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7 *Interim Co-Lead Counsel for Indirect Purchaser Plaintiffs*

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10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN FRANCISCO DIVISION**
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16 IN RE: CAPACITORS ANTITRUST
LITIGATION

MASTER FILE NO. 14-cv-03264-JD

17 This Document Relates to:
18 ALL INDIRECT PURCHASER ACTIONS

**DECLARATION OF STEVEN N.
WILLIAMS IN SUPPORT OF INDIRECT
PURCHASER PLAINTIFFS' MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT WITH
DEFENDANTS NEC TOKIN, NITSUKO,
AND OKAYA**

Date: November 10, 2016
Time: 10:00 a.m.
Place: Courtroom 11, 19th Floor

1 I, Steven N. Williams, declare as follows:

2 1. I am an attorney duly licensed to practice law in the State of California and
3 admitted to practice in this Court and the courts of the State of California. I am a partner with
4 Cotchett, Pitre & McCarthy, LLP (“**CPM**”), and Interim Co-Lead Counsel for Indirect Purchaser
5 Plaintiffs (“**IPPs**”). The matters described 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 class action settlement with Defendants NEC TOKIN Corp./NEC TOKIN America Inc.
10 (collectively, “**NEC TOKIN**”), Nitsuko Electronics Corporation (“**Nitsuko**”), and Okaya
11 Electric Industries Co, Ltd. (“**Okaya**”) (collectively, the “**Settlements**” or the “**Settling**
12 **Defendants**”). A true and correct copy of the proposed NEC TOKIN settlement agreement is
13 attached hereto as Exhibit 1. A true and correct copy of the proposed Nitsuko settlement
14 agreement is attached hereto as Exhibit 2. A true and correct copy of the proposed Okaya
15 settlement agreement is attached hereto as Exhibit 3.

16 Brief Factual Summary

17 3. This case arises from an alleged conspiracy by the Defendants to fix, raise,
18 maintain and/or stabilize the price of capacitors sold in the United States. This case has been
19 heavily litigated, with multiple rounds of motions to dismiss and motions for summary judgment
20 already having been filed. There have been significant discovery challenges faced by IPPs, not
21 only in regards to obtaining documents and information from Defendants but also in obtaining
22 documents and information from non-party capacitor distributors in order to successfully
23 prosecute this action.

24 4. Defendant NEC TOKIN is alleged to have been involved in the electrolytic
25 capacitor conspiracy from April 1, 2002 to the present. *See* Fourth Consolidated Complaint, ¶¶
26 2, 369, 371. Specifically, Defendant NEC TOKIN was involved in the manufacturing, marketing
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1 and sale of electrolytic capacitors; it neither manufactured nor sold film capacitors during the
2 relevant time period.

3 5. Defendants Nitsuko and Okaya were primarily involved in the manufacturing,
4 marketing and sale of film capacitors.

5 6. The Settlements were reached after hard-fought litigation, are the result of arms-
6 length negotiations, and Interim Class Counsel believes that the settlements are in the best
7 interests of the Class. These are the first settlements between IPPs and any defendant in this
8 action, come early in the case, and come at a time when the non-settling defendants, for the most
9 part, either refuse to produce their witnesses entirely for depositions or their witnesses have
10 invoked the Fifth Amendment and refused to testify.

11 7. IPPs engaged in settlement negotiations with Defendant Nitsuko over the course
12 of many months. These negotiations included in person meetings, the exchange of confidential
13 information reflecting the parties' respective views of liability and damages, and information
14 concerning Nitsuko's financial conditions and prospects. The proposed settlement was only
15 arrived after the exchange of this information, continued dialogue between the parties, and
16 negotiation concerning appropriate financial consideration to be paid in exchange for a release.

17 8. Negotiations with Okaya followed a similar process as negotiations with Nitsuko,
18 but took even longer to reach the proposed settlement. The parties held in in-person meetings,
19 telephonic meetings, exchanged information, and exchanged settlement proposals. The proposed
20 settlement was arrived at only after both sides had the opportunity to be fully informed of the
21 relative strengths and weaknesses of their positions, litigation risks, and issues involving ability
22 to pay.

23 9. Settlement negotiations with Defendant NEC TOKIN likewise continued for many
24 months and involved high-level executives at Defendant NEC TOKIN as well as their lawyers,
25 who are highly experienced and skilled antitrust lawyers. Additionally, several mediation
26 sessions with Defendant NEC TOKIN were conducted with the Honorable Layn R. Phillips
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1 (Ret.), a well-regarded mediator who has successfully mediated many complex cases including
2 antitrust class actions.

3 10. In addition, the Settlements reflect a fairly high percentage of the overall sales of
4 capacitors by the settling defendants. The settlement with Nitsuko, for example, represents 800%
5 of Nitsuko's total sales in the United States during the Class Period; the settlement with Okaya
6 represents at least 10% of Okaya's total sales in the United States during the Class Period; and
7 the settlement with NEC TOKIN represents 25.92% of NEC TOKIN's total sales in the United
8 States during the Class Period. These percentages are not the alleged overcharge, but rather the
9 percentage of overall sales. Given that these calculations are based on these Defendants' total
10 sales in the United States, and not just the subset of sales to distributors in states which permit
11 claims by indirect purchasers, the percentages are in fact much higher.

12 11. With the Settlements, Plaintiffs have ensured a base recovery to the class members
13 of **US\$14.95** million, with the potential for even larger recoveries against the other defendants.
14 The cooperation from the three Settling Defendants will assist Plaintiffs in obtaining further
15 settlements for class members.

16 Executed on October 6, 2016 in Burlingame, California.

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18 /s/ Steven N. Williams
19 Steven N. Williams
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