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

14 **IN RE: CAPACITORS ANTITRUST**
15 **LITIGATION**

Master File NO. 14-cv-03264-JD

16 **THIS DOCUMENT RELATES TO:**
17 **ALL INDIRECT PURCHASER ACTIONS**

DECLARATION OF ADAM J. ZAPALA
IN SUPPORT OF INDIRECT
PURCHASER PLAINTIFFS' MOTION
FOR FINAL APPROVAL OF
SETTLEMENTS WITH DEFENDANTS
HITACHI CHEMICAL, SOSHIN,
HOLYSTONE, NCC/UCC, AND
RUBYCON AND APPROVAL OF
ALLOCATION PLAN

Date: October 18, 2018
Time: 10:00 A.M.
Judge: Hon. James Donato
Courtroom: 11, 19th Floor

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Declaration of Adam J. Zapala in Support of IPP's Motion for Final Approval of Settlements with
Defendants Hitachi Chemical, Soshin, Holystone, NCC/UCC, and Rubycon;
Case No. 14-cv-03264-JD

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 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 1. I make this declaration in support of IPPs’ motion for final approval of their
9 settlements with Defendants (1) Hitachi Chemical Co., Ltd, Hitachi AIC Inc., and Hitachi
10 Chemical Co. America, Ltd. (collectively, “**Hitachi Chemical**”); (2) Soshin Electric Co., Ltd and
11 Soshin Electronics of America, Inc. (together, “**Soshin**”); (3) Holystone Enterprise Co., Ltd, Holy
12 Stone Holdings Co., Ltd, Holy Stone Polytech Co., Ltd, and Milestone Global Technology, Inc.
13 (collectively, “**Holy Stone**”); (4) Nippon Chemi-Con Corp. and United Chemi-Con Corp.
14 (together, “**NCC/UCC**”); and (5) Rubycon Corp. and Rubycon America Inc. (together,
15 “**Rubycon**”). As used herein, “Settlements” refers collectively to IPPs’ settlements with the
16 Settling Defendants for the Round 2 Settlements. “Settlement Classes” refers to each of the
17 settlement classes previously certified by the Court.

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

19 2. The Settlements were reached after hard-fought litigation and are the result of
20 arm’s-length negotiations.

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

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

4 5. The Settlements provide compensation to the Settlement Class totaling
 5 \$34,590,000. This amount is a base recovery for IPPs in this litigation, with potential additional
 6 recoveries coming from non-settling Defendants in the future.

7 6. Based on the discovery in this Action and the transactional data obtained from
 8 Defendants and non-party distributors, the Settlements reflect a high percentage of the overall
 9 sales of the relevant capacitors by the Settling Defendants. The table below summarizes the
 10 excellent results that the Second Round Settlements represent:

Defendant Family	Settlement Amount	Comments
Hitachi	\$14,000,000	Settlement amount represents approximately 29% of Hitachi's <i>total</i> , direct sales of capacitors in the United States during the relevant time period. <i>See</i> Doc. 1844 at 7.
Soshin	\$590,000	Settlement amount represents more than 100% of Soshin's total sales of standalone capacitors to distributors during the relevant time period. <i>See</i> Doc. 1844 at 7.
Holy Stone	\$2,000,000	Settlement amount represents 67% of Holy Stone's <i>total</i> direct sales of capacitors in the United States during the relevant time period. <i>See</i> Doc. 2099 at 12.
NCC/UCC	\$13,500,000	Settlement amount represents 11.4% of NCC/UCC's relevant sales of standalone capacitors to distributors during the relevant time period. <i>See</i> Doc. 2099 at 13.
Rubycon	\$4,500,000	Settlement amount represents 14% of Rubycon's total sales of standalone capacitors to distributors during the relevant time period. <i>See</i> Doc. 2099 at 13.

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

11 **Hitachi Chemical Settlement**

12 8. Attached hereto as **Exhibit A** is a true and correct copy of the Settlement
13 Agreement with Hitachi Chemical (“Hitachi Chemical Settlement”). The Hitachi Chemical
14 Settlement was previously filed with the Court in connection with IPPs’ Motion for Preliminary
15 Approval of these Settlements. (ECF No. 1844-2.)

