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8  
9 **UNITED STATES DISTRICT COURT**  
10 **NORTHERN DISTRICT OF CALIFORNIA**  
11 **SAN FRANCISCO DIVISION**

12 **IN RE CAPACITORS ANTITRUST**  
13 **LITIGATION**

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

14  
15 **This Document Relates to:**  
16 **All Indirect Purchaser Actions**

**DECLARATION OF ADAM J. ZAPALA**  
**IN SUPPORT OF INDIRECT**  
**PURCHASER PLAINTIFFS' MOTION**  
**FOR PRELIMINARY APPROVAL OF**  
**SETTLEMENTS WITH PANASONIC,**  
**NICHICON, ELNA, AND MATSUO**  
**DEFENDANTS AND FOR APPROVAL**  
**OF THE PLAN OF ALLOCATION**

**Date:** July 25, 2019  
**Time:** 10:00 a.m.  
**Place:** Courtroom 11, 19<sup>th</sup> 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 &  
4 McCarthy, LLP (“CPM”) and Interim Lead Counsel for Indirect Purchaser Plaintiffs (“IPPs”) in  
5 this litigation. The matters described herein are based on my personal knowledge, and if called as  
6 a 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 Panasonic Corporation, Panasonic Corporation of North  
10 America, SANYO Electric Co., Ltd., and SANYO North America Corporation (collectively,  
11 “Panasonic”); (2) Defendants Nichicon Corporation and Nichicon (America) Corporation  
12 (together, “Nichicon”); (3) Defendants ELNA Co., Ltd. and ELNA America, Inc. (together,  
13 “Elna”); and (4) Defendant Matsuo Electric Co., Ltd (“Matsuo”), (Panasonic, Nichicon, Elna, and  
14 Matsuo, are referred to collectively as the “Settling Defendants”.)

15 3. The Settlements subject to this Motion were reached after hard-fought litigation  
16 and significant discovery, are the result of arms-length negotiations, and counsel for IPPs believe  
17 the settlements are in the best interests of the proposed classes. A true and correct copy of the  
18 proposed Panasonic Settlement Agreement is attached hereto as **Exhibit 1**. A true and correct  
19 copy of the Nichicon Settlement Agreement is attached hereto as **Exhibit 2**. A true and correct  
20 copy of the Elna Settlement Agreement is attached hereto as **Exhibit 3**. A true and correct copy  
21 of the Matsuo Settlement agreement is attached hereto as **Exhibit 4**.

22 4. This case arises from an alleged conspiracy by the Defendants to fix, raise,  
23 maintain and/or stabilize the price of capacitors sold in the United States. This case has been  
24 heavily litigated, with multiple rounds of motions to dismiss and motions for summary judgment  
25 filed and class certification currently pending with the Court. There have been significant  
26 discovery challenges faced by IPPs, not only in regards to obtaining documents and information  
27 from Defendants but also in obtaining documents and information from non-party capacitor  
28 distributors in order to prosecute this case.

1           5.        IPPs engaged in settlement negotiations with the Panasonic Defendants for over a  
2 year prior to reaching agreement on the appropriate monetary consideration. These negotiations  
3 included in person meetings and the exchange of confidential information reflecting the parties'  
4 respective views of liability and damages. These negotiations were hard fought. The proposed  
5 settlement was only agreed upon after the exchange of information, continued dialogue between  
6 the parties, and negotiation concerning appropriate financial consideration. The settlement was  
7 reached after the exchange of expert reports, expert discovery regarding class certification, and  
8 after the parties had fully briefed class certification.

9           6.        IPPs engaged in extensive settlement negotiations with Nichicon. The parties held  
10 in-person and telephonic meetings, as well as exchanged information and settlement proposals.  
11 The proposed settlement was arrived at only after both sides had the opportunity to be fully  
12 informed regarding the relative strengths and weaknesses of their positions, litigation risks, and  
13 issues involving ability to pay. This settlement was only reached after substantial discovery in  
14 this case. The settlement was reached after a mediation session with the Hon. Daniel Weinstein  
15 (Ret.) of JAMS.

16           7.        IPPs engaged in settlement negotiations with Nichicon for over two years. These  
17 negotiations included assistance from a nationally renowned mediator, in person meetings, the  
18 exchange of confidential information reflecting the parties' respective views of liability and  
19 damages. With the assistance of the mediator, the parties engaged in several additional  
20 discussions and negotiations regarding an appropriate settlement. These negotiations were hard  
21 fought. The proposed settlement was only agreed upon after the exchange of information,  
22 continued dialogue between the parties, and negotiation concerning appropriate financial  
23 consideration. The settlement was reached after the exchange of expert reports and expert  
24 discovery regarding class certification, and after the parties had fully briefed class certification.  
25 IPPs calculated that Nichicon's sales to U.S. distributors over the relevant time period were  
26 \$216,099,900.00.

27           8.        IPPs and Elna negotiated for more than one year. These negotiations included in  
28 person meetings and the exchange of confidential information reflecting the parties' respective

1 views of liability and damages. The proposed settlement was only agreed upon after the  
2 exchange of information, continued dialogue between the parties, and negotiation concerning  
3 appropriate financial consideration. The settlement was reached after the exchange of expert  
4 reports, expert discovery regarding class certification, and the parties had fully briefed class  
5 certification. IPPs calculated that Elna's sales to U.S. distributors during the relevant time period  
6 were \$3,250,600.00.

