

1 Joseph W. Cotchett (State Bar No. 36324)  
2 Adam J. Zapala (State Bar No. 245748)  
3 Elizabeth T. Castillo (State Bar No. 280502)  
4 **COTCHETT PITRE & McCARTHY LLP**  
5 840 Malcolm Road  
6 Burlingame, CA 94010  
7 Telephone: (650) 697-6000  
8 Facsimile: (650) 697-0577  
9 jcotchett@cpmlegal.com  
10 azapala@cpmlegal.com  
11 ecastillo@cpmlegal.com

12 *Lead Counsel for the Indirect Purchaser Plaintiffs*

13  
14 **UNITED STATES DISTRICT COURT**  
15  
16 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
17  
18 **SAN FRANCISCO DIVISION**

19 **IN RE CAPACITORS ANTITRUST**  
20 **LITIGATION**

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

23 **THIS DOCUMENT RELATES TO:**  
24  
25 **ALL INDIRECT PURCHASER**  
26 **PLAINTIFF ACTIONS**

27 **DECLARATION OF ADAM J. ZAPALA**  
28 **IN SUPPORT OF INDIRECT**  
**PURCHASER PLAINTIFFS' NOTICE OF**  
**MOTION AND MOTION FOR FINAL**  
**APPROVAL OF SETTLEMENTS WITH**  
**ELNA, MATSUO, NICHICON, AND**  
**PANASONIC; MEMORANDUM OF**  
**POINTS AND AUTHORITIES IN**  
**SUPPORT**

Date: January 23, 2020

Time: 10:00 a.m.

Place: Courtroom 11, 19th Floor

Judge: Hon. James Donato

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 and the courts of the State of California. I am a partner with  
4 Cotchett, Pitre & McCarthy, LLP (“CPM”), Lead Counsel for the Indirect Purchaser Plaintiffs  
5 (“IPPs”). 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 1. I make this declaration in support of Indirect Purchaser Plaintiffs’ Notice of  
9 Motion and Motion for Final Approval of Settlements with Elna, Matsuo, Nichicon, and  
10 Panasonic. As used herein, “Settlements” refers collectively to IPPs’ settlements with Elna  
11 Corporation, Ltd. and Elna America, Inc. (“ELNA”), Matsuo Electric Corporation, Ltd.  
12 (“Matsuo”), Nichicon Corporation and Nichicon America Corporation (“Nichicon”), and  
13 Panasonic Corporation (“Panasonic”) in the above-captioned action (“Action”). “Settlement  
14 Classes” refers to each of the settlement classes previously certified by the Court.

15 **The Settlements are Fair, Reasonable, and Adequate**

16 2. The Settlements were reached after hard-fought litigation and are the result of  
17 arm’s-length negotiations.

18 3. I have extensive experience representing indirect purchaser plaintiff classes in  
19 complex, antitrust litigation. Based on my experience, the Settlements, individually and  
20 collectively, provide substantial value—both monetary and non-monetary in the form of the  
21 Settling Defendants’ cooperation—to the Settlement Classes. I believe the Settlements are fair,  
22 reasonable, and adequate and are in the best interests of the Settlement Classes.

23 4. Lead Counsel worked tirelessly to obtain complete and accurate information  
24 regarding Settling Defendants’ anticompetitive conduct and the volume of commerce at issue in  
25 the litigation. This information was used to negotiate and obtain the just and fair Settlements  
26 with Settling Defendants. Lead Counsel worked over the course of several months to finalize  
27 these Settlements.

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1           5.       The Settlements provide compensation to the Settlement Classes totaling  
2 \$30,950,000, which brings the total recovery in the Action to \$80,490,000. This amount is a base  
3 recovery for IPPs in this litigation, with potential additional recoveries coming from non-settling  
4 Defendants in the future.

5           6.       Based on the discovery in this Action and the transactional data obtained from  
6 Defendants and non-party distributors, the Settlements reflect a high percentage of the overall  
7 sales of the relevant capacitors by the Settling Defendants. The table below summarizes the  
8 excellent results that the Settlements represent:

Defendant Family	Settlement Amount	Comments
ELNA	\$2,250,000	The settlement amount represents 69.23% of ELNA's sales of capacitors to U.S. distributors totaling only \$3,250,600.00 (ECF No. 698-1 at ¶ 8) and 734.65% of the estimated damages attributable to ELNA (ECF No. 698 at 6).
Matsuo	\$2,500,000	The settlement amount represents 49.99% of Matsuo's sales of capacitors to U.S. distributors totaling only \$5,000,647.00 (ECF No. 698-1 ¶ 9) and 567.13% of the estimated damages attributable to Matsuo (ECF No. 698 at 6).
Nichicon	\$21,500,000	The settlement amount represents 9.95% of Nichicon's sales of capacitors to U.S. distributors totaling \$216,099,900 (ECF No. 698-1 at ¶ 7) and 106.72% of the estimated damages attributable to Nichicon (ECF No. 698 at 6).
Panasonic	\$4,700,000	The settlement amount represents 4.4% of Panasonic's affected sales of capacitors to U.S. distributors totaling \$107,233,527 (ECF No. 698-1 at ¶ 17) and 47.13% of the estimated damages against Panasonic (ECF No. 698 at 6).

