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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 21st day
2 of July 2017 (the “Execution Date”), by and among Defendants Hitachi Chemical Co., Ltd.,
3 Hitachi AIC Inc., and Hitachi Chemical Co. America, Ltd., (collectively, “Hitachi Chemical”), and
4 the Indirect Purchaser Plaintiffs (“IPPs”), both individually and on behalf of the Classes in the
5 above captioned action. This Settlement Agreement is intended by the Settling Parties to fully,
6 finally, and forever resolve, discharge and settle the Released Claims, upon and subject to the terms
7 and conditions hereof.

8 **RECITALS**

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

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

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

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

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

1 Actions;

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

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

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

22 **AGREEMENT**

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

3 **Definitions**

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

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

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

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

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

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

19 (f) "Classes" is defined in the following manner:

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

27 All persons and entities in the United States who, during the period from January 1, 2002 to
28 February 28, 2014, purchased one or more Film Capacitor(s) from a distributor (or from an entity

1 other than a Defendant) that a Defendant or alleged co-conspirator manufactured. Excluded from
2 the Class are Defendants, their parent companies, subsidiaries and Affiliates, any co-conspirators,
3 Defendants' attorneys in this case, federal government entities and instrumentalities, states and their
4 subdivisions, all judges assigned to this case, all jurors in this case, and all persons and entities who
5 directly purchased Capacitors from Defendants.

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

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

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

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

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

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

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

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

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

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

1 (p) “Escrow Agent” means the agent jointly designated by Class Counsel and Hitachi
2 Chemical, and any successor agent.

3 (q) “Execution Date” means the date of the last signature set forth on the signature pages
4 below.

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

18 (s) “Gross Settlement Fund” means the Settlement Amount plus any interest that may
19 accrue.

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

24 (u) “Judgment” means the order of judgment and dismissal of the Actions with prejudice.

25 (v) “Net Settlement Fund” means the Gross Settlement Fund, less the payments set forth in
26 ¶ 16.

27 (w) “Hitachi Chemical” means collectively Hitachi Chemical Co., Ltd., Hitachi AIC Inc.,
28 and Hitachi Chemical Co. America, Ltd., and their respective past, present and future direct and

1 indirect parents, members, subsidiaries, and Affiliates, and the past, present, and future respective
2 officers, directors, employees, managers, members, partners, agents, shareholders (in their capacity
3 as shareholders), attorneys and legal representatives, assigns, servants, and representatives, and the
4 predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.

5 (x) "Notice, Administrative and Claims Administration Costs" means the reasonable sum of
6 money not in excess of \$550,000 to be paid out of the Gross Settlement Fund to pay for notice to
7 the Classes and related administrative and claims administration costs.

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

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

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

1 or any other restraint of competition alleged in the Action or that could have been or hereafter could
2 be alleged against the Releasees relating to Capacitors, or (3) any other restraint of competition
3 relating to Capacitors that could be asserted as a violation of the Sherman Act or any other antitrust,
4 unjust enrichment, unfair competition, unfair practices, trade practices, price discrimination, unitary
5 pricing, racketeering, civil conspiracy or consumer protection law, whether under federal, state,
6 local or foreign law.

7 (bb) "Releasees" refers jointly and severally, individually and collectively to Hitachi
8 Chemical as defined in ¶ 1(w) above.

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

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

16 (ee) "Settlement Amount" means exactly Fourteen Million U.S. Dollars (\$14,000,000.00).
17 Based on Class Counsel's allocation of the Settlement Amount, \$13,370,000 will be allocated to
18 pay claimants with qualifying purchases of electrolytic capacitors, while \$630,000 will be allocated
19 to pay claimants with qualifying purchases of film capacitors. But in no event shall Hitachi
20 Chemical pay more than \$14,000,000.

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

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 settlement
26 with and release of the Releasees, or might have affected his, her or its decision not to object to this
27 Settlement. Such Unknown Claims include claims that are the subject of California Civil Code §
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1 1542 and equivalent, similar or comparable laws or principles of law. California Civil Code § 1542
2 provides:

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

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

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

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

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

27 5. *Claims Administrator.* Indirect Purchaser Plaintiffs shall retain a Claims Administrator,
28 which shall be responsible for the claims administration process including distribution to Class

1 Members pursuant to a court-approved plan of distribution. The fees and expenses of the Claims
2 Administrator shall be paid exclusively out of the Settlement Fund. In no event shall Hitachi
3 Chemical be separately responsible for any fees or expenses of the Claims Administrator.

