

EXHIBIT 3

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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 14th
2 day of April, 2016 (the “Execution Date”), by and among Defendant Okaya Electric Industries Co.,
3 Ltd. (“OEI”) and the Indirect Purchaser Plaintiffs (“IPPs”), both individually and on behalf of the
4 Class in the above captioned class action. This Settlement Agreement is intended by the Settling
5 Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims, upon and
6 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 Class against, among others, OEI and
10 other Defendants and alleged co-conspirators;

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

14 WHEREAS, OEI 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
18 the conduct, statements, acts or omissions alleged in the Actions; and further denies the allegations
19 that the Indirect Purchaser Plaintiffs or any member of the Class were harmed by any conduct by
20 Okaya 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 OEI agree that neither this Settlement
25 Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an
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28 Settlement Agreement; Case No. 3:14-cv-03264-JD

1 admission or evidence of any violation of any statute or law or of any liability or wrongdoing by
2 Okaya or of the truth of any of the claims or allegations alleged in the Actions;

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

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

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

23 **AGREEMENT**

24 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the
25 Settling Parties, by and through their undersigned attorneys of record, in consideration of the
26 covenants, agreements, and releases set forth herein and for other good and valuable consideration,

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1 that the Actions and the Released Claims as against Okaya shall be finally and fully settled,
2 compromised and dismissed on the merits and with prejudice, without costs as to Indirect Purchaser
3 Plaintiffs, the Class, or Okaya, upon and subject to the approval of the Court, following notice to
4 the Class, on the following on the following terms and conditions:

5 **Definitions**

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

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

11 (b) "Affiliates" means entities controlling, controlled by, or under common control with a
12 Releasee or Releasor.

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

16 (d) "Capacitors" means electronic components that store electric charges between one or
17 more pairs of conductors separated by an insulator. It includes electrolytic, aluminum, tantalum,
18 and/or film capacitors.

19 (e) "Claims Administrator" means the claims administrator(s) to be selected by Class
20 Counsel.

21 (f) "Class" is defined as all persons and entities in the United States who, during the period
22 from January 1, 2002, to the Execution Date, purchased one or more Capacitor(s) from a distributor
23 (or from an entity other than a Defendant) that a Defendant or alleged co-conspirator manufactured.
24 Excluded from the Class are Defendants, their parent companies, subsidiaries and Affiliates, any
25 co-conspirators, Defendants' attorneys in this case, federal government entities and
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1 instrumentalities, states and their subdivisions, all judges assigned to this case, all jurors in this
2 case, and all persons and entities who directly purchased Capacitors from Defendants.

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

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

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

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

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

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

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

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

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

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Settlement Agreement; Case No. 3:14-cv-03264-JD

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

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

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

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

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1 (p) "Escrow Agent" means the agent jointly designated by Class Counsel and OEI, and any
2 successor agent.

3 (q) "Execution Date" means April 14, 2016.

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

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

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

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

24 (v) "Net Settlement Fund" means the Gross Settlement Fund, less the payments set forth in
25 ¶ 16.

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1 (w) "Okaya" means Okaya Electric Industries Co. Ltd., and its respective past, present and
2 future direct and indirect parents, members, subsidiaries, and Affiliates, and the past, present, and
3 future respective officers, directors, employees, managers, members, partners, agents, shareholders
4 (in their capacity as shareholders), attorneys and legal representatives, assigns, servants, and
5 representatives, and the predecessors, successors, heirs, executors, administrators, and assigns of
6 each of the foregoing.

7 (x) "Notice, Administrative, and Claims Administration Costs" means the reasonable sum of
8 money not in excess of \$150,000 to be paid out of the Gross Settlement Fund to pay for notice to
9 the Class and related administrative and claims administration costs.

