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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

This Settlement Agreement (“Settlement Agreement”) is made and entered into this 7<sup>th</sup> day of March, 2018 (the “Execution Date”), by and among Defendants Rubycon Corp. and Rubycon America Inc. (together referred herein as “Rubycon”) and the Indirect Purchaser Plaintiffs (“IPPs”), both individually and on behalf of the Class in the above captioned class action. This Settlement Agreement is intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims, upon and subject to the terms and conditions hereof.

### **RECITALS**

WHEREAS, Indirect Purchaser Plaintiffs are prosecuting the above-captioned Actions on their own behalf and on behalf of the Class against, among others, Rubycon and other Defendants and alleged co-conspirators;

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

WHEREAS, Rubycon has denied and continues to deny each and all of Indirect Purchaser Plaintiffs’ claims as alleged in the Indirect Purchasers’ Fifth Amended Complaint; has not conceded or admitted any liability in the Actions; has denied and continues to deny all charges of liability against it arising out of any of the conduct, statements, acts or omissions alleged in the Actions; and further denies the allegations that the Indirect Purchaser Plaintiffs or any member of the Class were harmed by any conduct by Rubycon alleged in the Actions or otherwise;

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

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

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

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

WHEREAS, arm's length settlement negotiations have taken place between counsel for Indirect Purchaser Plaintiffs and Rubycon, and this Settlement Agreement, which embodies all of the terms and conditions of the Settlement between the Settling Parties, both individually and on behalf of the Class, has been reached as a result of the Settling Parties' negotiations (subject to the

approval of the Court) as provided herein and is intended to supersede any prior agreements or understandings between the Settling Parties.

### **AGREEMENT**

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

#### **Definitions**

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

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

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

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

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

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

(f) “Classes” are defined as:

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

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

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

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

(i) “Court” means the United States District Court for the Northern District of California.

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

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

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

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

- (1) All parties have executed this Settlement Agreement;
- (2) The Court has preliminarily approved the Settlement Agreement;

- (3) Notice has been provided to the Classes in a manner approved by the Court;
- (4) The Court has entered a Final Judgment; and
- (5) The Final Judgment (as more fully described in ¶ 6 of the Settlement

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

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

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

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

(q) “Execution Date” means March 7, 2018, the date by which all parties have executed this settlement agreement.

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

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



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

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

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

(w) “Notice, Administrative, and Claims Administration Costs” means the reasonable sum of money not in excess of \$500,000 to be paid out of the Gross Settlement Fund to pay for notice to the Class and related administrative and claims administration costs.

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

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

(z) “Released Claims” means any and all manner of claims, demands, rights, actions, suits, causes of action, whether class, individual or otherwise in nature, fees, costs, penalties, injuries, damages whenever incurred, liabilities of any nature whatsoever, known or unknown (including, but not limited to, “Unknown Claims”), foreseen or unforeseen, suspected or

unsuspected, asserted or unasserted, contingent or non-contingent, in law or in equity, under the laws of any jurisdiction, which Releasors or any of them, whether directly, representatively, derivatively, or in any other capacity, ever had, now have or hereafter can, shall or may have, relating in any way to any conduct prior to February 28, 2014 and arising out of or related in any way in whole or in part to any facts, circumstances, acts, or omissions arising out of or related to (1) the purchase, pricing, selling, discounting, marketing, manufacturing and/or distributing of Capacitors; (2) any agreement, combination or conspiracy to raise, fix, maintain or stabilize the prices of Capacitors or restrict, reduce, alter or allocate the supply, quantity or quality of Capacitors or concerning the development, manufacture, supply, distribution, transfer, marketing, sale or pricing of Capacitors, or any other restraint of competition alleged in the Actions or that could have been or hereafter could be alleged against the Releasees relating to Capacitors, or (3) any other restraint of competition relating to Capacitors that could be asserted as a violation of the Sherman Act or any other antitrust, unjust enrichment, unfair competition, unfair practices, trade practices, price discrimination, unitary pricing, racketeering, civil conspiracy or consumer protection law, whether under federal, state, local or foreign law.

aa) “Releasees” refers jointly and severally, individually and collectively to Rubycon as defined in ¶ 1(cc) below.

(bb) “Releasors” refers jointly and severally, individually and collectively to the Indirect Purchaser Plaintiffs and each and every member of the Class on their own behalf and on behalf of their respective past, present, and/or future direct and indirect parents, members, subsidiaries, and Affiliates, and their past, present, and/or future officers, directors, employees, agents, attorneys and legal representatives, servants, and representatives, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.

(cc) “Rubycon” means Rubycon Corp. and Rubycon America Inc., and their respective past, present and future direct and indirect parents, members, subsidiaries, and Affiliates, and the past, present, and future respective officers, directors, employees, managers, members, partners, agents, shareholders (in their capacity as shareholders), attorneys and legal representatives, assigns, servants, and representatives, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.