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23           7.       In addition to providing substantial monetary restitution to the Settlement Classes,  
24 the Settlements require substantial cooperation from the Settling Defendants in IPPs' further  
25 prosecution against non-settling Defendants. This cooperation includes oral proffers of facts  
26 regarding the price-fixing conspiracies, production of documents related to the conspiracy, and  
27 making current employees available for interviews, depositions, and trial testimony. Cooperation  
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1 is especially valuable in a case like this where documentary evidence may no longer exist due to  
2 key events having taken place more than a decade ago, and where other key witnesses continue  
3 to evade the United States and avoid Court orders requiring depositions. With many witnesses  
4 refusing to provide testimony, Settling Defendants' cooperation is important.

#### 5 **ELNA Settlement**

6 8. Attached hereto as **Exhibit A** is a true and correct copy of the Settlement  
7 Agreement with ELNA ("ELNA Settlement"). IPPs previously filed it with the Court in  
8 connection with IPPs' Motion for Preliminary Approval of Settlements with Panasonic,  
9 Nichicon, Elna, and Matsuo Defendants and for Approval of the Plan of Allocation (ECF No.  
10 698-4).

11 9. Under the ELNA Settlement, ELNA has agreed to pay \$2,250,000 to resolve  
12 IPPs' claims against it. Ex. A at ¶ 1(dd). Based on the sales information provided to IPPs during  
13 settlement negotiations, the settlement with ELNA represents 69.23% of ELNA's sales of  
14 capacitors to U.S. distributors totaling only \$3,250,600.00 (ECF No. 698-1 at ¶ 8) and 734.65%  
15 of the estimated damages attributable to ELNA (ECF No. 698 at 6) during the electrolytic class  
16 period.

17 10. ELNA has also agreed to provide substantial cooperation, as described above, to  
18 IPPs assist in prosecution IPPs' claims against the non-settling Defendants. Ex. A at ¶¶ 32-35.

19 11. IPPs engaged in settlement negotiations with ELNA for several years. These  
20 negotiations included in person meetings, the exchange of confidential information reflecting the  
21 parties' views of liability and damages, and information concerning ELNA's financial conditions  
22 and prospects. These negotiations were hard fought. The settlement was reached after the  
23 exchange of expert reports and expert discovery regarding class certification.

#### 24 **Matsuo Settlement**

25 12. Attached hereto as **Exhibit B** is a true and correct copy of the Settlement  
26 Agreement with Matsuo. IPPs previously filed it with the Court in connection with IPPs' Motion  
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1 for Preliminary Approval of Settlements with Panasonic, Nichicon, Elna, and Matsuo Defendants  
2 and for Approval of the Plan of Allocation (ECF No. 698-5).

3 13. Under the Matsuo Settlement, Matsuo will pay \$2,500,000 to resolve IPPs' claims  
4 against it. Ex. B at ¶ 1(dd). Based on the sales information provided to IPPs in reaching this  
5 settlement, the settlement with Matsuo represents 49.99% of Matsuo's sales of capacitors to U.S.  
6 distributors totaling only \$5,000,647.00 (ECF No. 698-1 ¶ 9) and 567.13% of the estimated  
7 damages attributable to Matsuo (ECF No. 698 at 6) during the electrolytic class period.

8 14. Matsuo has agreed to provide substantial cooperation, as described above, to  
9 assist IPPs in prosecuting their claims against non-settling Defendants. Ex. B at ¶¶ 32-35.

10 15. Settlement negotiations with Matsuo followed a similar process as negotiations  
11 with ELNA. IPPs engaged in settlement discussions with Matsuo for many years. These  
12 negotiations included in person meetings, the exchange of confidential information reflecting the  
13 parties' views of liability and damages, and information concerning Matsuo's financial  
14 conditions and prospects. These negotiations were hard fought. The settlement was reached after  
15 the exchange of expert reports and expert discovery regarding class certification.

16 **Nichicon Settlement**

17 16. Attached hereto as **Exhibit C** is a true and correct copy of the Settlement  
18 Agreement with Nichicon ("Nichicon Settlement"). IPPs previously filed it with the Court in  
19 connection with IPPs' Motion for Preliminary Approval of Settlements with Panasonic,  
20 Nichicon, Elna, and Matsuo Defendants and for Approval of the Plan of Allocation (ECF No.  
21 698-3).