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

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

18 (aa) "Released Claims" means any and all manner of claims, demands, rights, actions, suits,
19 causes of action, whether class, individual, or otherwise in nature, fees, costs, penalties, injuries,
20 damages whenever incurred, liabilities of any nature whatsoever, known or unknown (including,
21 but not limited to, "Unknown Claims"), foreseen or unforeseen, suspected or unsuspected, asserted
22 or unasserted, contingent or non-contingent, in law or in equity, under the laws of any jurisdiction,
23 which Releasers or any of them, whether directly, representatively, derivatively, or in any other
24 capacity, ever had, now have or hereafter can, shall, or may have, relating in any way to any
25 conduct prior to the Execution Date of this Settlement Agreement and arising out of or related in
26 any way in whole or in part to any facts, circumstances, acts, or omissions arising out of or related

1 to (1) the purchase, pricing, selling, discounting, marketing, manufacturing, and/or distributing of
2 Capacitors; (2) any agreement, combination, or conspiracy to raise, fix, maintain, or stabilize the
3 prices of film capacitors or restrict, reduce, alter, or allocate the supply, quantity, or quality of
4 Capacitors or concerning the development, manufacture, supply, distribution, transfer, marketing,
5 sale, or pricing of Capacitors, or any other restraint of competition alleged in the Action or that
6 could have been or hereafter could be alleged against the Releasees relating to Capacitors, or (3)
7 any other restraint of competition relating to Capacitors that could be asserted as a violation of the
8 Sherman Act or any other antitrust, unjust enrichment, unfair competition, unfair practices, trade
9 practices, price discrimination, unitary pricing, racketeering, civil conspiracy, or consumer
10 protection law, whether under federal, state, local, or foreign law.

11 (bb) "Releasees" refers jointly and severally, individually and collectively to Okaya as
12 defined in ¶ 1(w) above.

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

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

20 (ee) "Settlement Amount" means Nine-Hundred Thousand U.S. Dollars (\$900,000).

21 (ff) "Settling Parties" means, collectively, the Indirect Purchaser Plaintiffs (on behalf of
22 themselves and the Class) and Okaya.

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

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

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

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

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

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

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

8 6. *Motion for Final Approval and Entry of Final Judgment.* Not less than thirty five (35)
9 days prior to the date set by the Court to consider whether this Settlement should be finally
10 approved, Class Counsel shall submit a motion for final approval of the Settlement by the Court.
11 The Settling Parties shall jointly seek entry of the Final Approval Order and Judgment:

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

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

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

20 (d) directing that the Actions be dismissed with prejudice as to OEI and, except as provided
21 for herein, without costs;

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

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

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

4 (h) determining pursuant to Federal Rule of Civil Procedure 54(b) that there is no just
5 reason for delay and directing entry of a final judgment as to OEI; and

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

8 7. At least three (3) business days prior to the filing of any motions or other papers in
9 connection with this Settlement, including without limitation, the Preliminary Approval Motion and
10 the Motion for Final Approval of the Settlement, Class Counsel will send working drafts of these
11 papers to counsel for OEI. The text of any proposed form of order preliminarily or finally approving
12 the Settlement shall be agreed upon by Plaintiffs and OEI before it is submitted to the Court and
13 shall be consistent with the terms of this Settlement Agreement and the Class definition set forth
14 herein.

15 8. *Stay Order.* Upon the Execution Date, the Action shall be stayed as against OEI only.
16 Should the Action be tried against any Defendants other than Okaya, the parties specifically agree
17 that any findings therein shall not be binding on or admissible in evidence against Okaya or
18 prejudice Okaya in any way in any future proceeding involving Okaya.

19 9. Upon the date that the Court enters an order preliminarily approving the Settlement,
20 Indirect Purchaser Plaintiffs and members of the Class shall be barred and enjoined from
21 commencing, instituting, or continuing to prosecute any action or any proceeding in any court of
22 law or equity, arbitration tribunal, administrative forum, or other forum of any kind worldwide
23 based on the Released Claims. Nothing in this provision shall prohibit the Indirect Purchaser
24 Plaintiffs or Class Counsel from continuing to participate in discovery in the Actions that is initiated
25 by other plaintiffs or that is subject to and consistent with the cooperation provisions set forth in ¶¶
26 32-35.

1 **Releases**

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

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

13 12. ***Covenant Not to Sue.*** Releasors hereby covenant not to sue the Releasees with respect
14 to any such Released Claims. Releasors shall be permanently barred and enjoined from instituting,
15 commencing, or prosecuting against the Releasees any claims based in whole or in part on the
16 Released Claims. The Settling Parties contemplate and agree that this Settlement Agreement may
17 be pleaded as a bar to a lawsuit, and an injunction may be obtained, preventing any action from
18 being initiated or maintained in any case sought to be prosecuted on behalf of Indirect Purchaser
19 Plaintiffs with respect to the Released Claims.