(dd) “Settlement” means the settlement of the Released Claims set forth herein.

(ee) “Settlement Amount” means Four Million Five Hundred Thousand U.S. Dollars (\$4,500,000). Based on Class Counsel’s allocation of the Settlement Amount, \$4,297,500 will be allocated to pay claimants with qualifying purchases of Electrolytic Capacitors, while \$202,500 will be allocated to pay claimants with qualifying purchases of Film Capacitors. But in no event shall Rubycon pay more than \$4,500,000.

(ff) “Settling Parties” means, collectively, the Indirect Purchaser Plaintiffs (on behalf of themselves and the Class) and Rubycon.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. Upon the date that the Court enters an order preliminarily approving the Settlement, Indirect Purchaser Plaintiffs and members of the Classes shall be barred and enjoined from

commencing, instituting, or continuing to prosecute any action or any proceeding in any court of law or equity, arbitration tribunal, administrative forum, or other forum of any kind worldwide based on the Released Claims. Nothing in this provision shall prohibit the Indirect Purchaser Plaintiffs or Class Counsel from continuing to participate in discovery in the Actions that is initiated by other plaintiffs or that is subject to and consistent with the cooperation provisions set forth in ¶¶ 32-35.

### **Releases**

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

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

12. ***Covenant Not to Sue.*** Releasors hereby covenant not to sue the Releasees with respect to any such Released Claims. Releasors shall be permanently barred and enjoined from instituting, commencing, or prosecuting against the Releasees any claims based in whole or in part on the Released Claims. The Settling Parties contemplate and agree that this Settlement Agreement may be pleaded as a bar to a lawsuit, and an injunction may be obtained, preventing any action

from being initiated or maintained in any case sought to be prosecuted on behalf of Indirect Purchaser Plaintiffs with respect to the Released Claims.

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

14. ***Claims Excluded from Release.*** Notwithstanding the foregoing, the releases provided herein shall not release claims against Rubycon for product liability, breach of contract, breach of warranty or personal injury, or any other claim unrelated to the allegations in the Actions



of restraint of competition or unfair competition with respect to Capacitors. Additionally, the releases provided herein shall not release any claims to enforce the terms of this Settlement Agreement.

**Settlement Fund**

15. ***Settlement Payment.*** Rubycon shall pay by wire transfer the Settlement Amount to the Escrow Agent pursuant to mutually agreeable escrow instructions in two installments. The first installment shall be paid within thirty (30) business days after the Court has preliminarily approved the Settlement Agreement, in the amount of \$2.25 million (\$2,250,000.00). The second installment shall be paid one year after the Court has preliminarily approved the Settlement Agreement, in the amount of \$2.25 million (\$2,250,000.00). The Settlement Amount constitutes the total amount of payment that Rubycon is required to make in connection with this Settlement Agreement. This amount shall not be subject to reduction, and upon the occurrence of the Effective Date, no funds shall revert to Rubycon except as provided herein. The Escrow Agent shall only act in accordance with the mutually agreed escrow instructions.

16. ***Disbursements Prior to Effective Date.*** No amount may be disbursed from the Gross Settlement Fund unless and until the Effective Date, except that: (a) Notice, Administrative, and Claims Administration Costs, which may not exceed \$500,000, may be paid from the Gross Settlement Fund as they become due; (b) Taxes and Tax Expenses (as defined in ¶ 20 below) may be paid from the Gross Settlement Fund as they become due; and (c) attorneys' fees and reimbursement of litigation costs may be paid as ordered by the Court, which may be disbursed during the pendency of any appeals, which may be taken from the judgment to be entered by the Court finally approving this Settlement.

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

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

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

20. ***Taxes.*** The Settling Parties and the Escrow Agent agree to treat the Gross Settlement Fund as being at all times a "qualified settlement fund" within the meaning of Treas. Reg. §1.468B-1. The Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this paragraph, including the "relation-back election" (as defined in

Treas. Reg. §1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to prepare and deliver timely and properly the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

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

(b) The following shall be paid out of the Gross Settlement Fund: (i) all taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Gross Settlement Fund, including, without limitation, any taxes or tax detriments that may be imposed upon Rubycon or its counsel with respect to any income earned by the Gross Settlement Fund for any period during which the Gross Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes (collectively, “Taxes”); and (ii) all

expenses and costs incurred in connection with the operation and implementation of this paragraph, including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this paragraph (collectively, "Tax Expenses"). In all events neither Rubycon nor its counsel shall have any liability or responsibility for the Taxes or the Tax Expenses. With funds from the Gross Settlement Fund, the Escrow Agent shall indemnify and hold harmless Rubycon and its counsel for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Gross Settlement Fund and shall timely be paid by the Escrow Agent out of the Gross Settlement Fund without prior order from the Court and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. §1.468B-2(1)(2)); neither Rubycon nor its counsel is responsible therefor, nor shall they have any liability therefor. The Settling Parties agree to cooperate with the Escrow Agent, each other, their tax attorneys, and their accountants to the extent reasonably necessary to carry out the provisions of this paragraph.