4 **6. Motion for Final Approval and Entry of Final Judgment.** Prior to the date set by the
5 Court to consider whether this Settlement should be finally approved, Class Counsel shall submit a
6 motion for final approval of the Settlement by the Court. The Settling Parties shall jointly seek entry
7 of the Final Approval Order and Judgment:

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

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

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

16 (d) directing that the Actions be dismissed with prejudice as to Hitachi Chemical and,
17 except as provided for herein, without costs;

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

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

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

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

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

1 7. At least seven (7) business days prior to the filing of any motions or other papers in
2 connection with this Settlement, including without limitation, the Preliminary Approval Motion and
3 the Motion for Final Approval of the Settlement, Class Counsel will send working drafts of these
4 papers to counsel for Hitachi Chemical. The text of any proposed form of order preliminarily or
5 finally approving the Settlement shall be agreed upon by Plaintiffs and Hitachi Chemical before it is
6 submitted to the Court and shall be consistent with the terms of this Settlement Agreement and the
7 Class definitions set forth herein.

8 8. *Stay Order.* Upon the Execution Date, the Action shall be stayed as against Hitachi
9 Chemical only. Should the Action be tried against any Defendants other than Hitachi Chemical, the
10 parties specifically agree that any findings therein shall not be binding on or admissible in evidence
11 against Hitachi Chemical or prejudice Hitachi Chemical in any way in any future proceeding
12 involving Hitachi Chemical.

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

20 Releases

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

27 11. *No Future Actions Following Release.* The Releasors shall not, after the Effective Date,
28 seek (directly or indirectly) to commence, institute, maintain or prosecute any suit, action or

1 complaint or collect from or proceed against Hitachi Chemical or any other Releasee (including
2 pursuant to the Actions) based on the Released Claims in any forum worldwide, whether on his,
3 her, or its own behalf or as part of any putative, purported or certified classes of purchasers or
4 consumers.

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

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

3 14. ***Claims Excluded from Release.*** Notwithstanding the foregoing, the releases provided
4 herein shall not release claims against Hitachi Chemical for product liability, breach of contract,
5 breach of warranty or personal injury, or any other claim unrelated to the allegations in the Actions
6 of restraint of competition or unfair competition with respect to Capacitors. Additionally, the
7 releases provided herein shall not release any claims to enforce the terms of this Settlement
8 Agreement.

9 **Settlement Fund**

10 15. ***Settlement Payment.*** Hitachi Chemical shall pay by wire transfer the Settlement
11 Amount to the Escrow Agent pursuant to escrow instructions within fifteen (15) business days after
12 the Execution Date. This amount constitutes the total amount of payment that Hitachi Chemical is
13 required to make in connection with this Settlement Agreement. This amount shall not be subject to
14 reduction, and upon the occurrence of the Effective Date, no funds shall revert to Hitachi Chemical
15 except as provided herein. The Escrow Agent shall only act in accordance with the mutually agreed
16 escrow instructions. Class Counsel shall allocate the Settlement Amount in the following manner:
17 \$13,370,000 of the Settlement Amount shall be allocated to pay claimants with qualifying
18 purchases of electrolytic capacitors. \$630,000 of the Settlement Amount shall be allocated to pay
19 claimants with qualifying purchases of film capacitors.

20 16. ***Disbursements Prior to Effective Date.*** No amount may be disbursed from the Gross
21 Settlement Fund unless and until the Effective Date, except that: (a) Notice, Administrative and
22 Claims Administration Costs, which may not exceed \$550,000, may be paid from the Gross
23 Settlement Fund as they become due; (b) Taxes and Tax Expenses (as defined in ¶ 20 below) may
24 be paid from the Gross Settlement Fund as they become due, and (c) attorneys' fees and
25 reimbursement of litigation costs may be paid as ordered by the Court, which may be disbursed
26 during the pendency of any appeals, which may be taken from the judgment to be entered by the
27 Court finally approving this Settlement.

