, it is their intention to release, and they are releasing, all
11 Released Claims, even Unknown Claims. In furtherance of this intention, the Releasors expressly
12 waive and relinquish, to the fullest extent permitted by law, any rights or benefits conferred by
13 the provisions of California Civil Code § 1542, as set forth in ¶ 1(ii), or equivalent, similar or
14 comparable laws or principles of law. The Releasors acknowledge that they have been advised
15 by Class Counsel of the contents and effects of California Civil Code § 1542, and hereby
16 expressly waive and release with respect to the Released Claims any and all provisions, rights
17 and benefits conferred by California Civil Code § 1542 or by any equivalent, similar or
18 comparable law or principle of law in any jurisdiction. The Releasors may hereafter discover
19 facts other than or different from those which they know or believe to be true with respect to the
20 subject matter of the Released Claims, but the Releasors hereby expressly waive and fully,
21 finally and forever settle and release any known or unknown, suspected or unsuspected, foreseen
22 or unforeseen, asserted or unasserted, contingent or non-contingent, and accrued or unaccrued
23 claim, loss or damage with respect to the Released Claims, whether or not concealed or hidden,
24 without regard to the subsequent discovery or existence of such additional or different facts. The
25 release of unknown, unanticipated, unsuspected, unforeseen, and unaccrued losses or claims in
26 this paragraph is not a mere recital.

27 14. ***Claims Excluded from Release.*** Notwithstanding the foregoing, the releases
28 provided herein shall not release claims against Shinyei for product liability, breach of contract,

1 breach of warranty or personal injury, or any other claim unrelated to the allegations in the
2 Action of restraint of competition or unfair competition with respect to Capacitors. Additionally,
3 the releases provided herein shall not release any claims to enforce the terms of this Settlement
4 Agreement.

5 **Settlement Fund**

6 15. ***Settlement Payment.*** Shinyei shall pay by wire transfer the Settlement Amount
7 (\$150,000.00) to the Escrow Agent pursuant to escrow instructions within 45 days after the
8 Execution Date. This amount constitutes the total amount of payment that Shinyei is required to
9 make in connection with this Settlement Agreement. This amount shall not be subject to
10 reduction, and upon the occurrence of the Effective Date, no funds shall revert to Shinyei except
11 as provided herein. The Escrow Agent shall only act in accordance with the mutually agreed
12 escrow instructions.

13 16. ***Disbursements Prior to Effective Date.*** No amount may be disbursed from the
14 Gross Settlement Fund unless and until the Effective Date, except that: (a) Notice,
15 Administrative and Claims Administration Costs may be paid from the Gross Settlement Fund as
16 they become due; (b) Taxes and Tax Expenses (as defined in ¶ 20(b) below) may be paid from the
17 Gross Settlement Fund as they become due, and (c) attorneys' fees and reimbursement of
18 litigation costs may be paid as ordered by the Court, which may be disbursed during the
19 pendency of any appeals, which may be taken from the judgment to be entered by the Court
20 finally approving this Settlement.

21 17. ***Refund by Escrow Agent.*** If the Settlement as described herein is not finally
22 approved by any court, or it is terminated as provided herein, or the Judgment as described
23 herein is not approved or entered or is overturned on appeal or by writ, the Gross Settlement
24 Fund, including the Settlement Amount and all interest earned on the Settlement Amount while
25 held in escrow, excluding only Notice, Administrative and Claims Administration Costs and
26 Taxes and/or Tax Expenses, shall be refunded, reimbursed and repaid by the Escrow Agent to
27 Shinyei within five (5) business days after receiving notice pursuant to ¶ 37 below.

28 18. ***Refund by Class Counsel.*** If the Settlement as described herein is not finally

1 approved by any court, or it is terminated as provided herein, or the Judgment as described
2 herein is not approved or entered or is overturned on appeal or by writ, any attorneys' fees and
3 costs previously paid pursuant to this Settlement Agreement (as well as interest on such amounts)
4 shall be refunded, reimbursed and repaid by Class Counsel to Shinyei within thirty (30) business
5 days after receiving notice pursuant to ¶ 37 below.

6 19. **No Additional Payments by Shinyei.** Under no circumstances will Shinyei be
7 required to pay more or less than the Settlement Amount pursuant to this Settlement Agreement
8 and the Settlement set forth herein. For purposes of clarification, the payment of any Fee and
9 Expense Award (as defined in ¶ 30 below), the Notice, Administrative and Claims
10 Administrative Costs, and any other costs associated with the implementation of this Settlement
11 Agreement shall be exclusively paid from the Settlement Amount.

12 20. **Taxes.** The Settling Parties and the Escrow Agent agree to treat the Gross
13 Settlement Fund as being at all times a "qualified settlement fund" within the meaning of Treas.
14 Reg. § 1.468B-1. The Escrow Agent shall timely make such elections as necessary or advisable
15 to carry out the provisions of this paragraph, including the "relation-back election" (as defined in
16 Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such elections shall be made in
17 compliance with the procedures and requirements contained in such regulations. It shall be the
18 responsibility of the Escrow Agent to prepare and deliver timely and properly the necessary
19 documentation for signature by all necessary parties, and thereafter to cause the appropriate
20 filing to occur.

21 (a) For the purpose of § 1.468B of the Internal Revenue Code of 1986, as amended,
22 and the regulations promulgated thereunder, the "administrator" shall be the Escrow Agent. The
23 Escrow Agent shall satisfy the administrative requirements imposed by Treas. Reg. § 1.468B-2
24 by, e.g., (i) obtaining a taxpayer identification number, (ii) satisfying any information reporting
25 or withholding requirements imposed on distributions from the Gross Settlement Fund, and (iii)
26 timely and properly filing applicable federal, state and local tax returns necessary or advisable
27 with respect to the Gross Settlement Fund (including, without limitation, the returns described in
28 Treas. Reg. § 1.468B-2(k)) and paying any taxes reported thereon. Such returns (as well as the

1 election described in this paragraph) shall be consistent with the provisions of this paragraph and
2 in all events shall reflect that all Taxes as defined in ¶ 20(b) below on the income earned by the
3 Gross Settlement Fund shall be paid out of the Gross Settlement Fund as provided in ¶ 20(b)
4 hereof;

5 (b) The following shall be paid out of the Gross Settlement Fund: (i) all taxes
6 (including any estimated taxes, interest or penalties) arising with respect to the income earned by
7 the Gross Settlement Fund, including, without limitation, any taxes or tax detriments that may be
8 imposed upon Shinyei or its counsel with respect to any income earned by the Gross Settlement
9 Fund for any period during which the Gross Settlement Fund does not qualify as a “qualified
10 settlement fund” for federal or state income tax purposes (collectively, “Taxes”); and (ii) all
11 expenses and costs incurred in connection with the operation and implementation of this
12 paragraph, including, without limitation, expenses of tax attorneys and/or accountants and
13 mailing and distribution costs and expenses relating to filing (or failing to file) the returns
14 described in this paragraph (collectively, “Tax Expenses”). In all events neither Shinyei nor its
15 counsel shall have any liability or responsibility for the Taxes or the Tax Expenses. With funds
16 from the Gross Settlement Fund, the Escrow Agent shall indemnify and hold harmless Shinyei
17 and its counsel for Taxes and Tax Expenses (including, without limitation, Taxes payable by
18 reason of any such indemnification). Further, Taxes and Tax Expenses shall be treated as, and
19 considered to be, a cost of administration of the Gross Settlement Fund and shall timely be paid by
20 the Escrow Agent out of the Gross Settlement Fund without prior order from the Court and the
21 Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold
22 from distribution to Authorized Claimants any funds necessary to pay such amounts, including
23 the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts
24 that may be required to be withheld under Treas. Reg. §1.468B-2(1)(2)); neither Shinyei nor its
25 counsel is responsible therefor, nor shall they have any liability therefor. The Settling Parties
26 agree to cooperate with the Escrow Agent, each other, their tax attorneys and their accountants to
27 the extent reasonably necessary to carry out the provisions of this paragraph.

1 **Administration and Distribution of Gross Settlement Fund**

2 21. ***Time to Appeal.*** The time to appeal from an approval of the Settlement shall
3 commence upon the Court’s entry of the Judgment regardless of whether or not either the
4 Distribution Plan or an application for attorneys’ fees and expenses has been submitted to the
5 Court or resolved.

6 22. ***Distribution of Gross Settlement Fund.*** Upon further orders of the Court, the
7 Claims Administrator, subject to such supervision and direction of the Court and/or Class
8 Counsel as may be necessary or as circumstances may require, shall administer the claims
9 submitted by members of the Class and shall oversee distribution of the Gross Settlement Fund
10 to Authorized Claimants pursuant to the Distribution Plan. Subject to the terms of this Settlement
11 Agreement and any order(s) of the Court, the Gross Settlement Fund shall be applied as follows:

12 (a) To pay all costs and expenses reasonably and actually incurred in providing notice
13 to the Class in connection with administering and distributing the Net Settlement Fund to
14 Authorized Claimants, and in connection with paying escrow fees and costs, if any;

15 (b) To pay all costs and expenses, if any, reasonably and actually incurred in soliciting
16 claims and assisting with the filing and processing of such claims;

17 (c) To pay the Taxes and Tax Expenses as defined herein;

18 (d) To pay any Attorney Fee and Expense Award that is allowed by the Court, subject
19 to and in accordance with the Agreement; and

20 (e) To distribute the balance of the “Net Settlement Fund” to Authorized Claimants
21 as allowed by the Agreement, any Distribution Plan or order of the Court.

22 23. ***Distribution of Net Settlement Fund.*** The Net Settlement Fund shall be
23 distributed in accordance with the Distribution Plan that is approved by the Court.

24 24. All Persons who fall within the definition of the Class who do not timely and
25 validly request to be excluded from the Class shall be subject to and bound by the provisions of
26 this Settlement Agreement, the releases contained herein, and the Judgment with respect to all
27 Released Claims, regardless of whether such Persons seek or obtain by any means, including,
28 without limitation, by submitting a Proof of Claim and Release or any similar document, any

1 distribution from the Gross Settlement Fund or the Net Settlement Fund.

2 25. ***No Liability for Distribution of Settlement Funds.*** Neither the Releasees nor their
3 counsel shall have any responsibility for, interest in or liability whatsoever with respect to the
4 distribution of the Gross Settlement Fund; the Distribution Plan; the determination,
5 administration, or calculation of claims; the Settlement Fund’s qualification as a “qualified
6 settlement fund”; the payment or withholding of Taxes or Tax Expenses; the distribution of the
7 Net Settlement Fund; or any losses incurred in connection with any such matters. The Releasors
8 hereby fully, finally and forever release, relinquish and discharge the Releasees and their counsel
9 from any and all such liability. No Person shall have any claim against Class Counsel or the
10 Claims Administrator based on the distributions made substantially in accordance with the
11 Agreement and the Settlement contained herein, the Distribution Plan or further orders of the
12 Court.

