

UNITED STATES DISTRICT COURT  
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**

This Settlement Agreement (“Agreement”) is made and entered into this 4 day of October, 2018 (the “Execution Date”) by and between Panasonic Corporation, (hereinafter “Panasonic”), on the one hand, and the Indirect Purchaser Plaintiffs, both individually and on behalf of Classes in the above-captioned class action. This Settlement Agreement is intended by the Settling Parties to fully, finally and forever resolve, discharge and settle the Released Claims, upon and subject to the terms and conditions hereof.

WHEREAS, Indirect Purchaser Plaintiffs are prosecuting the above-captioned action (the “Class Action”) on their own behalf and on behalf of Classes against, among others, Panasonic and other Defendants and alleged co-conspirators;

WHEREAS, Indirect Purchaser Plaintiffs allege, among other things, that Panasonic violated the antitrust and consumer protection laws by conspiring to fix, raise, maintain or stabilize the prices of Electrolytic and Film Capacitors; and these acts caused the Classes to incur damages;

WHEREAS, except as expressly admitted in Panasonic’s answer to the Indirect Purchaser Plaintiffs’ operative complaint, Panasonic denies Indirect Purchaser Plaintiffs’ allegations and has asserted defenses to Indirect Purchaser Plaintiffs’ claims; has not conceded or admitted any

liability, or that it violated or breached any law, regulation, or duty owed to the Indirect Purchaser Plaintiffs; has denied and continues to deny all charges of liability against it arising out of any of the conduct, statements, acts or omissions alleged in the Actions; and further denies any member of the Classes were harmed by any conduct by Panasonic alleged in the Actions or otherwise;

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

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

WHEREAS, Indirect Purchaser Plaintiffs' Class Counsel have concluded, after due investigation and after carefully considering the relevant circumstances, including, without limitation, the claims asserted in the Indirect Purchaser Plaintiffs' Fifth Consolidated Complaint filed in Docket No. 3:14-cv-03263-JD, the legal and factual defenses thereto and the applicable law, that it is in the best interests of the Indirect Purchaser Plaintiffs and the Classes to enter into this Settlement Agreement to avoid the uncertainties of litigation and to assure that the benefits reflected herein are obtained for the Indirect Purchaser Plaintiffs and the Classes, and, further, that Indirect Purchaser Plaintiffs' Class Counsel consider the Settlement set forth herein to be fair, reasonable and adequate and in the best interests of the Indirect Purchaser Plaintiffs and the Classes;

WHEREAS, Panasonic has concluded, despite its belief that it is not liable for the claims asserted against it in the Actions and that it has good defenses thereto, that it will enter into this

Settlement Agreement in order to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, and thereby to put to rest this controversy with respect to the Indirect Purchaser Plaintiffs and the Classes and avoid the risks inherent in complex litigation; and

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

#### **AGREEMENT**

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Settling Parties, by and through their undersigned attorneys of record, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, that the Actions and the Released Claims as against Panasonic shall be finally and fully settled, compromised, and dismissed on the merits and with prejudice, without costs as to Indirect Purchaser Plaintiffs, the Classes, or Panasonic, upon and subject to the approval of the Court, following notice to the Class, on the following terms and conditions:

##### A. Definitions

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

(a) "Action" or "Actions" means *In re Capacitors Antitrust Litigation* - All Indirect Purchaser Actions, Case No. 3: 14-cv-03264-JD, and each of the cases brought on behalf of indirect purchasers that have been consolidated and/or included as part of Docket No. 3:14-cv-03264-JD.

(b) “Affiliates” means entities controlling, controlled by or under common control with any Person.

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

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

(e) “Claims Administrator” means the claims administrator(s) to be selected by Class Counsel. The Claims Administrator will be obligated to operate consistent with terms of this Settlement Agreement.

(f) “Class” or “Classes” is generally defined in the following manner:

All persons and entities in the United States who, during the period from April 1, 2002 to February 28, 2014, purchased one or more Electrolytic Capacitor(s) from a distributor (or from an entity other than a Defendant) that a Defendant or alleged co-conspirator manufactured. Excluded from the Class are Defendants, their parent companies, subsidiaries and Affiliates, any co-conspirators, Defendants’ attorneys in this case, federal government entities and instrumentalities, states and their subdivisions, all judges assigned to this case, all jurors in this case, and all persons and entities who directly purchased Capacitors from Defendants. And,

All persons and entities in the United States who, during the period from January 1, 2002 to February 28, 2014, purchased one or more Film Capacitor(s) from a distributor (or from an entity other than a Defendant) that a Defendant or alleged co-conspirator manufactured. Excluded from the

Class are Defendants, their parent companies, subsidiaries and Affiliates, any co-conspirators, Defendants' attorneys in this case, federal government entities and instrumentalities, states and their subdivisions, all judges assigned to this case, all jurors in this case, and all persons and entities who directly purchased Capacitors from Defendants.

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

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

(i) "Court" means the United States District Court for the Northern District of California.

(j) "Defendants" means Hitachi Chemical Co., Ltd., Hitachi AIC Inc., Hitachi Chemical Co. America, Ltd., Nippon Chemi-Con Corp., United Chemi-Con, Inc., Rubycon Corp., Rubycon America Inc., Panasonic Corp., Panasonic Corp. of North America, SANYO Electric Co., Ltd., SANYO Electronic Device (U.S.A.) Corp.,<sup>1</sup> Elna Co., Ltd., Elna America Inc., Matsuo Electric Co., Ltd., NEC TOKIN Corp., NEC TOKIN America Inc., Nichicon Corp., Nichicon America Corp., Fujitsu Media Devices, Ltd., Holy Stone Enterprise Co., Ltd., Holy Stone Holdings Co., Ltd., Holy Stone Polytech Co., Ltd., Milestone Global Technology, Inc., Nissei Electric Co., Ltd., Nitsuko Electronics Corp., Okaya Electric Industries Co., Ltd., Shinyei Technology Co., Ltd., Shinyei Capacitor Co., Ltd., Soshin Electric Co., Ltd., Taitso Corp., and Toshin Kogyo Co., Ltd.

