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

**IN RE CAPACITORS ANTITRUST
LITIGATION**

Case No. 3:14-cv-03264-JD

SETTLEMENT AGREEMENT

This Document Relates to:

Indirect Purchaser Actions

1 This Settlement Agreement (“Settlement Agreement”) is made and entered into this 12th day
2 of February, 2018 (the “Execution Date”), by and among Defendants Nippon Chemi-Con Corp. and
3 United Chemi-Con, Inc., (collectively, “NCC/UCC”), and the Indirect Purchaser Plaintiffs (“IPPs”),
4 both individually and on behalf of the Classes in the above captioned action. This Settlement
5 Agreement is intended by the Settling Parties to fully, finally, and forever resolve, discharge and
6 settle the Released Claims, upon and subject to the terms and conditions hereof.

7 **RECITALS**

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

11 WHEREAS, Indirect Purchaser Plaintiffs allege, among other things, that NCC/UCC violated
12 the antitrust and consumer protection laws by conspiring to fix, raise, maintain, or stabilize the prices
13 of electrolytic or film Capacitors; and these acts caused the Classes to incur damages;

14 WHEREAS, NCC/UCC has denied and continues to deny each and all of Indirect Purchaser
15 Plaintiffs’ claims and allegations of wrongdoing; has not conceded or admitted any liability, or that
16 it violated or breached any law, regulation, or duty owed to the Indirect Purchaser Plaintiffs; has
17 denied and continues to deny all charges of wrongdoing or liability against it arising out of any of the
18 conduct, statements, acts or omissions alleged in the Actions; and further denies the allegations that
19 the Indirect Purchaser Plaintiffs or any member of the Classes were harmed by any conduct by
20 NCC/UCC alleged in the Actions or otherwise;

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

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

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

10 WHEREAS, NCC/UCC has concluded, despite its belief that it is not liable for the claims
11 asserted against it in the Actions and that it has good defenses thereto, that it will enter into this
12 Settlement Agreement in order to avoid further expense, inconvenience, and the distraction of
13 burdensome and protracted litigation, and thereby to put to rest this controversy with respect to the
14 Indirect Purchaser Plaintiffs and the Classes and avoid the risks inherent in complex litigation; and

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

21 AGREEMENT

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

1 **Definitions**

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

4 (a) “Action” or “Actions” means *In re Capacitors Antitrust Litigation* – All Indirect Purchaser
5 Actions, Case No. 3:14-cv-03264-JD, and each of the cases brought on behalf of indirect purchasers
6 previously consolidated and/or included as part of Docket No. 3:14-cv-03264-JD.

7 (b) “Affiliates” means entities controlling, controlled by or under common control with a
8 Releasee or Releasor.

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

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

15 (e) “Claims Administrator” means the claims administrator(s) to be selected by Class
16 Counsel.

17 (f) “Classes” is defined in the following manner:

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

25 All persons and entities in the United States who, during the period from January 1, 2002 to
26 February 28, 2014, purchased one or more Film Capacitor(s) from a distributor (or from an entity
27 other than a Defendant) that a Defendant or alleged co-conspirator manufactured. Excluded from the
28 Class are Defendants, their parent companies, subsidiaries and Affiliates, any co-conspirators,

1 Defendants' attorneys in this case, federal government entities and instrumentalities, states and their
2 subdivisions, all judges assigned to this case, all jurors in this case, and all persons and entities who
3 directly purchased Capacitors from Defendants.

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

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

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

9 (j) "Defendant" or "Defendants" means Nippon Chemi-Con Corp., United Chemi-Con, Inc.,
10 Hitachi Chemical Co., Ltd., Hitachi AIC Inc., Hitachi Chemical Co. America, Ltd., Inc., Rubycon
11 Corp., Rubycon America Inc., Panasonic Corp., Panasonic Corp. of North America, SANYO Electric
12 Co., Ltd., SANYO Electronic Device (U.S.A.) Corp., Elna Co., Ltd. and Elna America Inc., Matsuo
13 Electric Co., Ltd., NEC TOKIN Corp., NEC TOKIN America Inc., Nichicon Corp., Nichicon
14 America Corp., Fujitsu Media Devices, Ltd., Nissei Electric Co., Ltd., Nitsuko Electronics Corp.,
15 Okaya Electric Industries Co., Ltd., Shinyei Technology Co., Ltd., Shinyei Capacitor Co., Ltd.,
16 Soshin Electric Co., Ltd., Taitso Corp., Toshin Kogyo Co., Ltd., Holy Stone Enterprise Co., Ltd.,
17 Holy Stone Holdings Co., Ltd., Holy Stone Polytech Co., Ltd., and Milestone Global Technology,
18 Inc.

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

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

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

27 (1) All parties have executed this Settlement Agreement;

1 (2) The Court has preliminarily approved the Settlement Agreement and the motion
2 after providing notice to the Classes as defined herein;

3 (3) The Court has entered a Final Judgment; and

4 (4) The Final Judgment (as more fully described in ¶ 6 of the Settlement Agreement)
5 has become final, with the occurrence of the following: (A) the entry by the Court of a final order
6 approving the Settlement Agreement under Rule 23(e) of the Federal Rules of Civil Procedure
7 together with entry of a final judgment dismissing the Class Action and all claims therein against
8 NCC/UCC with prejudice as to all Class Members (the "Final Judgment"), and (B) the expiration of
9 the time for appeal or to seek permission to appeal from the Court's approval of the Settlement
10 Agreement and entry of the Final Judgment or, if an appeal from an approval and Final Judgment is
11 taken, the affirmance of such Final Judgment in its entirety, without modification, by the court of last
12 resort to which an appeal of such Final Judgment may be taken, provided, however, a modification
13 or reversal on appeal of any amount of Class Counsel's fees and expenses awarded by the Court from
14 the Settlement Fund or any plan of allocation or distribution of the Settlement Fund shall not be
15 deemed a modification of all or part of the terms of this Settlement Agreement or the Final Judgment.
16 It is agreed that neither the provisions of Rule 60 of the Federal Rules of Civil Procedure nor the All
17 Writs Act, 28 U.S.C. § 1651, shall be taken into account in determining the above-stated times.

