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9 *Interim Lead Counsel for the*
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 13 **UNITED STATES DISTRICT COURT**
 14 **NORTHERN DISTRICT OF CALIFORNIA**
 15 **SAN FRANCISCO DIVISION**

16 **IN RE: CAPACITORS ANTITRUST**
 17 **LITIGATION**

NO. 14-cv-03264-JD

18 **THIS DOCUMENT RELATES TO:**
 19 **ALL INDIRECT PURCHASER ACTIONS**

DECLARATION OF STEVEN N.
WILLIAMS IN SUPPORT OF
INDIRECT PURCHASER PLAINTIFFS'
MOTION FOR FINAL APPROVAL OF
SETTLEMENTS WITH DEFENDANTS
NEC TOKIN, NITSUKO AND OKAYA

Date: July 6, 2017
Time: 10:00 A.M.
Judge: Hon. James Donato
Courtroom: 11, 19th Floor

1 I, Steven N. Williams, 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 and the courts of the State of California. I am a partner with
4 Cotchett, Pitre & McCarthy, LLP (“CPM”), and Interim Lead Counsel for the Indirect Purchaser
5 Plaintiffs (“IPPs”). The matters described herein are based on my personal knowledge, and if
6 called as a witness, I could and would testify competently thereto. I make this declaration
7 pursuant to 28 U.S.C. § 1746.

8 2. I make this declaration in support of IPPs’ motion for final approval of their
9 settlements with Defendants NEC TOKIN Corp. and NEC TOKIN America Inc. (together, “NEC
10 Tokin”), Nitsuko Electronics Corporation (“Nitsuko”), and Okaya Electrics Industries Co., Ltd.
11 (“Okaya”) (collectively, “Settling Defendants”). As used herein, “Settlements” refers collectively
12 to IPPs’ settlements with the Settling Defendants. “Settlement Classes” refers to each of the
13 settlement classes previously certified by the Court.

14 **The Settlements are Fair, Reasonable, and Adequate**

15 3. The Settlements were reached after hard-fought litigation and are the result of
16 arm’s-length negotiations.

17 4. I have extensive experience representing indirect purchaser plaintiff classes in
18 complex, antitrust litigation. Based on my experience, the Settlements, individually and
19 collectively, provide substantial value – both monetary and non-monetary in the form of the
20 Settling Defendants’ cooperation – to the Settlement Classes. I believe the Settlements are fair,
21 reasonable, and adequate and are in the best interests of the Settlement Class.

22 5. Lead Counsel worked tirelessly to obtain complete and accurate information
23 regarding Settling Defendants’ anticompetitive conduct and the volume of commerce at issue in
24 the litigation. This information was used to negotiate and obtain the just and fair Settlements with
25 Settling Defendants. Lead Counsel worked over the course of several months to finalize these
26 Settlements.

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1 6. The Settlements provide compensation to the Settlement Class totaling
 2 \$14,950,000. This amount is a base recovery for IPPs in this litigation, with potential additional
 3 recoveries coming from non-settling Defendants in the future.

4 7. Based on the discovery in this Action and the transactional data obtained from
 5 Defendants and non-party distributors, the Settlements reflect a fairly high percentage of the
 6 overall sales of capacitors by the settling Defendants. The settlement with Nitsuko, for example,
 7 represents 800% of Nitsuko's total sales in the United States during the Class Period; the
 8 settlement with Okaya represents at least 10% of Okaya's total sales in the United States during
 9 the Class Period; and the settlement with NEC TOKIN represents 25.92% of NEC TOKIN's total
 10 sales in the United States during the Class Period. These percentages are not the alleged
 11 overcharge, but rather the percentage of overall sales in the U.S. Given that these calculations are
 12 based on these Defendants' total sales in the United States, and not just the subset of sales to
 13 distributors, the percentages are in fact much higher

14 8. In addition to providing monetary restitution to the Settlement Classes, the
 15 Settlements require substantial cooperation from the Settling Defendants in IPPs' and Lead
 16 Counsel's further prosecution against non-settling Defendants. This cooperation includes oral
 17 proffers of facts regarding the price-fixing conspiracies, production of documents related to the
 18 conspiracy, and making current employees available for interviews, depositions, and trial
 19 testimony. This cooperation has already provided IPPs and Lead Counsel with evidence to
 20 demonstrate the existence, character, and nature of the capacitors conspiracies. Cooperation is
 21 especially valuable in a case like this where documentary evidence may no longer exist due to key
 22 events having taken place more than a decade ago, and where other key witnesses continue to
 23 evade the United States and avoid Court orders requiring depositions. With many witnesses
 24 refusing to provide testimony, Settling Defendants' cooperation is invaluable in IPPs' prosecution
 25 of their Claims against non-settling defendants.