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<sup>1</sup> Indirect Purchaser Plaintiffs' Fifth Consolidated Complaint incorrectly identifies SANYO Electronic Device (U.S.A.) Corp., which was previously an internal division of SANYO North America Corporation, as a defendant. As of April 1, 2015, SANYO North America Corporation ceased to exist following its merger with Panasonic Corporation of North America.

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

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

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

- i. All parties have executed this Settlement Agreement;
- ii. The Court has preliminarily approved this Settlement Agreement;
- iii. Notice has been provided to the Classes in a manner approved by the Court;
- iv. The Court has entered a Final Judgment; and
- v. The Final Judgment has become final, with the occurrence of the following: (a) the entry by the Court of a final order approving this Settlement Agreement under Rule 23(e) of the Federal Rules of Civil Procedure together with entry of a final judgment dismissing the Class Action and all claims therein against the Releasees with prejudice as to Indirect Purchaser Plaintiffs and all Class Members (the “Final Judgment”), and (b) the expiration of the time for appeal or to seek permission to appeal from the Court’s approval of this Settlement Agreement and entry of the Final Judgment or, if an appeal from an approval and Final Judgment is taken, the affirmance of such Final Judgment in its entirety, without modification, by the court of last resort to which an appeal of such Final Judgment may be taken, provided, however, a modification or reversal on appeal of any amount of Class Counsel’s fees and expenses awarded by the Court from the Gross Settlement Fund or any plan of allocation or distribution of the Gross

Settlement Fund shall not be deemed a modification of all or part of the terms of this Settlement Agreement or the Final Judgment. Neither the provisions of Rule 60 of the Federal Rules of Civil Procedure nor the All Writs Act, 28 U.S.C. § 1651, shall be taken into account in determining the above-stated times.

(n) “Electrolytic Capacitor” means all electrolytic and polymer capacitors, including, but not limited to, aluminum, manganese, tantalum, electrolytic solution (such as in E-Caps or water capacitors), carbon (such as in electric double layer), or any hybrid or combination thereof.

(o) “Escrow Agent” means the agent jointly designated by Class Counsel and Panasonic, and any successor agent. The Escrow Agent will be obligated to follow mutually agreeable escrow instructions that will be consistent with terms of this Settlement Agreement.

(p) “Execution Date” means the date of the last signature set forth on the signature pages below.

(q) “Film Capacitor” means all types of film capacitors, including, but not limited to, halogen, foil, mylar, polypropylene, polyester, oil, or any hybrid or combination thereof.

(r) “Final” means, with respect to any order of court, including, without limitation, the Judgment, that such order represents a final and binding determination of all issues within its scope and is not subject to further review on appeal or otherwise. Without limitation, an order becomes “Final” when: (a) no appeal has been filed and the prescribed time for commencing any appeal has expired; or (b) an appeal has been filed and either (i) the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired, or (ii) the order has been affirmed in its entirety and the prescribed time, if any, for commencing any further appeal has expired. For purposes of this Settlement Agreement, an “appeal” includes appeals as of right,

discretionary appeals, interlocutory appeals, proceedings involving writs of certiorari or mandamus, and any other proceedings of like kind. Any appeal or other proceeding pertaining solely to any order adopting or approving a Distribution Plan, and/or to any order issued in respect of an application for attorneys' fees and expenses consistent with this Settlement Agreement, shall not in any way delay or preclude the Judgment from becoming Final.

(s) "Gross Settlement Fund" means the Settlement Amount plus any interest that may accrue.

(t) "Indirect Purchaser Plaintiffs" means the Plaintiffs listed in the Indirect Purchasers' Fifth Consolidated Complaint ¶¶ 29-39.

(u) "Judgment" means the order of judgment and dismissal of the Actions with prejudice against the Releasees.

(v) "Net Settlement Fund" means the Gross Settlement Fund, less the payments set forth in ¶ 20, *infra*.

(w) "Panasonic" means Panasonic Corporation. "Panasonic Defendants" means Panasonic Corporation, Panasonic Corporation of North America, SANYO Electric Co., Ltd., and SANYO Electronic Device (U.S.A.) Corporation.

(x) "Notice and Administrative Costs" means the reasonable sum of money not in excess of \$350,000.00 to be paid out of the Gross Settlement Fund to pay for notice to the Classes and related administrative costs.

(y) "Person(s)" means an individual, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or



any political subdivision or agency thereof, and any business or legal entity and any spouses, heirs, predecessors, successors, representatives, or assignees of any of the foregoing.

(z) “Proof of Claim and Release” means the form, to be approved by further order(s) of the Court, by which any member of the Classes may make claims against the Gross Settlement Fund.

(aa) “Released Claims” means any and all manner of claims, demands, rights, actions, suits, causes of action, whether class, individual or otherwise in nature, fees, costs, penalties, injuries, damages whenever incurred, liabilities of any nature whatsoever, known or unknown (including, but not limited to, Unknown Claims), foreseen or unforeseen, suspected or unsuspected, asserted or unasserted, contingent or non-contingent, in law or in equity, under the laws of any jurisdiction, to which Releasers or any of them, whether directly, representatively, derivatively, or in any other capacity, ever had, now have or hereafter can, shall or may have, relating in any way to any conduct prior to February 28, 2014 and arising out of or related in any way in whole or in part to any facts, circumstances, acts, or omissions arising out of or related to (1) the purchase, pricing, selling, discounting, marketing, manufacturing, and/or distributing of Capacitors; (2) any agreement, combination or conspiracy to raise, fix, maintain or stabilize the prices of Capacitors or restrict, reduce, alter or allocate the supply, quantity or quality of Capacitors or concerning the development, manufacture, supply, distribution, transfer, marketing, sale or pricing of Capacitors, or any other restraint of competition alleged in the Action or that could have been or hereafter could be alleged against the Releasees relating to Capacitors, or (3) any other restraint of competition relating to Capacitors that could be asserted as a violation of the Sherman Act or any other antitrust, unjust enrichment, unfair competition, unfair practices, trade practices,

price discrimination, unitary pricing, racketeering, civil conspiracy, or consumer protection law, whether under federal, state, local, or foreign law.