18 (n) "Electrolytic Capacitor" means a capacitor that uses an electrolyte (an ionic conducting
19 liquid) as one of its plates to achieve a relatively larger capacitance per volume. It includes but is not
20 limited to the following: circular polymer aluminum electrolytic capacitors, rectangular polymer
21 aluminum capacitors, rectangular polymer tantalum capacitors and other tantalum capacitors, and
22 non-polymer aluminum electrolytic capacitors.

23 (o) "Film Capacitor" means a capacitor that uses insulating plastic film and one of two
24 conductive materials, propylene or polyester. It includes but is not limited to the following: (1) film
25 and aluminum foil capacitors, (2) film and other metal capacitors, (3) layered capacitors, and (4)
26 surface-mount capacitors (i.e., capacitors without leads).

27 (p) "Escrow Agent" means the agent jointly designated by Class Counsel and NCC/UCC, and
28 any successor agent.

1 (q) "Execution Date" means the date of the last signature set forth on the signature pages
2 below.

3 (r) "Final" means, with respect to any order of court, including, without limitation, the
4 Judgment, that such order represents a final and binding determination of all issues within its scope
5 and is not subject to further review on appeal or otherwise. Without limitation, an order becomes
6 "Final" when: (a) no appeal has been filed and the prescribed time for commencing any appeal has
7 expired; or (b) an appeal has been filed and either (i) the appeal has been dismissed and the prescribed
8 time, if any, for commencing any further appeal has expired, or (ii) the order has been affirmed in its
9 entirety and the prescribed time, if any, for commencing any further appeal has expired. For purposes
10 of this Settlement Agreement, an "appeal" includes appeals as of right, discretionary appeals,
11 interlocutory appeals, proceedings involving writs of certiorari or mandamus, and any other
12 proceedings of like kind. Any appeal or other proceeding pertaining solely to any order adopting or
13 approving a Distribution Plan, and/or to any order issued in respect of an application for attorneys'
14 fees and expenses consistent with this Settlement Agreement, shall not in any way delay or preclude
15 the Judgment from becoming Final.

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

17 (t) "Indirect Purchaser Plaintiffs" means Michael Brooks, CAE Sound, Steve Wong, Toy-
18 Knowlogy Inc., AGS Devices, Co., AGS Devices, Ltd., J&O Electronics, Nebraska Dynamics, Inc.,
19 Angstrom, Inc., MakersLED, and In Home Tech Solutions, Inc., as well as any other Person added
20 as an Indirect Purchaser Plaintiff in the Actions.

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

22 (v) "Net Settlement Fund" means the Gross Settlement Fund, less the payments set forth in ¶
23 16.

24 (w) "NCC/UCC" means collectively Nippon Chemi-Con Corp. and United Chemi-Con, Inc.,
25 and their respective past, present and future direct and indirect parents, members, subsidiaries, and
26 Affiliates, and the past, present, and future respective officers, directors, employees, managers,
27 members, partners, agents, shareholders (in their capacity as shareholders), attorneys and legal
28

1 representatives, assigns, servants, and representatives, and the predecessors, successors, heirs,
2 executors, administrators, and assigns of each of the foregoing.

3 (x) "Notice, Administrative and Claims Administration Costs" means the reasonable sum of
4 money not in excess of \$650,000 to be paid out of the Gross Settlement Fund to pay for notice to the
5 Classes and related administrative and claims administration costs.

6 (y) "Person(s)" means an individual, corporation, limited liability corporation, professional
7 corporation, limited liability partnership, partnership, limited partnership, association, joint stock
8 company, estate, legal representative, trust, unincorporated association, government or any political
9 subdivision or agency thereof, and any business or legal entity and any spouses, heirs, predecessors,
10 successors, representatives or assignees of any of the foregoing.

11 (z) "Proof of Claim and Release" means the form to be sent to the Classes, upon further
12 order(s) of the Court, by which any member of the Classes may make claims against the Gross
13 Settlement Fund.

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

1 Capacitors that could be asserted as a violation of the Sherman Act or any other antitrust, unjust
2 enrichment, unfair competition, unfair practices, trade practices, price discrimination, unitary pricing,
3 racketeering, civil conspiracy or consumer protection law, whether under federal, state, local or
4 foreign law.

5 (bb) "Releasees" refers jointly and severally, individually and collectively to NCC/UCC as
6 defined in ¶ 1(w) above.

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

13 (dd) "Settlement" means the settlement of the Released Claims set forth herein.

14 (ee) "Settlement Amount" means exactly Thirteen Million Five Hundred Thousand U.S.
15 Dollars (\$13,500,000.00). Based on Class Counsel's allocation of the Settlement Amount,
16 \$12,892,500.00 will be allocated to pay claimants with qualifying purchases of electrolytic capacitors,
17 while \$607,500.00 will be allocated to pay claimants with qualifying purchases of film capacitors.
18 But in no event shall NCC/UCC pay more than \$13,500,000.

19 (ff) "Settling Parties" means, collectively, the Indirect Purchaser Plaintiffs (on behalf of
20 themselves and the Classes) and NCC/UCC.