**Administration and Distribution of Gross Settlement Fund**

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

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

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

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

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

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

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

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

24. All Persons who fall within the definition of the Classes who do not timely and validly request to be excluded from the Classes shall be subject to and bound by the provisions of this Settlement Agreement, the releases contained herein, and the Judgment with respect to all Released Claims, regardless of whether such Persons seek or obtain by any means, including,

without limitation, by submitting a Proof of Claim and Release or any similar document, any distribution from the Gross Settlement Fund or the Net Settlement Fund.

25. ***No Liability for Distribution of Settlement Funds.*** Neither the Releasees nor their counsel shall have any responsibility for, interest in, or liability whatsoever with respect to the distribution of the Gross Settlement Fund; the Distribution Plan; the determination, administration, or calculation of claims; the Settlement Fund's qualification as a "qualified settlement fund"; the payment or withholding of Taxes or Tax Expenses; the distribution of the Net Settlement Fund; or any losses incurred in connection with any such matters. The Releasers hereby fully, finally, and forever release, relinquish, and discharge the Releasees and their counsel from any and all such liability. No Person shall have any claim against Class Counsel or the Notice and Claims Administrator based on the distributions made substantially in accordance with the Agreement and the Settlement contained herein, the Distribution Plan, or further orders of the Court.

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

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

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

**Attorneys' Fees and Reimbursement of Expenses**

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

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

30. *Award of Fees and Expenses Not Part of Settlement.* The procedure for, and the allowance or disallowance by the Court of, the Fee and Expense Application are not part of the Settlement set forth in this Settlement Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in this Settlement Agreement. Any order or proceeding relating to the Fee and Expense Application, or any appeal from any Fee and Expense Award or any other order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Settlement Agreement, or affect or delay the finality of the Judgment and the Settlement of the Actions as set

forth herein. No order of the Court or modification or reversal on appeal of any order of the Court concerning any Fee and Expense Award or Distribution Plan shall constitute grounds for cancellation or termination of this Settlement Agreement.

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

**Cooperation**

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

33. ***Attorney Proffer.*** Within fifteen (15) business days after Preliminary Approval by the Court or such time as mutually agreed by the Settling Parties, counsel for Rubycon shall provide Class Counsel with an oral proffer of facts known to them about meetings or communications between competitors in the Capacitors industry and about documents relevant to agreements or understandings regarding the pricing or supply of Capacitors. Should the attorney



proffer required by this paragraph not occur within the fifteen (15) business days after Preliminary Approval, Indirect Purchaser Plaintiffs do not waive their right to an attorney proffer.

34. ***Cooperation Subject to and Consistent with Prior Obligations.*** Rubycon and the Indirect Purchaser Plaintiffs shall not be obligated to provide cooperation that would violate an applicable court order or Rubycon's commitments to the United States Department of Justice ("DOJ") or any other domestic or foreign governmental entity. Rubycon represents that it is not presently aware of any court order prohibiting, or any objection from an enforcement authority to Rubycon providing the cooperation contemplated by this section, with the following exceptions: (1) DOJ's objection to the production of translations (*see* DKT Nos. 656, 678, 1097); (2) the Court's Order granting DOJ's Motion to stay certain discovery related to its upcoming trial against Nippon Chemi-Con and United Chemi-Con including the depositions of Rubycon deponents Kazuhiko Mitsuohori and Norio Kasuga (DKT Nos. 2051, 2054); and (3) DOJ's objection to the production of communications between Rubycon and DOJ (DKT Nos. 630, 632). Additionally, Indirect Purchaser Plaintiffs and Rubycon will take reasonable efforts to accommodate the other's efforts to minimize duplication in the providing of any cooperation.

35. ***Further Cooperation.***

(a) Rubycon shall, to the extent it has not done so already, produce ordinary course of business documents that it has provided to the U.S. and foreign law enforcement authorities, including all English translations of any documents, concerning Capacitors, to the extent they exist, within fifteen (15) business days after Preliminary Approval by the Court of this Settlement Agreement. Rubycon will produce English translations upon the lifting of DOJ's objection or related stay as described in ¶ 34. The Indirect Purchaser Plaintiffs expressly reserve their right to move the Court for an order permitting production of such documents.

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

(1) To the extent Rubycon has agreed to provide documents subject to this Settlement Agreement, it will only be obligated to provide such documents subject to the previous agreements between the parties as to the scope and time period of discovery.