(bb) “Releasees” refers jointly and severally, individually and collectively to Panasonic Corporation, Panasonic Corporation of North America, SANYO Electric Co., Ltd., SANYO North America Corporation, their Affiliates and joint ventures, their respective past and present officers, directors, employees, managers, members, partners, agents, attorneys and legal representatives, assigns, servants, and representatives, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing, but excluding Defendants other than Panasonic Corporation, Panasonic Corporation of North America, SANYO Electric Co., Ltd., SANYO North America Corporation, and the former SANYO Electronic Device (U.S.A.) Corp.

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

(dd) “Settlement” means the settlement of the Released Claims set forth herein.

(ee) “Settlement Amount” means exactly Four Million, Seven Hundred Thousand U.S. Dollars (\$4,700,000.00). Based on Class Counsel’s allocation of the Settlement Amount, 95.5% (\$4,488,500.00) will be allocated to pay claimants with qualifying purchases of Electrolytic Capacitors, while 4.5% (\$211,500.00) of the Settlement Amount will be allocated to pay claimants with qualifying purchases of Film Capacitors. But in no event shall Panasonic pay more than \$4,700,000.00.

(ff) “Settlement Class” means the Class or Classes, as defined in subsection (f), *supra*.

(gg) “Settling Parties” means, collectively, the Indirect Purchaser Plaintiffs (on behalf of themselves and the Classes) and Panasonic.

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

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

B. Preliminary Approval Order, Notice Order, and Settlement Hearing

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

3. ***Motion for Preliminary Approval.*** At a time mutually agreed upon by the parties, Class Counsel shall submit this Settlement Agreement to the Court and shall apply for entry of a Preliminary Approval Order, requesting, inter alia, preliminary approval of the Settlement. The

motion shall include (a) the proposed Preliminary Approval Order, and (b) a definition of the proposed Settlement Classes, defined at ¶¶ 1(f) and (ff), *supra*, pursuant to Federal Rule of Civil Procedure 23.

4. ***Proposed Notice.*** At a time mutually agreed upon by the parties, Class Counsel shall submit to the Court for approval a proposed form of, method for, and schedule for dissemination of notice to the Classes. To the extent practicable and to the extent consistent with this paragraph, Class Counsel may seek to coordinate this notice program with other settlements that may be reached in the Action in order to reduce the expense of notice. This motion shall recite and ask the Court to find that the proposed form of and method for dissemination of the notice to the Class constitutes valid, due, and sufficient notice to the Class, constitutes the best notice practicable under the circumstances, and complies fully with the requirements of Federal Rule of Civil Procedure 23. Except for as provided in ¶ 1(x), *supra*, Class Counsel shall be responsible for arranging and paying for class notice, claims administration, and distribution of settlement funds, and for obtaining any needed court approvals.

5. ***Claims Administrator.*** Indirect Purchaser Plaintiffs shall retain a Claims Administrator, which shall be responsible for the claims administration process including distribution of the Gross Settlement Fund to Class Members pursuant to a court-approved plan of distribution. The fees and expenses of the Claims Administrator shall be paid exclusively out of the Gross Settlement Fund. In no event shall Panasonic be separately responsible for any fees or expenses of the Claims Administrator.

6. ***Motion for Final Approval and Entry of Final Judgment.*** Not less than thirty-five (35) days prior to the date set by the Court to consider whether this Settlement should be

finally approved, Class Counsel shall submit a motion for final approval of the Settlement by the Court. The Settling Parties shall jointly seek entry of the Final Approval Order and Judgment:

- (a) certifying the Classes, pursuant to Federal Rule of Civil Procedure 23, solely for purposes of this Settlement;
- (b) fully and finally approving the Settlement contemplated by this Settlement Agreement and its terms as being fair, reasonable, and adequate within the meaning of Federal Rule of Civil Procedure 23 and directing its consummation pursuant to its terms and conditions;
- (c) finding that the notice given to the Class Members constituted the best notice practicable under the circumstances and complies in all respects with the requirements of Federal Rule of Civil Procedure 23 and due process;
- (d) directing that the Actions be dismissed with prejudice as to the Releasees and, except as provided for herein, without costs;
- (e) discharging and releasing the Releasees from all Released Claims;
- (f) permanently barring and enjoining the institution and prosecution, by Indirect Purchaser Plaintiffs and Class Members, of any other action against the Releasees in any court asserting any claims related in any way to the Released Claims;
- (g) reserving continuing and exclusive jurisdiction over the Settlement, including all future proceedings concerning the administration, consummation and enforcement of this Settlement Agreement;
- (h) expressly determining pursuant to Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing entry of a Final Judgment as to the Releasees; and

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

7. **Stay Order.** Upon the date that the Court enters an order preliminarily approving the Settlement, Indirect Purchaser Plaintiffs and members of the Classes shall be barred and enjoined from commencing, instituting or continuing to prosecute any action or any proceeding in any court of law or equity, arbitration tribunal, administrative forum, or other forum of any kind worldwide based on the Released Claims. Nothing in this provision shall prohibit the Indirect Purchaser Plaintiffs or Class Counsel from continuing to participate in discovery in the Actions that is initiated by other plaintiffs or that is subject to and consistent with the cooperation provisions set forth in ¶¶ 29-38, *infra*.