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

27 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR
28 DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF

1 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE
2 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

3 **Preliminary Approval Order, Notice Order and Settlement Hearing**

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

9 3. *Motion for Preliminary Approval.* At a time to be determined by Class Counsel, Class
10 Counsel shall submit this Settlement Agreement to the Court and shall apply for entry of a Preliminary
11 Approval Order, requesting, inter alia, preliminary approval of the Settlement. The motion shall
12 include (a) the proposed Preliminary Approval Order, and (b) a definition of the proposed settlement
13 Classes pursuant to Federal Rule of Civil Procedure 23.

14 4. *Proposed Notice.* At a time to be determined in their sole discretion, Class Counsel shall
15 submit to the Court for approval a proposed form of, method for and schedule for dissemination of
16 notice to the Classes. To the extent practicable and to the extent consistent with this paragraph, Class
17 Counsel may seek to coordinate this notice program with other settlements that may be reached in
18 the Action in order to reduce the expense of notice. This motion shall recite and ask the Court to find
19 that the proposed form of and method for dissemination of the notice to the Classes constitutes valid,
20 due and sufficient notice to the Classes, constitutes the best notice practicable under the
21 circumstances, and complies fully with the requirements of Federal Rule of Civil Procedure 23.

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

27 6. *Motion for Final Approval and Entry of Final Judgment.* Prior to the date set by the
28 Court to consider whether this Settlement should be finally approved, Class Counsel shall submit a

1 motion for final approval of the Settlement by the Court. The Settling Parties shall jointly seek entry
2 of the Final Approval Order and Judgment:

3 (a) certifying the Classes, as defined in this Settlement Agreement, pursuant to Federal Rule
4 of Civil Procedure 23, solely for purposes of this Settlement;

5 (b) fully and finally approving the Settlement contemplated by this Settlement Agreement and
6 its terms as being fair, reasonable and adequate within the meaning of Federal Rule of Civil Procedure
7 23 and directing its consummation pursuant to its terms and conditions;

8 (c) finding that the notice given to the Class Members constituted the best notice practicable
9 under the circumstances and complies in all respects with the requirements of Federal Rule of Civil
10 Procedure 23 and due process;

11 (d) directing that the Actions be dismissed with prejudice as to NCC/UCC and, except as
12 provided for herein, without costs;

13 (e) discharging and releasing the Releasees from all Released Claims;

14 (f) permanently barring and enjoining the institution and prosecution, by Indirect Purchaser
15 Plaintiffs and Class Members, of any other action against the Releasees in any court asserting any
16 claims related in any way to the Released Claims;

17 (g) reserving continuing and exclusive jurisdiction over the Settlement, including all future
18 proceedings concerning the administration, consummation and enforcement of this Settlement
19 Agreement;

20 (h) determining pursuant to Federal Rule of Civil Procedure 54(b) that there is no just reason
21 for delay and directing entry of a final judgment as to NCC/UCC; and

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

24 7. At least seven (7) business days prior to the filing of any motions or other papers in
25 connection with this Settlement, including without limitation, the Preliminary Approval Motion and
26 the Motion for Final Approval of the Settlement, Class Counsel will send working drafts of these
27 papers to counsel for NCC/UCC. The text of any proposed form of order preliminarily or finally
28 approving the Settlement shall be agreed upon by Plaintiffs and NCC/UCC before it is submitted to

1 the Court and shall be consistent with the terms of this Settlement Agreement and the Class definitions
2 set forth herein.

3 8. **Stay Order.** Upon the Execution Date, the Action shall be stayed as against NCC/UCC
4 only. Should the Action be tried against any Defendants other than NCC/UCC, the parties specifically
5 agree that any findings therein shall not be binding on or admissible in evidence against NCC/UCC
6 or prejudice NCC/UCC in any way in any future proceeding involving NCC/UCC.

7 9. Upon the date that the Court enters an order preliminarily approving the Settlement,
8 Indirect Purchaser Plaintiffs and members of the Classes shall be barred and enjoined from
9 commencing, instituting or continuing to prosecute any action or any proceeding in any court of law
10 or equity, arbitration tribunal, administrative forum or other forum of any kind worldwide based on
11 the Released Claims. Nothing in this provision shall prohibit the Indirect Purchaser Plaintiffs or Class
12 Counsel from continuing to participate in discovery in the Actions that is initiated by other plaintiffs
13 or that is subject to and consistent with the cooperation provisions set forth in ¶¶ 32-35.

14 **Releases**

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

21 11. **No Future Actions Following Release.** The Releasors shall not, after the Effective Date,
22 seek (directly or indirectly) to commence, institute, maintain or prosecute any suit, action or
23 complaint or collect from or proceed against NCC/UCC or any other Releasee (including pursuant to
24 the Actions) based on the Released Claims in any forum worldwide, whether on his, her, or its own
25 behalf or as part of any putative, purported or certified classes of purchasers or consumers.

26 12. **Covenant Not to Sue.** Releasors hereby covenant not to sue the Releasees with respect to
27 any such Released Claims. Releasors shall be permanently barred and enjoined from instituting,
28 commencing or prosecuting against the Releasees any claims based in whole or in part on the

1 Released Claims. The Settling Parties contemplate and agree that this Settlement Agreement may be
2 pleaded as a bar to a lawsuit, and an injunction may be obtained, preventing any action from being
3 initiated or maintained in any case sought to be prosecuted on behalf of Indirect Purchaser Plaintiffs
4 with respect to the Released Claims.