13 26. ***Balance Remaining in Net Settlement Fund.*** If there is any balance remaining in
14 the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), Class
15 Counsel may reallocate such balance among Authorized Claimants in an equitable and economic
16 fashion, distribute the remaining funds through *cy pres*, or allow the money to escheat to federal
17 or state governments, subject to Court approval. In no event shall the Net Settlement Fund revert
18 to Shinyei.

19 27. ***Distribution Plan Not Part of Settlement.*** It is understood and agreed by the
20 Settling Parties that any Distribution Plan, including any adjustments to any Authorized
21 Claimant’s claim, is not a part of this Settlement Agreement and is to be considered by the Court
22 separately from the Court’s consideration of the fairness, reasonableness and adequacy of the
23 Settlement set forth in this Settlement Agreement, and any order or proceedings relating to the
24 Distribution Plan shall not operate to terminate or cancel this Settlement Agreement or affect the
25 finality of the Judgment, the Final Approval Order, or any other orders entered pursuant to this
26 Settlement Agreement. The time to appeal from an approval of the Settlement shall commence
27 upon the Court’s entry of the Judgment regardless of whether either the Distribution Plan or an
28 application for attorneys’ fees and expenses has been submitted to the Court or approved.

1 **Attorneys' Fees and Reimbursement of Expenses**

2 28. *Fee and Expense Application.* Class Counsel may submit an application or
3 applications (the "Fee and Expense Application") for distributions from the Gross Settlement
4 Fund, for: (a) an award of attorneys' fees; plus (b) reimbursement of expenses incurred in
5 connection with prosecuting the Action; plus (c) any interest on such attorneys' fees and
6 expenses (until paid) at the same rate and for the same periods as earned by the Settlement Fund,
7 as appropriate, and as may be awarded by the Court.

8 29. *Payment of Fee and Expense Award.* Any amounts that are awarded by the Court
9 pursuant to the above paragraph (the "Fee and Expense Award") shall be paid from the Gross
10 Settlement Fund consistent with the provisions of this Settlement Agreement.

11 30. *Award of Fees and Expenses Not Part of Settlement.* The procedure for, and the
12 allowance or disallowance by the Court of, the Fee and Expense Application are not part of the
13 Settlement set forth in this Settlement Agreement, and are to be considered by the Court
14 separately from the Court's consideration of the fairness, reasonableness and adequacy of the
15 Settlement set forth in this Settlement Agreement. Any order or proceeding relating to the Fee
16 and Expense Application, or any appeal from any Fee and Expense Award or any other order
17 relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this
18 Settlement Agreement, or affect or delay the finality of the Judgment and the Settlement of the
19 Action as set forth herein. No order of the Court or modification or reversal on appeal of any
20 order of the Court concerning any Fee and Expense Award or Distribution Plan shall constitute
21 grounds for cancellation or termination of this Settlement Agreement.

22 31. *No Liability for Fees and Expenses of Class Counsel.* Shinyei shall have no
23 responsibility for, and no liability whatsoever with respect to, any payment(s) to Class Counsel
24 pursuant to this Settlement Agreement and/or to any other Person who may assert some claim
25 thereto or any Fee and Expense Award that the Court may make in the Action, other than as set
26 forth in this Settlement Agreement.

27 **Conditions of Settlement, Effect of Disapproval, Cancellation or Termination**

28 32. *Occurrence of Effective Date.* Upon the occurrence of all of the events required

1 in order to trigger the Effective Date as defined in ¶ 1(m), any and all remaining interest or right
2 of Shinyei in or to the Gross Settlement Fund, if any, shall be absolutely and forever
3 extinguished, and the Gross Settlement Fund (less any Notice and Administrative Costs, Taxes
4 or Tax Expenses or any Fee and Expense Award paid) shall be transferred from the Escrow
5 Agent to the Claims Administrator as successor Escrow Agent within ten (10) days after the
6 Effective Date.

7 33. ***Failure of Effective Date to Occur.*** If, for whatever reason, the Effective Date
8 does not occur or is not met, then this Settlement Agreement shall be cancelled and terminated,
9 subject to and in accordance with ¶¶ 36-37, below, unless the Settling Parties mutually agree in
10 writing to proceed with this Settlement Agreement.

11 34. ***Exclusions.*** Class Counsel shall cause copies of requests for exclusion from the
12 Class to be provided to Shinyei's counsel. No later than 14 days after the final date for mailing
13 requests for exclusion, Class Counsel shall provide Shinyei's counsel with a complete and final
14 list of opt-outs. With the motion for final approval of the Settlement, Class Counsel will file with
15 the Court a complete list of requests for exclusion from the Class, including only the name, city
16 and state of the person or entity requesting exclusion.

17 35. ***Objections.*** Settlement Class members who wish to object to any aspect of the
18 Settlement must file with the Court a written statement containing their objection by end of the
19 period to object to the Settlement. Any award or payment of attorneys' fees made to counsel to
20 an objector to the Settlement shall only be made by Court order and upon a showing of the
21 benefit conferred to the Class. In determining any such award of attorneys' fees to an objectors'
22 counsel, the Court will consider the incremental value to the Class caused by any such
23 objection. Any award of attorneys' fees by the Court will be conditioned on the objector and his
24 or her attorney stating under penalty of perjury that no payments shall be made to the objector
25 based on the objector's participation in the matter - other than as ordered by the Court.

26 36. ***Failure to Enter Proposed Preliminary Approval Order, Final Approval Order***
27 ***or Judgment.*** If the Court does not enter the Preliminary Approval Order, the Final Approval
28 Order or the Judgment, or if the Court enters the Final Approval Order and the Judgment and

1 appellate review is sought and, on such review, the Final Approval Order or the Judgment is
2 finally vacated, modified or reversed, then this Settlement Agreement and the Settlement
3 incorporated therein shall be cancelled and terminated; provided, however, the Settling Parties
4 agree to act in good faith to secure Final Approval of this Settlement and to attempt to address in
5 good faith concerns regarding the Settlement identified by the Court and any court of appeal. No
6 Settling Party shall have any obligation whatsoever to proceed under any terms other than
7 substantially in the form provided and agreed to herein; provided, however, that no order of the
8 Court concerning any Fee and Expense Application or Distribution Plan, or any modification or
9 reversal on appeal of such order, shall constitute grounds for cancellation or termination of this
10 Settlement Agreement by any Settling Party. Without limiting the foregoing, Shinyei shall have,
11 in its sole and absolute discretion, the option to terminate the Settlement in its entirety in the
12 event that the Judgment, upon becoming Final, does not provide for the dismissal with prejudice
13 of the Action against it.

14 37. **Termination.** Unless otherwise ordered by the Court, in the event that the
15 Effective Date does not occur or this Settlement Agreement should terminate, or be cancelled or
16 otherwise fail to become effective for any reason or the Settlement as described herein is not
17 finally approved by the Court, or the Judgment is reversed or vacated following any appeal taken
18 therefrom, then:

19 (a) within five (5) business days after written notification of such event is sent by
20 counsel for Shinyei to the Escrow Agent, the Gross Settlement Fund, including the Settlement
21 Amount and all interest earned on the Settlement Fund while held in escrow excluding only
22 Notice Administrative and Claims Administration Costs that have either been properly disbursed
23 or are due and owing, Taxes and Tax Expenses that have been paid or that have accrued and will
24 be payable at some later date, and attorneys' fees and costs that have been disbursed pursuant to
25 Court order will be refunded, reimbursed and repaid by the Escrow Agent to Shinyei; if said
26 amount or any portion thereof is not returned within such five (5) business day period, then
27 interest shall accrue thereon at the rate of ten percent (10%) per annum until the date that said
28 amount is returned;

1 (b) within thirty (30) business days after written notification of such event is sent by
2 Counsel for Shinyei to Class Counsel, all attorneys' fees and costs which have been disbursed to
3 class counsel pursuant to Court order shall be refunded, reimbursed and repaid by Class Counsel
4 to Shinyei;

5 (c) the Escrow Agent or its designee shall apply for any tax refund owed to the Gross
6 Settlement Fund and pay the proceeds to Shinyei, after deduction of any fees or expenses
7 reasonably incurred in connection with such application(s) for refund, pursuant to such written
8 request;

9 (d) the Settling Parties shall be restored to their respective positions in the Action as
10 of the Execution Date, with all of their respective claims and defenses, preserved as they existed
11 on that date;

12 (e) the terms and provisions of this Settlement Agreement, with the exception of
13 ¶¶ 37-40 (which shall continue in full force and effect), shall be null and void and shall have no
14 further force or effect with respect to the Settling Parties, and neither the existence nor the terms
15 of this Settlement Agreement (nor any negotiations preceding this Settlement Agreement nor any
16 acts performed pursuant to, or in furtherance of, this Settlement Agreement) shall be used in the
17 Action or in any other action or proceeding for any purpose (other than to enforce the terms
18 remaining in effect); and

19 (f) any judgment or order entered by the Court in accordance with the terms of this
20 Settlement Agreement shall be treated as vacated, nunc pro tunc.

21 **No Admission of Liability**

22 38. ***Final and Complete Resolution.*** The Settling Parties intend the Settlement as
23 described herein to be a final and complete resolution of all disputes between them with respect
24 to the Action and Released Claims and to compromise claims that are contested, and it shall not
25 be deemed an admission by any Settling Party as to the merits of any claim or defense or any
26 allegation made in the Action.

27 39. ***Federal Rule of Evidence 408.*** The Settling Parties agree that this Settlement
28 Agreement, its terms and the negotiations surrounding this Settlement Agreement shall be

1 governed by Federal Rule of Evidence 408 and shall not be admissible or offered or received into
2 evidence in any suit, action or other proceeding, except upon the written agreement of the Settling
3 Parties hereto, pursuant to an order of a court of competent jurisdiction, or as shall be necessary
4 to give effect to, declare or enforce the rights of the Settling Parties with respect to any provision
5 of this Settlement Agreement.

