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7 *Interim Lead Counsel for Indirect Purchaser Plaintiffs*

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

13 **IN RE CAPACITORS ANTITRUST**  
14 **LITIGATION**

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

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

**DECLARATION OF ADAM J. ZAPALA**  
**IN SUPPORT OF INDIRECT**  
**PURCHASER PLAINTIFFS' NOTICE OF**  
**MOTION AND MOTION FOR**  
**PRELIMINARY APPROVAL OF**  
**SETTLEMENTS WITH HOLYSTONE,**  
**NCC/UCC, AND RUBYCON AND FOR**  
**APPROVAL OF THE PLAN OF**  
**ALLOCATION**

**Date:** TBD  
**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 & McCarthy,  
4 LLP (“CPM”) and Interim Lead Counsel for Indirect Purchaser Plaintiffs (“IPPs”) in this  
5 litigation. The matters described herein are based on my personal knowledge, and if called as a  
6 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 Defendants (1) Holystone Enterprise Co., Ltd., Holy Stone Holdings Co., Ltd.,  
10 Holy Stone Polytech Co., Ltd., and Milestone Global Technology, Inc. (together, “Holystone”),  
11 (2) Nippon Chemi-con Corp. and United Chemi-con Corp. (together, “NCC/UCC”) and (3)  
12 Rubycon Corp. and Rubycon America Inc. (together, “Rubycon”) (collectively, “Settling  
13 Defendants”).

14 3. The settlements subject to this Motion were reached after hard-fought litigation  
15 and significant discovery, are the result of arms-length negotiations, and counsel for IPPs believe  
16 the settlements are in the best interests of the proposed classes. A true and correct copy of the  
17 proposed Holystone settlement agreement is attached hereto as **Exhibit 1**. A true and correct  
18 copy of the proposed NCC/UCC settlement agreement is attached hereto as **Exhibit 2**. A true  
19 and correct copy of the proposed Rubycon settlement agreement is attached hereto as **Exhibit 3**.

20 4. A true and correct copy of the ordering granting preliminary approval of the  
21 settlements with the Hitachi and Soshin Defendants (ECF No. 2009) in this case is attached  
22 hereto as **Exhibit 4**.

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

3 6. IPPs engaged in extensive settlement negotiations with the Settling Defendants. As  
4 described more fully below, the parties held in-person and telephonic meetings as well as  
5 exchanged information and settlement proposals. The proposed settlements were arrived at only  
6 after both sides had the opportunity to be fully informed of the relative strengths and weaknesses  
7 of their positions, litigation risks, and issues involving ability to pay. These settlements were  
8 only reached after substantial discovery in this case.

9 7. IPPs and the three Settling Defendants are represented by highly skilled antitrust  
10 counsel who are knowledgeable of the law and have extensive experience with complex antitrust  
11 lawsuits. As the Court knows, IPPs and Defendants have been heavily litigating this case for  
12 close to four years. The parties have conducted approximately 130 depositions during the course  
13 of this litigation. Moreover, Defendants have produced roughly 11,223,611 documents to IPPs,  
14 comprised of 28,331,064 pages. This information was in IPPs' possession and had been analyzed  
15 prior to reaching these settlements.

16 8. Further, at the time of reaching these settlements, the parties had engaged in expert  
17 discovery and fully briefed IPPs' motion for class certification. Indeed, IPPs reached a settlement  
18 with NCC/UCC at approximately 1:00 am the night before the hearing on IPPs' motion for class  
19 certification. At the time of reaching these settlements, therefore, IPPs and the Settling  
20 Defendants were well-informed about the facts, damages, and defenses relevant to this action.

21 9. Moreover, throughout this litigation, Defendants Holystone, NCC/UCC and  
22 Rubycon (and the other non-settling defendants) have vigorously contested this case, challenging  
23 IPPs' legal theories of liability, whether the facts support Defendants' level of involvement in  
24 such a conspiracy, and the damages for which each Defendant may be liable.

25 10. IPPs' operative complaint (ECF No. 1466) alleges that the NCC/UCC and  
26 Rubycon Defendants were involved in both the electrolytic and film capacitor conspiracies from  
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1 2002 through such time as the anticompetitive effects of defendants' conduct ceased. IPPs' Fifth  
2 Consolidated Complaint ¶¶ 2-3.

3 11. The settlements with the NCC/UCC and Rubycon Defendants cover the time  
4 period from April 1, 2002 to February 28, 2014 for the Electrolytic Settlement Class and January  
5 1, 2002 to February 28, 2014 for the Film Settlement Class—the same time periods that IPPs  
6 moved for in their motion for class certification. *See* IPPs' Motion for Class Certification, ECF  
7 No. 1681.