C. Releases

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

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

10. **Covenant Not to Sue.** Releasors hereby covenant not to sue the Releasees with respect to any such Released Claims. Releasors shall be permanently barred and enjoined from

instituting, commencing, or prosecuting against the Releasees any claims based in whole or in part on the Released Claims. The Settling Parties contemplate and agree that this Settlement Agreement may be pleaded as a bar to a lawsuit, and an injunction may be obtained, preventing any action from being initiated or maintained in any case sought to be prosecuted on behalf of Indirect Purchaser Plaintiffs with respect to the Released Claims.

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

12. ***Claims Excluded from Release.*** Notwithstanding the foregoing, the releases provided herein shall not release claims against Panasonic for product liability, breach of contract, breach of warranty or personal injury, or any other claim unrelated to the allegations in the Actions of restraint of competition or unfair competition with respect to Capacitors. Additionally, the releases provided herein shall not release any claims to enforce the terms of this Settlement Agreement.

D. Settlement Fund

13. ***Settlement Payment.*** Panasonic shall pay by wire transfer the Settlement Amount to the Escrow Agent pursuant to mutually agreeable escrow instructions within forty-five (45) days of an order issued by the District Court granting preliminary approval of this Settlement Agreement, in the amount of \$4,700,000.00. The foregoing payment constitutes the total amount of payment that Panasonic is required to make in connection with this Settlement Agreement. The amount shall not be subject to reduction, and upon the occurrence of the Effective Date, no funds shall revert to Panasonic except as provided herein. The Escrow Agent shall only act in accordance with the mutually agreed escrow instructions.

14. ***Disbursements Prior to Effective Date.*** No amount may be disbursed from the Gross Settlement Fund unless and until the Effective Date, except that: (a) Notice and Administrative Costs, which may not exceed \$350,000.00, may be paid from the Gross Settlement Fund as they become due; (b) Taxes and Tax Expenses (as defined in ¶ 18, *infra*) may be paid from the Gross Settlement Fund as they become due, and (c) attorneys' fees and reimbursement of litigation costs may be paid as ordered by the Court, which may be disbursed during the pendency of any appeals that may be taken from the judgment to be entered by the Court finally approving this Settlement.



15. **Refund by Escrow Agent.** If the Settlement as described herein is not finally approved by any court, or it is terminated as provided herein, or the Judgment is overturned on appeal or by writ, the Gross Settlement Fund, including the Settlement Amount and all interest earned on the Settlement Amount while held in escrow, excluding only Notice and Administrative Costs and Taxes and/or Tax Expenses (as defined in ¶ 18, *infra*), shall be refunded, reimbursed and repaid by the Escrow Agent to Panasonic within five (5) business days after receiving notice pursuant to ¶ 44, *infra*.

16. **Refund by Class Counsel.** If the Settlement as described herein is not finally approved by any court, or it is terminated as provided herein, or the Judgment is overturned on appeal or by writ, any attorneys' fees and costs previously paid pursuant to this Settlement Agreement (as well as interest on such amounts) shall be refunded, reimbursed, and repaid by Class Counsel to Panasonic within thirty (30) business days after receiving notice pursuant to ¶ 44, *infra*.

17. **No Additional Payments by Panasonic.** Under no circumstances will Panasonic be required to pay more or less than the Settlement Amount pursuant to this Settlement Agreement and the Settlement set forth herein. For purposes of clarification, the payment of any Fee and Expense Award (as defined in ¶ 26, *infra*), the Notice and Administrative Costs, and any other costs associated with the implementation of this Settlement Agreement shall be exclusively paid from the Settlement Amount.

18. **Taxes.** The Settling Parties and the Escrow Agent agree to treat the Gross Settlement Fund as being at all times a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1. The Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this paragraph, including the "relation-back election" (as defined in

Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to prepare and deliver timely and properly the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

(a) For the purpose of § 4688 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the Escrow Agent. The Escrow Agent shall satisfy the administrative requirements imposed by Treas. Reg. § 1.468B-2 by, e.g., (i) obtaining a taxpayer identification number, (ii) satisfying any information reporting or withholding requirements imposed on distributions from the Gross Settlement Fund, and (iii) timely and properly filing applicable federal, state and local tax returns necessary or advisable with respect to the Gross Settlement Fund (including, without limitation, the returns described in Treas. Reg. § 1.468B-2(k)) and paying any taxes reported thereon. Such returns (as well as the election described in this paragraph) shall be consistent with the provisions of this paragraph and in all events shall reflect that all Taxes as defined in ¶ 18(b), *infra*, on the income earned by the Gross Settlement Fund shall be paid out of the Gross Settlement Fund as provided in ¶ 18(b), *infra*;

(b) The following shall be paid out of the Gross Settlement Fund: (i) all taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Gross Settlement Fund, including, without limitation, any taxes or tax detriments that may be imposed upon Panasonic or its counsel with respect to any income earned by the Gross Settlement Fund for any period during which the Gross Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes (collectively, “Taxes”); and (ii) all

expenses and costs incurred in connection with the operation and implementation of this paragraph, including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this paragraph (collectively, "Tax Expenses"). In all events neither Panasonic nor its counsel shall have any liability or responsibility for the Taxes or the Tax Expenses. With funds from the Gross Settlement Fund, the Escrow Agent shall indemnify and hold harmless Panasonic and its counsel for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Gross Settlement Fund and shall timely be paid by the Escrow Agent out of the Gross Settlement Fund without prior order from the Court and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. §1.468B-2(1)(2)); neither Panasonic nor its counsel is responsible therefor, nor shall they have any liability therefor. The Settling Parties agree to cooperate with the Escrow Agent, each other, their tax attorneys, and their accountants to the extent reasonably necessary to carry out the provisions of this paragraph.