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

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

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

20 **20. Taxes.** The Settling Parties and the Escrow Agent agree to treat the Gross Settlement
21 Fund as being at all times a "qualified settlement fund" within the meaning of Treas. Reg. §1.468B-
22 1. The Escrow Agent shall timely make such elections as necessary or advisable to carry out the
23 provisions of this paragraph, including the "relation-back election" (as defined in Treas. Reg.
24 §1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the
25 procedures and requirements contained in such regulations. It shall be the responsibility of the
26 Escrow Agent to prepare and deliver timely and properly the necessary documentation for signature
27 by all necessary parties, and thereafter to cause the appropriate filing to occur.

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

12 (b) The following shall be paid out of the Gross Settlement Fund: (i) all taxes (including any
13 estimated taxes, interest or penalties) arising with respect to the income earned by the Gross
14 Settlement Fund, including, without limitation, any taxes or tax detriments that may be imposed
15 upon Hitachi Chemical or its counsel with respect to any income earned by the Gross Settlement
16 Fund for any period during which the Gross Settlement Fund does not qualify as a “qualified
17 settlement fund” for federal or state income tax purposes (collectively, “Taxes”); and (ii) all
18 expenses and costs incurred in connection with the operation and implementation of this paragraph,
19 including, without limitation, expenses of tax attorneys and/or accountants and mailing and
20 distribution costs and expenses relating to filing (or failing to file) the returns described in this
21 paragraph (collectively, “Tax Expenses”). In all events neither Hitachi Chemical nor its counsel
22 shall have any liability or responsibility for the Taxes or the Tax Expenses. With funds from the
23 Gross Settlement Fund, the Escrow Agent shall indemnify and hold harmless Hitachi Chemical and
24 its counsel for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of
25 any such indemnification). Further, Taxes and Tax Expenses shall be treated as, and considered to
26 be, a cost of administration of the Gross Settlement Fund and shall timely be paid by the Escrow
27 Agent out of the Gross Settlement Fund without prior order from the Court and the Escrow Agent
28 shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to

1 Authorized Claimants any funds necessary to pay such amounts, including the establishment of
2 adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to
3 be withheld under Treas. Reg. §1.468B-2(1)(2)); neither Hitachi Chemical nor its counsel is
4 responsible therefor, nor shall they have any liability therefor. The Settling Parties agree to
5 cooperate with the Escrow Agent, each other, their tax attorneys and their accountants to the extent
6 reasonably necessary to carry out the provisions of this paragraph.

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

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

11 22. *Distribution of Gross Settlement Fund.* Upon further orders of the Court, the Notice
12 and Claims Administrator, subject to such supervision and direction of the Court and/or Class
13 Counsel as may be necessary or as circumstances may require, shall administer the claims
14 submitted by members of the Classes and shall oversee distribution of the Gross Settlement Fund to
15 Authorized Claimants pursuant to the Distribution Plan. Subject to the terms of this Settlement
16 Agreement and any order(s) of the Court, the Gross Settlement Fund shall be applied as follows:

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

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

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

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

25 (e) To distribute the balance of the "Net Settlement Fund" to Authorized Claimants as
26 allowed by the Agreement, any Distribution Plan or order of the Court.

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

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

7 25. *No Liability for Distribution of Settlement Funds.* Neither the Releasees nor their
8 counsel shall have any responsibility for, interest in or liability whatsoever with respect to the
9 distribution of the Gross Settlement Fund; the Distribution Plan; the allocation of the Settlement
10 Amount between claimants with qualifying purchases of Electrolytic Capacitors and claimants with
11 qualifying purchases of Film Capacitors; the determination, administration, or calculation of claims;
12 the Settlement Fund's qualification as a "qualified settlement fund"; the payment or withholding of
13 Taxes or Tax Expenses; the distribution of the Net Settlement Fund; or any losses incurred in
14 connection with any such matters. The Releasors hereby fully, finally and forever release,
15 relinquish and discharge the Releasees and their counsel from any and all such liability. No Person
16 shall have any claim against Class Counsel or the Notice and Claims Administrator based on the
17 distributions made substantially in accordance with the Agreement and the Settlement contained
18 herein, the Distribution Plan or further orders of the Court.