6 40. *Use of Agreement as Evidence.* Neither this Settlement Agreement nor the
7 Settlement, nor any act performed or document executed pursuant to or in furtherance of this
8 Settlement Agreement or the Settlement: (a) is or may be deemed to be or may be used as an
9 admission of, or evidence of, the validity of any Released Claims, of any allegation made in the
10 Action, or of any wrongdoing or liability of Shinyei; or (b) is or may be deemed to be or may be
11 used as an admission of, or evidence of, any liability, fault or omission of the Releasees in any
12 civil, criminal or administrative proceeding in any court, administrative agency or other tribunal.
13 Neither this Settlement Agreement nor the Settlement, nor any act performed or document
14 executed pursuant to or in furtherance of this Settlement Agreement or the Settlement shall be
15 admissible in any proceeding for any purpose, except to enforce the terms of the Settlement, and
16 except that the Releasees may file this Settlement Agreement and/or the Judgment in any action
17 for any purpose, including, but not limited to, in order to support a defense or counterclaim based
18 on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or
19 reduction or any other theory of claim preclusion or issue preclusion or similar defense or
20 counterclaim. The limitations described in this paragraph apply whether or not the Court enters
21 the Preliminary Approval Order, the Final Approval Order, or the Judgment, or if the Settlement
22 Agreement is terminated or rescinded.

23 **Miscellaneous Provisions**

24 41. *Voluntary Settlement.* The Settling Parties agree that the Settlement Amount and
25 the other terms of the Settlement as described herein were negotiated in good faith by the Settling
26 Parties, and reflect a settlement that was reached voluntarily and after consultation with
27 competent legal counsel.

28 42. *Consent to Jurisdiction.* Shinyei and each Class Member hereby irrevocably

1 submit to the exclusive jurisdiction of the Court only for the specific purpose of any suit, action,
2 proceeding or dispute arising out of or relating to this Settlement Agreement or the applicability
3 of this Settlement Agreement. Solely for purposes of such suit, action, or proceeding, to the
4 fullest extent that they may effectively do so under applicable law, Shinyei and the Class
5 Members irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise,
6 any claim or objection that they are not subject to the jurisdiction of the Court or that the Court is
7 in any way an improper venue or an inconvenient forum. Nothing herein shall be construed as a
8 submission to jurisdiction for any purpose other than any suit, action, proceeding, or dispute
9 arising out of or relating to this Settlement Agreement or the applicability of this Settlement
10 Agreement.

11 43. ***Resolution of Disputes; Retention of Exclusive Jurisdiction.*** Any disputes
12 between or among Shinyei and any Class Members concerning matters contained in this
13 Settlement Agreement shall, if they cannot be resolved by negotiation and agreement, be
14 submitted to the Court. The Court shall retain exclusive jurisdiction over the implementation and
15 enforcement of this Settlement Agreement.

16 44. ***Binding Effect.*** This Settlement Agreement shall be binding upon, and inure to the
17 benefit of, the successors and assigns of the parties hereto. Without limiting the generality of the
18 foregoing, each and every covenant and agreement herein by Indirect Purchaser Plaintiffs and
19 Class Counsel shall be binding upon all Class Members.

20 45. ***Authorization to Enter Settlement Agreement.*** The undersigned representatives of
21 Shinyei represent that they are fully authorized to enter into and to execute this Settlement
22 Agreement on behalf of Shinyei. Class Counsel, on behalf of Indirect Purchaser Plaintiffs and the
23 Class, represent that they are, subject to Court approval, expressly authorized to take all action
24 required or permitted to be taken by or on behalf of the Indirect Purchaser Plaintiffs and the
25 Class pursuant to this Settlement Agreement to effectuate its terms and to enter into and execute
26 this Settlement Agreement and any modifications or amendments to the Settlement Agreement
27 on behalf of the Class that they deem appropriate.

28 46. ***Notices.*** All notices under this Settlement Agreement shall be in writing. Each such

1 notice shall be given either by (a) email; (b) hand delivery; (c) registered or certified mail, return
2 receipt requested, postage pre-paid; (d) Federal Express or similar overnight courier; or (e)
3 facsimile and first class mail, postage pre-paid and, if directed to any Class Member, shall be
4 addressed to Class Counsel at their addresses set forth below, and if directed to Shinyei, shall be
5 addressed to their attorneys at the addresses set forth below or such other addresses as Class
6 Counsel or Shinyei may designate, from time to time, by giving notice to all parties hereto in the
7 manner described in this paragraph.

8 If directed to the Indirect Purchaser Plaintiffs, address notice to:

9 COTCHETT, PITRE & MCCARTHY
10 Adam J. Zapala (azapala@cpmlegal.com)
San Francisco Airport Office Center
840 Malcolm Road, Suite 200
11 Burlingame, CA 94010
Telephone: (650) 697-6000
12 Facsimile: (650) 697-0577

13 If directed to Shinyei, address notice to:

14 DENTONS US LLP
Gaspare J. Bono (gap.bono@dentons.com)
15 1900 K Street NW
Washington, DC 20006
16 Telephone: (202) 496-7500
17 Facsimile: (202) 496-7756

18 47. **Confidentiality of Settlement Negotiations.** Class Counsel shall keep strictly
19 confidential and not disclose to any third party, including specifically any counsel representing
20 any other current or former party to the Action, any non-public information regarding the
21 Settling Parties' negotiation of this settlement and/or the Settlement Agreement. For the sake of
22 clarity, information contained within this Settlement Agreement shall be considered public, and
23 Shinyei may issue a press release regarding execution of the Settlement Agreement and the
24 amount paid in connection with the Settlement Agreement.

25 48. **Headings.** The headings used in this Settlement Agreement are intended for the
26 convenience of the reader only and shall not affect the meaning or interpretation of this
27 Settlement Agreement.

28 49. **No Party Deemed to Be the Drafter.** None of the parties hereto shall be deemed

1 to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any
2 statute, case law or rule of interpretation or construction that would or might cause any provision
3 to be construed against the drafter hereof.

4 50. ***Choice of Law.*** This Settlement Agreement shall be considered to have been
5 negotiated, executed and delivered, and to be wholly performed, in the State of California, and
6 the rights and obligations of the parties to this Settlement Agreement shall be construed and
7 enforced in accordance with, and governed by, the substantive laws of the State of California
8 without giving effect to that State's choice of law principles.

9 51. ***Amendment; Waiver.*** This Settlement Agreement shall not be modified in any
10 respect except by a writing executed by all the parties hereto, and the waiver of any rights conferred
11 hereunder shall be effective only if made by written instrument of the waiving party. The waiver
12 by any party of any breach of this Settlement Agreement shall not be deemed or construed as a
13 waiver of any other breach, whether prior, subsequent or contemporaneous, of this Settlement
14 Agreement.

15 52. ***Execution in Counterparts.*** This Settlement Agreement may be executed in one
16 or more counterparts. All executed counterparts and each of them shall be deemed to be one
17 and the same instrument. Counsel for the parties to this Settlement Agreement shall exchange
18 among themselves original signed counterparts and a complete set of executed counterparts shall
19 be filed with the Court.

20 53. ***Notification of State Officials.*** Shinyei shall be responsible for providing all
21 notices required by the Class Action Fairness Act, 28 U.S.C. § 1715, to be provided to state
22 attorneys general or to the Attorney General of the United States.

23 54. ***Integrated Agreement.*** This Settlement Agreement constitutes the entire
24 agreement between the Settling Parties and no representations, warranties or inducements have
25 been made to any party concerning this Settlement Agreement other than the representations,
26 warranties and covenants contained and memorialized herein. It is understood by the Settling
27 Parties that, except for the matters expressly represented herein, the facts or law with respect to
28 which this Settlement Agreement is entered into may turn out to be other than or different from the

1 facts now known to each party or believed by such party to be true; each party therefore expressly
2 assumes the risk of the facts or law turning out to be so different, and agrees that this Settlement
3 Agreement shall be in all respects effective and not subject to termination by reason of any such
4 different facts or law. Except as otherwise provided herein, each party shall bear its own costs
5 and attorneys' fees.

6 IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives,
7 have executed this Settlement Agreement as of the Execution Date.

8
9 INDIRECT PURCHASER PLAINTIFFS' CLASS COUNSEL, on behalf of Indirect
10 Purchaser Plaintiffs individually and on behalf of the Class

11 By: 

12 Adam J. Zapala
13 COTCHETT, PITRE & MCCARTHY, LLP
14 San Francisco Airport Office Center
15 840 Malcolm Road, Suite 200
16 Burlingame, CA 94010
17 Telephone: 650-697-6000
18 Fax: 650-697-0577
19 azapala@cpmlegal.com

20 SHINYEI KAISHA, SHINYEI TECHNOLOGY CO., LTD.,
21 SHINYEI CAPACITOR CO., LTD., SHINYEI KAISHA ELECTRONICS (M) SDN.
22 BHD., AND SHINYEI CORPORATION OF AMERICA

23
24 By: 

25 Gaspare J. Bono
26 DENTONS US LLP
27 1900 K Street NW
28 Washington, DC 20006
Telephone: (202) 496-7500
Facsimile: (202) 496-7756
gap.bono@dentons.com

EXHIBIT 2

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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

**IN RE CAPACITORS ANTITRUST
LITIGATION**

Case No. 3:14-cv-03264-JD

**This Document Relates to:
Indirect Purchaser Actions**

SETTLEMENT AGREEMENT

1 This Settlement Agreement (defined below) is made and entered into this 2nd day of June
2 2021 (the “Execution Date”), by and among Taitso Corp. (“Taitso”) and the Indirect Purchaser
3 Plaintiffs (“IPPs”), both individually and on behalf of the Class (defined below) in the above-
4 captioned action (“Action”). This Settlement Agreement is intended by Taitso and IPPs (“the
5 Settling Parties” as defined below) to fully, finally, and forever resolve, discharge and settle the
6 Released Claims (defined below), upon and subject to the terms and conditions hereof.