E. Administration and Distribution of Gross Settlement Fund

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

20. ***Distribution of Gross Settlement Fund.*** Upon further orders of the Court, the Claims Administrator, subject to such supervision and direction of the Court and/or Class Counsel

as may be necessary or as circumstances may require, shall administer the claims submitted by members of the Classes and shall oversee distribution of the Gross Settlement Fund to Authorized Claimants pursuant to the Distribution Plan. Subject to the terms of this Settlement Agreement and any order(s) of the Court, except for the \$350,000.00 of the Gross Settlement Fund which may be used towards notice to the class and the costs of administration on a non-refundable basis, Class Counsel shall be responsible for the following:

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

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

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

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

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

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

All Persons who fall within the definition of the Classes who do not timely and validly request to be excluded from the Classes shall be subject to and bound by the provisions of this Settlement Agreement, the releases contained herein, and the Judgment with respect to all Released Claims, regardless of whether such Persons seek or obtain by any means, including, without

limitation, by submitting a Proof of Claim and Release or any similar document, any distribution from the Gross Settlement Fund or the Net Settlement Fund.

22. ***No Liability for Distribution of Settlement Funds.*** Neither the Releasees nor their counsel shall have any responsibility for, interest in, or liability whatsoever with respect to the distribution of the Gross Settlement Fund; the Distribution Plan; the allocation of the Settlement Amount between claimants with qualifying purchases of Electrolytic Capacitors and claimants with qualifying purchases of Film Capacitors; the determination, administration, or calculation of claims; the Gross Settlement Fund's qualification as a "qualified settlement fund"; the payment or withholding of Taxes or Tax Expenses; the distribution of the Net Settlement Fund; or any losses incurred in connection with any such matters. The Releasors hereby fully, finally, and forever release, relinquish and discharge the Releasees and their counsel from any and all such liability. No Person shall have any claim against Class Counsel or the Claims Administrator based on the distributions made substantially in accordance with this Settlement Agreement and the Settlement contained herein, the Distribution Plan, or further orders of the Court.

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

24. ***Distribution Plan Not Part of Settlement.*** It is understood and agreed by the Settling Parties that any Distribution Plan, including any adjustments to any Authorized Claimant's claim, is not a part of this Settlement Agreement and is to be considered by the Court separately

from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in this Settlement Agreement, and any order or proceedings relating to the Distribution Plan shall not operate to terminate or cancel this Settlement Agreement or affect the finality of the Judgment, the Final Approval Order, or any other orders entered pursuant to this Settlement Agreement. The time to appeal from an approval of the Settlement shall commence upon the Court's entry of the Judgment regardless of whether either the Distribution Plan or an application for attorneys' fees and expenses has been submitted to the Court or approved.

F. Attorneys' Fees and Reimbursement of Expenses

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

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

27. ***Award of Fees and Expenses Not Part of Settlement.*** The procedure for, and the allowance or disallowance by the Court of, the Fee and Expense Application are not part of the Settlement set forth in this Settlement Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in this Settlement Agreement. Any order or proceeding relating to the Fee and Expense Application, or any appeal from any Fee and Expense Award or any other order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Settlement

Agreement, or affect or delay the finality of the Judgment and the Settlement of the Actions as set forth herein. No order of the Court or modification or reversal on appeal of any order of the Court concerning any Fee and Expense Award or Distribution Plan shall constitute grounds for cancellation or termination of this Settlement Agreement.

28. ***No Liability for Fees and Expenses of Class Counsel.*** Panasonic shall have no responsibility for, and no liability whatsoever with respect to, any payment(s) to Class Counsel pursuant to this Settlement Agreement and/or to any other Person who may assert some claim thereto or any Fee and Expense Award that the Court may make in the Actions, other than to make the Settlement Payment as set forth in ¶ 13, *supra*, of this Settlement Agreement.

G. Cooperation

29. ***Cooperation as Consideration.*** In return for the Release provided herein, Panasonic agrees to pay the Settlement Amount and agrees to provide cooperation to Indirect Purchaser Plaintiffs as set forth specifically below.

30. ***ACPERA Cooperation.*** Panasonic will provide the same cooperation to Indirect Purchaser Plaintiffs that Panasonic provides to any other claimant pursuant to the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 (“ACPERA”) on the condition Indirect Purchaser Plaintiffs coordinate scheduling with other claimants to avoid undue burdensome duplication of the cooperation.

31. ***Cooperation Subject to and Consistent with Prior Obligations.*** Panasonic shall not be obligated to provide cooperation, including but not limited to the depositions described in ¶ 32, *infra*, that would violate an applicable court order or Panasonic’s commitments to the United States Department of Justice (“DOJ”) or any other governmental entity. With the exception of the stay precluding discovery of communications with the DOJ or grand jury, *see* Dkts. 630 and 632, Panasonic represents that it is not presently aware of any court order prohibiting, or any objection

from an enforcement authority to Panasonic providing the cooperation contemplated by this section. Additionally, Indirect Purchaser Plaintiffs and Panasonic will make reasonable efforts to minimize duplication in the providing of any cooperation.

32. **Depositions.** Class Counsel may participate in any deposition that goes forward pursuant to a notice by another plaintiff in the *In re Capacitors Antitrust Litigation* of any current or former Panasonic employee, and Class Counsel agrees to cooperate with the noticing party as well as any other party participating in the deposition so that the deposition will not exceed the time limitations agreed to for depositions as set forth in the Stipulation regarding Discovery Limits Pursuant to FRCP 26(f) as so ordered by the Court on May 28, 2015 (Dkt. 725).

33. **Productions.** If Panasonic produces any declarations, documents, data, or other responses to discovery to any other plaintiff in the Actions, Panasonic will produce the same to Indirect Purchaser Plaintiffs.