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

25 27. *Distribution Plan Not Part of Settlement.* It is understood and agreed by the Settling
26 Parties that any Distribution Plan, including any adjustments to any Authorized Claimant's claim, is
27 not a part of this Settlement Agreement and is to be considered by the Court separately from the
28 Court's consideration of the fairness, reasonableness and adequacy of the Settlement set forth in this

1 Settlement Agreement, and any order or proceedings relating to the Distribution Plan shall not
2 operate to terminate or cancel this Settlement Agreement or affect the finality of the Judgment, the
3 Final Approval Order, or any other orders entered pursuant to this Settlement Agreement. The time
4 to appeal from an approval of the Settlement shall commence upon the Court's entry of the
5 Judgment regardless of whether either the Distribution Plan or an application for attorneys' fees and
6 expenses has been submitted to the Court or approved.

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

8 **28. *Fee and Expense Application.*** Class Counsel may submit an application or applications
9 (the "Fee and Expense Application") for distributions from the Gross Settlement Fund, for: (a) an
10 award of attorneys' fees; plus (b) reimbursement of expenses incurred in connection with
11 prosecuting the Actions; plus (c) any interest on such attorneys' fees and expenses (until paid) at the
12 same rate and for the same periods as earned by the Settlement Fund, as appropriate, and as may be
13 awarded by the Court.

14 **29. *Payment of Fee and Expense Award.*** Any amounts that are awarded by the Court
15 pursuant to the above paragraph (the "Fee and Expense Award") shall be paid from the Gross
16 Settlement Fund consistent with the provisions of this Settlement Agreement.

17 **30. *Award of Fees and Expenses Not Part of Settlement.*** The procedure for, and the
18 allowance or disallowance by the Court of, the Fee and Expense Application are not part of the
19 Settlement set forth in this Settlement Agreement, and are to be considered by the Court separately
20 from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement set
21 forth in this Settlement Agreement. Any order or proceeding relating to the Fee and Expense
22 Application, or any appeal from any Fee and Expense Award or any other order relating thereto or
23 reversal or modification thereof, shall not operate to terminate or cancel this Settlement Agreement,
24 or affect or delay the finality of the Judgment and the Settlement of the Actions as set forth herein.
25 No order of the Court or modification or reversal on appeal of any order of the Court concerning
26 any Fee and Expense Award or Distribution Plan shall constitute grounds for cancellation or
27 termination of this Settlement Agreement.
28

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

6 **Cooperation**

7 32. *Cooperation as Consideration.* In return for the Release and Discharge provided herein,
8 Hitachi Chemical agrees to pay the Settlement Amount and agrees to provide cooperation to
9 Indirect Purchaser Plaintiffs as set forth specifically below. The Settling Parties recognize that
10 Hitachi Chemical is a Defendant in other cases brought by different plaintiffs concerning
11 allegations of violations of antitrust laws regarding Capacitors. If Hitachi Chemical has not
12 resolved all of the related cases by the time any cooperation obligation pursuant to ¶ 33-35 comes
13 due, the Settling Parties agree to meet and confer regarding the timing and manner of the
14 cooperation to be provided by Hitachi Chemical to Indirect Purchaser Plaintiffs and/or Class
15 Counsel under the provision at issue.

16 33. *Attorney Proffer.* Within thirty (30) business days after Preliminary Approval by the
17 Court of this Settlement Agreement or such time as mutually agreed by the Settling Parties, counsel
18 for Hitachi Chemical shall provide Class Counsel with an oral proffer of facts known to them about
19 meetings or communications between competitors in the Capacitors industry. Should the attorney
20 proffer required by this paragraph not occur within the 30 business days after Preliminary Approval,
21 Indirect Purchaser Plaintiffs do not waive their right to an attorney proffer.

22 34. *Cooperation Subject to and Consistent with Prior Obligations.* Hitachi Chemical and
23 the Indirect Purchaser Plaintiffs shall not be obligated to provide cooperation that would violate an
24 applicable court order or Hitachi Chemical's commitments to the United States Department of
25 Justice or any other domestic or foreign governmental entity. Additionally, Indirect Purchaser
26 Plaintiffs and Hitachi Chemical will take reasonable efforts to accommodate the other's efforts to
27 minimize duplication in the providing of any cooperation.
28

1 35. **Further Cooperation.** The Settling Parties agree to the following, except that all
2 cooperation obligations by Hitachi Chemical shall cease if Indirect Purchaser Plaintiffs cease to be
3 a party in the Actions against all other Defendants.