8 12. The settlement with the Holystone Defendants covers the time period from April  
9 1, 2002 to February 28, 2014 for the Electrolytic Settlement Class—the same time period that  
10 IPPs moved for in their motion for class certification.

11 13. In addition, the settlements reflect a very high percentage of the overall affected  
12 commerce of the Settling Defendants. Based on the data provided to IPPs, the settlement with  
13 Holystone represents approximately 67% of their overall affected commerce (\$2.98 million)  
14 during the relevant class period—that is, Holystone's sales to *any* direct purchaser, regardless of  
15 whether it was a distributor or not. Moreover, Holy Stone was only part of the conspiracy for a  
16 3 ½ year period after its acquisition of Hitachi's tantalum business.

17 14. Based on the data provided to IPPs, the settlement with NCC/UCC represents  
18 approximately 11.4% of NCC/UCC's affected commerce (approximately \$118.7 million in  
19 affected sales to distributors during the class period).

20 15. Based on the data provided to IPPs, the settlement with Rubycon represents  
21 approximately 14% of affected commerce during the relevant class period (approximately \$32.1  
22 million in sales to distributors during the class period). It should be noted that, as this Court  
23 previously recognized in Rubycon's criminal sentencing, Rubycon has a limited ability to pay  
24 fines and settlements as a result of its extremely poor financial condition. *Rubycon Sentencing*  
25 *Hearing Transcript* ("Hr'g Tr.") 23-25, Jan. 25, 2017.

26 16. The foregoing settlements are truly excellent recoveries for the classes in the view  
27 of Class Counsel.

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1 17. The Settlements were reached after hard-fought litigation, are the result of arms-  
2 length negotiations, and Interim Class Counsel believes that the settlements are in the best  
3 interests of the Class. These settlements, although not the first, come after substantial discovery  
4 in the case, and come at a time when the non-settling Defendants, for the most part, either refuse  
5 to produce their witnesses entirely for depositions or their witnesses have invoked the Fifth  
6 Amendment and refused to testify

7 18. IPPs engaged in settlement negotiations with Defendant Rubycon for over two  
8 years. These negotiations included assistance from a nationally renowned mediator, in person  
9 meetings, the exchange of confidential information reflecting the parties' respective views of  
10 liability and damages, and information concerning Rubycon's financial conditions and prospects.  
11 With the assistance of the mediator, the parties engaged in several additional discussions and  
12 negotiations regarding an appropriate settlement. These negotiations were hard fought. The  
13 proposed settlement was only agreed upon after the exchange of information, continued dialogue  
14 between the parties, and negotiation concerning appropriate financial consideration. The  
15 settlement was reached after the exchange of expert reports and expert discovery regarding class  
16 certification, and after the parties had fully briefed class certification.

17 19. Negotiations with Defendant NCC/UCC followed a similar, although not identical,  
18 process as negotiations with Rubycon. The parties held in-person meetings, telephonic meetings,  
19 exchanged information, and exchanged settlement proposals. The proposed settlement was  
20 arrived at only after both sides had the opportunity to be fully informed of the relative strengths  
21 and weaknesses of their positions, and litigation risks. As with the other settlements, the  
22 settlement with NCC/UCC was only reached after substantial discovery in this action. Indeed,  
23 the parties concluded their negotiations over the financial terms of the settlement at  
24 approximately 1:00 am, the night before the hearing on IPPs' motion for class certification.

25 20. Finally, negotiations with Holystone occurred over approximately one year. The  
26 parties held in-person meetings, telephonic meetings, exchanged information, and exchanged  
27 settlement proposals. The proposed settlement was arrived at only after both sides had the  
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1 opportunity to be fully informed of the relative strengths and weaknesses of their positions,  
2 litigation risks, and issues involving ability to pay. The settlement was reached well after expert  
3 discovery on class certification and the briefing on the same motion.

4 21. The cumulative settlement fund established by these three settlements is  
5 \$20,000,000.00 (\$20 million), which represents an excellent recovery for the Classes. Taken  
6 together with the previously approved settlements with Soshin and Hitachi, the cumulative  
7 settlement fund for the Round 2 settlements is \$34,590,000.00.

8 22. For settlements involving Defendants who were alleged to have participated in  
9 both the electrolytic and film conspiracies, the settlement amounts will be allocated to different  
10 pots to be paid out to claimants with qualifying purchases of electrolytic or film capacitors,  
11 respectively. As set forth in the settlement agreements, those amounts are allocated based on the  
12 fact that film commerce is approximately 4.5% of electrolytic commerce as a proportion.

13 I declare under penalty of perjury, under the laws of the United States of America, that  
14 the foregoing is true and correct. Executed on April 24, 2018 in Burlingame, California.

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