7 **RECITALS**

8 WHEREAS, Indirect Purchaser Plaintiffs are prosecuting the Action on their own behalf
9 and on behalf of the Class against, among others, Taitso and other Defendants and alleged co-
10 conspirators;

11 WHEREAS, Indirect Purchaser Plaintiffs allege, among other things, that Taitso violated
12 the antitrust and consumer protection laws by conspiring to fix, raise, maintain, or stabilize the
13 prices of Capacitors, and these acts caused the Class to incur damages;

14 WHEREAS, Taitso has denied and continues to deny each and all of Indirect Purchaser
15 Plaintiffs’ claims and allegations of wrongdoing; has not conceded or admitted any liability, or
16 that it violated or breached any law, regulation, or duty owed to the Indirect Purchaser Plaintiffs;
17 has denied and continues to deny all charges of wrongdoing or liability against it arising out of
18 any of the conduct, statements, acts or omissions alleged in the Action; and further denies the
19 allegations that the Indirect Purchaser Plaintiffs or any member of the Class were harmed by any
20 conduct by Taitso alleged in the Action or otherwise;

21 WHEREAS, Indirect Purchaser Plaintiffs and Defendants have engaged in extensive
22 discovery regarding the facts pertaining to Indirect Purchaser Plaintiffs’ claims and Defendants’
23 defenses;

24 WHEREAS, Indirect Purchaser Plaintiffs and Taitso agree that neither this Settlement
25 Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be
26 an admission or evidence of any violation of any statute or law or of any liability or wrongdoing
27 by Taitso or of the truth of any of the claims or allegations alleged in the Action;

1 WHEREAS, Indirect Purchaser Plaintiffs' Class Counsel have concluded, after due
2 investigation and after carefully considering the relevant circumstances, including, without
3 limitation, the claims asserted in the Indirect Purchaser Plaintiffs' Fifth Consolidated Complaint
4 filed in Docket No. 3:14-cv-03264-JD, the legal and factual defenses thereto and the applicable
5 law, that it is in the best interests of the Indirect Purchaser Plaintiffs and the Class to enter into this
6 Settlement Agreement to avoid the uncertainties of litigation and to assure that the benefits
7 reflected herein are obtained for the Indirect Purchaser Plaintiffs and the Class, and, further, that
8 Indirect Purchaser Plaintiffs' Class Counsel consider the Settlement set forth herein to be fair,
9 reasonable and adequate and in the best interests of the Indirect Purchaser Plaintiffs and the
10 Class; and

11 WHEREAS, Taitso has concluded, despite its belief that it is not liable for the claims
12 asserted against it in the Action and that it has good defenses thereto, that it will enter into this
13 Settlement Agreement in order to avoid further expense, inconvenience, and the distraction of
14 burdensome and protracted litigation, and thereby to put to rest this controversy with respect to
15 the Indirect Purchaser Plaintiffs and the Class and avoid the risks inherent in complex litigation;
16 and

17 WHEREAS, arm's length settlement negotiations have taken place between counsel for
18 Indirect Purchaser Plaintiffs and Taitso, and this Settlement Agreement, which embodies all of
19 the terms and conditions of the Settlement between the Settling Parties, both individually and on
20 behalf of the Class, has been reached as a result of the Settling Parties' negotiations (subject to
21 the approval of the Court) as provided herein and is intended to supersede any prior agreements
22 or understandings between the Settling Parties.

23 **AGREEMENT**

24 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among
25 the Settling Parties, by and through their undersigned attorneys of record, in consideration of the
26 covenants, agreements, and releases set forth herein and for other good and valuable
27 consideration, that the Action and the Released Claims as against Taitso shall be finally and fully
28 settled, compromised and dismissed on the merits and with prejudice, without costs as to Indirect

1 Purchaser Plaintiffs, the Class, or Taitso, upon and subject to the approval of the Court, following
2 notice to the Class, on the following terms and conditions:

3 **DEFINITIONS**

4 1. As used in this Settlement Agreement, the following terms shall have the meanings
5 specified below:

6 (a) “Action” means *In re Capacitors Antitrust Litigation* – All Indirect
7 Purchaser Actions, Case No. 3:14-cv-03264-JD, and each of the cases brought on behalf of
8 indirect purchasers previously consolidated and/or included as part of Docket No. 3:14-cv-
9 03264-JD.

10 (b) “Affiliates” means entities controlling, controlled by or under common
11 control with a Releasee or Releasor.

12 (c) “Authorized Claimant” means any Indirect Plaintiff Purchaser who, in
13 accordance with the terms of this Settlement Agreement, is entitled to a distribution consistent
14 with any Distribution Plan or order of the Court ordering distribution to the Class.

15 (d) “Capacitors” means electronic components that store electric charges
16 between one or more pairs of conductors separated by an insulator. It includes electrolytic,
17 aluminum, tantalum and/or film capacitors.

18 (e) “Claims Administrator” means the claims administrator(s) to be selected
19 by Class Counsel.

20 (f) “Class” is defined as all persons and entities in the Indirect Purchaser States
21 (as defined herein) who, during the period from January 1, 2002 to February 28, 2014, purchased
22 one or more Capacitor(s) from a distributor (or from an entity other than a Defendant) that a
23 Defendant or alleged co-conspirator manufactured. Excluded from the Class are Defendants;
24 their parent companies, subsidiaries and Affiliates; any co-conspirators; Defendants’ attorneys in
25 this Action; federal government entities and instrumentalities, states and their subdivisions; all
26 judges assigned to this Action; all jurors in this Action; and all Persons who directly purchased
27 Capacitors from Defendants.

28 (g) “Class Counsel” means the law firm of Cotchett, Pitre & McCarthy, LLP.

1 (h) “Class Member” means a Person who falls within the definition of the Class
2 and who does not timely and validly elect to be excluded from the Class in accordance with the
3 procedure to be established by the Court.

4 (i) “Court” means the United States District Court for the Northern District of
5 California.

6 (j) “Defendant” or “Defendants” means Hitachi Chemical Co., Ltd., Hitachi
7 AIC Inc., Hitachi Chemical Co. America, Ltd., Nippon Chemi-Con Corp., United Chemi-Con,
8 Inc., Rubycon Corp., Rubycon America Inc., Panasonic Corp., Panasonic Corp. of North America,
9 SANYO Electric Co., Ltd., SANYO Electronic Device (U.S.A.) Corp., Elna Co., Ltd. and Elna
10 America Inc., Matsuo Electric Co., Ltd., NEC TOKIN Corp., NEC TOKIN America Inc.,
11 Nichicon Corp., Nichicon America Corp., Fujitsu Media Devices, Ltd., Nissei Electric Co., Ltd.,
12 Nitsuko Electronics Corp., Okaya Electric Industries Co., Ltd., Shinyei Technology Co., Ltd.,
13 Shinyei Capacitor Co., Ltd., Soshin Electric Co., Ltd., Taitso Corp., Toshin Kogyo Co., Ltd.,
14 Holy Stone Enterprise Co., Ltd., Holy Stone Holdings Co., Ltd., Holy Stone Polytech Co., Ltd.,
15 and Milestone Global Technology, Inc.

16 (k) “Distribution Plan” means any plan or formula of allocation of the Gross
17 Settlement Fund, to be approved by the Court, whereby the Net Settlement Fund shall in the
18 future be distributed to Authorized Claimants.

19 (l) “Document” is synonymous in meaning and equal in scope to the usage of
20 this term in Fed. R. Civ. P. 34(a), including, without limitation, electronic or computerized data
21 compilations. A draft of non-identical copy is a separate document within the meaning of this
22 term.

23 (m) “Effective Date” means the first date by which all of the following events
24 and conditions have been met or have occurred:

25 (1) All parties have executed this Settlement Agreement;

26 (2) The Court has preliminarily approved the Settlement Agreement, certified
27 the settlement Class for purposes of effectuating this Settlement, and approved the motion
28 after providing notice to the Class as defined herein;

1 (3) The Court has entered a Final Judgment; and

2 (4) The Final Judgment (as more fully described in ¶ 7 of the Settlement
3 Agreement) has become final, with the occurrence of the following: (A) the entry by the
4 Court of a final order approving the Settlement Agreement under Rule 23(e) of the Federal
5 Rules of Civil Procedure together with entry of a final judgment dismissing the Action and
6 all claims therein by the Class against Taitso with prejudice as to all Class Members (the
7 “Final Judgment”), and (B) the expiration of the time for appeal or to seek permission to
8 appeal from the Court’s approval of the Settlement Agreement and entry of the Final
9 Judgment or, if an appeal from an approval and Final Judgment is taken, the affirmance of
10 such Final Judgment in its entirety, without modification, by the court of last resort to which
11 an appeal of such Final Judgment may be taken, provided, however, a modification or
12 reversal on appeal of any amount of Class Counsel’s fees and expenses awarded by the
13 Court from the Settlement Fund or any plan of allocation or distribution of the Settlement
14 Fund shall not be deemed a modification of all or part of the terms of this Settlement
15 Agreement or the Final Judgment. It is agreed that neither the provisions of Rule 60 of the
16 Federal Rules of Civil Procedure nor the All Writs Act, 28 U.S.C. § 1651, shall be taken
17 into account in determining the above-stated times.

18 (n) “Electrolytic Capacitor” means a capacitor that uses an electrolyte (an ionic
19 conducting liquid) as one of its plates to achieve a relatively larger capacitance per volume. It
20 includes but is not limited to the following: circular polymer aluminum electrolytic capacitors,
21 rectangular polymer aluminum capacitors, rectangular polymer tantalum capacitors, non-
22 polymer aluminum electrolytic capacitors, and non-polymer electrolytic double-layer capacitors.

23 (o) “Film Capacitor” means a capacitor that uses insulating plastic film and
24 one of two conductive materials, propylene or polyester. It includes but is not limited to the
25 following: (1) film and aluminum foil capacitors, (2) film and other metal capacitors, (3) layered
26 capacitors, and (4) surface-mount capacitors (i.e., capacitors without leads).

27 (p) “Escrow Agent” means the agent jointly designated by Class Counsel and
28 Taitso, and any successor agent.

1 (q) “Execution Date” means the first date set forth above in this Settlement
2 Agreement, which is June 2, 2021.

3 (r) “Final” means, with respect to any order of court, including, without
4 limitation, the Judgment, that such order represents a final and binding determination of all issues
5 within its scope and is not subject to further review on appeal or otherwise. Without limitation,
6 an order becomes “Final” when: (a) no appeal has been filed and the prescribed time for
7 commencing any appeal has expired; or (b) an appeal has been filed and either (i) the appeal has
8 been dismissed and the prescribed time, if any, for commencing any further appeal has expired,
9 or (ii) the order has been affirmed in its entirety and the prescribed time, if any, for commencing
10 any further appeal has expired. For purposes of this Settlement Agreement, an “appeal” includes
11 appeals as of right, discretionary appeals, interlocutory appeals, proceedings involving writs of
12 certiorari or mandamus, and any other proceedings of like kind. Any appeal or other proceeding
13 pertaining solely to any order adopting or approving a Distribution Plan, and/or to any order
14 issued in respect of an application for attorneys’ fees and expenses consistent with this Settlement
15 Agreement, shall not in any way delay or preclude the Judgment from becoming Final.

16 (s) “Gross Settlement Fund” or “Settlement Fund” means the Settlement
17 Amount plus any interest that may accrue.

18 (t) “Indirect Purchaser Plaintiffs” means Michael Brooks, CAE Sound, Steve
19 Wong, Toy-Knowlogy Inc., AGS Devices, Co., AGS Devices, Ltd., J&O Electronics, Nebraska
20 Dynamics, Inc., Angstrom, Inc., MakersLED, and In Home Tech Solutions, Inc., as well as any
21 other Person added as an Indirect Purchaser Plaintiff in the Action.