4 (a) Hitachi Chemical will produce documents that it has provided to the U.S. and foreign
5 law enforcement authorities, including all English translations of any documents, concerning
6 Capacitors, to the extent they exist, within fifteen (15) business days after Preliminary Approval by
7 the Court of this Settlement Agreement.

8 (b) Hitachi Chemical shall identify and produce documents concerning meetings with
9 competitors attended by Hitachi Chemical or that were provided to Hitachi Chemical by other
10 participants, including meeting minutes and notes from attendees, and emails concerning meetings
11 with competitors within fifteen (15) business days after the Preliminary Approval by the Court of
12 this Settlement Agreement. Class Counsel seek documents concerning meetings or other meetings
13 where prices of Capacitors were discussed, including but not limited to, so-called ECC, ASEAN
14 SM, Presidents' Meetings, TC, KCC, ATC, CUP, Taiwan SM, AT Statistics, MK Research, JFC,
15 Hong Kong SM, Singapore SM, Shanghai SM, TAOB, and other such similar meetings, as well as
16 bilateral communications with competitors.

17 (c) If Hitachi Chemical produces any declarations, documents, data, or other responses to
18 discovery to any other plaintiff in the Actions, Hitachi Chemical will produce the same to Indirect
19 Purchaser Plaintiffs.

20 (d) Each of the parties shall cooperate in good faith to authenticate, to the extent possible, a
21 reasonable number of documents and/or things produced by Hitachi Chemical in the Actions,
22 whether by declarations, affidavits, depositions, hearings and/or trials as may be necessary for the
23 Actions, without the need for the other party to issue any subpoenas, letters rogatory, letters of
24 request, or formal discovery requests to the other.

25 (e) Hitachi Chemical will make its best efforts to make up to three (3) current or former
26 employees reasonably available for interviews, as necessary. Such interviews shall not exceed six
27 hours per employee, and may be conducted telephonically or by videoconference. If the interviews
28 are conducted with the assistance of an interpreter, the interview time shall be doubled.

1 (f) Hitachi Chemical agrees Indirect Purchaser Plaintiffs may ask questions at depositions of
2 Hitachi witnesses noticed by other plaintiffs in the litigation.

3 (g) Hitachi Chemical shall produce its transactional data regarding its sales of Capacitors to
4 its customers.

5 (h) Hitachi Chemical agrees that it will respond in writing to reasonable requests for
6 clarification of the transactional, production and cost data that Hitachi Chemical produced in the
7 Actions and also about its methods of pricing Capacitors.

8 (i) Indirect Purchaser Plaintiffs agree to withdraw all outstanding discovery served on
9 Hitachi Chemical and neither Hitachi Chemical nor Indirect Purchaser Plaintiffs shall file motions
10 against the other during the pendency of the Agreement except to enforce the terms of this
11 Settlement Agreement.

12 (j) Hitachi Chemical will use its best efforts to make up to three (3) present or former
13 employees available to Indirect Purchaser Plaintiffs for deposition. The depositions shall be held
14 either at mutually agreed locations in the United States or, if mutually agreed, via videoconference
15 or teleconference. Such depositions shall not exceed seven (7) hours in length unless an
16 interpreter is used, in which event the examination time shall not exceed twelve (12) hours.
17 Indirect Purchaser Plaintiffs will reimburse Hitachi Chemical for reasonable coach class airfare and
18 up to two (2) nights of reasonable hotel expenses per witness (not to exceed \$300 per night per
19 witness) for each witness who is made available for deposition in the United States.

20 (k) Subject to paragraph 34, Hitachi Chemical will use its best efforts to make up to three
21 (3) present or former employees available to Indirect Purchaser Plaintiffs at trial for testimony.
22 Plaintiffs will reimburse Hitachi for reasonable business class airfare and up to three (3) nights of
23 reasonable hotel expenses (not to exceed \$300 per night per witness) for each witness who is made
24 available for trial testimony in the United States.