5 13. *Waiver of California Civil Code § 1542 and Similar Laws.* The Releasors acknowledge
6 that, by virtue of the execution of this Settlement Agreement, and for the consideration received
7 hereunder, it is their intention to release, and they are releasing, all Released Claims, even Unknown
8 Claims. In furtherance of this intention, the Releasors expressly waive and relinquish, to the fullest
9 extent permitted by law, any rights or benefits conferred by the provisions of California Civil Code
10 § 1542, as set forth in ¶ 1(gg), or equivalent, similar or comparable laws or principles of law. The
11 Releasors acknowledge that they have been advised by Class Counsel of the contents and effects of
12 California Civil Code § 1542, and hereby expressly waive and release with respect to the Released
13 Claims any and all provisions, rights and benefits conferred by California Civil Code § 1542 or by
14 any equivalent, similar or comparable law or principle of law in any jurisdiction. The Releasors may
15 hereafter discover facts other than or different from those which they know or believe to be true with
16 respect to the subject matter of the Released Claims, but the Releasors hereby expressly waive and
17 fully, finally and forever settle and release any known or unknown, suspected or unsuspected,
18 foreseen or unforeseen, asserted or unasserted, contingent or non-contingent, and accrued or
19 unaccrued claim, loss or damage with respect to the Released Claims, whether or not concealed or
20 hidden, without regard to the subsequent discovery or existence of such additional or different facts.
21 The release of unknown, unanticipated, unsuspected, unforeseen, and unaccrued losses or claims in
22 this paragraph is not a mere recital.

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

28 **Settlement Fund**

1 **15. Settlement Payment.** NCC/UCC shall pay by wire transfer the Settlement Amount to the
2 Escrow Agent pursuant to escrow instructions within thirty (30) business days after the Execution
3 Date. This amount constitutes the total amount of payment that NCC/UCC is required to make in
4 connection with this Settlement Agreement. This amount shall not be subject to reduction, and upon
5 the occurrence of the Effective Date, no funds shall revert to NCC/UCC except as provided herein.
6 The Escrow Agent shall only act in accordance with the mutually agreed escrow instructions. Class
7 Counsel shall allocate the Settlement Amount in the following manner: \$12,892,500.00 of the
8 Settlement Amount shall be allocated to pay claimants with qualifying purchases of electrolytic
9 capacitors. \$607,500.00 of the Settlement Amount shall be allocated to pay claimants with qualifying
10 purchases of film capacitors.

11 **16. Disbursements Prior to Effective Date.** No amount may be disbursed from the Gross
12 Settlement Fund unless and until the Effective Date, except that: (a) Notice, Administrative and
13 Claims Administration Costs, which may not exceed \$650,000, may be paid from the Gross
14 Settlement Fund as they become due; (b) Taxes and Tax Expenses (as defined in ¶ 20 below) may be
15 paid from the Gross Settlement Fund as they become due, and (c) attorneys' fees and reimbursement
16 of litigation costs may be paid as ordered by the Court, which may be disbursed during the pendency
17 of any appeals, which may be taken from the judgment to be entered by the Court finally approving
18 this Settlement.

19 **17. Refund by Escrow Agent.** If the Settlement as described herein is not finally approved by
20 any court, or it is terminated as provided herein, or the Judgment is overturned on appeal or by writ,
21 the Gross Settlement Fund, including the Settlement Amount and all interest earned on the Settlement
22 Amount while held in escrow, excluding only Notice, Administrative and Claims Administration
23 Costs and Taxes and/or Tax Expenses (as defined in below), shall be refunded, reimbursed and repaid
24 by the Escrow Agent to NCC/UCC within five (5) business days after receiving notice pursuant to ¶
25 41 below.

26 **18. Refund by Class Counsel.** If the Settlement as described herein is not finally approved by
27 any court, or it is terminated as provided herein, or the Judgment as described herein is not approved
28 or entered or is overturned on appeal or by writ, any attorneys' fees and costs previously paid pursuant

1 to this Settlement Agreement (as well as interest on such amounts) shall be refunded, reimbursed and
2 repaid by Class Counsel to NCC/UCC within thirty (30) business days after receiving notice pursuant
3 to ¶ 41 below.

4 **19. No Additional Payments by NCC/UCC.** Under no circumstances will NCC/UCC be
5 required to pay more or less than the Settlement Amount pursuant to this Settlement Agreement and
6 the Settlement set forth herein. For purposes of clarification, the payment of any Fee and Expense
7 Award (as defined in ¶ 29 below), the Notice, Administrative and Claims Administrative Costs, and
8 any other costs associated with the implementation of this Settlement Agreement shall be exclusively
9 paid from the Settlement Amount.

10 **20. Taxes.** The Settling Parties and the Escrow Agent agree to treat the Gross Settlement Fund
11 as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. §1.468B-1. The
12 Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions
13 of this paragraph, including the “relation-back election” (as defined in Treas. Reg. §1.468B-1) back
14 to the earliest permitted date. Such elections shall be made in compliance with the procedures and
15 requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to
16 prepare and deliver timely and properly the necessary documentation for signature by all necessary
17 parties, and thereafter to cause the appropriate filing to occur.