22 (u) “Indirect Purchaser States” means California, Florida, Michigan,
23 Minnesota, Nebraska, and New York.

24 (v) “Judgment” means the order of judgment and dismissal of the Action with
25 prejudice.

26 (w) “Net Settlement Fund” means the Gross Settlement Fund, less the payments
27 set forth in ¶ 17.

28 (x) “Taitso” means Taitso Corp. and its respective past, present and future

1 direct and indirect parents, members, subsidiaries, and Affiliates, and the past, present, and future
2 respective officers, directors, employees, managers, members, partners, agents, shareholders (in
3 their capacity as shareholders), attorneys and legal representatives, assigns, servants, and
4 representatives, and the predecessors, successors, heirs, executors, administrators, and assigns of
5 each of the foregoing.

6 (y) “Notice, Administrative and Claims Administration Costs” means the
7 reasonable sum of nonrefundable settlement money to be paid out of the Gross Settlement Fund
8 to pay for notice to the Class and related administrative and claims administration costs.

9 (z) “Person(s)” means an individual, corporation, limited liability corporation,
10 professional corporation, limited liability partnership, partnership, limited partnership,
11 association, joint stock company, estate, legal representative, trust, unincorporated association,
12 government or any political subdivision or agency thereof, and any business or legal entity and
13 any spouses, heirs, predecessors, successors, representatives or assignees of any of the foregoing.

14 (aa) “Proof of Claim and Release” means the form to be sent to the Class, upon
15 further order(s) of the Court, by which any member of the Class may make claims against the
16 Gross Settlement Fund.

17 (bb) “Released Claims” means any and all manner of claims, demands, rights,
18 actions, suits, causes of action, whether class, individual or otherwise in nature, fees, costs,
19 penalties, injuries, damages whenever incurred, liabilities of any nature whatsoever, known or
20 unknown (including, but not limited to, “Unknown Claims”), foreseen or unforeseen, suspected
21 or unsuspected, asserted or unasserted, contingent or non-contingent, in law or in equity, under the
22 laws of any jurisdiction, which Releasers or any of them, whether directly, representatively,
23 derivatively, or in any other capacity, ever had, now have or hereafter can, shall or may have,
24 relating in any way to any conduct on or before the Effective Date and arising out of or related
25 in any way in whole or in part to any facts, circumstances, acts, or omissions by Releasees which
26 were alleged or which could have been alleged in the Action, including but not limited to any
27 conduct by Releasees regardless of where it occurred at any time on or before the Effective Date
28 concerning, arising out of or related to (1) the purchase, pricing, selling, discounting, marketing,

1 manufacturing and/or distributing of Capacitors; (2) any agreement, combination or conspiracy
2 to raise, fix, maintain or stabilize the prices of film capacitors or restrict, reduce, alter or allocate
3 the supply, quantity or quality of Capacitors or concerning the development, manufacture,
4 supply, distribution, transfer, marketing, sale or pricing of Capacitors, or any other restraint of
5 competition alleged in the Action or that could have been or hereafter could be alleged against
6 the Releasees relating to Capacitors, or (3) any other restraint of competition relating to
7 Capacitors that could have been or hereafter could be alleged against the Releasees as a violation
8 of the Sherman Act or any other antitrust, unjust enrichment, unfair competition, unfair practices,
9 trade practices, price discrimination, unitary pricing, racketeering, civil conspiracy or consumer
10 protection law, whether under federal, state, local or foreign law provided however, that nothing
11 herein shall release: (i) claims involving any negligence, personal injury, breach of contract,
12 bailment, failure to deliver lost goods, damaged or delayed goods, product defect, securities or
13 similar claim relating to any Capacitors; and (ii) claims for damages under the state or local laws
14 of any jurisdiction other than an Indirect Purchaser State, as defined herein in this Settlement
15 Agreement.

16 (cc) "Releasees" refers jointly and severally, individually and collectively to
17 Taitso as defined in ¶ 1(x) above.

18 (dd) "Releasors" refers jointly and severally, individually and collectively to the
19 Indirect Purchaser Plaintiffs and each and every member of the Class on their own behalf and on
20 behalf of their respective past, present, and/or future direct and indirect parents, members,
21 subsidiaries and Affiliates, and their past, present and/or future officers, directors, employees,
22 agents, attorneys and legal representatives, servants, and representatives, and the predecessors,
23 successors, heirs, executors, administrators and assigns of each of the foregoing.

24 (ee) "Settlement" means the settlement of the Released Claims set forth herein.

25 (ff) "Settlement Agreement" means this settlement agreement dated June 2, 2021.

26 (gg) "Settlement Amount" means One Hundred Fifty Thousand U.S. Dollars
27 (\$150,000.00).

1 (hh) “Settling Parties” means, collectively, the Indirect Purchaser Plaintiffs (on
2 behalf of themselves and the Class) and Taitso.

3 (ii) “Unknown Claims” means any Released Claim that an Indirect Purchaser
4 Plaintiff and/or Class Member does not know or suspect to exist in his, her or its favor at the time
5 of the release of the Releasees that if known by him, her or it, might have affected his, her or its
6 settlement with and release of the Releasees, or might have affected his, her or its decision not to
7 object to this Settlement. Such Unknown Claims include claims that are the subject of California
8 Civil Code § 1542 and equivalent, similar or comparable laws or principles of law. California
9 Civil Code § 1542 provides:

10 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
11 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
12 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
13 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
14 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
15 DEBTOR OR RELEASED PARTY.

16 **Preliminary Approval Order, Notice Order and Settlement Hearing**

17 2. ***Reasonable Best Efforts to Effectuate this Settlement.*** The Settling Parties: (a)
18 acknowledge that it is their intent to consummate this Settlement Agreement; and (b) agree to
19 cooperate to the extent reasonably necessary to effectuate and implement the terms and conditions
20 of this Settlement Agreement and to exercise their reasonable best efforts to accomplish the terms
21 and conditions of this Settlement Agreement.

22 3. ***Motion for Preliminary Approval.*** At a time to be determined by Class Counsel,
23 subject to ¶ 7, Class Counsel shall submit this Settlement Agreement to the Court and shall apply
24 for entry of a Preliminary Approval Order, requesting, *inter alia*, preliminary approval of the
25 Settlement. The motion shall include (a) the proposed Preliminary Approval Order, and (b) a
26 request for certification of the Class for settlement purposes pursuant to Federal Rule of Civil
27 Procedure 23.

28 4. ***Proposed Notice.*** At a time to be determined in their sole discretion, Class Counsel

1 shall submit to the Court for approval a proposed form of, method for and schedule for
2 dissemination of notice to the Class. To the extent practicable and to the extent consistent with
3 this paragraph, Class Counsel may seek to coordinate this notice program with other settlements
4 that may be reached in the Action in order to reduce the expense of notice. This motion shall
5 recite and ask the Court to find that the proposed form of and method for dissemination of the
6 notice to the Class constitutes valid, due and sufficient notice to the Class, constitutes the best
7 notice practicable under the circumstances, and complies fully with the requirements of Federal
8 Rule of Civil Procedure 23.

9 5. ***Claims Administrator.*** Indirect Purchaser Plaintiffs shall retain a Claims
10 Administrator, which shall be responsible for the claims administration process including
11 distribution to Class Members pursuant to a court-approved plan of distribution. The fees and
12 expenses of the Claims Administrator shall be paid exclusively out of the Settlement Fund. In no
13 event shall Taitso be separately responsible for any fees or expenses of the Claims Administrator
14 unless so specified in this agreement.

15 6. ***Requests for Exclusion (Opt Outs).*** Any Class Member that wishes to seek
16 exclusion from the Settlement Class by “opting out” must timely submit a written request for
17 Exclusion to the Claims Administrator (a “Request for Exclusion”). To be effective, such
18 Requests for Exclusion must state: the Settlement Class Member’s full legal name, address and
19 telephone number; that the Class Member purchased Capacitors indirectly from one or more
20 Distributor who themselves purchased from one of the Defendants during the Class Period; and
21 that the Class Member (1) wants to be excluded from the *In re Capacitors Antitrust Litigation* –
22 Indirect Purchaser Actions class action settlement with Taitso and (2) understands that by so
23 doing, the Class Member will not be able to get any money or benefits from the settlement with
24 Taitso under the Settlement Agreement. All Requests for Exclusion must be signed and dated by
25 the Class Member or its officer or legal representative, and be (1) mailed to the Claims
26 Administrator via First Class United States Mail (or United States Mail for overnight delivery)
27 and postmarked by a date certain to be specified on the Notice, or (2) received by the Claims
28 Administrator by that date, provided, however, that if a Class Member mails the Opt-Out

1 Statement pursuant to option (1), it will be effective only if received by the Claims Administrator
2 on or before ten (10) calendar days after the end of the Opt-Out Period. Persons who opt out are
3 not entitled to any monetary award from the Settlement Fund.

4 7. ***Motion for Final Approval and Entry of Final Judgment.*** Prior to the date set by
5 the Court to consider whether this Settlement should be finally approved, Class Counsel shall
6 submit a motion for final approval of the Settlement by the Court. The Settling Parties shall
7 jointly seek entry of the Final Approval Order and Judgment:

8 (a) certifying the Settlement Class, as defined in this Settlement Agreement,
9 pursuant to Federal Rule of Civil Procedure 23, solely for purposes of this Settlement;

10 (b) fully and finally approving the Settlement contemplated by this Settlement
11 Agreement and its terms as being fair, reasonable and adequate within the meaning of Federal
12 Rule of Civil Procedure 23 and directing its consummation pursuant to its terms and conditions.

13 (c) finding that the notice given to the Class Members constituted the best
14 notice practicable under the circumstances and complies in all respects with the requirements of
15 Federal Rule of Civil Procedure 23 and due process;

16 (d) directing that the Action be dismissed with prejudice as to Taitso and, except
17 as provided for herein, without costs;

18 (e) discharging and releasing the Releasees from all Released Claims;

19 (f) permanently barring and enjoining the institution and prosecution, by
20 Indirect Purchaser Plaintiffs and Class Members, of any other action against the Releasees in any
21 court asserting any claims related in any way to the Released Claims;

22 (g) reserving continuing and exclusive jurisdiction over the Settlement,
23 including all future proceedings concerning the administration, consummation and enforcement
24 of this Settlement Agreement;

25 (h) determining pursuant to Federal Rule of Civil Procedure 54(b) that there is
26 no just reason for delay and directing entry of a final judgment as to Taitso; and

27 (i) containing such other and further provisions consistent with the terms of
28 this Settlement Agreement to which the parties expressly consent in writing.

