

**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 30th
2 day of June, 2017 (the “Execution Date”), by and among Defendant Soshin Electric Co., Ltd. and
3 Soshin Electronics of America, Inc. (together “Soshin”) and the Indirect Purchaser Plaintiffs (“IPPs”),
4 both individually and on behalf of the Class in the above captioned class action. This Settlement
5 Agreement is intended by the Settling Parties to fully, finally, and forever resolve, discharge and
6 settle the Released Claims, upon and subject to the terms and conditions hereof.

7 **RECITALS**

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

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

14 WHEREAS, Soshin has denied and continues to deny each and all of Indirect Purchaser
15 Plaintiffs’ claims and allegations of wrongdoing; has not conceded or admitted any liability, or that
16 it violated or breached any law, regulation, or duty owed to the Indirect Purchaser Plaintiffs; has
17 denied and continues to deny all charges of wrongdoing or liability against it arising out of any of the
18 conduct, statements, acts or omissions alleged in the Actions; and further denies the allegations that
19 the Indirect Purchaser Plaintiffs or any member of the Class were harmed by any conduct by Soshin
20 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 Soshin agree that neither this Settlement
25 Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an
26 admission or evidence of any violation of any statute or law or of any liability or wrongdoing by
27 Soshin or of the truth of any of the claims or allegations alleged in the Actions;

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

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

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

21 **AGREEMENT**

22 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the
23 Settling Parties, by and through their undersigned attorneys of record, in consideration of the
24 covenants, agreements, and releases set forth herein and for other good and valuable consideration,
25 that the Actions and the Released Claims as against Soshin shall be finally and fully settled,
26 compromised and dismissed on the merits and with prejudice, without costs as to Indirect Purchaser
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1 Plaintiffs, the Class, or Soshin, upon and subject to the approval of the Court, following notice to the
2 Class, 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 Purchaser
7 Actions, Case No. 3:14-cv-03264-JD, and each of the cases brought on behalf of indirect purchasers
8 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 Class.

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

26 (g) “Class Counsel” means the law firm of Cotchett, Pitre & McCarthy, LLP.
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1 (h) "Class Member" means a Person who falls within the definition of the Class and who does
2 not timely and validly elect to be excluded from the Class in accordance with the procedure to be
3 established by the Court.

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

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

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

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

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

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

24 (2) The Court has preliminarily approved the Settlement Agreement, certified the
25 settlement Class for purposes of effectuating this Settlement, and approved the motion after providing
26 notice to the Class as defined herein;

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

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

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

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

24 (p) "Escrow Agent" means the agent jointly designated by Class Counsel and Soshin, and any
25 successor agent.

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

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

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

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

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

21 (v) "Net Settlement Fund" means the Gross Settlement Fund, less the payments set forth in ¶
22 17.

23 (w) "Soshin" means Soshin Electric Co., Ltd. and Soshin Electronics of America, Inc., and
24 their respective past, present and future direct and indirect parents, members, subsidiaries, and
25 Affiliates, and the past, present, and future respective officers, directors, employees, managers,
26 members, partners, agents, shareholders (in their capacity as shareholders), attorneys and legal
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1 representatives, assigns, servants, and representatives, and the predecessors, successors, heirs,
2 executors, administrators, and assigns of each of the foregoing.

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

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

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

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

7 (bb) "Releasees" refers jointly and severally, individually and collectively to Soshin as
8 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 Class 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, executors,
14 administrators and assigns of each of the foregoing.

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

16 (ee) "Settlement Agreement" means this settlement agreement dated June __, 2017.

17 (ff) "Settlement Amount" means Five-Hundred and Ninety Thousand U.S. Dollars
18 (\$590,000).

19 (gg) "Settling Parties" means, collectively, the Indirect Purchaser Plaintiffs (on behalf of
20 themselves and the Class) and Soshin.

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

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

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

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

11 3. *Motion for Preliminary Approval.* At a time to be determined by Class Counsel, subject
12 to ¶ 7, Class Counsel shall submit this Settlement Agreement to the Court and shall apply for entry
13 of a Preliminary Approval Order, requesting, inter alia, preliminary approval of the Settlement. The
14 motion shall include (a) the proposed Preliminary Approval Order, and (b) a request for certification
15 of the Class for settlement purposes pursuant to Federal Rule of Civil Procedure 23.