18 (a) For the purpose of §468B of the Internal Revenue Code of 1986, as amended, and the
19 regulations promulgated thereunder, the “administrator” shall be the Escrow Agent. The Escrow
20 Agent shall satisfy the administrative requirements imposed by Treas. Reg. §1.468B-2 by, e.g., (i)
21 obtaining a taxpayer identification number, (ii) satisfying any information reporting or withholding
22 requirements imposed on distributions from the Gross Settlement Fund, and (iii) timely and properly
23 filing applicable federal, state and local tax returns necessary or advisable with respect to the Gross
24 Settlement Fund (including, without limitation, the returns described in Treas. Reg. §1.468B-2(k))
25 and paying any taxes reported thereon. Such returns (as well as the election described in this
26 paragraph) shall be consistent with the provisions of this paragraph and in all events shall reflect that
27 all Taxes as defined in ¶ 20(b) below on the income earned by the Gross Settlement Fund shall be
28 paid out of the Gross Settlement Fund as provided in ¶ 20(b) hereof;

1 (b) The following shall be paid out of the Gross Settlement Fund: (i) all taxes (including any
2 estimated taxes, interest or penalties) arising with respect to the income earned by the Gross
3 Settlement Fund, including, without limitation, any taxes or tax detriments that may be imposed upon
4 NCC/UCC or its counsel with respect to any income earned by the Gross Settlement Fund for any
5 period during which the Gross Settlement Fund does not qualify as a “qualified settlement fund” for
6 federal or state income tax purposes (collectively, “Taxes”); and (ii) all expenses and costs incurred
7 in connection with the operation and implementation of this paragraph, including, without limitation,
8 expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating
9 to filing (or failing to file) the returns described in this paragraph (collectively, “Tax Expenses”). In
10 all events neither NCC/UCC nor its counsel shall have any liability or responsibility for the Taxes or
11 the Tax Expenses. With funds from the Gross Settlement Fund, the Escrow Agent shall indemnify
12 and hold harmless NCC/UCC and its counsel for Taxes and Tax Expenses (including, without
13 limitation, Taxes payable by reason of any such indemnification). Further, Taxes and Tax Expenses
14 shall be treated as, and considered to be, a cost of administration of the Gross Settlement Fund and
15 shall timely be paid by the Escrow Agent out of the Gross Settlement Fund without prior order from
16 the Court and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary)
17 to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts,
18 including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any
19 amounts that may be required to be withheld under Treas. Reg. §1.468B-2(1)(2)); neither NCC/UCC
20 nor its counsel is responsible therefor, nor shall they have any liability therefor. The Settling Parties
21 agree to cooperate with the Escrow Agent, each other, their tax attorneys and their accountants to the
22 extent reasonably necessary to carry out the provisions of this paragraph.

23 **Administration and Distribution of Gross Settlement Fund**

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

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

1 may be necessary or as circumstances may require, shall administer the claims submitted by members
2 of the Classes and shall oversee distribution of the Gross Settlement Fund to Authorized Claimants
3 pursuant to the Distribution Plan. Subject to the terms of this Settlement Agreement and any order(s)
4 of the Court, the Gross Settlement Fund shall be applied as follows:

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

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

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

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

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

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

17 **24.** All Persons who fall within the definition of the Classes who do not timely and validly
18 request to be excluded from the Classes shall be subject to and bound by the provisions of this
19 Settlement Agreement, the releases contained herein, and the Judgment with respect to all Released
20 Claims, regardless of whether such Persons seek or obtain by any means, including, without
21 limitation, by submitting a Proof of Claim and Release or any similar document, any distribution
22 from the Gross Settlement Fund or the Net Settlement Fund.

23 **25. *No Liability for Distribution of Settlement Funds.*** Neither the Releasees nor their counsel
24 shall have any responsibility for, interest in or liability whatsoever with respect to the distribution of
25 the Gross Settlement Fund; the Distribution Plan; the allocation of the Settlement Amount between
26 claimants with qualifying purchases of Electrolytic Capacitors and claimants with qualifying
27 purchases of Film Capacitors; the determination, administration, or calculation of claims; the
28 Settlement Fund’s qualification as a “qualified settlement fund”; the payment or withholding of Taxes

1 or Tax Expenses; the distribution of the Net Settlement Fund; or any losses incurred in connection
2 with any such matters. The Releasors hereby fully, finally and forever release, relinquish and
3 discharge the Releasees and their counsel from any and all such liability. No Person shall have any
4 claim against Class Counsel or the Notice and Claims Administrator based on the distributions made
5 substantially in accordance with the Agreement and the Settlement contained herein, the Distribution
6 Plan or further orders of the Court.

7 **26. Balance Remaining in Net Settlement Fund.** If there is any balance remaining in the Net
8 Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), Class Counsel
9 may reallocate such balance among Authorized Claimants in an equitable and economic fashion,
10 distribute the remaining funds through *cy pres*, or allow the money to escheat to federal or state
11 governments, subject to Court approval. In no event shall the Net Settlement Fund revert to
12 NCC/UCC.

13 **27. Distribution Plan Not Part of Settlement.** It is understood and agreed by the Settling
14 Parties that any Distribution Plan, including any adjustments to any Authorized Claimant's claim, is
15 not a part of this Settlement Agreement and is to be considered by the Court separately from the
16 Court's consideration of the fairness, reasonableness and adequacy of the Settlement set forth in this
17 Settlement Agreement, and any order or proceedings relating to the Distribution Plan shall not operate
18 to terminate or cancel this Settlement Agreement or affect the finality of the Judgment, the Final
19 Approval Order, or any other orders entered pursuant to this Settlement Agreement. The time to
20 appeal from an approval of the Settlement shall commence upon the Court's entry of the Judgment
21 regardless of whether either the Distribution Plan or an application for attorneys' fees and expenses
22 has been submitted to the Court or approved.