34. **Authentication.** In addition to ¶ 30, Panasonic shall cooperate in good faith to authenticate, to the extent possible, a reasonable number of documents and/or things produced by Panasonic in the Actions, whether by declarations, affidavits, depositions, hearings and/or trials as may be necessary for the Actions, without the need for the other party to issue any subpoenas, letters rogatory, letters of request, or formal discovery requests to the other.

35. **Witness Testimony.** In addition to ¶ 30, Panasonic will make reasonable efforts to make three (3) persons who were employed by Panasonic during the time period referred to in ¶ 1(f), *supra*, available one time each for testimony at a hearing or trial in the United States in which Indirect Purchaser Plaintiffs. Plaintiffs shall reimburse Panasonic for the reasonable travel expenses, including reasonable hotel accommodations, it incurs in connection with such testimony, including the cost of an interpreter(s), if needed.



36. **Minimizing burden.** Indirect Purchaser Plaintiffs and Class Counsel shall coordinate with Direct Purchaser Plaintiffs and any other parties with whom Panasonic has agreed to provide ACPERA cooperation so as to minimize Panasonic's burden and costs in providing cooperation.

37. **Other Discovery.** Upon the Execution Date, neither the Panasonic Defendants nor the Indirect Purchaser Plaintiffs shall file motions against the other or initiate or participate in any discovery, motion or proceeding directly adverse to the other in connection with the Actions, except as specifically provided for herein. The Panasonic Defendants and the Indirect Purchaser Plaintiffs shall not be obligated to respond or supplement prior responses to formal discovery that has been previously propounded by the other in the Actions.

38. **Resolution of Disputes.** To the extent the Settling Parties disagree about the interpretation or enforcement of any terms of this Settlement Agreement relating to future cooperation by Panasonic, or about the triggering of the threshold specified in ¶ 41(b) to rescind this Settlement Agreement, they agree to submit such disputes for binding resolution by the Honorable James Donato or another mutually agreed neutral.

H. Conditions of Settlement, Effect of Disapproval, Cancellation or Termination

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

40. ***Failure of Effective Date to Occur.*** If, for whatever reason, the Effective Date does not occur or is not met, then this Settlement Agreement shall be cancelled and terminated, subject to and in accordance with ¶ 44, *infra*, unless the Settling Parties mutually agree in writing to proceed with this Settlement Agreement.

41. ***Exclusions.***

(a) Any Class Member that wishes to seek exclusion from the Settlement Class by “opting out” must timely submit a written request for exclusion to the Claims Administrator. Class Counsel shall cause copies of requests for exclusion to be provided to Panasonic’s counsel. No later than fourteen (14) days after the final date for mailing requests for exclusion, as determined by the Court as part of the Motion for Preliminary Approval, Class Counsel shall provide Panasonic’s counsel with a complete and final list of opt-outs. With the Motion for Final Approval of the Settlement, Class Counsel will file with the Court a complete list of requests for exclusion from the Class, including only the name, city, and state of the person or entity requesting exclusion.

(b) Panasonic shall have the option to rescind and terminate this Settlement Agreement in part and without liability of any kind if the following conditions are satisfied:

i. If the aggregate purchases of electrolytic Capacitors manufactured by Panasonic and its Affiliates from distributors made by members of the Classes who timely and validly request exclusion from the Classes equal or exceeds twenty percent (20%) of the total volume of purchases made by the Classes of Electrolytic capacitors manufactured by Panasonic and its Affiliates from distributors as determined by the sales data that the Classes use to generate its opt-out notices. In the event this amount is triggered and in the event that Panasonic exercises this option, Class Counsel shall refund only the Settlement Amount allocated to purchasers of electrolytic capacitors less any amounts used under the terms of the Settlement Agreement for

notice and claims administration purposes. Notwithstanding Panasonic exercising this option, the parties' Settlement Agreement with respect to film capacitors shall remain in effect. For the avoidance of doubt, Purchases from distributors by Flextronics International U.S.A. Inc., Avnet, Inc., the AASI Beneficiaries' Trust, by and through Kenneth A. Walt, Liquidating Trustee, and Benchmark Electronics, Inc. shall be excluded from the calculations subject to this paragraph.

ii. If the aggregate purchases of film Capacitors manufactured by Panasonic and its Affiliates from distributors made by members of the Classes who timely and validly request exclusion from the Classes equal or exceeds twenty percent (20%) of the total volume of purchases made by the Classes of film capacitors manufactured by Panasonic and its Affiliates from distributors as determined by the sales data that the Classes use to generate its opt-out notices. In the event this amount is triggered and in the event that Panasonic exercises this option, Class Counsel shall refund only the Settlement Amount allocated to purchasers of film capacitors less any amounts used under the terms of the Settlement Agreement for notice and claims administration purposes. Notwithstanding Panasonic exercising this option, the parties' Settlement Agreement with respect to electrolytic capacitors shall remain in effect. For the avoidance of doubt, Purchases from distributors by Flextronics International U.S.A. Inc., Avnet, Inc., the AASI Beneficiaries' Trust, by and through Kenneth A. Walt, Liquidating Trustee, and Benchmark Electronics, Inc. shall be excluded from the calculations subject to this paragraph.

iii. Panasonic shall exercise the option to rescind and terminate this Settlement Agreement by providing ten (10) business days' written notice to Class Counsel. Upon such rescission and termination, Indirect Purchaser Plaintiffs and Panasonic will notify the Court immediately and withdraw all pending motions filed to effectuate this Settlement. In the event that Panasonic exercises its option to rescind and terminate in accord with this Settlement

Agreement: (i) this Settlement Agreement, except as provided herein, shall be null and void as to Panasonic, shall have no force or effect, and shall be without prejudice to the rights and contentions of Releasees and Releasers in this or any other litigation; and (ii) the Gross Settlement fund, except as provided herein, shall be refunded promptly to Panasonic, minus such payment (as set forth in this Settlement Agreement) of Notice and Administrative Costs and Taxes and Tax Expenses, consistent with the provisions of ¶¶ 14 and 18, *supra*, respectively.