1 8. **Stay Order.** Upon the Execution Date, the Action shall be stayed as against Taitsu
2 only. Should the Action be tried against any Defendants other than Taitsu, the parties specifically
3 agree that any findings therein shall not be binding on or admissible in evidence against Taitsu or
4 prejudice Taitsu in any way in any future proceeding involving Taitsu.

5 9. Upon the date that the Court enters an order preliminarily approving the
6 Settlement, Indirect Purchaser Plaintiffs and members of the Class shall be barred and enjoined
7 from commencing, instituting or continuing to prosecute any action or any proceeding in any
8 court of law or equity, arbitration tribunal, administrative forum or other forum of any kind
9 worldwide based on the Released Claims. Nothing in this provision shall prohibit the Indirect
10 Purchaser Plaintiffs or Class Counsel from continuing to participate in discovery in the Action
11 that is initiated by other plaintiffs.

12 **Releases**

13 10. **Released Claims.** Upon the Effective Date, the Releasors (regardless of whether
14 any such Releasor ever seeks or obtains any recovery by any means, including, without
15 limitation, by submitting a Proof of Claim and Release, any distribution from the Gross
16 Settlement Fund) by virtue of this Settlement Agreement shall be deemed to have, and by
17 operation of the Judgment shall have fully, finally and forever released, relinquished and
18 discharged all Released Claims against the Releasees.

19 11. **No Future Actions Following Release.** The Releasors shall not, after the Effective
20 Date, seek (directly or indirectly) to commence, institute, maintain or prosecute any suit, action
21 or complaint or collect from or proceed against Taitsu or any other Releasee (including pursuant
22 to the Action) based on the Released Claims in any forum worldwide, whether on his, her, or its
23 own behalf or as part of any putative, purported or certified class of purchasers or consumers.

24 12. **Covenant Not to Sue.** Releasors hereby covenant not to sue the Releasees with
25 respect to any such Released Claims. Releasors shall be permanently barred and enjoined from
26 instituting, commencing or prosecuting against the Releasees any claims based in whole or in
27 part on the Released Claims. The Settling Parties contemplate and agree that this Settlement
28 Agreement may be pleaded as a bar to a lawsuit, and an injunction may be obtained, preventing

1 any action from being initiated or maintained in any case sought to be prosecuted by or on behalf
2 of Indirect Purchaser Plaintiffs or Class Members with respect to the Released Claims.

3 13. ***Waiver of California Civil Code § 1542 and Similar Laws.*** The Releasors
4 acknowledge that, by virtue of the execution of this Settlement Agreement, and for the
5 consideration received hereunder, it is their intention to release, and they are releasing, all
6 Released Claims, even Unknown Claims. In furtherance of this intention, the Releasors expressly
7 waive and relinquish, to the fullest extent permitted by law, any rights or benefits conferred by
8 the provisions of California Civil Code § 1542, as set forth in ¶ 1(ii), or equivalent, similar or
9 comparable laws or principles of law. The Releasors acknowledge that they have been advised
10 by Class Counsel of the contents and effects of California Civil Code § 1542, and hereby
11 expressly waive and release with respect to the Released Claims any and all provisions, rights
12 and benefits conferred by California Civil Code § 1542 or by any equivalent, similar or
13 comparable law or principle of law in any jurisdiction. The Releasors may hereafter discover
14 facts other than or different from those which they know or believe to be true with respect to the
15 subject matter of the Released Claims, but the Releasors hereby expressly waive and fully, finally
16 and forever settle and release any known or unknown, suspected or unsuspected, foreseen or
17 unforeseen, asserted or unasserted, contingent or non-contingent, and accrued or unaccrued
18 claim, loss or damage with respect to the Released Claims, whether or not concealed or hidden,
19 without regard to the subsequent discovery or existence of such additional or different facts. The
20 release of unknown, unanticipated, unsuspected, unforeseen, and unaccrued losses or claims in
21 this paragraph is not a mere recital.

22 14. ***Claims Excluded from Release.*** Notwithstanding the foregoing, the releases
23 provided herein shall not release claims against Taitso for product liability, breach of contract,
24 breach of warranty or personal injury, or any other claim unrelated to the allegations in the Action
25 of restraint of competition or unfair competition with respect to Capacitors. Additionally, the
26 releases provided herein shall not release any claims to enforce the terms of this Settlement
27 Agreement.

1 **Settlement Fund**

2 15. ***Settlement Payment.*** Taitso shall pay by wire transfer the Settlement Amount
3 (\$150,000) to the Escrow Agent pursuant to escrow instructions within 45 days after the
4 Execution Date. This amount constitutes the total amount of payment that Taitso is required to
5 make in connection with this Settlement Agreement. This amount shall not be subject to
6 reduction, and upon the occurrence of the Effective Date, no funds shall revert to Taitso except
7 as provided herein. The Escrow Agent shall only act in accordance with the mutually agreed
8 escrow instructions.

9 16. ***Disbursements Prior to Effective Date.*** No amount may be disbursed from the
10 Gross Settlement Fund unless and until the Effective Date, except that: (a) Notice, Administrative
11 and Claims Administration Costs may be paid from the Gross Settlement Fund as they become
12 due; (b) Taxes and Tax Expenses (as defined in ¶ 20(b) below) may be paid from the Gross
13 Settlement Fund as they become due, and (c) attorneys' fees and reimbursement of litigation costs
14 may be paid as ordered by the Court, which may be disbursed during the pendency of any appeals,
15 which may be taken from the judgment to be entered by the Court finally approving this
16 Settlement.

17 17. ***Refund by Escrow Agent.*** If the Settlement as described herein is not finally
18 approved by any court, or it is terminated as provided herein, or the Judgment as described herein
19 is not approved or entered or is overturned on appeal or by writ, the Gross Settlement Fund,
20 including the Settlement Amount and all interest earned on the Settlement Amount while held in
21 escrow, excluding only Notice, Administrative and Claims Administration Costs and Taxes
22 and/or Tax Expenses, shall be refunded, reimbursed and repaid by the Escrow Agent to Taitso
23 within five (5) business days after receiving notice pursuant to ¶ 37 below.

24 18. ***Refund by Class Counsel.*** If the Settlement as described herein is not finally
25 approved by any court, or it is terminated as provided herein, or the Judgment as described herein
26 is not approved or entered or is overturned on appeal or by writ, any attorneys' fees and costs
27 previously paid pursuant to this Settlement Agreement (as well as interest on such amounts) shall
28 be refunded, reimbursed and repaid by Class Counsel within thirty (30) business days after

1 receiving notice pursuant to ¶ 37 below.

2 19. **No Additional Payments by Taitso.** Under no circumstances will Taitso be
3 required to pay more or less than the Settlement Amount pursuant to this Settlement Agreement
4 and the Settlement set forth herein. For purposes of clarification, the payment of any Fee and
5 Expense Award (as defined in ¶ 29 below), the Notice, Administrative and Claims
6 Administrative Costs, and any other costs associated with the implementation of this Settlement
7 Agreement shall be exclusively paid from the Settlement Amount.

8 20. **Taxes.** The Settling Parties and the Escrow Agent agree to treat the Gross Settlement
9 Fund as being at all times a “qualified settlement fund” within the meaning of Treas. Reg.
10 § 1.468B-1. The Escrow Agent shall timely make such elections as necessary or advisable to
11 carry out the provisions of this paragraph, including the “relation-back election” (as defined in
12 Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such elections shall be made in
13 compliance with the procedures and requirements contained in such regulations. It shall be the
14 responsibility of the Escrow Agent to prepare and deliver timely and properly the necessary
15 documentation for signature by all necessary parties, and thereafter to cause the appropriate filing
16 to occur.

17 (a) For the purpose of § 1.468B of the Internal Revenue Code of 1986, as amended,
18 and the regulations promulgated thereunder, the “administrator” shall be the Escrow Agent. The
19 Escrow Agent shall satisfy the administrative requirements imposed by Treas. Reg. § 1.468B-2
20 by, e.g., (i) obtaining a taxpayer identification number, (ii) satisfying any information reporting
21 or withholding requirements imposed on distributions from the Gross Settlement Fund, and (iii)
22 timely and properly filing applicable federal, state and local tax returns necessary or advisable
23 with respect to the Gross Settlement Fund (including, without limitation, the returns described in
24 Treas. Reg. § 1.468B-2(k)) and paying any taxes reported thereon. Such returns (as well as the
25 election described in this paragraph) shall be consistent with the provisions of this paragraph and
26 in all events shall reflect that all Taxes as defined in ¶ 20(b) below on the income earned by the
27 Gross Settlement Fund shall be paid out of the Gross Settlement Fund as provided in ¶ 20(b)
28 hereof;

1 (b) The following shall be paid out of the Gross Settlement Fund: (i) all taxes
2 (including any estimated taxes, interest or penalties) arising with respect to the income earned
3 by the Gross Settlement Fund, including, without limitation, any taxes or tax detriments that may
4 be imposed upon Taitso or its counsel with respect to any income earned by the Gross Settlement
5 Fund for any period during which the Gross Settlement Fund does not qualify as a “qualified
6 settlement fund” for federal or state income tax purposes (collectively, “Taxes”); and (ii) all
7 expenses and costs incurred in connection with the operation and implementation of this
8 paragraph, including, without limitation, expenses of tax attorneys and/or accountants and
9 mailing and distribution costs and expenses relating to filing (or failing to file) the returns
10 described in this paragraph (collectively, “Tax Expenses”). In all events neither Taitso nor its
11 counsel shall have any liability or responsibility for the Taxes or the Tax Expenses. With funds
12 from the Gross Settlement Fund, the Escrow Agent shall indemnify and hold harmless Taitso
13 and its counsel for Taxes and Tax Expenses (including, without limitation, Taxes payable by
14 reason of any such indemnification). Further, Taxes and Tax Expenses shall be treated as, and
15 considered to be, a cost of administration of the Gross Settlement Fund and shall timely be paid by
16 the Escrow Agent out of the Gross Settlement Fund without prior order from the Court and the
17 Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold
18 from distribution to Authorized Claimants any funds necessary to pay such amounts, including
19 the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts
20 that may be required to be withheld under Treas. Reg. §1.468B-2(1)(2)); neither Taitso nor its
21 counsel is responsible therefor, nor shall they have any liability therefor. The Settling Parties
22 agree to cooperate with the Escrow Agent, each other, their tax attorneys and their accountants
23 to the extent reasonably necessary to carry out the provisions of this paragraph.

24 **Administration and Distribution of Gross Settlement Fund**

25 21. *Time to Appeal.* The time to appeal from an approval of the Settlement shall
26 commence upon the Court’s entry of the Judgment regardless of whether or not either the
27 Distribution Plan or an application for attorneys’ fees and expenses has been submitted to the
28 Court or resolved.