20 13. ***Waiver of California Civil Code § 1542 and Similar Laws.*** The Releasors acknowledge
21 that, by virtue of the execution of this Settlement Agreement, and for the consideration received
22 hereunder, it is their intention to release, and they are releasing, all Released Claims, even
23 Unknown Claims. In furtherance of this intention, the Releasors expressly waive and relinquish, to
24 the fullest extent permitted by law, any rights or benefits conferred by the provisions of California
25 Civil Code § 1542, as set forth in ¶ 1(gg), or equivalent, similar, or comparable laws or principles of
26 law. The Releasors acknowledge that they have been advised by Class Counsel of the contents and
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1 effects of California Civil Code § 1542, and hereby expressly waive and release with respect to the
2 Released Claims any and all provisions, rights, and benefits conferred by California Civil Code
3 § 1542 or by any equivalent, similar, or comparable law or principle of law in any jurisdiction. The
4 Releasers may hereafter discover facts other than or different from those which they know or
5 believe to be true with respect to the subject matter of the Released Claims, but the Releasers
6 hereby expressly waive and fully, finally, and forever settle and release any known or unknown,
7 suspected or unsuspected, foreseen or unforeseen, asserted or unasserted, contingent or non-
8 contingent, and accrued or unaccrued claim, loss, or damage with respect to the Released Claims,
9 whether or not concealed or hidden, without regard to the subsequent discovery or existence of such
10 additional or different facts. The release of unknown, unanticipated, unsuspected, unforeseen, and
11 unaccrued losses or claims in this paragraph is not a mere recital.

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

17 **Settlement Fund**

18 15. *Settlement Payment.* OEI shall pay by wire transfer the Settlement Amount to the
19 Escrow Agent pursuant to escrow instructions within forty (40) business days after the Execution
20 Date. This amount constitutes the total amount of payment that Okaya is required to make in
21 connection with this Settlement Agreement. This amount shall not be subject to reduction, and upon
22 the occurrence of the Effective Date, no funds shall revert to OEI except as provided herein. The
23 Escrow Agent shall only act in accordance with the mutually agreed escrow instructions.

24 16. *Disbursements Prior to Effective Date.* No amount may be disbursed from the Gross
25 Settlement Fund unless and until the Effective Date, except that: (a) Notice, Administrative, and
26 Claims Administration Costs, which may not exceed \$150,000, may be paid from the Gross
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1 Settlement Fund as they become due; (b) Taxes and Tax Expenses (as defined in ¶ 20 below) may
2 be paid from the Gross Settlement Fund as they become due; and (c) attorneys' fees and
3 reimbursement of litigation costs may be paid as ordered by the Court, which may be disbursed
4 during the pendency of any appeals, which may be taken from the judgment to be entered by the
5 Court finally approving this Settlement.

6 **17. Refund by Escrow Agent.** If the Settlement as described herein is not finally approved
7 by any court, or it is terminated as provided herein, or the Judgment is overturned on appeal or by
8 writ, the Gross Settlement Fund, including the Settlement Amount and all interest earned on the
9 Settlement Amount while held in escrow, excluding only Notice, Administrative and Claims
10 Administration Costs and Taxes and/or Tax Expenses (as defined below), shall be refunded,
11 reimbursed, and repaid by the Escrow Agent to OEI within five (5) business days after receiving
12 notice pursuant to ¶ 43 below.

13 **18. Refund by Class Counsel.** If the Settlement as described herein is not finally approved
14 by any court, or it is terminated as provided herein, or the Judgment as described herein is not
15 approved or entered or is overturned on appeal or by writ, any attorneys' fees and costs previously
16 paid pursuant to this Settlement Agreement (as well as interest on such amounts) shall be refunded,
17 reimbursed, and repaid by Class Counsel to OEI within thirty (30) business days after receiving
18 notice pursuant to ¶ 43 below.

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

25 **20. Taxes.** The Settling Parties and the Escrow Agent agree to treat the Gross Settlement
26 Fund as being at all times a "qualified settlement fund" within the meaning of Treas. Reg. §1.468B-

1 1. The Escrow Agent shall timely make such elections as necessary or advisable to carry out the
2 provisions of this paragraph, including the “relation-back election” (as defined in Treas. Reg.
3 §1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the
4 procedures and requirements contained in such regulations. It shall be the responsibility of the
5 Escrow Agent to prepare and deliver timely and properly the necessary documentation for signature
6 by all necessary parties, and thereafter to cause the appropriate filing to occur.