7 9. IPPs and Matsuo also negotiated for more than two years. These negotiations  
8 included in person and telephonic meetings and the exchange of confidential information  
9 reflecting the parties' respective views of liability and damages. The proposed settlement was  
10 only agreed upon after the exchange of information, continued dialogue between the parties, and  
11 negotiation concerning appropriate financial consideration. The settlement was reached after the  
12 exchange of expert reports, expert discovery regarding class certification, and the parties had fully  
13 briefed class certification. IPPs' experts calculated that Matsuo's sales to U.S. distributors during  
14 the relevant time period were \$5,000,647.00.

15 10. IPPs and the Settling Defendants are represented by highly-skilled antitrust  
16 counsel who are knowledgeable of the law and have extensive experience with complex antitrust  
17 lawsuits. As the Court knows, IPPs and Defendants have been heavily litigating this case for four  
18 years. The parties have conducted approximately 130 depositions during the course of this  
19 litigation. Moreover, Defendants have produced roughly 11,223,611 documents to IPPs,  
20 comprised of 28,331,064 pages. This information was in IPPs' possession and had been largely  
21 analyzed prior to reaching this settlement.

22 11. Further, at the time of reaching these Settlements, the parties had engaged in expert  
23 discovery and fully briefed IPPs' motion for class certification. At the time of reaching this  
24 settlement, therefore, IPPs and the Settling Defendants were well-informed about the facts,  
25 damages, and defenses relevant to this action.

26 12. Moreover, throughout this litigation, the Settling Defendants (and the other non-  
27 settling defendants) have vigorously contested this case, challenging IPPs' legal theories of  
28

1 liability, whether the facts support Defendants' level of involvement in such a conspiracy, and the  
2 damages for which each Defendant may be liable.

3 13. IPPs' operative complaint (ECF No. 1466) alleges that the Settling Defendants  
4 were involved in the electrolytic and/or film capacitor conspiracies from 2002 through such time  
5 as the anticompetitive effects of defendants' conduct ceased. IPPs' Fifth Consolidated Complaint  
6 ¶¶ 2-3.

7 14. 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 for the Electrolytic Class and the time period January 1, 2002 to February 28, 2014 for the Film  
11 Class—the same time periods that IPPs moved to certify in their motion for class certification.

12 15. In addition to the monetary value, the Settlement considers the significant  
13 additional benefits provided to IPPs by Panasonic in fulfilling its cooperation obligations as the  
14 ACPERA applicant. Panasonic has provided, and will continue to provide, substantial and  
15 valuable cooperation to IPPs in prosecuting this action. Prior to lead counsel being appointed for  
16 the classes, Panasonic contacted plaintiffs' counsel to offer a proffer pursuant to ACPERA, and  
17 subsequently, in October 2014, Panasonic proffered to IPPs what Panasonic represented was a full  
18 account of all facts known to Panasonic that were potentially relevant to this action. At the same  
19 time, Panasonic also provided IPPs with an electronic production of all documents Panasonic  
20 produced to the DOJ in connection with the DOJ's investigation relating to electrolytic and film  
21 capacitors, including translations. This information gave IPPs the details needed to support the  
22 allegations pled in their amended complaint, filed in December 2014, and guided their discovery  
23 efforts. In addition to this early cooperation, Panasonic has given multiple follow-up proffers and  
24 responded to information requests from IPPs. Furthermore, Panasonic has made its employees  
25 available for interviews and depositions throughout the action.

26 16. The Panasonic Defendants are differently situated from other defendants in that  
27 they will not likely be exposed to treble damages or joint and several liability. The Panasonic  
28 Defendants have unique defenses, in particular withdrawal defenses for both the electrolytic and

1 film conspiracies respectively, that a jury may find persuasive in reducing the Panasonic  
2 Defendants' liability exposure at trial.

3 17. Because Panasonic has provided the cooperation required by ACPERA throughout  
4 this action, and fulfilled each of ACPERA's requirements to date, it is appropriate to limit the  
5 relevant commerce for purposes of evaluating the adequacy of the class settlement to U.S. sales  
6 by Panasonic and Sanyo to distributors during the applicable periods when Panasonic and Sanyo  
7 personnel attended the relevant group meetings. This totals \$107,233,527 in commerce in sales to  
8 distributors, which is the basis for the settlement amount. The settlement represents  
9 approximately 47.13% of the potential damages against Panasonic. IPPs believe that the  
10 settlement reflects a fair and reasonable compromise in light of the litigation risks, and the  
11 limitations on a trial recovery from an ACPERA applicant.

12 18. The foregoing settlements are excellent recoveries for the classes in the view of  
13 Class Counsel.

14 I declare under penalty of perjury, under the laws of the United States of America, that the  
15 foregoing is true and correct. Executed on June 20, 2019 in Burlingame, California.

16  
17 /s/ Adam J. Zapala  
18 ADAM J. ZAPALA