26 **NEC Tokin Settlement Agreement**

27 9. Attached hereto as **Exhibit A** is a true and correct copy of the Settlement
 28 Agreement with NEC Tokin ("NEC Tokin Settlement"). The NEC Tokin Settlement was

1 previously filed with the Court in connection with IPPs’ Motion for Preliminary Approval of
2 these Settlements. (ECF No. 1305-3.)

3 10. Under the NEC Tokin Settlement, NEC Tokin has agreed to pay \$13,250,000 to
4 resolve IPPs’ claims against it. Ex. A at ¶ 1(dd). Based on the sales information provided to IPPs
5 during settlement negotiations, the settlement with NEC Tokin represents 25.92% of NEC
6 Tokin’s total sales in the United States during the Class Period.

7 11. NEC Tokin has also agreed to provide substantial cooperation, as described above,
8 to IPPs assist in prosecution IPPs’ claims against the non-settling defendants. *Id.* at ¶ 30–36.

9 12. Settlement negotiations with NEC Tokin proceeded over the course of many
10 months and involved several high-level executives at NEC Tokin and their lawyers, who are
11 highly experienced and skilled antitrust lawyers. Lead Counsel for IPPs had several meetings with
12 NEC Tokin’s counsel, at which confidential information was exchanged regarding each parties’
13 respective views of liability and damages and NEC Tokin’s financial conditions and prospects.
14 IPPs’ also employed accounting experts to assess NEC Tokin’s ability to pay and its prospects for
15 potential bankruptcy.

16 13. The Settlement with NEC Tokin was reached following mediation sessions
17 conducted with the Honorable Layn R. Phillips (Ret.), a well-regarded mediator who has
18 successfully mediated many complex cases, including antitrust class actions.

19 14. The proposed settlement with NEC Tokin was finalized after the exchange of
20 information, continued dialogue between the parties, negotiations concerning appropriate
21 financial consideration in exchange for a release of claims, and the mediation sessions with Judge
22 Phillips.

23 **Nitsuko Settlement**

24 15. Attached hereto as **Exhibit B** is a true and correct copy of the Settlement
25 Agreement with Nitsuko (“Nitsuko Settlement”). This Settlement Agreement was previously filed
26 with the Court in connection with IPPs’ Motion for Preliminary Approval of these Settlements.
27 ECF No. 1305-4.

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1 16. Under the Nitsuko Settlement, Nitsuko will pay \$800,000 to resolve IPPs' claims
2 against it. Ex. B at ¶ 1(ee). Based on the sales information provided to IPPs in reaching this
3 settlement, the settlement with Nitsuko represents 800% of Nitsuko's total sales in the United
4 States during the Class Period.

5 17. Nitsuko has agreed to provide substantial cooperation, as described above, to assist
6 IPPs in prosecuting their claims against non-settling Defendants. *Id.* at ¶¶ 29–35.

7 18. Settlement negotiations with Nitsuko proceeded over the course of many months
8 and involved several high-level executives at Nitsuko and their lawyers, who are highly
9 experienced and skilled antitrust lawyers. Lead Counsel for IPPs had several meetings with
10 Nitsuko's counsel, at which confidential information was exchanged regarding each parties'
11 respective views of liability and damages and Nitsuko's financial conditions and prospects.

12 19. The proposed settlement with Nitsuko was finalized after this exchange of
13 information, continued dialogue between the parties, and negotiations concerning appropriate
14 financial consideration in exchange for release of claims.

15 **Okaya Settlement**

16 20. Attached hereto as **Exhibit C** is a true and correct copy of the Settlement
17 Agreement with Okaya ("Okaya Settlement"). The Okaya Settlement was previously filed with
18 the Court in connection with IPPs' Motion for Preliminary Approval of these Settlements. ECF
19 No. 1305-5.