23 **Attorneys' Fees and Reimbursement of Expenses**

24 **28. Fee and Expense Application.** Class Counsel may submit an application or applications
25 (the "Fee and Expense Application") for distributions from the Gross Settlement Fund, for: (a) an
26 award of attorneys' fees; plus (b) reimbursement of expenses incurred in connection with prosecuting
27 the Actions; plus (c) any interest on such attorneys' fees and expenses (until paid) at the same rate
28

1 and for the same periods as earned by the Settlement Fund, as appropriate, and as may be awarded
2 by the Court.

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

6 30. *Award of Fees and Expenses Not Part of Settlement.* The procedure for, and the
7 allowance or disallowance by the Court of, the Fee and Expense Application are not part of the
8 Settlement set forth in this Settlement Agreement, and are to be considered by the Court separately
9 from the Court’s consideration of the fairness, reasonableness and adequacy of the Settlement set
10 forth in this Settlement Agreement. Any order or proceeding relating to the Fee and Expense
11 Application, or any appeal from any Fee and Expense Award or any other order relating thereto or
12 reversal or modification thereof, shall not operate to terminate or cancel this Settlement Agreement,
13 or affect or delay the finality of the Judgment and the Settlement of the Actions as set forth herein.
14 No order of the Court or modification or reversal on appeal of any order of the Court concerning any
15 Fee and Expense Award or Distribution Plan shall constitute grounds for cancellation or termination
16 of this Settlement Agreement.

17 31. *No Liability for Fees and Expenses of Class Counsel.* NCC/UCC shall have no
18 responsibility for, and no liability whatsoever with respect to, any payment(s) to Class Counsel
19 pursuant to this Settlement Agreement and/or to any other Person who may assert some claim thereto
20 or any Fee and Expense Award that the Court may make in the Actions, other than as set forth in this
21 Settlement Agreement.

22 **Cooperation**

23 32. *Cooperation as Consideration.* In return for the Release and Discharge provided herein,
24 NCC/UCC agrees to pay the Settlement Amount and agrees to work in good faith to provide
25 cooperation to Indirect Purchaser Plaintiffs in the form of trial witnesses and corporate statements to
26 the extent this cooperation does not prejudice the defense of the criminal action against NCC. The
27 Settling Parties recognize that NCC is a Defendant in the criminal action United States v. Nippon
28 Chemi-Con Corporation, 3:17CR00540 in the Northern District of California. The Settling Parties

1 also recognize that NCC/UCC are Defendants in other cases brought by different plaintiffs
2 concerning allegations of violations of antitrust laws regarding Capacitors.

3 **33. Cooperation Subject to and Consistent with Prior Obligations.** NCC/UCC and the
4 Indirect Purchaser Plaintiffs shall not be obligated to provide cooperation that would violate an
5 applicable court order or NCC/UCC's commitments to the United States Department of Justice or
6 any other domestic or foreign governmental entity. Additionally, Indirect Purchaser Plaintiffs and
7 NCC/UCC will take reasonable efforts to accommodate the other's efforts to minimize duplication in
8 the providing of any cooperation.

9 **34. Further Cooperation.** The Settling Parties agree to the following, except that all
10 cooperation obligations by NCC/UCC shall cease if Indirect Purchaser Plaintiffs cease to be a party
11 in the Actions against all other Defendants.

12 (a) If NCC/UCC produces any declarations, documents, data, or other responses to discovery
13 to any other plaintiff in the Actions, NCC/UCC will produce the same to Indirect Purchaser Plaintiffs.

14 (b) Each of the parties shall cooperate in good faith to authenticate, to the extent possible, a
15 reasonable number of documents and/or things produced by NCC/UCC in the Actions, whether by
16 declarations, affidavits, depositions, hearings and/or trials as may be necessary for the Actions,
17 without the need for the other party to issue any subpoenas, letters rogatory, letters of request, or
18 formal discovery requests to the other.

19 (c) NCC/UCC agrees Indirect Purchaser Plaintiffs may ask questions at depositions of
20 NCC/UCC witnesses noticed by other plaintiffs in the litigation.

21 (d) NCC/UCC agrees that it will respond in writing to reasonable requests for clarification of
22 the transactional, production and cost data that NCC/UCC produced in the Actions and also about its
23 methods of pricing Capacitors.

24 **35. Resolution of Disputes.** To the extent the Settling Parties disagree about the interpretation
25 or enforcement of any terms of this Settlement Agreement relating to future cooperation by
26 NCC/UCC, or about the triggering of the threshold specified in the Confidential Termination
27 Agreement referenced in ¶ 38(b), they agree to submit such disputes for binding resolution by the
28 Honorable James Donato or another mutually agreed neutral.

1 **Conditions of Settlement, Effect of Disapproval, Cancellation or Termination**

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

8 37. *Failure of Effective Date to Occur.* If, for whatever reason, the Effective Date does not
9 occur or is not met, then this Settlement Agreement shall be cancelled and terminated, subject to and
10 in accordance with ¶ 41, below, unless the Settling Parties mutually agree in writing to proceed with
11 this Settlement Agreement.

12 38. *Exclusions.*

13 (a) Any Class Member that wishes to seek exclusion from the Settlement Classes by “opting
14 out” must timely submit a written request for exclusion to the Claims Administrator. Class Counsel
15 shall cause copies of requests for exclusion from the Classes to be provided to NCC/UCC’s counsel.
16 No later than fourteen (14) days after the final date for mailing requests for exclusion, Class Counsel
17 shall provide NCC/UCC’s counsel with a complete and final list of opt-outs. With the motion for
18 final approval of the Settlement, Class Counsel will file with the Court a complete list of requests for
19 exclusion from the Classes, including only the name, city and state of the person or entity requesting
20 exclusion.