1 22. ***Distribution of Gross Settlement Fund.*** Upon further orders of the Court, the
2 Claims Administrator, subject to such supervision and direction of the Court and/or Class Counsel
3 as may be necessary or as circumstances may require, shall administer the claims submitted by
4 members of the Class and shall oversee distribution of the Gross Settlement Fund to Authorized
5 Claimants pursuant to the Distribution Plan. Subject to the terms of this Settlement Agreement
6 and any order(s) of the Court, the Gross Settlement Fund shall be applied as follows:

7 (a) To pay all costs and expenses reasonably and actually incurred in providing
8 notice to the Class in connection with administering and distributing the Net Settlement Fund to
9 Authorized Claimants, and in connection with paying escrow fees and costs, if any;

10 (b) To pay all costs and expenses, if any, reasonably and actually incurred in
11 soliciting claims and assisting with the filing and processing of such claims;

12 (c) To pay the Taxes and Tax Expenses as defined herein;

13 (d) To pay any Attorney Fee and Expense Award that is allowed by the Court,
14 subject to and in accordance with the Agreement; and

15 (e) To distribute the balance of the “Net Settlement Fund” to Authorized
16 Claimants as allowed by the Agreement, any Distribution Plan or order of the Court.

17 23. ***Distribution of Net Settlement Fund.*** The Net Settlement Fund shall be distributed
18 in accordance with the Distribution Plan that is approved by the Court.

19 24. All Persons who fall within the definition of the Class who do not timely and
20 validly request to be excluded from the Class shall be subject to and bound by the provisions of
21 this Settlement Agreement, the releases contained herein, and the Judgment with respect to all
22 Released Claims, regardless of whether such Persons seek or obtain by any means, including,
23 without limitation, by submitting a Proof of Claim and Release or any similar document, any
24 distribution from the Gross Settlement Fund or the Net Settlement Fund.

25 25. ***No Liability for Distribution of Settlement Funds.*** Neither the Releasees nor their
26 counsel shall have any responsibility for, interest in or liability whatsoever with respect to the
27 distribution of the Gross Settlement Fund; the Distribution Plan; the determination,
28 administration, or calculation of claims; the Settlement Fund’s qualification as a “qualified

1 settlement fund”; the payment or withholding of Taxes or Tax Expenses; the distribution of the
2 Net Settlement Fund; or any losses incurred in connection with any such matters. The Releasors
3 hereby fully, finally and forever release, relinquish and discharge the Releasees and their counsel
4 from any and all such liability. No Person shall have any claim against Class Counsel or the
5 Claims Administrator based on the distributions made substantially in accordance with the
6 Agreement and the Settlement contained herein, the Distribution Plan or further orders of the
7 Court.

8 26. ***Balance Remaining in Net Settlement Fund.*** If there is any balance remaining in
9 the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), Class
10 Counsel may reallocate such balance among Authorized Claimants in an equitable and economic
11 fashion, distribute the remaining funds through *cy pres*, or allow the money to escheat to federal
12 or state governments, subject to Court approval. In no event shall the Net Settlement Fund revert
13 to Taitso.

14 27. ***Distribution Plan Not Part of Settlement.*** It is understood and agreed by the
15 Settling Parties that any Distribution Plan, including any adjustments to any Authorized
16 Claimant’s claim, is not a part of this Settlement Agreement and is to be considered by the Court
17 separately from the Court’s consideration of the fairness, reasonableness and adequacy of the
18 Settlement set forth in this Settlement Agreement, and any order or proceedings relating to the
19 Distribution Plan shall not operate to terminate or cancel this Settlement Agreement or affect the
20 finality of the Judgment, the Final Approval Order, or any other orders entered pursuant to this
21 Settlement Agreement. The time to appeal from an approval of the Settlement shall commence
22 upon the Court’s entry of the Judgment regardless of whether either the Distribution Plan or an
23 application for attorneys’ fees and expenses has been submitted to the Court or approved.

24 **Attorneys’ Fees and Reimbursement of Expenses**

25 28. ***Fee and Expense Application.*** Class Counsel may submit an application or
26 applications (the “Fee and Expense Application”) for distributions from the Gross Settlement
27 Fund, for: (a) an award of attorneys’ fees; plus (b) reimbursement of expenses incurred in
28 connection with prosecuting the Action; plus (c) any interest on such attorneys’ fees and expenses

1 (until paid) at the same rate and for the same periods as earned by the Settlement Fund, as
2 appropriate, and as may be awarded by the Court.

3 29. ***Payment of Fee and Expense Award.*** Any amounts that are awarded by the Court
4 pursuant to the above paragraph (the “Fee and Expense Award”) shall be paid from the Gross
5 Settlement Fund consistent with the provisions of this Settlement Agreement.

6 30. ***Award of Fees and Expenses Not Part of Settlement.*** The procedure for, and the
7 allowance or disallowance by the Court of, the Fee and Expense Application are not part of the
8 Settlement set forth in this Settlement Agreement, and are to be considered by the Court
9 separately from the Court’s consideration of the fairness, reasonableness and adequacy of the
10 Settlement set forth in this Settlement Agreement. Any order or proceeding relating to the Fee
11 and Expense Application, or any appeal from any Fee and Expense Award or any other order
12 relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this
13 Settlement Agreement, or affect or delay the finality of the Judgment and the Settlement of the
14 Action as set forth herein. No order of the Court or modification or reversal on appeal of any
15 order of the Court concerning any Fee and Expense Award or Distribution Plan shall constitute
16 grounds for cancellation or termination of this Settlement Agreement.

17 31. ***No Liability for Fees and Expenses of Class Counsel.*** Taitsu shall have no
18 responsibility for, and no liability whatsoever with respect to, any payment(s) to Class Counsel
19 pursuant to this Settlement Agreement and/or to any other Person who may assert some claim
20 thereto or any Fee and Expense Award that the Court may make in the Action, other than as set
21 forth in this Settlement Agreement.

22 **Conditions of Settlement, Effect of Disapproval, Cancellation or Termination**

23 32. ***Occurrence of Effective Date.*** Upon the occurrence of all of the events required in
24 order to trigger the Effective Date as defined in ¶ 1(m), any and all remaining interest or right of
25 Taitsu in or to the Gross Settlement Fund, if any, shall be absolutely and forever extinguished,
26 and the Gross Settlement Fund (less any Notice and Administrative Costs, Taxes or Tax
27 Expenses or any Fee and Expense Award paid) shall be transferred from the Escrow Agent to
28 the Claims Administrator as successor Escrow Agent within ten (10) days after the Effective

1 Date.

2 33. **Failure of Effective Date to Occur.** If, for whatever reason, the Effective Date
3 does not occur or is not met, then this Settlement Agreement shall be cancelled and terminated,
4 subject to and in accordance with ¶¶ 36-37, below, unless the Settling Parties mutually agree in
5 writing to proceed with this Settlement Agreement.

6 34. **Exclusions.** Class Counsel shall cause copies of requests for exclusion from the
7 Class to be provided to Taitso's counsel. No later than 14 days after the final date for mailing
8 requests for exclusion, Class Counsel shall provide Taitso's counsel with a complete and final
9 list of opt-outs. With the motion for final approval of the Settlement, Class Counsel will file with
10 the Court a complete list of requests for exclusion from the Class, including only the name, city
11 and state of the person or entity requesting exclusion.

12 35. **Objections.** Settlement Class members who wish to object to any aspect of the
13 Settlement must file with the Court a written statement containing their objection by end of the
14 period to object to the Settlement. Any award or payment of attorneys' fees made to counsel to
15 an objector to the Settlement shall only be made by Court order and upon a showing of the benefit
16 conferred to the Class. In determining any such award of attorneys' fees to an objector's counsel,
17 the Court will consider the incremental value to the Class caused by any such objection. Any
18 award of attorneys' fees by the Court will be conditioned on the objector and his or her attorney
19 stating under penalty of perjury that no payments shall be made to the objector based on the
20 objector's participation in the matter - other than as ordered by the Court.

21 36. **Failure to Enter Proposed Preliminary Approval Order, Final Approval Order**
22 **or Judgment.** If the Court does not enter the Preliminary Approval Order, the Final Approval
23 Order or the Judgment, or if the Court enters the Final Approval Order and the Judgment and
24 appellate review is sought and, on such review, the Final Approval Order or the Judgment is
25 finally vacated, modified or reversed, then this Settlement Agreement and the Settlement
26 incorporated therein shall be cancelled and terminated; provided, however, the Settling Parties
27 agree to act in good faith to secure Final Approval of this Settlement and to attempt to address
28 in good faith concerns regarding the Settlement identified by the Court and any court of appeal.

1 No Settling Party shall have any obligation whatsoever to proceed under any terms other than
2 substantially in the form provided and agreed to herein; provided, however, that no order of the
3 Court concerning any Fee and Expense Application or Distribution Plan, or any modification or
4 reversal on appeal of such order, shall constitute grounds for cancellation or termination of this
5 Settlement Agreement by any Settling Party. Without limiting the foregoing, Taitso shall have,
6 in its sole and absolute discretion, the option to terminate the Settlement in its entirety in the
7 event that the Judgment, upon becoming Final, does not provide for the dismissal with prejudice
8 of the Action against it.

9 37. **Termination.** Unless otherwise ordered by the Court, in the event that the Effective
10 Date does not occur or this Settlement Agreement should terminate, or be cancelled or otherwise
11 fail to become effective for any reason or the Settlement as described herein is not finally
12 approved by the Court, or the Judgment is reversed or vacated following any appeal taken
13 therefrom, then:

14 (a) within five (5) business days after written notification of such event is sent
15 by counsel for Taitso to the Escrow Agent, the Gross Settlement Fund, including the Settlement
16 Amount and all interest earned on the Settlement Fund while held in escrow excluding only
17 Notice Administrative and Claims Administration Costs that have either been properly disbursed
18 or are due and owing, Taxes and Tax Expenses that have been paid or that have accrued and will
19 be payable at some later date, and attorneys' fees and costs that have been disbursed pursuant to
20 Court order will be refunded, reimbursed and repaid by the Escrow Agent to Taitso; if said
21 amount or any portion thereof is not returned within such five (5) business day period, then
22 interest shall accrue thereon at the rate of ten percent (10%) per annum until the date that said
23 amount is returned;

24 (b) within thirty (30) business days after written notification of such event is
25 sent by Counsel for Taitso to Class Counsel, all attorneys' fees and costs which have been
26 disbursed to class counsel pursuant to Court order shall be refunded, reimbursed and repaid by
27 Class Counsel to Taitso;

28 (c) the Escrow Agent or its designee shall apply for any tax refund owed to the

1 Gross Settlement Fund and pay the proceeds to Taitso, after deduction of any fees or expenses
2 reasonably incurred in connection with such application(s) for refund, pursuant to such written
3 request;

4 (d) the Settling Parties shall be restored to their respective positions in the
5 Action as of the Execution Date, with all of their respective claims and defenses, preserved as
6 they existed on that date;

7 (e) the terms and provisions of this Settlement Agreement, with the exception
8 of ¶¶ 37-40 (which shall continue in full force and effect), shall be null and void and shall have
9 no further force or effect with respect to the Settling Parties, and neither the existence nor the
10 terms of this Settlement Agreement (nor any negotiations preceding this Settlement Agreement
11 nor any acts performed pursuant to, or in furtherance of, this Settlement Agreement) shall be
12 used in the Action or in any other action or proceeding for any purpose (other than to enforce the
13 terms remaining in effect); and

14 (f) any judgment or order entered by the Court in accordance with the terms of
15 this Settlement Agreement shall be treated as vacated, nunc pro tunc.

