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

**IN RE: CAPACITORS ANTITRUST
LITIGATION**

Master File No. 3:14-cv-03264-JD

This Document Relates to:

ALL INDIRECT PURCHASER ACTIONS

**AMENDED [PROPOSED] ORDER
GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT WITH DEFENDANTS
NEC TOKIN, NITSUKO, AND OKAYA**

1 On October 6, 2016, Indirect Purchaser Plaintiffs (“**IPPs**”) filed a Motion for Preliminary
2 Approval of Class Action Settlement with Defendants (1) NEC TOKIN Corp./NEC TOKIN
3 America Inc. (collectively “**NEC TOKIN**”), (2) Nitsuko Electronics Corporation (“**Nitsuko**”),
4 and (3) Okaya Electric Industries Co, Ltd. (“**Okaya**”). The Court heard the argument of counsel
5 on October 14, 2016, and requested further briefing. The Court, having reviewed the motion
6 and the further briefing, the settlement agreements, the pleadings and other papers on file in this
7 action, and the statements of counsel and the parties, hereby finds that the motion should be
8 GRANTED.
9

10 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

- 11 1. For purposes of this Order, except as otherwise set forth herein, the Court adopts and
12 incorporates the definitions contained in the settlement agreements, to the extent not
13 contradictory or mutually exclusive.
- 14 2. The Court hereby preliminarily approves the settlement agreements.
- 15 3. The Court finds that the settlements fall within the range of possible final approval
16 and that there is a sufficient basis for notifying the settlement classes and for setting
17 a Fairness Hearing.
- 18 4. Pursuant to Federal Rule of Civil Procedure 23, the Court certifies the following
19 settlement classes for purposes of this Motion only:
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22 **a. NEC TOKIN**

23 All persons and entities in the United States who, during, the period
24 from April 1, 2002 to July 15, 2016, purchased directly from a
25 distributor one or more Capacitor(s) that a Defendant manufactured.
26 Excluded from the Class are Defendants, their parent companies,
27 subsidiaries and affiliates, any co-conspirators, Defendants’ attorneys
28 in this case, federal government entities and instrumentalities, states
and their subdivisions, all judges assigned to this case, all jurors in this
case.

b. NITSUKO

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2 All persons and entities in the United States who, during, the period
3 from January 1, 2003 to March 29, 2016, purchased one or more
4 Capacitor(s) from a distributor that a Defendant manufactured.
5 Excluded from the Class are Defendants, their parent companies,
6 subsidiaries and affiliates, any co-conspirators, Defendants' attorneys
7 in this case, federal government entities and instrumentalities, states
8 and their subdivisions, all judges assigned to this case, all jurors in this
9 case, and all persons and entities who directly purchased capacitors
10 from Defendants.

11
12 **c. OKAYA**

13 All persons and entities in the United States who, during, the period
14 from January 1, 2002 to April 14, 2016, purchased one or more
15 Capacitor(s) from a distributor (or from an entity other than a
16 Defendant) that a Defendant or alleged co-conspirator manufactured.
17 Excluded from the Class are Defendants, their parent companies,
18 subsidiaries and affiliates, any co-conspirators, Defendants' attorneys
19 in this case, federal government entities and instrumentalities, states
20 and their subdivisions, all judges assigned to this case, all jurors in this
21 case, and all persons and entities who directly purchased capacitors
22 from Defendants.

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5. The Court further finds that the prerequisites to certifying settlement classes under Rule 23 are satisfied for settlement purposes in that (a) there are at least thousands of geographically dispersed settlement class members, making joinder of all members impracticable; (b) there are questions of law and fact common to the settlement classes which predominate over individual issues; (c) the claims or defenses of the class representatives are typical of the claims or defenses of the settlement classes; (d) the Indirect Purchaser Plaintiffs will fairly and adequately protect the interests of the settlement classes, and have retained counsel experienced in antitrust class action litigation who have, and will continue to, adequately represent the settlement classes; and (e) resolution through class settlements is superior to individual settlements.

- 1 6. The Court hereby appoints the Plaintiffs named in the Indirect Purchaser Plaintiffs’
2 Fourth Consolidated Complaint (March 18, 2016) (ECF No. 1168) (“FCC”) as
3 Representative Plaintiffs of the settlement classes.
- 4 7. The Court hereby appoints the law firm Cotchett, Pitre & McCarthy, LLP as
5 Settlement Class Counsel.
- 6 8. IPPs’ Class Counsel and their designees are authorized to expend funds from the
7 escrow accounts to pay taxes, tax expenses, notice, and administration costs as set
8 forth in the Settlement Agreement.
- 9 9. All further Indirect Purchaser class proceedings as to Defendants NEC TOKIN,
10 Nitsuko, and Okaya are hereby stayed except for any actions required to effectuate
11 the settlement.
- 12 10. The Court retains exclusive jurisdiction over this action to consider all further matters
13 arising out of or connected with the settlement, except that, as provided in
14 paragraph 36 of the IPPs’ settlement agreement with NEC TOKIN, any disputes
15 regarding the interpretation or enforcement of any terms of this Settlement
16 Agreement relating to future cooperation by NEC TOKIN, or about the triggering of
17 the threshold specified in the Confidential Termination Agreement described in
18 ¶39(b), shall be submitted for binding resolution by former United States District
19 Judge Layn Phillips or another neutral mutually agreed upon by the IPPs and NEC
20 TOKIN.

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24 IT IS SO ORDERED.

25 Dated: _____

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28 The Honorable James Donato
UNITED STATES DISTRICT JUDGE