21 (b) NCC/UCC shall have the option to rescind and terminate this Settlement Agreement in
22 its entirety and without liability of any kind if based on available data, the aggregate purchases of
23 Electrolytic Capacitors and/or Film Capacitors purchased from distributors by Class Members that
24 opt out pursuant to ¶ 38(a) of this Settlement Agreement exceeds a threshold agreed to by Indirect
25 Purchaser Plaintiffs and NCC/UCC in the Confidential Termination Agreement that has been
26 executed separately by Indirect Purchaser Plaintiffs and NCC/UCC. NCC/UCC shall exercise this
27 option to rescind and terminate this Settlement Agreement by providing ten (10) business days written
28 notice to Class Counsel. Upon such rescission and termination, Indirect Purchaser Plaintiffs and

1 NCC/UCC will notify the Court immediately and withdraw all pending motions filed to effectuate
2 this Settlement. Indirect Purchaser Plaintiffs and NCC/UCC will also, as may be required by the
3 Court, submit the Confidential Termination Agreement to the Court for in-camera review. In the
4 event that NCC/UCC exercises its option to rescind and terminate this Settlement Agreement: (i) this
5 Settlement Agreement shall be null and void as to NCC/UCC, and shall have no force or effect and
6 shall be without prejudice to the rights and contentions of Releasees and Releasors in this or any other
7 litigation; (ii) the Gross Settlement fund shall be refunded promptly to NCC/UCC, minus such
8 payment (as set forth in this Settlement Agreement) of Notice and Administrative Costs and Taxes
9 and Tax Expenses, consistent with the provisions of ¶¶ 16 and 20.

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

19 **40. *Failure to Enter Proposed Preliminary Approval Order, Final Approval Order or***
20 ***Judgment.*** If the Court does not enter the Preliminary Approval Order, the Final Approval Order or
21 the Judgment, or if the Court enters the Final Approval Order and the Judgment and appellate review
22 is sought and, on such review, the Final Approval Order or the Judgment is finally vacated, modified,
23 or reversed, then this Settlement Agreement and the Settlement incorporated therein shall be
24 cancelled and terminated; provided, however, the Settling Parties agree to act in good faith to secure
25 Final Approval of this Settlement and to attempt to address in good faith concerns regarding the
26 Settlement identified by the Court and any court of appeal. No Settling Party shall have any obligation
27 whatsoever to proceed under any terms other than substantially in the form provided and agreed to
28 herein; provided, however, that no order of the Court concerning any Fee and Expense Application

1 or Distribution Plan, or any modification or reversal on appeal of such order, shall constitute grounds
2 for cancellation or termination of this Settlement Agreement by any Settling Party. Without limiting
3 the foregoing, NCC/UCC shall have, in its sole and absolute discretion, the option to terminate the
4 Settlement in its entirety in the event that the Judgment, upon becoming Final, does not provide for
5 the dismissal with prejudice of all the Action against them.

6 41. **Termination.** Unless otherwise ordered by the Court, in the event that the Effective Date
7 does not occur or this Settlement Agreement should terminate, or be cancelled or otherwise fail to
8 become effective for any reason, the Settlement as described herein is not finally approved by the
9 Court, or the Judgment is reversed or vacated following any appeal taken therefrom, then:

10 (a) within five (5) business days after written notification of such event is sent by counsel for
11 NCC/UCC to the Escrow Agent, the Gross Settlement Fund, including the Settlement Amount and
12 all interest earned on the Settlement Fund while held in escrow excluding only Notice Administrative
13 and Class Administration Costs that have either been properly disbursed or are due and owing, Taxes
14 and Tax Expenses that have been paid or that have accrued and will be payable at some later date,
15 and attorneys' fees and costs that have been disbursed pursuant to Court order will be refunded,
16 reimbursed and repaid by the Escrow Agent to NCC/UCC; if said amount or any portion thereof is
17 not returned within such five (5) day period, then interest shall accrue thereon at the rate of ten percent
18 (10%) per annum until the date that said amount is returned;

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

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

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

4 (e) the terms and provisions of this Settlement Agreement, with the exception of ¶¶ 42-44
5 (which shall continue in full force and effect), shall be null and void and shall have no further force
6 or effect with respect to the Settling Parties, and neither the existence nor the terms of this Settlement
7 Agreement (nor any negotiations preceding this Settlement Agreement nor any acts performed
8 pursuant to, or in furtherance of, this Settlement Agreement) shall be used in the Actions or in any
9 other action or proceeding for any purpose (other than to enforce the terms remaining in effect); and

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

12 **No Admission of Liability**

13 42. *Final and Complete Resolution.* The Settling Parties intend the Settlement as described
14 herein to be a final and complete resolution of all disputes between them with respect to the Actions
15 and Released Claims and to compromise claims that are contested, and it shall not be deemed an
16 admission by any Settling Party as to the merits of any claim or defense or any allegation made in the
17 Actions.

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

24 44. *Use of Agreement as Evidence.* Neither this Settlement Agreement nor the Settlement,
25 nor any act performed or document executed pursuant to or in furtherance of this Settlement
26 Agreement or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or
27 evidence of, the validity of any Released Claims, of any allegation made in the Actions, or of any
28 wrongdoing or liability of NCC/UCC; or (b) is or may be deemed to be or may be used as an

1 admission of, or evidence of, any liability, fault or omission of the Releasees in any civil, criminal or
2 administrative proceeding in any court, administrative agency or other tribunal. Neither this
3 Settlement Agreement nor the Settlement, nor any act performed or document executed pursuant to
4 or in furtherance of this Settlement Agreement or the Settlement shall be admissible in any proceeding
5 for any purpose, except to enforce the terms of the Settlement, and except that the Releasees may file
6 this Settlement Agreement and/or the Judgment in any action for any purpose, including, but not
7 limited to, in order to support a defense or counterclaim based on principles of res judicata, collateral
8 estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim
9 preclusion or issue preclusion or similar defense or counterclaim. The limitations described in this
10 paragraph apply whether or not the Court enters the Preliminary Approval Order, the Final Approval
11 Order, or the Judgment, or if the Settlement Agreement is terminated or rescinded.