16 **No Admission of Liability**

17 38. ***Final and Complete Resolution.*** The Settling Parties intend the Settlement as
18 described herein to be a final and complete resolution of all disputes between them with respect
19 to the Action and Released Claims and to compromise claims that are contested, and it shall not
20 be deemed an admission by any Settling Party as to the merits of any claim or defense or any
21 allegation made in the Action.

22 39. ***Federal Rule of Evidence 408.*** The Settling Parties agree that this Settlement
23 Agreement, its terms and the negotiations surrounding this Settlement Agreement shall be
24 governed by Federal Rule of Evidence 408 and shall not be admissible or offered or received
25 into evidence in any suit, action or other proceeding, except upon the written agreement of the
26 Settling Parties hereto, pursuant to an order of a court of competent jurisdiction, or as shall be
27 necessary to give effect to, declare or enforce the rights of the Settling Parties with respect to any
28 provision of this Settlement Agreement.

1 40. *Use of Agreement as Evidence.* Neither this Settlement Agreement nor the
2 Settlement, nor any act performed or document executed pursuant to or in furtherance of this
3 Settlement Agreement or the Settlement: (a) is or may be deemed to be or may be used as an
4 admission of, or evidence of, the validity of any Released Claims, of any allegation made in the
5 Action, or of any wrongdoing or liability of Taitso; or (b) is or may be deemed to be or may be
6 used as an admission of, or evidence of, any liability, fault or omission of the Releasees in any
7 civil, criminal or administrative proceeding in any court, administrative agency or other tribunal.
8 Neither this Settlement Agreement nor the Settlement, nor any act performed or document
9 executed pursuant to or in furtherance of this Settlement Agreement or the Settlement shall be
10 admissible in any proceeding for any purpose, except to enforce the terms of the Settlement, and
11 except that the Releasees may file this Settlement Agreement and/or the Judgment in any action
12 for any purpose, including, but not limited to, in order to support a defense or counterclaim based
13 on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or
14 reduction or any other theory of claim preclusion or issue preclusion or similar defense or
15 counterclaim. The limitations described in this paragraph apply whether or not the Court enters
16 the Preliminary Approval Order, the Final Approval Order, or the Judgment, or if the Settlement
17 Agreement is terminated or rescinded.

18 **Miscellaneous Provisions**

19 41. *Voluntary Settlement.* The Settling Parties agree that the Settlement
20 Amount and the other terms of the Settlement as described herein were negotiated in good faith
21 by the Settling Parties, and reflect a settlement that was reached voluntarily and after consultation
22 with competent legal counsel.

23 42. *Consent to Jurisdiction.* Taitso and each Class Member hereby irrevocably
24 submit to the exclusive jurisdiction of the Court only for the specific purpose of any suit, action,
25 proceeding or dispute arising out of or relating to this Settlement Agreement or the applicability
26 of this Settlement Agreement. Solely for purposes of such suit, action, or proceeding, to the fullest
27 extent that they may effectively do so under applicable law, Taitso and the Class Members
28 irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim

1 or objection that they are not subject to the jurisdiction of the Court or that the Court is in any
2 way an improper venue or an inconvenient forum. Nothing herein shall be construed as a
3 submission to jurisdiction for any purpose other than any suit, action, proceeding, or dispute
4 arising out of or relating to this Settlement Agreement or the applicability of this Settlement
5 Agreement.

6 43. **Resolution of Disputes; Retention of Exclusive Jurisdiction.** Any disputes
7 between or among Taitso and any Class Members concerning matters contained in this
8 Settlement Agreement shall, if they cannot be resolved by negotiation and agreement, be
9 submitted to the Court. The Court shall retain exclusive jurisdiction over the implementation and
10 enforcement of this Settlement Agreement.

11 44. **Binding Effect.** This Settlement Agreement shall be binding upon, and inure
12 to the benefit of, the successors and assigns of the parties hereto. Without limiting the generality
13 of the foregoing, each and every covenant and agreement herein by Indirect Purchaser Plaintiffs
14 and Class Counsel shall be binding upon all Class Members.

15 45. **Authorization to Enter Settlement Agreement.** The undersigned
16 representatives of Taitso represent that they are fully authorized to enter into and to execute this
17 Settlement Agreement on behalf of Taitso. Class Counsel, on behalf of Indirect Purchaser
18 Plaintiffs and the Class, represent that they are, subject to Court approval, expressly authorized
19 to take all action required or permitted to be taken by or on behalf of the Indirect Purchaser
20 Plaintiffs and the Class pursuant to this Settlement Agreement to effectuate its terms and to enter
21 into and execute this Settlement Agreement and any modifications or amendments to the
22 Settlement Agreement on behalf of the Class that they deem appropriate.

23 46. **Notices.** All notices under this Settlement Agreement shall be in writing.
24 Each such notice shall be given either by (a) email; (b) hand delivery; (c) registered or certified
25 mail, return receipt requested, postage pre-paid; (d) Federal Express or similar overnight courier;
26 or (e) facsimile and first class mail, postage pre-paid and, if directed to any Class Member, shall
27 be addressed to Class Counsel at their addresses set forth below, and if directed to Taitso, shall
28 be addressed to their attorneys at the addresses set forth below or such other addresses as Class

1 Counsel or Taitso may designate, from time to time, by giving notice to all parties hereto in the
2 manner described in this paragraph.

3 If directed to the Indirect Purchaser Plaintiffs, address notice to:

4 COTCHETT, PITRE & MCCARTHY
5 Adam J. Zapala (azapala@cpmlegal.com)
6 San Francisco Airport Office Center
7 840 Malcolm Road, Suite 200
8 Burlingame, CA 94010
9 Telephone: (650) 697-6000
10 Facsimile: (650) 697-0577

11 If directed to Taitso, address notice to:

12 BONA LAW PC
13 Jarod M. Bona (jarod.bona@bonalawpc.com)
14 4275 Executive Square, Suite 200
15 La Jolla, CA 92037
16 Telephone: (858) 964-4589
17 Facsimile: (858) 964-2301

18 47. **Confidentiality of Settlement Negotiations.** Class Counsel shall keep strictly
19 confidential and not disclose to any third party, including specifically any counsel representing
20 any other current or former party to the Action, any non-public information regarding the Settling
21 Parties' negotiation of this settlement and/or the Settlement Agreement. For the sake of clarity,
22 information contained within this Settlement Agreement shall be considered public, and Taitso
23 may issue a press release regarding execution of the Settlement Agreement and the amount paid
24 in connection with the Settlement Agreement.

25 48. **Headings.** The headings used in this Settlement Agreement are intended for the
26 convenience of the reader only and shall not affect the meaning or interpretation of this
27 Settlement Agreement.

28 49. **No Party Deemed to Be the Drafter.** None of the parties hereto shall be deemed to
be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute,
case law or rule of interpretation or construction that would or might cause any provision to be
construed against the drafter hereof.

50. **Choice of Law.** This Settlement Agreement shall be considered to have been
negotiated, executed and delivered, and to be wholly performed, in the State of California, and

1 the rights and obligations of the parties to this Settlement Agreement shall be construed and
2 enforced in accordance with, and governed by, the substantive laws of the State of California
3 without giving effect to that State's choice of law principles.

4 51. **Amendment; Waiver.** This Settlement Agreement shall not be modified in any
5 respect except by a writing executed by all the parties hereto, and the waiver of any rights conferred
6 hereunder shall be effective only if made by written instrument of the waiving party. The waiver
7 by any party of any breach of this Settlement Agreement shall not be deemed or construed as a
8 waiver of any other breach, whether prior, subsequent or contemporaneous, of this Settlement
9 Agreement.

10 52. **Execution in Counterparts.** This Settlement Agreement may be executed in one
11 or more counterparts. All executed counterparts and each of them shall be deemed to be one
12 and the same instrument. Counsel for the parties to this Settlement Agreement shall exchange
13 among themselves original signed counterparts and a complete set of executed counterparts shall
14 be filed with the Court.

15 53. **Notification of State Officials.** Taitsu shall be responsible for providing all notices
16 required by the Class Action Fairness Act, 28 U.S.C. § 1715, to be provided to state attorneys
17 general or to the Attorney General of the United States.

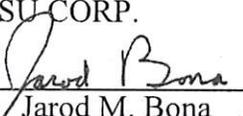
18 54. **Integrated Agreement.** This Settlement Agreement constitutes the entire
19 agreement between the Settling Parties and no representations, warranties or inducements have
20 been made to any party concerning this Settlement Agreement other than the representations,
21 warranties and covenants contained and memorialized herein. It is understood by the Settling
22 Parties that, except for the matters expressly represented herein, the facts or law with respect to
23 which this Settlement Agreement is entered into may turn out to be other than or different from
24 the facts now known to each party or believed by such party to be true; each party therefore
25 expressly assumes the risk of the facts or law turning out to be so different, and agrees that this
26 Settlement Agreement shall be in all respects effective and not subject to termination by reason
27 of any such different facts or law. Except as otherwise provided herein, each party shall bear its
28 own costs and attorneys' fees.

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IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives, have executed this Settlement Agreement as of the Execution Date.

INDIRECT PURCHASER PLAINTIFFS' CLASS COUNSEL, on behalf of Indirect Purchaser Plaintiffs individually and on behalf of the Class

By: 
Adam J. Zapala
COTCHETT, PITRE & MCCARTHY
San Francisco Airport Office Center
840 Malcolm Road, Suite 200
Burlingame, CA 94010
Telephone: 650-697-6000
Fax: 650-697-0577
azapala@cpmlegal.com

TAITSU CORP.
By: 
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