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

24 5. *Claims Administrator.* Indirect Purchaser Plaintiffs shall retain a Claims Administrator,
25 which shall be responsible for the claims administration process including distribution to Class
26 Members pursuant to a court-approved plan of distribution. The fees and expenses of the Claims
27 Administrator shall be paid exclusively out of the Settlement Fund. In no event shall Soshin be
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1 separately responsible for any fees or expenses of the Claims Administrator unless so specified in
2 this agreement.

3 **6. Requests for Exclusion (Opt Outs).** Any Class Member that wishes to seek exclusion
4 from the Settlement Class by “opting out” must timely submit a written request for Exclusion to the
5 Claims Administrator (a “Request for Exclusion”). To be effective, such Requests for Exclusion
6 must state: the Settlement Class Member’s full legal name, address and telephone number; that the
7 Class Member purchased Capacitors indirectly from one or more Distributor who themselves
8 purchased from one of the Defendants during the Class Period; and that the Class Member (1) wants
9 to be excluded from the *In re Capacitors Antitrust Litigation* – Indirect Purchaser Actions, class
10 action settlement with Soshin and (2) understands that by so doing, the Class Member will not be
11 able to get any money or benefits from the settlement with Soshin under the Settlement Agreement.
12 All Requests for Exclusion must be signed and dated by the Class Member or its officer or legal
13 representative, and be (1) mailed to the Claims Administrator via First Class United States Mail (or
14 United States Mail for overnight delivery) and postmarked by a date certain to be specified on the
15 Notice, or (2) received by the Claims Administrator by that date, provided, however, that if a Class
16 Member mails the Opt-Out Statement pursuant to option (1), it will be effective only if received by
17 the Claims Administrator on or before ten (10) calendar days after the end of the Opt-Out Period.
18 Persons who opt out are not entitled to any monetary award from the Settlement Fund.

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

23 (a) certifying the Settlement Class, as defined in this Settlement Agreement, pursuant to
24 Federal Rule of Civil Procedure 23, solely for purposes of this Settlement;(b) fully and finally
25 approving the Settlement contemplated by this Settlement Agreement and its terms as being fair,
26 reasonable and adequate within the meaning of Federal Rule of Civil Procedure 23 and directing its
27 consummation pursuant to its terms and conditions;

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

4 (d) directing that the Actions be dismissed with prejudice as to Soshin and, except as provided
5 for herein, without costs;

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

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

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

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

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

17 8. At least seven (7) business days prior to the filing of any motions or other papers in
18 connection with this Settlement, including without limitation, the Preliminary Approval Motion and
19 the Motion for Final Approval of the Settlement, Class Counsel will send working drafts of these
20 papers to counsel for Soshin. The text of any proposed form of order preliminarily or finally
21 approving the Settlement shall be agreed upon by Plaintiffs and Soshin before it is submitted to the
22 Court and shall be consistent with the terms of this Settlement Agreement and the Class definition set
23 forth herein.

24 9. **Stay Order.** Upon the Execution Date, the Action shall be stayed as against Soshin only.
25 Should the Action be tried against any Defendants other than Soshin, the parties specifically agree
26 that any findings therein shall not be binding on or admissible in evidence against Soshin or prejudice
27 Soshin in any way in any future proceeding involving Soshin.

1 10. Upon the date that the Court enters an order preliminarily approving the Settlement,
2 Indirect Purchaser Plaintiffs and members of the Class shall be barred and enjoined from
3 commencing, instituting or continuing to prosecute any action or any proceeding in any court of law
4 or equity, arbitration tribunal, administrative forum or other forum of any kind worldwide based on
5 the Released Claims. Nothing in this provision shall prohibit the Indirect Purchaser Plaintiffs or Class
6 Counsel from continuing to participate in discovery in the Actions that is initiated by other plaintiffs
7 or that is subject to and consistent with the cooperation provisions set forth in ¶¶ 33-36.