20 21. Under the Okaya Settlement, Okaya will pay \$900,000 to resolve IPPs' claims
21 against it. Ex. C at ¶ 1(ee). Based on the sales information provided to IPPs in reaching this
22 settlement, the monetary amount with Okaya represents 10% of Okaya's total sales in the United
23 States during the Class Period.

24 22. Okaya has agreed to provide substantial cooperation, as described above, to assist
25 IPPs in their prosecution of their claims against the non-settling defendants. *Id.* at ¶ 32–37.

26 23. Settlement negotiations with Okaya proceeded over the course of many months
27 and involved several high-level executives at Okaya and their lawyers, who are highly
28 experienced and skilled antitrust lawyers. Lead Counsel for IPPs had several meetings with

1 Okaya's counsel, at which confidential information was exchanged regarding each parties'
2 respective views of liability and damages and Okaya's financial conditions and prospects.

3 24. The proposed settlement with Okaya was finalized after this exchange of
4 information, continued dialogue between the parties, and negotiations concerning appropriate
5 financial consideration in exchange for release of claims.

6 Claims Released

7 25. The Settlement Agreements have substantially similar release provisions. Ex. A at
8 ¶¶ 8–12 (NEC Tokin Settlement); Ex. B at ¶¶ 8–12 (Nitsuko Settlement); Ex. C at ¶¶ 10–14
9 (Okaya Settlement).

10 26. The Settlement Agreements do not resolve or compromise any claims against non-
11 settling Defendants. Ex. A at ¶ 1(aa) (NEC Tokin Settlement); Ex. B at ¶ 1(bb) (Nitsuko
12 Settlement); Ex. C at ¶ 1(bb) (Okaya Settlement).

13 Notice to the Settlement Class

14 27. Lead Counsel has implemented the notice plan approved by this Court on January
15 30, 2017. ECF No. 1457. Based on my experience and involvement in many class notice
16 programs, it is my opinion that the notice plan as implemented was the best notice practicable
17 under the circumstances, and that it comported with due process requirements.

18 28. Lead Counsel for IPPs worked with class action notice provider, A.B. Data, to
19 identify as many Class Members as possible for dissemination of actual notice, e.g., direct mail
20 notice. As stated in the declaration of Eric Schachter, A.B. Data served direct mail notice on
21 nearly 500,000 potential class members, and nearly 100,000 potential Class Members were
22 directly e-mailed. In addition to direct notice, A.B. Data's notice program included (1)
23 publication of the short form notice approved by the Court pursuant to the Preliminary Approval
24 Order in *The Wall Street Journal*, *Electronic Design*, and *Nuts and Volts*, (2) a website banner ad
25 campaign that generated more than 27.3 million banner views on websites likely to reach
26 capacitors purchasers, (3) a settlement website, and (4) a telephone hotline. Schachter Decl. at ¶¶
27 11-14.

1 29. Attached hereto as **Exhibit D** is the list of persons and entities that have requested
2 exclusion from the Settlement Class. This list of excluded Class Members was filed with the
3 Court on June 7, 2017. ECF No. 1662-1. To date, a total of 627 persons or entities opted out of
4 the Settlement Class. Dell, Inc., and its subsidiaries account for 597 of the 627 opted-out entities
5 (approximately 96%). In total, only 10 distinct requests for exclusion were received by A.B.
6 Data: 4 from individuals, and 6 from collective entities.

7 30. Collectively, opted-out individuals and entities represent less than 1.5% of the
8 Settling Defendants' total capacitor sales in the United States.

9 31. The Settlements drew only one objection: that filed on June 5, 2017 by Patrick S.
10 Sweeney. ECF No. 1663. Mr. Sweeney is not a member of any of the Settlement Classes, and on
11 June 22, Mr. Sweeney withdrew his objection with prejudice. Mr. Sweeney received no
12 consideration of any kind in exchange for his withdrawal of the objection. ECF No. 1702.

13 **Final Judgment**

14 32. Proposed Final Judgments as to the IPPs' claims against each of the Settlement
15 Defendants are attached to IPPs' Motion and provided therein. If the Court should grant IPPs'
16 motion for final approval of the Settlements, counsel for the Settling Defendants expressed
17 Settling Defendants' consent to entry of judgment in the forms attached to the motion.

18 I declare that the foregoing is true and correct to the best of my knowledge. Executed on
19 June 26, 2017 in Burlingame, California.

20
21 /s/ Steven N. Williams
22 Steven N. Williams