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

43. **Failure to Enter Proposed Preliminary Approval Order, Final Approval Order or Judgment.** If the Court does not enter the Preliminary Approval Order, the Final Approval Order, or the Judgment, or if the Court enters the Final Approval Order and the Judgment and appellate review is sought and, on such review, the Final Approval Order or the Judgment is finally vacated, modified, or reversed in a material way, then this Settlement Agreement and the Settlement incorporated therein shall be cancelled and terminated; provided, however, the Settling Parties agree to act in good faith to secure Final Approval of this Settlement and to attempt to address in good faith concerns regarding the Settlement identified by the Court and any court of appeal. No

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

44. **Termination.** Unless otherwise ordered by the Court, in the event that the Effective Date does not occur or this Settlement Agreement should terminate, or be cancelled, or otherwise fail to become effective for any reason, including, without limitation, in the event that Panasonic elects to terminate this Settlement Agreement pursuant to ¶ 41(b), *supra*, the Settlement as described herein is not finally approved by the Court, or the Judgment is reversed or vacated following any appeal taken therefrom, then:

(a) within five (5) business days after written notification of such event is sent by counsel for Panasonic to the Escrow Agent, the Gross Settlement Fund, excluding only Notice and Administrative Costs that have either been properly disbursed or are due and owing, Taxes and Tax Expenses that have been paid or that have accrued and will be payable at some later date, and attorneys' fees and costs that have been disbursed pursuant to Court order, will be refunded, reimbursed, and repaid by the Escrow Agent to Panasonic; if said amount or any portion thereof is not returned within such five (5) day period, then interest shall accrue thereon at the rate of ten percent (10%) per annum until the date that said amount is returned;

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

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

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

(e) the terms and provisions of this Settlement Agreement, with the exception of ¶¶ 45-47, *infra* (which shall continue in full force and effect), shall be null and void and shall have no further force or effect with respect to the Settling Parties, and neither the existence nor the terms of this Settlement Agreement (nor any negotiations preceding this Settlement Agreement nor any acts performed pursuant to, or in furtherance of, this Settlement Agreement) shall be used in the Actions or in any other action or proceeding for any purpose (other than to enforce the terms remaining in effect); and

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

I. No Admission of Liability

45. ***Final and Complete Resolution.*** The Settling Parties intend the Settlement as described herein to be a final and complete resolution of all disputes between them with respect to the Actions and Released Claims and to compromise claims that are contested, and it shall not be

deemed an admission by any Settling Party as to the merits of any claim or defense or any allegation made in the Actions.

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

47. *Use of Agreement as Evidence.* Neither this Settlement Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Settlement Agreement or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claims, of any allegation made in the Actions, or of any wrongdoing or liability of the Releasees; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any liability, fault or omission of the Releasees in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Neither this Settlement Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Settlement Agreement or the Settlement shall be admissible in any proceeding for any purpose, except to enforce the terms of the Settlement, and except that the Releasees may file this Settlement Agreement and/or the Judgment in any action for any purpose, including, but not limited to, in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion, issue preclusion, or similar

defense or counterclaim. The limitations described in this paragraph apply whether or not the Court enters the Preliminary Approval Order, the Final Approval Order, or the Judgment.

J. Miscellaneous Provisions

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

49. ***Consent to Jurisdiction.*** Panasonic and each Class Member hereby irrevocably submit to the exclusive jurisdiction of the Court only for the specific purpose of any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement. Solely for purposes of such suit, action, or proceeding, to the fullest extent that they may effectively do so under applicable law, Panasonic and the Class Members irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of the Court or that the Court is in any way an improper venue or an inconvenient forum. Nothing herein shall be construed as a submission to jurisdiction for any purpose other than any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement.

50. ***Resolution of Disputes; Retention of Exclusive Jurisdiction.*** Subject to ¶ 38, *supra*, the Court shall retain exclusive jurisdiction over the implementation and enforcement of this Settlement Agreement.

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



52. **Authorization to Enter Settlement Agreement.** The undersigned representative(s) of Panasonic represent that they are fully authorized to enter into and to execute this Settlement Agreement on behalf of Panasonic. Class Counsel, on behalf of Indirect Purchaser Plaintiffs and the Classes, represent that they are, subject to Court approval, expressly authorized to take all action required or permitted to be taken by or on behalf of the Indirect Purchaser Plaintiffs and the Classes pursuant to this Settlement Agreement to effectuate its terms and to enter into and execute this Settlement Agreement and any modifications or amendments to this Settlement Agreement on behalf of the Classes that they deem appropriate.

53. **Notices.** All notices under this Settlement Agreement shall be in writing. Each such notice shall be given either by (a) e-mail; (b) hand delivery; (c) registered or certified mail, return receipt requested, postage pre-paid; (d) Federal Express or similar overnight courier; or (e) facsimile and first class mail, postage pre-paid and, if directed to any Class Member, shall be addressed to Class Counsel at their addresses set forth below, and if directed to Panasonic, shall be addressed to its attorneys at the addresses set forth below or such other addresses as Class Counsel or Panasonic may designate, from time to time, by giving notice to all parties hereto in the manner described in this paragraph.

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

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

If directed to Panasonic, address notice to:

WINSTON & STRAWN LLP  
Jeffrey Kessler (jkessler@winston.com)  
200 Park Avenue  
New York, NY 10166  
Telephone: 212-294-4698  
Facsimile: 212-294-4700

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

55. **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.

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

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

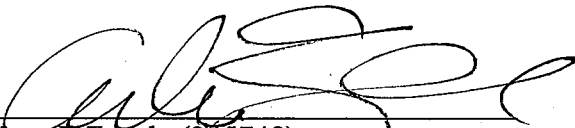
58. ***Execution in Counterparts.*** This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the parties to this Settlement Agreement shall exchange among themselves original signed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

59. ***Notification of State Officials.*** Panasonic shall be responsible for providing all notices required by the Class Action Fairness Act to be provided to state attorneys general or to the United States of America.