8 **Releases**

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

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

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

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

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

24 **Settlement Fund**

25 16. *Settlement Payment.* Soshin shall pay by wire transfer the Settlement Amount (\$590,000)
26 to the Escrow Agent pursuant to escrow instructions within 30 days after the Execution Date. This
27 amount constitutes the total amount of payment that Soshin is required to make in connection with
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1 this Settlement Agreement. This amount shall not be subject to reduction, and upon the occurrence
2 of the Effective Date, no funds shall revert to Soshin except as provided herein. The Escrow Agent
3 shall only act in accordance with the mutually agreed escrow instructions.

4 **17. Disbursements Prior to Effective Date.** No amount may be disbursed from the Gross
5 Settlement Fund unless and until the Effective Date, except that: (a) Notice, Administrative and
6 Claims Administration Costs, which may not exceed \$150,000, may be paid from the Gross
7 Settlement Fund as they become due; (b) Taxes and Tax Expenses (as defined in ¶ 21 below) may be
8 paid from the Gross Settlement Fund as they become due, and (c) attorneys' fees and reimbursement
9 of litigation costs may be paid as ordered by the Court, which may be disbursed during the pendency
10 of any appeals, which may be taken from the judgment to be entered by the Court finally approving
11 this Settlement.

12 **18. Refund by Escrow Agent.** If the Settlement as described herein is not finally approved by
13 any court, or it is terminated as provided herein, or the Judgment as described herein is not approved
14 or entered or is overturned on appeal or by writ, the Gross Settlement Fund, including the Settlement
15 Amount and all interest earned on the Settlement Amount while held in escrow, excluding only
16 Notice, Administrative and Claims Administration Costs and Taxes and/or Tax Expenses, shall be
17 refunded, reimbursed and repaid by the Escrow Agent to Soshin within five (5) business days after
18 receiving notice pursuant to ¶ 44 below.

19 **19. Refund by Class Counsel.** If the Settlement as described herein is not finally approved by
20 any court, or it is terminated as provided herein, or the Judgment as described herein is not approved
21 or entered or is overturned on appeal or by writ, any attorneys' fees and costs previously paid pursuant
22 to this Settlement Agreement (as well as interest on such amounts) shall be refunded, reimbursed and
23 repaid by Class Counsel to Soshin within thirty (30) business days after receiving notice pursuant to
24 ¶ 44 below.

25 **20. No Additional Payments by Soshin.** Under no circumstances will Soshin be required to
26 pay more or less than the Settlement Amount pursuant to this Settlement Agreement and the
27 Settlement set forth herein. For purposes of clarification, the payment of any Fee and Expense Award
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1 (as defined in ¶ 30 below), the Notice, Administrative and Claims Administrative Costs, and any
2 other costs associated with the implementation of this Settlement Agreement shall be exclusively paid
3 from the Settlement Amount.

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

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

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

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

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

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

1 (a) To pay all costs and expenses reasonably and actually incurred in providing notice to the
2 Class in connection with administering and distributing the Net Settlement Fund to Authorized
3 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 claims
5 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 and
8 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 **24. *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 25. 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 **26. *No Liability for Distribution of Settlement Funds.*** Neither the Releasees nor their counsel
20 shall have any responsibility for, interest in or liability whatsoever with respect to the distribution of
21 the Gross Settlement Fund; the Distribution Plan; the determination, administration, or calculation of
22 claims; the Settlement Fund’s qualification as a “qualified settlement fund”; the payment or
23 withholding of Taxes or Tax Expenses; the distribution of the Net Settlement Fund; or any losses
24 incurred in connection with any such matters. The Releasors hereby fully, finally and forever release,
25 relinquish and discharge the Releasees and their counsel from any and all such liability. No Person
26 shall have any claim against Class Counsel or the Claims Administrator based on the distributions
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1 made substantially in accordance with the Agreement and the Settlement contained herein, the
2 Distribution Plan or further orders of the Court.

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

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

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

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

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

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

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

17 **Cooperation**

18 33. *Cooperation as Consideration.* In return for the Release and Discharge provided herein,
19 Soshin agrees to pay the Settlement Amount and agrees to provide cooperation to Indirect Purchaser
20 Plaintiffs as set forth specifically below in ¶¶ 34-36.