7 (a) For the purpose of §468B of the Internal Revenue Code of 1986, as amended, and the
8 regulations promulgated thereunder, the “administrator” shall be the Escrow Agent. The Escrow
9 Agent shall satisfy the administrative requirements imposed by Treas. Reg. §1.468B-2 by, e.g., (i)
10 obtaining a taxpayer identification number, (ii) satisfying any information reporting or withholding
11 requirements imposed on distributions from the Gross Settlement Fund, and (iii) timely and
12 properly filing applicable federal, state, and local tax returns necessary or advisable with respect to
13 the Gross Settlement Fund (including, without limitation, the returns described in Treas. Reg.
14 §1.468B-2(k)) and paying any taxes reported thereon. Such returns (as well as the election
15 described in this paragraph) shall be consistent with the provisions of this paragraph and in all
16 events shall reflect that all Taxes as defined in ¶ 20(b) below on the income earned by the Gross
17 Settlement Fund shall be paid out of the Gross Settlement Fund as provided in ¶ 20(b) hereof;

18 (b) The following shall be paid out of the Gross Settlement Fund: (i) all taxes (including any
19 estimated taxes, interest or penalties) arising with respect to the income earned by the Gross
20 Settlement Fund, including, without limitation, any taxes or tax detriments that may be imposed
21 upon Okaya or its counsel with respect to any income earned by the Gross Settlement Fund for any
22 period during which the Gross Settlement Fund does not qualify as a “qualified settlement fund” for
23 federal or state income tax purposes (collectively, “Taxes”); and (ii) all expenses and costs incurred
24 in connection with the operation and implementation of this paragraph, including, without
25 limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and
26 expenses relating to filing (or failing to file) the returns described in this paragraph (collectively,

1 “Tax Expenses”). In all events neither Okaya nor its counsel shall have any liability or
2 responsibility for the Taxes or the Tax Expenses. With funds from the Gross Settlement Fund, the
3 Escrow Agent shall indemnify and hold harmless Okaya and its counsel for Taxes and Tax
4 Expenses (including, without limitation, Taxes payable by reason of any such indemnification).
5 Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration
6 of the Gross Settlement Fund and shall timely be paid by the Escrow Agent out of the Gross
7 Settlement Fund without prior order from the Court and the Escrow Agent shall be obligated
8 (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized
9 Claimants any funds necessary to pay such amounts, including the establishment of adequate
10 reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be
11 withheld under Treas. Reg. §1.468B-2(1)(2)); neither Okaya nor its counsel is responsible therefor,
12 nor shall they have any liability therefor. The Settling Parties agree to cooperate with the Escrow
13 Agent, each other, their tax attorneys, and their accountants to the extent reasonably necessary to
14 carry out the provisions of this paragraph.

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

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

19 22. *Distribution of Gross Settlement Fund.* Upon further orders of the Court, the Notice
20 and Claims Administrator, subject to such supervision and direction of the Court and/or Class
21 Counsel as may be necessary or as circumstances may require, shall administer the claims
22 submitted by members of the Class and shall oversee distribution of the Gross Settlement Fund to
23 Authorized Claimants pursuant to the Distribution Plan. Subject to the terms of this Settlement
24 Agreement and any order(s) of the Court, the Gross Settlement Fund shall be applied as follows:
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1 (a) To pay all costs and expenses reasonably and actually incurred in connection providing
2 notice to the Class in connection with administering and distributing the Net Settlement Fund to
3 Authorized Claimants, and in connection with paying escrow fees and costs, if any;

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

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

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

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

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

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

19 **25. *No Liability for Distribution of Settlement Funds.*** Neither the Releasees nor their
20 counsel shall have any responsibility for, interest in, or liability whatsoever with respect to the
21 distribution of the Gross Settlement Fund; the Distribution Plan; the determination, administration,
22 or calculation of claims; the Settlement Fund’s qualification as a “qualified settlement fund”; the
23 payment or withholding of Taxes or Tax Expenses; the distribution of the Net Settlement Fund; or
24 any losses incurred in connection with any such matters. The Releasors hereby fully, finally, and
25 forever release, relinquish, and discharge the Releasees and their counsel from any and all such
26 liability. No Person shall have any claim against Class Counsel or the Notice and Claims

1 Administrator based on the distributions made substantially in accordance with the Agreement and
2 the Settlement contained herein, the Distribution Plan, or further orders of the Court.