12 **Miscellaneous Provisions**

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

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

26 47. ***Resolution of Disputes; Retention of Exclusive Jurisdiction.*** Any disputes between or
27 among NCC/UCC and any Class Members concerning matters contained in this Settlement
28 Agreement and the Confidential Termination Agreement referenced in ¶ 38(b) shall, if they cannot

1 be resolved by negotiation and agreement, be submitted to the Court. The Court shall retain exclusive
2 jurisdiction over the implementation and enforcement of this Settlement Agreement.

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

7 49. **Authorization to Enter Settlement Agreement.** The undersigned representatives of
8 NCC/UCC represent that they are fully authorized to enter into and to execute this Settlement
9 Agreement on behalf of NCC/UCC. Class Counsel, on behalf of Indirect Purchaser Plaintiffs and the
10 Classes, represent that they are, subject to Court approval, expressly authorized to take all action
11 required or permitted to be taken by or on behalf of the Indirect Purchaser Plaintiffs and the Classes
12 pursuant to this Settlement Agreement to effectuate its terms and to enter into and execute this
13 Settlement Agreement and any modifications or amendments to the Settlement Agreement on behalf
14 of the Classes that they deem appropriate.

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

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

23
24 COTCHETT, PITRE & MCCARTHY
25 Adam J. Zapala (azapala@cpmlegal.com)
26 San Francisco Airport Office Center
27 840 Malcolm Road, Suite 200
28 Burlingame, CA 94010
 Telephone: 650-697-6000
 Facsimile: 650-697-0577

 If directed to NCC/UCC, address notice to:

1 PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
2 Joseph J. Bial (jbial@paulweiss.com)
3 2001 K Street, NW
4 Washington, D.C., 20006-1047
5 Telephone: 202-223-7318
6 Facsimile: 202-204-7378

7 **51. Confidentiality of Settlement Negotiations.** Class Counsel shall keep strictly confidential
8 and not disclose to any third party, including specifically any counsel representing any other current
9 or former party to the Action, any non-public information regarding the Settling Parties' negotiation
10 of this settlement and/or the Settlement Agreement. For the sake of clarity, information contained
11 within this Settlement Agreement shall be considered public, and NCC/UCC may issue a press release
12 regarding execution of the Settlement Agreement and the amount paid in connection with the
13 Settlement Agreement.

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

17 **53. No Party Deemed to Be the Drafter.** None of the parties hereto shall be deemed to be the
18 drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law
19 or rule of interpretation or construction that would or might cause any provision to be construed
20 against the drafter hereof.

21 **54. Choice of Law.** This Settlement Agreement shall be considered to have been negotiated,
22 executed and delivered, and to be wholly performed, in the State of California, and the rights and
23 obligations of the parties to this Settlement Agreement shall be construed and enforced in accordance
24 with, and governed by, the internal, substantive laws of the State of California without giving effect
25 to that State's choice of law principles.

26 **55. Amendment; Waiver.** This Settlement Agreement shall not be modified in any respect
27 except by a writing executed by all the parties hereto, and the waiver of any rights conferred hereunder
28 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.

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

5 57. *Notification of State Officials.* NCC/UCC shall be responsible for providing all notices
6 required by the Class Action Fairness Act to be provided to state attorneys general or to the United
7 States of America.

8 58. *Integrated Agreement.* This Settlement Agreement constitutes the entire agreement
9 between the Settling Parties and no representations, warranties or inducements have been made to
10 any party concerning this Settlement Agreement other than the representations, warranties and
11 covenants contained and memorialized herein. It is understood by the Settling Parties that, except for
12 the matters expressly represented herein, the facts or law with respect to which this Settlement
13 Agreement is entered into may turn out to be other than or different from the facts now known to each
14 party or believed by such party to be true; each party therefore expressly assumes the risk of the facts
15 or law turning out to be so different, and agrees that this Settlement Agreement shall be in all respects
16 effective and not subject to termination by reason of any such different facts or law. Except as
17 otherwise provided herein, each party shall bear its own costs and attorneys' fees.

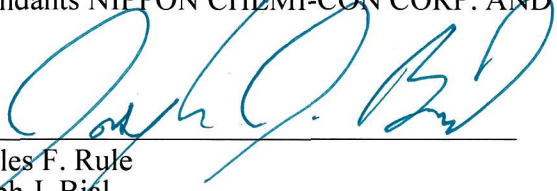
18 IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives,
19 have executed this Settlement Agreement as of the date first herein above written.

20 INDIRECT PURCHASER PLAINTIFFS' CLASS COUNSEL, on behalf of Indirect
21 Purchaser Plaintiffs individually and on behalf of the Classes.

22
23 By: Adam Zapala / ETC
24 Adam J. Zapala
25 COTCHETT, PITRE & MCCARTHY
26 San Francisco Airport Office Center
27 840 Malcolm Road, Suite 200
28 Burlingame, CA 94010
 Telephone: 650-697-6000
 Fax: 650-697-0577
 azapala@cpmlegal.com

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Defendants NIPPON CHEMI-CON CORP. AND UNITED CHEMI-CON, INC.

By: 

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