60. ***Entire Agreement.*** This Settlement Agreement constitutes the entire agreement between the Settling Parties and supersedes any prior agreements and/or understandings between the parties, written or oral. No representations, warranties, or inducements have been made to any party concerning this Settlement Agreement other than the representations, warranties, and covenants contained and memorialized herein. It is understood by the Settling Parties that, except for the matters expressly represented herein, the facts or law with respect to which this Settlement Agreement is entered into may turn out to be other than or different from the facts now known to each party or believed by such party to be true; each party therefore expressly assumes the risk of the facts or law turning out to be so different, and agrees that this Settlement Agreement shall be in all respects effective and not subject to termination by reason of any such different facts or law.

61. Except as otherwise provided herein, each party shall bear its own costs and attorneys' fees.

IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives, have executed this Settlement Agreement as of the date first herein above written.



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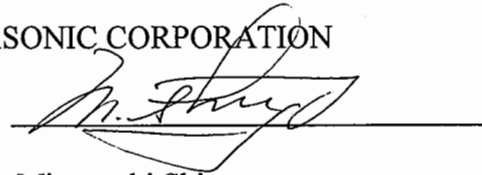
Adam J. Zapala (245748)  
COTCHETT, PITRE & McCARTHY, LLP  
840 Malcolm Road, Suite 200  
Burlingame, CA 94010  
Telephone: (650) 697-6000  
Facsimile: (650) 697-0577  
[azapala@cpmlegal.com](mailto:azapala@cpmlegal.com)

Date: 9/27/18

*Interim Lead Counsel for Indirect Purchaser  
Plaintiffs*

PANASONIC CORPORATION

By:

A handwritten signature in black ink, appearing to read "M. Shigeta", is written over a horizontal line.

Name: Mitsutoshi Shigeta

Title: Director, Device Solutions Business Division  
Automotive & Industrial Systems Company,  
Panasonic Corporation

Date:

October 4, 2018

UNITED STATES DISTRICT COURT  
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

**FIRST AMENDMENT TO SETTLEMENT AGREEMENT**

This First Amendment to Settlement Agreement (“First Amendment”) is made and entered into as of the date of the latest signature set forth below (the “Amendment Date”) between Panasonic Corporation (“Panasonic”) and the Indirect Purchaser Plaintiffs, both individually and on behalf of Classes in the above-captioned class action (collectively, the “Settling Parties”).

WHEREAS, the Settling Parties entered into a Settlement Agreement with an Execution Date of October 4, 2018 (the “Settlement Agreement”);

WHEREAS, Paragraph A.1.(ee) of the Settlement Agreement provided that:

“Settlement Amount” means exactly Four Million, Seven Hundred Thousand U.S. Dollars (\$4,700,000.00). Based on Class Counsel’s allocation of the Settlement Amount, 95.5% (\$4,488,500.00) will be allocated to pay claimants with qualifying purchases of Electrolytic Capacitors, while 4.5% (\$211,500.00) of the Settlement Amount will be allocated to pay claimants with qualifying purchases of Film Capacitors. But in no event shall Panasonic pay more than \$4,700,000.00.

WHEREAS, Paragraph 57 of the Settlement Agreement provides that the Settlement Agreement may be modified by a writing executed by all the parties to the Settlement Agreement;

WHEREAS, the Settling Parties have agreed, pursuant to Paragraph 57 of the Settlement Agreement, to modify Paragraph A.1.(ee) of the Settlement Agreement;

NOW THEREFORE, the Settling Parties, for good and valuable consideration, hereby agree as follows:

1. Paragraph A.1.(ee) of the Settlement Agreement is hereby modified to provide that:  
  
“Settlement Amount” means exactly Four Million, Seven Hundred Thousand U.S. Dollars (\$4,700,000.00). Based on Class Counsel’s allocation of the Settlement Amount, 76% (\$3,572,000.00) will be allocated to pay claimants with qualifying purchases of Electrolytic Capacitors, while 24% (\$1,128,000.00) of the Settlement Amount will be allocated to pay claimants with qualifying purchases of Film Capacitors. But in no event shall Panasonic pay more than \$4,700,000.00.
2. No later than twenty-five days after the Amendment Date, Class Counsel shall submit the Settlement Agreement to the Court and shall move for entry of a Preliminary Approval Order, requesting, inter alia, preliminary approval of the Settlement. Class Counsel shall provide Panasonic with drafts of Class Counsel’s motion for entry of a Preliminary Approval Order and related papers at least three days before Class Counsel submits those papers to the Court.
3. This First Amendment may be executed in counterparts by the Settling Parties, including by email or other electronic transmission, and when each Settling Party has signed and delivered (including without limitation by email or other electronic transmission) at least one such counterpart, each counterpart shall be deemed an original and, when taken together with other signed counterparts, shall constitute one agreement which shall be binding upon and effective in accordance with its terms as to all Parties.
4. All other terms and provisions and definitions in the Settlement Agreement remain in full force and effect.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS THEREOF, this First Amendment to Settlement Agreement is entered into as of the Amendment Date.




Adam J. Zapala (245748)  
COTCHETT, PITRE & McCARTHY, LLP  
840 Malcolm Road, Suite 200  
Burlingame, CA 94010  
Telephone: (650) 697-6000  
Facsimile: (650) 697-0577  
[azapala@cpmlegal.com](mailto:azapala@cpmlegal.com)

Date: May 13, 2019

*Interim Lead Counsel for Indirect Purchaser Plaintiffs*

PANASONIC CORPORATION



Ian-L. Papendick  
WINSTON & STRAWN LLP  
Counsel for Panasonic Corporation

Date: MAY 9, 2019