16 9. Under the Hitachi Chemical Settlement, Hitachi Chemical has agreed to pay
17 \$14,000,000 to resolve IPPs’ claims against it. Ex. A at ¶ 1(ee). Based on the sales information
18 provided to IPPs during settlement negotiations, the settlement with Hitachi Chemical represents
19 29% of Hitachi Chemical’s *total* direct capacitor sales in the United States during the Class
20 Period.

21 10. Hitachi Chemical has also agreed to provide substantial cooperation, as described
22 above, to IPPs assist in prosecution IPPs’ claims against the non-settling defendants. *Id.* at ¶ 32–
23 35.

24 11. IPPs engaged in settlement negotiations with Hitachi Chemical for almost a year.
25 These negotiations included a mediation with a nationally renowned mediator, in person
26 meetings, the exchange of confidential information reflecting the parties’ views of liability and
27 damages, and information concerning Hitachi Chemical’s financial conditions and prospects.
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1 After the mediation and with the assistance of the mediator, the parties engaged in several
2 additional discussions and negotiations regarding an appropriate settlement. These negotiations
3 were hard fought. The settlement was reached after the exchange of expert reports and expert
4 discovery regarding class certification.

5 **Soshin Settlement**

6 12. Attached hereto as **Exhibit B** is a true and correct copy of the Settlement
7 Agreement with Soshin (“Sohin Settlement”). This Settlement Agreement was previously filed
8 with the Court in connection with IPPs’ Motion for Preliminary Approval of these Settlements.
9 ECF No. 1844-4.

10 13. Under the Soshin Settlement, Soshin will pay \$590,000 to resolve IPPs’ claims
11 against it. Ex. B at ¶ 1(ff). Based on the sales information provided to IPPs in reaching this
12 settlement, the settlement with Soshin represents more than 100% of Soshin’s capacitor sales to
13 distributors in the United States during the Class Period.

14 14. Soshin has agreed to provide substantial cooperation, as described above, to assist
15 IPPs in prosecuting their claims against non-settling Defendants. *Id.* at ¶¶ 33-36.

16 15. Settlement negotiations with Soshin followed a similar, although not identical,
17 process as negotiations with Hitachi Chemical. The parties held in-person meeting, telephonic
18 meetings, and exchanged settlement proposals. The proposed settlement was reached only after
19 both sides had the opportunity to be fully informed of the relative strengths and weaknesses of
20 their positions, litigation risks, and issues involving ability to pay. As with Hitachi, the settlement
21 with Soshin was only reached after substantial discovery.

22 **Holy Stone Settlement**

23 16. Attached hereto as **Exhibit C** is a true and correct copy of the Settlement
24 Agreement with Holy Stone (“Holy Stone Settlement”). The Holy Stone Settlement was
25 previously filed with the Court in connection with IPPs’ Motion for Preliminary Approval of
26 these Settlements. ECF No. 2099-3.

1 after both sides had the opportunity to be fully informed of the relative strengths and weaknesses
 2 of their positions and litigation risks. As with the other settlements, the settlement with
 3 NCC/UCC was reached only after substantial discovery.

4 **Rubycon Settlement**

5 24. Attached hereto as **Exhibit E** is a true and correct copy of the Settlement
 6 Agreement with Rubycon (“Rubycon Settlement”). The Rubycon Settlement was previously filed
 7 with the Court in connection with IPPs’ Motion for Preliminary Approval of these Settlements.
 8 ECF No. 2099-5.

9 25. Under the Rubycon Settlement, Rubycon will pay \$4,500,000 to resolve IPPs’
 10 claims against it. Ex. E at ¶ 1(ee). Based on sales information provided to IPPs, the settlement
 11 amount represents 14% of Rubycon’s total sales of standalone capacitors to distributors during the
 12 relevant time period. Rubycon has also agreed to provide substantial cooperation to assist IPPs
 13 in their prosecution of their claims against the non-settling defendants. *Id.* at ¶ 32–35.