25 36. **Other Discovery.** Upon the Execution Date, neither Hitachi Chemical nor the Indirect
26 Purchaser Plaintiffs shall file motions against the other or initiate or participate in any discovery,
27 motion or proceeding directly adverse to the other in connection with the Actions, except as
28 specifically provided for herein. Hitachi Chemical and the Indirect Purchaser Plaintiffs shall not be

1 obligated to respond or supplement prior responses to formal discovery that has been previously
2 propounded by the other in the Actions.

3 **37. Resolution of Disputes.** To the extent the Settling Parties disagree about the
4 interpretation or enforcement of any terms of this Settlement Agreement relating to future
5 cooperation by Hitachi Chemical, or about the triggering of the threshold specified in the
6 Confidential Termination Agreement referenced in ¶40(b), they agree to submit such disputes for
7 binding resolution by the Honorable James Donato or another mutually agreed neutral.

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

9 **38. Occurrence of Effective Date.** Upon the occurrence of all of the events required in order
10 to trigger the Effective Date as defined in ¶ 1(m), any and all remaining interest or right of Hitachi
11 Chemical in or to the Gross Settlement Fund, if any, shall be absolutely and forever extinguished,
12 and the Gross Settlement Fund (less any Notice and Administrative Costs, Taxes or Tax Expenses
13 or any Fee and Expense Award paid) shall be transferred from the Escrow Agent to the Notice and
14 Claims Administrator as successor Escrow Agent within ten (10) days after the Effective Date.

15 **39. Failure of Effective Date to Occur.** If, for whatever reason, the Effective Date does not
16 occur or is not met, then this Settlement Agreement shall be cancelled and terminated, subject to
17 and in accordance with ¶ 43, below, unless the Settling Parties mutually agree in writing to proceed
18 with this Settlement Agreement.

19 **40. Exclusions.**

20 a. Any Class Member that wishes to seek exclusion from the Settlement Classes by “opting
21 out” must timely submit a written request for exclusion to the Claims Administrator. Class Counsel
22 shall cause copies of requests for exclusion from the Classes to be provided to Hitachi Chemical’s
23 counsel. No later than fourteen (14) days after the final date for mailing requests for exclusion,
24 Class Counsel shall provide Hitachi Chemical’s counsel with a complete and final list of opt-outs.
25 With the motion for final approval of the Settlement, Class Counsel will file with the Court a
26 complete list of requests for exclusion from the Classes, including only the name, city and state of
27 the person or entity requesting exclusion.
28

1 b. Hitachi Chemical shall have the option to rescind and terminate this Settlement
2 Agreement in its entirety and without liability of any kind if based on available data, the aggregate
3 purchases of Electrolytic Capacitors and/or Film Capacitors purchased from distributors by Class
4 Members that opt out pursuant to Paragraph 40(a) of this Settlement Agreement exceeds a threshold
5 agreed to by Indirect Purchaser Plaintiffs and Hitachi Chemical in the Confidential Termination
6 Agreement that has been executed separately by Indirect Purchaser Plaintiffs and Hitachi Chemical.
7 Hitachi Chemical shall exercise this option to rescind and terminate this Settlement Agreement by
8 providing ten (10) business days written notice to Class Counsel. Upon such rescission and
9 termination, Indirect Purchaser Plaintiffs and Hitachi Chemical will notify the Court immediately
10 and withdraw all pending motions filed to effectuate this Settlement. Indirect Purchaser Plaintiffs
11 and Hitachi Chemical will also, as may be required by the Court, submit the Confidential
12 Termination Agreement to the Court for in-camera review. In the event that Hitachi Chemical
13 exercises its option to rescind and terminate this Settlement Agreement: (i) this Settlement
14 Agreement shall be null and void as to Hitachi Chemical, and shall have no force or effect and shall
15 be without prejudice to the rights and contentions of Releasees and Releasors in this or any other
16 litigation; (ii) the Gross Settlement fund shall be refunded promptly to Hitachi Chemical, minus
17 such payment (as set forth in this Settlement Agreement) of Notice and Administrative Costs and
18 Taxes and Tax Expenses, consistent with the provisions of ¶¶16 and 20.