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

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

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

20 **28. *Fee and Expense Application.*** Class Counsel may submit an application or applications
21 (the "Fee and Expense Application") for distributions from the Gross Settlement Fund, for: (a) an
22 award of attorneys' fees; plus (b) reimbursement of expenses incurred in connection with
23 prosecuting the Actions; plus (c) any interest on such attorneys' fees and expenses (until paid) at the
24 same rate and for the same periods as earned by the Settlement Fund, as appropriate, and as may be
25 awarded by the Court.
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1 **29. *Payment of Fee and Expense Award.*** Any amounts that are awarded by the Court
2 pursuant to the above paragraph (the “Fee and Expense Award”) shall be paid from the Gross
3 Settlement Fund consistent with the provisions of this Settlement Agreement.

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

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

20 **Cooperation**

21 **32. *Cooperation as Consideration.*** In return for the Release and Discharge provided herein,
22 OEI agrees to pay the Settlement Amount and agrees to provide cooperation to Indirect Purchaser
23 Plaintiffs as set forth specifically below in ¶¶ 33-35.

24 **33. *Attorney Proffer.*** Within thirty (30) business days after Preliminary Approval by the
25 Court of this Settlement Agreement or such time as mutually agreed by the Settling Parties, counsel
26 for OEI shall provide Class Counsel with an oral proffer of facts known to them about meetings or

1 communications between competitors in the Capacitors industry. Should the attorney proffer
2 required by this paragraph not occur within the 30 business days after Preliminary Approval,
3 Indirect Purchaser Plaintiffs do not waive their right to an attorney proffer. The Rule 30(b)(6)
4 deposition of Mr. Sugimoto, currently noticed for May 11-12, 2016, is hereby adjourned. In lieu of
5 the Rule 30(b)(6) deposition currently noticed for May 11-12, 2016, counsel for OEI shall also
6 provide a proffer of testimony a Rule 30(b)(6) OEI deponent might provide regarding OEI's pricing
7 of film capacitors consistent with the Indirect Purchaser Plaintiffs' Rule 30(b)(6) deposition notice
8 regarding pricing issues. Counsel for the Indirect Purchaser Plaintiffs and counsel for OEI shall
9 work cooperatively together to determine whether OEI 's designated Rule 30(b)(6) witness would
10 be able to provide a declaration or affidavit in lieu of testifying at a deposition for purposes of the
11 Indirect Purchaser Plaintiffs' motion for class certification.

12 **34. Cooperation Subject to and Consistent with Prior Obligations.** Okaya and the Indirect
13 Purchaser Plaintiffs shall not be obligated to provide cooperation that would violate an applicable
14 court order. Additionally, Indirect Purchaser Plaintiffs and Okaya will take reasonable efforts to
15 accommodate the other's efforts to minimize duplication in the providing of any cooperation.

16 **35. Further Cooperation.**

17 (a) OEI shall, to the extent it has not done so already, produce ordinary course of business
18 documents that it has provided to the U.S. and foreign law enforcement authorities, including all
19 English translations of any documents, concerning Capacitors, to the extent they exist, within
20 fifteen (15) business days after Preliminary Approval by the Court of this Settlement Agreement.

21 (b) OEI shall, to the extent it has not done so already, identify and produce documents
22 concerning JFC meetings attended by Okaya or that were provided to Okaya by other participants,
23 including meeting minutes and notes from attendees, and emails concerning JFC meetings within
24 fifteen (15) business days after the Preliminary Approval by the Court of this Settlement
25 Agreement.

1 (c) If OEI produces any declarations, documents, data, or other responses to discovery to
2 any other plaintiff in the Actions, OEI will produce the same to Indirect Purchaser Plaintiffs.

3 (d) OEI agrees to provide assistance reasonably necessary to establish the foundation for
4 and admissibility of documents OEI has produced in the Actions or pursuant to this Settlement
5 Agreement, including, as reasonably necessary, producing at trial in person, by deposition or by
6 affidavit, whichever is legally required, one current employee to testify as to the genuineness, status
7 as business records, and/or authenticity any documents produced by OEI in these Actions, including
8 OEI's transactional data, as necessary for use in briefing on class certification, dispositive motion
9 practice, or trial.