14 26. IPPs engaged in settlement discussions with Rubycon for over two years. These
 15 negotiations included assistance from a nationally-renowned mediator, in-person meetings, the
 16 exchange of confidential information reflecting the parties’ respective views of liability and
 17 damages, and information concerning Rubycon’s financial conditions and prospects. With the
 18 assistance of the mediator, the parties engaged in several additional discussions and negotiations
 19 regarding and appropriate settlement. These negotiations were hard fought. The proposed
 20 settlement was reached only after the exchange of information, continued dialogue between the
 21 parties, and negotiation concerning appropriate financial consideration. The settlement was
 22 reached after the exchange of expert reports and expert discovery regarding class certification,
 23 and after the parties had fully briefed class certification.

24 **Claims Released**

25 27. The Settlement Agreements have substantially similar release provisions. Ex. A at
 26 ¶¶ 10–14 (Hitachi Settlement); Ex. B at ¶¶ 11-15 (Soshin Settlement); Ex. C at ¶¶ 10–14 (Holy
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1 Stone Settlement); Ex. D at ¶¶ 10-14 (NCC/UCC Settlement); Ex. E at ¶¶ 10-14 (Rubycon
2 Settlement).

3 28. The Settlement Agreements do not resolve or compromise any claims against non-
4 settling Defendants. Ex. A at ¶ 1(bb) (Hitachi Chemical Settlement); Ex. B at ¶ 1(bb) (Soshin
5 Settlement); Ex. C at ¶ 1(bb) (Holy Stone Settlement); Ex. D at ¶ 1(bb) (NCC/UCC Settlement);
6 Ex. E at ¶ 1(aa) (Rubycon Settlement).

7 **Notice to the Settlement Class**

8 29. Lead Counsel has implemented the notice plan approved by this Court on May 25,
9 2018. ECF No. 2152. Based on my experience and involvement in many class notice programs, it
10 is my opinion that the notice plan as implemented was the best notice practicable under the
11 circumstances, and that it comported with due process requirements.

12 30. Lead Counsel for IPPs worked with class action notice provider, A.B. Data, to
13 identify as many Class Members as possible for dissemination of actual notice, *e.g.*, direct mail
14 notice. As stated in the declaration of Eric Schachter, A.B. Data served direct mail notice on
15 more than 400,000 potential class members, and more than 90,000 potential Class Members were
16 directly e-mailed. Declaration of Eric Schacher at ¶¶ 4-9, 11-12. In addition to direct notice,
17 A.B. Data's notice program included (1) publication of the short form notice approved by the
18 Court pursuant to the Preliminary Approval Order in *The Wall Street Journal*, (2) a website
19 banner ad campaign that generated more than 20 million banner views on websites likely to reach
20 capacitors purchasers, (3) a settlement website, and (4) a telephone hotline. Schachter Decl. at ¶¶
21 10, 13-21.

22 31. Attached hereto as **Exhibit F** is the list of persons and entities that have requested
23 exclusion from the Settlement Class. This list of excluded Class Members was filed with the
24 Court on September 5, 2018. ECF No. 2185-1. To date, a total of 73 persons or entities submitted
25 requests to opt out of the Settlement Classes included with the Notice Program. Plexus
26 Corporation, and its subsidiaries, and Microsoft Corporation, and its subsidiaries, account for 65
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1 of the 73 opted-out entities (approximately 89%). In total, only 7 distinct requests for exclusion
2 were received by A.B. Data: 3 from individuals and 4 from collective entities.

3 32. Collectively, opted-out individuals and entities represent less than 1.4% of the
4 Settling Defendants' total capacitor sales in the United States.

5 33. No objections to the settlement have been received. Schacter Decl. ¶ 24.

6 **Final Judgment**

7 34. Proposed Final Judgments as to the IPPs' claims against each of the Settlement
8 Defendants are attached to IPPs' Motion and provided therein. If the Court should grant IPPs'
9 motion for final approval of the Settlements, counsel for the Settling Defendants expressed
10 Settling Defendants' consent to entry of judgment in the forms attached to the motion.

11 I declare that the foregoing is true and correct to the best of my knowledge. Executed on
12 September 12, 2018 in Burlingame, California.

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14 /s/ Adam J. Zapala
15 Adam J. Zapala