19 **41. *Objections.*** Settlement Class Members who wish to object to any aspect of the
20 Settlement must file with the Court a written statement containing their objection by end of the
21 period to object to the Settlement. Any award or payment of attorneys' fees made to counsel to an
22 objector to the Settlement shall only be made by Court order and upon a showing of the benefit
23 conferred to the classes. In determining any such award of attorneys' fees to an objectors' counsel,
24 the Court will consider the incremental value to the Classes caused by any such objection. Any
25 award of attorneys' fees by the Court will be conditioned on the objector and his or her attorney
26 stating under penalty of perjury that no payments shall be made to the objector based on the
27 objector's participation in the matter - other than as ordered by the Court.
28

1 **42. Failure to Enter Proposed Preliminary Approval Order, Final Approval Order or**
2 **Judgment.** If the Court does not enter the Preliminary Approval Order, the Final Approval Order or
3 the Judgment, or if the Court enters the Final Approval Order and the Judgment and appellate
4 review is sought and, on such review, the Final Approval Order or the Judgment is finally vacated,
5 modified or reversed, then this Settlement Agreement and the Settlement incorporated therein shall
6 be cancelled and terminated; provided, however, the Settling Parties agree to act in good faith to
7 secure Final Approval of this Settlement and to attempt to address in good faith concerns regarding
8 the Settlement identified by the Court and any court of appeal. No Settling Party shall have any
9 obligation whatsoever to proceed under any terms other than substantially in the form provided and
10 agreed to herein; provided, however, that no order of the Court concerning any Fee and Expense
11 Application or Distribution Plan, or any modification or reversal on appeal of such order, shall
12 constitute grounds for cancellation or termination of this Settlement Agreement by any Settling
13 Party. Without limiting the foregoing, Hitachi Chemical shall have, in its sole and absolute
14 discretion, the option to terminate the Settlement in its entirety in the event that the Judgment, upon
15 becoming Final, does not provide for the dismissal with prejudice of all of the Actions against them.

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

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

1 (b) within thirty (30) business days after written notification of such event is sent by
2 Counsel for Hitachi Chemical to Class Counsel, all attorneys' fees and costs which have been
3 disbursed to Class Counsel pursuant to Court order shall be refunded, reimbursed and repaid by
4 Class Counsel to Hitachi Chemical;

5 (c) the Escrow Agent or its designee shall apply for any tax refund owed to the Gross
6 Settlement Fund and pay the proceeds to Hitachi Chemical, after deduction of any fees or expenses
7 reasonably incurred in connection with such application(s) for refund, pursuant to such written
8 request;

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

12 (e) the terms and provisions of this Settlement Agreement, with the exception of ¶¶ 43-46
13 (which shall continue in full force and effect), shall be null and void and shall have no further force
14 or effect with respect to the Settling Parties, and neither the existence nor the terms of this
15 Settlement Agreement (nor any negotiations preceding this Settlement Agreement nor any acts
16 performed pursuant to, or in furtherance of, this Settlement Agreement) shall be used in the Actions
17 or in any other action or proceeding for any purpose (other than to enforce the terms remaining in
18 effect); and

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

21 **No Admission of Liability**

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

27 **45. *Federal Rule of Evidence 408.*** The Settling Parties agree that this Settlement
28 Agreement, its terms and the negotiations surrounding this Settlement Agreement shall be governed

1 by Federal Rule of Evidence 408 and shall not be admissible or offered or received into evidence in
2 any suit, action or other proceeding, except upon the written agreement of the Settling Parties
3 hereto, pursuant to an order of a court of competent jurisdiction, or as shall be necessary to give
4 effect to, declare or enforce the rights of the Settling Parties with respect to any provision of this
5 Settlement Agreement.