10 (e) OEI will make its best efforts to make up to two current or former employees reasonably
11 available for interviews, as necessary. Such interviews shall not exceed three hours per employee,
12 and may be conducted telephonically or by videoconference. If the interviews are conducted with
13 the assistance of an interpreter, the interview time shall be doubled. At least five (5) business days
14 in advance of such depositions, Class Counsel shall provide a list of topics to be covered in the
15 interview.

16 (f) OEI agrees Indirect Purchaser Plaintiffs may ask questions at depositions of Okaya
17 witnesses noticed by other plaintiffs in the litigation.

18 (g) OEI shall, to the extent it has not done so already, respond in writing to reasonable
19 requests for clarification of the transactional, production, and cost data that OEI produced in the
20 Actions and also about its methods of pricing Capacitors. Such requests by Indirect Purchaser
21 Plaintiffs shall be coordinated with Direct Purchaser Plaintiffs' counsel to avoid duplication.

22 (h) Indirect Purchaser Plaintiffs agree to withdraw all outstanding discovery served on OEI,
23 and neither Okaya nor Indirect Purchaser Plaintiffs shall file motions against the other during the
24 pendency of the Agreement except to enforce the terms of this Settlement Agreement.

25 (i) Upon reasonable notice from Class Counsel and after Preliminary Approval of this
26 Settlement Agreement, OEI agrees to use its best efforts to make available no more than two of

1 OEI's current or former employees, who shall be separately agreed upon in advance by OEI and
2 Indirect Purchaser Plaintiffs, for a deposition. The depositions shall be held at a mutually agreed
3 location in the United States, and shall be completed by September 1, 2016. Such depositions shall
4 not exceed seven (7) and a half hours in length, if the witness testifies in English without a
5 translator. If the witness requires a translator, the deposition shall not exceed eleven (11) hours in
6 length. Indirect Purchaser Plaintiffs shall use best efforts to coordinate with counsel for Direct
7 Purchaser Plaintiffs to ensure that Okaya is not required to produce more than two witnesses for
8 deposition. Indirect Purchaser Plaintiffs will reimburse Okaya for reasonable business class airfare
9 and up to two (2) nights of reasonable hotel expenses per witness (not to exceed \$400 per night per
10 witness) for each witness who is made available for deposition in the United States.

11 (j) OEI will use its best efforts to make up to two present or former employees available to
12 Indirect Purchaser Plaintiffs at trial for testimony. Plaintiffs will reimburse Okaya for reasonable
13 business class airfare and up to three (3) nights of reasonable hotel expenses (not to exceed \$400
14 per night per witness) for each witness who is made available for trial testimony in the United
15 States. Indirect Purchaser Plaintiffs shall use best efforts to coordinate with counsel for Direct
16 Purchaser Plaintiffs to ensure that Okaya is not required to produce more than two witnesses at trial.

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

23 **37. *Resolution of Disputes.*** To the extent the Settling Parties disagree about the
24 interpretation or enforcement of any terms of this Settlement Agreement relating to future
25 cooperation by OEI, they agree to submit such disputes for binding resolution by the Honorable
26 James Donato or another mutually agreed neutral.

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

2 **38. 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 Okaya in
4 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 **39. 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
10 and in accordance with ¶ 43, below, unless the Settling Parties mutually agree in writing to proceed
11 with this Settlement Agreement.

12 **40. Exclusions.** Class Counsel shall cause copies of requests for exclusion from the Class to
13 be provided to OEI's counsel. No later than 14 days after the final date for mailing requests for
14 exclusion, Class Counsel shall provide OEI's counsel with a complete and final list of opt-outs.
15 With the motion for final approval of the Settlement, Class Counsel will file with the Court a
16 complete list of requests for exclusion from the Class, including only the name, city, and state of the
17 person or entity requesting exclusion. OEI shall have the option to terminate this Settlement
18 Agreement if the purchases of Capacitors from distributors made by members of the Class who
19 timely and validly request exclusion from the Class equal or exceeds twenty percent (20%) of the
20 total volume of purchases of capacitors made by the Class. After meeting and conferring with Class
21 Counsel, OEI may elect to terminate this Settlement Agreement by serving written notice on Class
22 Counsel by email and overnight courier and by filing a copy of such notice with the Court no later
23 than thirty (30) days before the date for the final approval hearing of this Settlement Agreement,
24 except that OEI shall have a minimum of ten (10) days in which to decide whether to terminate this
25 Settlement Agreement after receiving the final opt out list. In the event that OEI exercises its option
26 to terminate this Settlement Agreement: (i) this Settlement Agreement shall be null and void as to

1 OEI, and shall have no force or effect and shall be without prejudice to the rights and contentions of
2 Releasees and Releasors in this or any other litigation; and (ii) the Settlement fund paid by OEI,
3 plus interest thereon, shall be refunded promptly to OEI, minus such payment (as set forth in this
4 Settlement Agreement) of Notice and Administrative Costs and Taxes and Tax Expenses, consistent
5 with the provisions of ¶¶ 16 and 20.