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

1 35. *Cooperation Subject to and Consistent with Prior Obligations.* Soshin and the Indirect
2 Purchaser Plaintiffs shall not be obligated to provide cooperation that would violate an applicable
3 court order. Additionally, Indirect Purchaser Plaintiffs and Soshin will take reasonable efforts to
4 accommodate the other's efforts to minimize duplication in the providing of any cooperation.

5 36. *Further Cooperation.*

6 (a) Soshin shall, to the extent it has not done so already, produce ordinary course of business
7 documents that it has provided to the U.S. and foreign law enforcement authorities, including all
8 English translations of any documents, concerning Capacitors, to the extent they exist, within thirty
9 (30) business days after Preliminary Approval by the Court of this Settlement Agreement.

10 (b) Soshin shall, to the extent it has not done so already, identify and produce documents
11 concerning JFC meetings attended by Soshin or that were provided to Soshin by other participants,
12 including meeting minutes and notes from attendees, and emails concerning JFC meetings within
13 thirty (30) business days after the Preliminary Approval by the Court of this Settlement Agreement.

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

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

23 (e) Soshin will make its best efforts to make up to one current or former employee reasonably
24 available for interviews, as necessary. Such interviews shall not exceed three hours and may be
25 conducted telephonically or by videoconference. If the interviews are conducted with the assistance
26 of an interpreter, the interview time shall be doubled. At least five (5) business days in advance of
27 such interviews, Class Counsel shall provide a list of topics to be covered in the interview.

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

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

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

10 (i) Upon reasonable notice from Class Counsel and after Preliminary Approval of this
11 Settlement Agreement, Soshin agrees to use its best efforts to make available no more than one of
12 Soshin's current or former employees, who shall be separately agreed upon in advance by Soshin and
13 Indirect Purchaser Plaintiffs, for a deposition. Such depositions shall not exceed seven (7) and a half
14 hours in length, if the witness testifies in English without a translator. If the witness requires a
15 translator, the deposition shall not exceed eleven (11) hours in length. Indirect Purchaser Plaintiffs
16 shall use best efforts to coordinate with counsel for Direct Purchaser Plaintiffs to ensure that Soshin
17 is not required to produce more than one witness for deposition.

18 (j) Soshin will use its best efforts to make one present or former employee available to Indirect
19 Purchaser Plaintiffs at trial for testimony. Indirect Purchaser Plaintiffs shall use best efforts to
20 coordinate with counsel for Direct Purchaser Plaintiffs to ensure that Soshin is not required to produce
21 more than one witness at trial.

22 **37. Other Discovery.** Upon the Execution Date, neither Soshin nor the Indirect Purchaser
23 Plaintiffs shall file motions against the other or initiate or participate in any discovery, motion or
24 proceeding directly adverse to the other in connection with the Actions, except as specifically
25 provided for herein. Soshin and the Indirect Purchaser Plaintiffs shall not be obligated to respond or
26 supplement prior responses to formal discovery that has been previously propounded by the other in
27 the Actions.

1 38. **Resolution of Disputes.** To the extent the Settling Parties disagree about the interpretation
2 or enforcement of any terms of this Settlement Agreement relating to future cooperation by Soshin,
3 they agree to submit such disputes for binding resolution by the Honorable James Donato or another
4 mutually agreed neutral.

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

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

12 40. **Failure of Effective Date to Occur.** If, for whatever reason, the Effective Date does not
13 occur or is not met, then this Settlement Agreement shall be cancelled and terminated, subject to and
14 in accordance with ¶¶ 43-44, below, unless the Settling Parties mutually agree in writing to proceed
15 with this Settlement Agreement.

16 41. **Exclusions.** Class Counsel shall cause copies of requests for exclusion from the Class to
17 be provided to Soshin's counsel. No later than 14 days after the final date for mailing requests for
18 exclusion, Class Counsel shall provide Soshin's counsel with a complete and final list of opt-outs.
19 With the motion for final approval of the Settlement, Class Counsel will file with the Court a complete
20 list of requests for exclusion from the Class, including only the name, city and state of the person or
21 entity requesting exclusion.