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

23 **Miscellaneous Provisions**

24 **47. Voluntary Settlement.** The Settling Parties agree that the Settlement Amount and the
25 other terms of the Settlement as described herein were negotiated in good faith by the Settling
26 Parties, and reflect a settlement that was reached voluntarily and after consultation with competent
27 legal counsel.
28

1 **48. Consent to Jurisdiction.** Hitachi Chemical and each Class Member hereby irrevocably
2 submit to the exclusive jurisdiction of the Court only for the specific purpose of any suit, action,
3 proceeding or dispute arising out of or relating to this Settlement Agreement or the applicability of
4 this Settlement Agreement. Solely for purposes of such suit, action, or proceeding, to the fullest
5 extent that they may effectively do so under applicable law, Hitachi Chemical and the Class
6 Members irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise,
7 any claim or objection that they are not subject to the jurisdiction of the Court or that the Court is in
8 any way an improper venue or an inconvenient forum. Nothing herein shall be construed as a
9 submission to jurisdiction for any purpose other than any suit, action, proceeding, or dispute arising
10 out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement.

11 **49. Resolution of Disputes; Retention of Exclusive Jurisdiction.** Any disputes between or
12 among Hitachi Chemical and any Class Members concerning matters contained in this Settlement
13 Agreement and the Confidential Termination Agreement referenced in ¶40(b) of this Settlement
14 Agreement shall, if they cannot be resolved by negotiation and agreement, be submitted to the
15 Court. The Court shall retain exclusive jurisdiction over the implementation and enforcement of this
16 Settlement Agreement.

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

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

1 52. *Notices.* All notices under this Settlement Agreement shall be in writing. Each such
2 notice shall be given either by (a) e-mail; (b) hand delivery; (c) registered or certified mail, return
3 receipt requested, postage pre-paid; (d) Federal Express or similar overnight courier; or (e)
4 facsimile and first class mail, postage pre-paid and, if directed to any Class Member, shall be
5 addressed to Class Counsel at their addresses set forth below, and if directed to Hitachi Chemical,
6 shall be addressed to their attorneys at the addresses set forth below or such other addresses as Class
7 Counsel or Hitachi Chemical may designate, from time to time, by giving notice to all parties hereto
8 in the manner described in this paragraph.

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

10
11 COTCHETT, PITRE & MCCARTHY
12 Steven N. Williams (swilliams@cpmlegal.com)
13 San Francisco Airport Office Center
14 840 Malcolm Road, Suite 200
15 Burlingame, CA 94010
16 Telephone: 650-697-6000
17 Facsimile: 650-697-0577

18 If directed to Hitachi Chemical, address notice to:

19
20 WILSON SONSINI GOODRICH & ROSATI
21 Chul Pak (cpak@wsgr.com)
22 1301 Avenue of the Americas
23 40th Floor
24 New York, NY 10038
25 Telephone: 212-497-7726
26 Facsimile: 212-999-5899

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

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

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

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

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

18 **58. Execution in Counterparts.** This Settlement Agreement may be executed in one or more
19 counterparts. All executed counterparts and each of them shall be deemed to be one and the same
20 instrument. Counsel for the parties to this Settlement Agreement shall exchange among themselves
21 original signed counterparts and a complete set of executed counterparts shall be filed with the
22 Court.

23 **59. Notification of State Officials.** Hitachi Chemical shall be responsible for providing all
24 notices required by the Class Action Fairness Act to be provided to state attorneys general or to the
25 United States of America.

26 **60. Integrated Agreement.** This Settlement Agreement and the Confidential Termination
27 Agreement constitute the entire agreement between the Settling Parties and no representations,
28 warranties or inducements have been made to any party concerning this Settlement Agreement and

1 the Confidential Termination Agreement other than the representations, warranties and covenants
2 contained and memorialized herein. It is understood by the Settling Parties that, except for the
3 matters expressly represented herein, the facts or law with respect to which this Settlement
4 Agreement and the Confidential Termination Agreement is entered into may turn out to be other
5 than or different from the facts now known to each party or believed by such party to be true; each
6 party therefore expressly assumes the risk of the facts or law turning out to be so different, and
7 agrees that this Settlement Agreement and the Confidential Termination Agreement shall be in all
8 respects effective and not subject to termination by reason of any such different facts or law. Except
9 as otherwise provided herein, each party shall bear its own costs and attorneys' fees.

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

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

14
15 By: 
16 Steven N. Williams
17 COTCHETT, PITRE & MCCARTHY
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24 Defendants HITACHI CHEMICAL CO., LTD., HITACHI AIC INC., and HITACHI
25 CHEMICAL CO. AMERICA, LTD.

26
27 By: 
28 Chul Pak
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