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

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

1 Party. Without limiting the foregoing, Okaya shall have, in its sole and absolute discretion, the
2 option to terminate the Settlement in its entirety in the event that the Judgment, upon becoming
3 Final, does not provide for the dismissal with prejudice of all of the Actions against them.

4 **43. Termination.** Unless otherwise ordered by the Court, in the event that the Effective Date
5 does not occur or this Settlement Agreement should terminate, or be cancelled or otherwise fail to
6 become effective for any reason, including, without limitation, in the event that Okaya elects to
7 terminate this Settlement Agreement pursuant to ¶ 39, the Settlement as described herein is not
8 finally approved by the Court, or the Judgment is reversed or vacated following any appeal taken
9 therefrom, then:

10 (a) within five (5) business days after written notification of such event is sent by counsel
11 for OEI to the Escrow Agent, the Gross Settlement Fund, including the Settlement Amount and all
12 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,
14 Taxes and Tax Expenses that have been paid or that have accrued and will be payable at some later
15 date, and attorneys' fees and costs that have been disbursed pursuant to Court order will be
16 refunded, reimbursed, and repaid by the Escrow Agent to OEI; if said amount or any portion thereof
17 is not returned within such five (5) day period, then interest shall accrue thereon at the rate of ten
18 percent (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
20 Counsel for OEI 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 OEI;

22 (c) the Escrow Agent or its designee shall apply for any tax refund owed to the Gross
23 Settlement Fund and pay the proceeds to OEI, after deduction of any fees or expenses reasonably
24 incurred in connection with such application(s) for refund, pursuant to such written 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 ¶¶ 43-46
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
7 Settlement Agreement (nor any negotiations preceding this Settlement Agreement nor any acts
8 performed pursuant to, or in furtherance of, this Settlement Agreement) shall be used in the Actions
9 or in any other action or proceeding for any purpose (other than to enforce the terms remaining in
10 effect); and

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

13 **No Admission of Liability**

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

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

1 **46. Use of Agreement as Evidence.** Neither this Settlement Agreement nor the Settlement,
2 nor any act performed or document executed pursuant to or in furtherance of this Settlement
3 Agreement or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or
4 evidence of, the validity of any Released Claims, of any allegation made in the Actions, or of any
5 wrongdoing or liability of Okaya; or (b) is or may be deemed to be or may be used as an admission
6 of, or evidence of, any liability, fault, or omission of the Releasees in any civil, criminal, or
7 administrative proceeding in any court, administrative agency, or other tribunal. Neither this
8 Settlement Agreement nor the Settlement, nor any act performed or document executed pursuant to
9 or in furtherance of this Settlement Agreement or the Settlement shall be admissible in any
10 proceeding for any purpose, except to enforce the terms of the Settlement, and except that the
11 Releasees may file this Settlement Agreement and/or the Judgment in any action for any purpose,
12 including, but not limited to, in order to support a defense or counterclaim based on principles of res
13 judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other
14 theory of claim preclusion or issue preclusion or similar defense or counterclaim. The limitations
15 described in this paragraph apply whether or not the Court enters the Preliminary Approval Order,
16 the Final Approval Order, or the Judgment, or if the Settlement Agreement is terminated or
17 rescinded.

18 **Miscellaneous Provisions**

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

23 **48. Consent to Jurisdiction.** Okaya and each Class Member hereby irrevocably submit to
24 the exclusive jurisdiction of the Court only for the specific purpose of any suit, action, proceeding,
25 or dispute arising out of or relating to this Settlement Agreement or the applicability of this
26 Settlement Agreement. Solely for purposes of such suit, action, or proceeding, to the fullest extent

1 that they may effectively do so under applicable law, Okaya and the Class Members irrevocably
2 waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection
3 that they are not subject to the jurisdiction of the Court or that the Court is in any way an improper
4 venue or an inconvenient forum. Nothing herein shall be construed as a submission to jurisdiction
5 for any purpose other than any suit, action, proceeding, or dispute arising out of or relating to this
6 Settlement Agreement or the applicability of this Settlement Agreement.