22 17. Under the Nichicon Settlement, Nichicon will pay \$21,500,000 to resolve IPPs'  
23 claims against it. Ex. C at ¶ 1(dd). Based on sales information provided to IPPs, this amount  
24 represents 9.95% of Nichicon's sales of capacitors to U.S. distributors totaling \$216,099,900  
25 (ECF No. 698-1 at ¶ 7) and 106.72% of the estimated damages attributable to Nichicon (ECF  
26 No. 698 at 6) during the electrolytic class period.

1 18. Nichicon has agreed to provide substantial cooperation, as described above, to  
2 assist IPPs in their prosecution of their claims against the non-settling Defendants. Ex. C at ¶¶  
3 32-35.

4 19. IPPs engaged in settlement negotiations with Nichicon for over a year. These  
5 negotiations included a mediation with a nationally renowned mediator, in person meetings, and  
6 the exchange of confidential information reflecting the parties' views of liability and damages.  
7 These negotiations were hard fought. The settlement was reached after the exchange of expert  
8 reports and expert discovery regarding class certification.

9 **Panasonic Settlement**

10 20. Attached hereto as **Exhibit D** is a true and correct copy of the Settlement  
11 Agreement with Panasonic ("Panasonic Settlement"). IPPs previously filed it with the Court in  
12 connection with IPPs' Motion for Preliminary Approval of Settlements with Panasonic,  
13 Nichicon, Elna, and Matsuo Defendants and for Approval of the Plan of Allocation (ECF No.  
14 698-2).

15 21. Under the Settlement, Panasonic will pay \$4,700,000 to resolve IPPs' claims  
16 against it. Ex. D at ¶ 1(ee). Based on sales information provided to IPPs, the Settlement amount  
17 represents 4.4% of Panasonic's affected sales of capacitors to U.S. distributors totaling  
18 \$107,233,527 (ECF No. 698-1 at ¶ 17) and 47.13% of the estimated damages against Panasonic  
19 (ECF No. 698 at 6).

20 22. Panasonic has agreed to provide substantial cooperation, as described above, to  
21 assist IPPs in their prosecution of their claims against the non-settling defendants. Ex. D at ¶¶  
22 29-35.

23 23. Settlement negotiations with Panasonic lasted over several years. They involved  
24 in-person meetings, telephonic meetings, exchanged information, and exchanged settlement  
25 proposals. The proposed settlement was reached only after both sides had the opportunity to be  
26 fully informed of the relative strengths and weaknesses of their positions and litigation risks. As  
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1 with the other settlements, the settlement with Panasonic was reached only after substantial  
2 discovery and while the motion for class certification was pending.

### 3 **Claims Released**

4 24. The Settlement Agreements have substantially similar release provisions. Ex. A at  
5 ¶¶ 10–14 (ELNA Settlement); Ex. B at ¶¶ 11-15 (Matsuo Settlement); Ex. C at ¶¶ 10–14  
6 (Nichicon Settlement); Ex. D at ¶¶ 8-12 (Panasonic Settlement).

7 25. The Settlement Agreements do not resolve or compromise any claims against  
8 non-settling Defendants. Ex. A at ¶ 1(aa) (ELNA Settlement); Ex. B at ¶ 1(aa) (Matsuo  
9 Settlement); Ex. C at ¶ 1(aa) (Nichicon Settlement); Ex. D at ¶ 1(bb) (Panasonic Settlement).

### 10 **Notice to the Settlement Classes**

11 26. Lead Counsel implemented the Notice Program shortly after the Court approved it  
12 on August 12, 2019 (ECF No. 836). Based on my experience and involvement in many class  
13 notice programs, it is my opinion that the Notice Program as implemented was the best notice  
14 practicable under the circumstances and that it comported with Due Process requirements.

15 27. Lead Counsel worked with IPPs’ class action notice provider, A.B. Data, to  
16 identify as many Class Members as possible for dissemination of actual notice, e.g., direct mail  
17 notice. As stated in the Declaration of Eric Schachter, A.B. Data served direct mail notice on  
18 over 400,000 potential class members and directly emailed over 90,000 potential Class  
19 Members. Declaration of Eric Schachter at ¶¶ 7, 11 (“Schachter Decl.”). In addition to direct  
20 notice, the Notice Program included (1) publication of the short form notice approved by the  
21 Court in *The Wall Street Journal*, (2) a website banner ad campaign that generated more than 30  
22 million banner views on websites likely to reach capacitors purchasers, (3) a settlement website,  
23 and (4) a telephone helpline. *Id.* at ¶¶ 9-16.

24 28. Attached as Exhibit F to the Schachter Declaration is the list of persons and  
25 entities that have requested exclusion from the Settlement Classes. To date, IPPs received a total  
26 of 28 exclusion requests, including 19 requests from individuals and nine requests from entities.