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

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

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

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

5 (b) within thirty (30) business days after written notification of such event is sent by Counsel
6 for Soshin to Class Counsel, all attorneys' fees and costs which have been disbursed to class counsel
7 pursuant to Court order shall be refunded, reimbursed and repaid by Class Counsel to Soshin;

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

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

14 (e) the terms and provisions of this Settlement Agreement, with the exception of ¶¶ 44-47
15 (which shall continue in full force and effect), shall be null and void and shall have no further force
16 or effect with respect to the Settling Parties, and neither the existence nor the terms of this Settlement
17 Agreement (nor any negotiations preceding this Settlement Agreement nor any acts performed
18 pursuant to, or in furtherance of, this Settlement Agreement) shall be used in the Actions or in any
19 other action or proceeding for any purpose (other than to enforce the terms remaining in effect); and

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

22 **No Admission of Liability**

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

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

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

23 **Miscellaneous Provisions**

24 48. *Voluntary Settlement*. The Settling Parties agree that the Settlement Amount and the other
25 terms of the Settlement as described herein were negotiated in good faith by the Settling Parties, and
26 reflect a settlement that was reached voluntarily and after consultation with competent legal counsel.
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1 **49. Consent to Jurisdiction.** Soshin and each Class Member hereby irrevocably submit to the
2 exclusive jurisdiction of the Court only for the specific purpose of any suit, action, proceeding or
3 dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement
4 Agreement. Solely for purposes of such suit, action, or proceeding, to the fullest extent that they may
5 effectively do so under applicable law, Soshin and the Class Members irrevocably waive and agree
6 not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not
7 subject to the jurisdiction of the Court or that the Court is in any way an improper venue or an
8 inconvenient forum. Nothing herein shall be construed as a submission to jurisdiction for any purpose
9 other than any suit, action, proceeding, or dispute arising out of or relating to this Settlement
10 Agreement or the applicability of this Settlement Agreement.

11 **50. Resolution of Disputes; Retention of Exclusive Jurisdiction.** Any disputes between or
12 among Soshin and any Class Members concerning matters contained in this Settlement Agreement
13 shall, if they cannot be resolved by negotiation and agreement, be submitted to the Court. The Court
14 shall retain exclusive jurisdiction over the implementation and enforcement of this Settlement
15 Agreement.

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

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

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

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

9
10 COTCHETT, PITRE & MCCARTHY

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

12 San Francisco Airport Office Center

13 840 Malcolm Road, Suite 200

14 Burlingame, CA 94010

15 Telephone: 650-697-6000

16 Facsimile: 650-697-0577

17
18 If directed to Soshin, address notice to:

19
20 BAKER & HOSTETLER LLP

21 John R. Fornaciari (jfornaciari@bakerlaw.com)

22 Washington Square, Suite 1100

23 1050 Connecticut Avenue, N.W.

24 Washington, DC 20036-5304

25 Telephone: 202-861-1612

26 Facsimile: 202.861.1783

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

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

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

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

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

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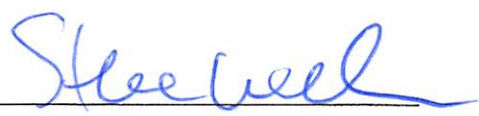
1 instrument. Counsel for the parties to this Settlement Agreement shall exchange among themselves
2 original signed counterparts and a complete set of executed counterparts shall be filed with the Court.

3 60. *Notification of State Officials.* Soshin 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 61. *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 for
10 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 each
12 party or believed by such party to be true; each party therefore expressly assumes the risk of the facts
13 or law turning out to be so different, and agrees that this Settlement Agreement shall be in all respects
14 effective and not subject to termination by reason of any such different facts or law. Except as
15 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
24 San Francisco Airport Office Center
25 840 Malcolm Road, Suite 200
26 Burlingame, CA 94010
27 Telephone: 650-697-6000

1 Fax: 650-697-0577

2 swilliams@cpmlegal.com

3
4 DEFENDANT SOSHIN ELECTRIC CO., LTD. AND SOSHIN ELECTRONICS OF
5 AMERICA, INC

6 By:  _____

7 John R. Fornaciari

8 BAKER & HOSTETLER LLP

9 Washington Square, Suite 1100

10 1050 Connecticut Avenue, N.W.

11 Washington, DC 20036-5304

12 Telephone: 202-861-1612

13 Facsimile: 202.861.1783

14 jfornaciari@bakerlaw.com

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