7 **49. Resolution of Disputes; Retention of Exclusive Jurisdiction.** Any disputes between or
8 among Okaya and any Class Members concerning matters contained in this Settlement Agreement
9 shall, if they cannot be resolved by negotiation and agreement, be submitted to the Court. The Court
10 shall retain exclusive jurisdiction over the implementation and enforcement of this Settlement
11 Agreement.

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

16 **51. Authorization to Enter Settlement Agreement.** The undersigned representatives of OEI
17 represent that they are fully authorized to enter into and to execute this Settlement Agreement on
18 behalf of OEI. Class Counsel, on behalf of Indirect Purchaser Plaintiffs and the Class, represent that
19 they are, subject to Court approval, expressly authorized to take all action required or permitted to
20 be taken by or on behalf of the Indirect Purchaser Plaintiffs and the Class pursuant to this
21 Settlement Agreement to effectuate its terms and to enter into and execute this Settlement
22 Agreement and any modifications or amendments to the Settlement Agreement on behalf of the
23 Class that they deem appropriate.

24 **52. Notices.** All notices under this Settlement Agreement shall be in writing. Each such
25 notice shall be given either by (a) e-mail; (b) hand delivery; (c) registered or certified mail, return
26 receipt requested, postage pre-paid; (d) Federal Express or similar overnight courier; or (e)

1 facsimile and first class mail, postage pre-paid and, if directed to any Class Member, shall be
2 addressed to Class Counsel at their addresses set forth below, and if directed to OEI, shall be
3 addressed to their attorneys at the addresses set forth below or such other addresses as Class
4 Counsel or OEI may designate, from time to time, by giving notice to all parties hereto in the
5 manner described in this paragraph.

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

7
8 COTCHETT, PITRE & MCCARTHY

9 Steven N. Williams (swilliams@cpmlegal.com)

10 San Francisco Airport Office Center

11 840 Malcolm Road, Suite 200

12 Burlingame, CA 94010

13 Telephone: 650-697-6000

14 Facsimile: 650-697-0577

15
16 If directed to OEI, address notice to:

17
18 BAKER & MCKENZIE LLP

19 Darrell Prescott (Darrell.Prescott@bakermckenzie.com)

20 452 Fifth Avenue

21 New York, NY 10018

22 Telephone:(212) 626-4476

23 Facsimile: (212) 310-1637

24
25 **53. Confidentiality of Settlement Negotiations.** Class Counsel shall keep strictly
26 confidential and not disclose to any third party, including specifically any counsel representing any
27

1 other current or former party to the Action, any non-public information regarding the Settling
2 Parties' negotiation of this Settlement and/or the Settlement Agreement. For the sake of clarity,
3 information contained within this Settlement Agreement shall be considered public, and Okaya may
4 issue a press release regarding execution of the Settlement Agreement and the amount paid in
5 connection with the Settlement Agreement.

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

9 **55. No Party Deemed to Be the Drafter.** None of the parties hereto shall be deemed to be
10 the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case
11 law or rule of interpretation or construction that would or might cause any provision to be construed
12 against the drafter hereof.

13 **56. Choice of Law.** This Settlement Agreement shall be considered to have been negotiated,
14 executed and delivered, and to be wholly performed, in the State of California, and the rights and
15 obligations of the parties to this Settlement Agreement shall be construed and enforced in
16 accordance with, and governed by, the internal, substantive laws of the State of California without
17 giving effect to that State's choice of law principles.

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

23 **58. Execution in Counterparts.** This Settlement Agreement may be executed in one or more
24 counterparts. All executed counterparts and each of them shall be deemed to be one and the same
25 instrument. Counsel for the parties to this Settlement Agreement shall exchange among themselves
26
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1 original signed counterparts and a complete set of executed counterparts shall be filed with the
2 Court.

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

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

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

18 INDIRECT PURCHASER PLAINTIFFS' CLASS COUNSEL, on behalf of Indirect
19 Purchaser Plaintiffs individually and on behalf of the Class

20
21 By: 

22 Steven N. Williams

23 COTCHETT, PITRE & MCCARTHY

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