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

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

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

(f) Rubycon will use its best efforts to make up to three (3) current or former employees reasonably available for interviews, as necessary. Such interviews shall not exceed three hours per employee, and may be conducted telephonically or by videoconference. If the interviews are conducted with the assistance of an interpreter, the interview time shall be doubled. At least five (5) business days in advance of such interviews Class Counsel shall provide a list of topics to be covered in the interview.

(g) Rubycon agrees Indirect Purchaser Plaintiffs may ask questions at depositions of Rubycon witnesses noticed by other plaintiffs in the litigation.

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

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

(j) Upon reasonable notice from Class Counsel and after Preliminary Approval of this Settlement Agreement, Rubycon agrees to use its best efforts to make available no more than four (4) of Rubycon's current or former employees, who shall be separately agreed upon in advance by

Rubycon and Indirect Purchaser Plaintiffs, for a deposition. Such depositions shall not exceed seven (7) and a half hours in length, if the witness testifies in English without a translator. If the witness requires a translator, the deposition shall not exceed twelve (12) hours in length. To the extent that Rubycon has settled with the Direct Purchaser Plaintiffs, Indirect Purchaser Plaintiffs shall use best efforts to coordinate with counsel for Direct Purchaser Plaintiffs to ensure that Rubycon is not required to produce more than four (4) witnesses for deposition. Indirect Purchaser Plaintiffs will reimburse Rubycon for reasonable business class airfare and up to three (3) nights of reasonable hotel expenses per witness (not to exceed \$400 per night per witness) for each witness who is made available for deposition in the United States.

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

36. ***Minimizing burden.*** Indirect Purchaser Plaintiffs and Class Counsel shall coordinate with Direct Purchaser Plaintiffs and any other parties with whom Rubycon has agreed to provide cooperation, to the extent feasible, so as to minimize Rubycon's burden and costs in providing cooperation.

37. ***Other Discovery.*** Upon the Execution Date, neither Rubycon nor the Indirect Purchaser Plaintiffs shall file motions against the other or initiate or participate in any discovery, motion, or proceeding directly adverse to the other in connection with the Actions, except as

specifically provided for herein. Rubycon and the Indirect Purchaser Plaintiffs shall not be obligated to respond or supplement prior responses to formal discovery that has been previously propounded by the other in the Actions.

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

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

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

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

41. **Exclusions.** Class Counsel shall cause copies of requests for exclusion from the Classes to be provided to Rubycon's counsel. No later than 14 days after the final date for mailing requests for exclusion, Class Counsel shall provide Rubycon's counsel with a complete and final list of opt-outs. With the motion for final approval of the Settlement, Class Counsel will

file with the Court a complete list of requests for exclusion from the Classes, including only the name, city, and state of the person or entity requesting exclusion. Rubycon shall have the option to terminate this Settlement Agreement if with regards to electrolytic capacitors, the aggregate amount (in U.S. dollars) of purchases of electrolytic capacitors by Class Members requesting exclusion is equal to or greater than 20% of the amount (in U.S. dollars) of purchases of electrolytic capacitors during the Class Period by all Settlement Class Members, including those Settlement Class Members who opt-out of the settlement(s). In the event this amount is triggered and in the event that Rubycon exercises this option, Class Counsel shall refund only the Settlement Amount allocated to purchasers of electrolytic capacitors less any amounts used under the terms of the Settlement Agreement for notice and claims administration purposes. Notwithstanding Rubycon exercising this option, subject to the following paragraph, the parties' Settlement Agreement with respect to film capacitors shall remain in effect. For the avoidance of doubt, Purchases by Flextronics International U.S.A. Inc., Avnet, Inc., the AASI Beneficiaries' Trust, by and through Kenneth A. Walt, Liquidating Trustee, and Benchmark Electronics, Inc. shall be excluded from the calculations subject to this paragraph.

Rubycon shall also have the option to terminate this agreement with respect to film capacitors if the aggregate amount (in U.S. dollars) of purchases of film capacitors by Class Members requesting exclusion is equal to or greater than 20% of the amount (in U.S. dollars) of purchases of film capacitors during the Class Period by all Settlement Class Members, including those Settlement Class Members who opt-out of the settlement(s). In the event this amount is triggered and in the event that Rubycon exercises this option, Class Counsel shall refund only the Settlement Amount allocated to purchasers of film capacitors less any amounts used under the terms of the Settlement Agreement for notice and claims administration purposes.

Notwithstanding Rubycon exercising the option under this paragraph, the parties' Settlement Agreement with respect to electrolytic capacitors shall remain in effect. For the avoidance of doubt, Purchases by Flextronics International U.S.A. Inc., Avnet, Inc., the AASI Beneficiaries' Trust, by and through Kenneth A. Walt, Liquidating Trustee, and Benchmark Electronics, Inc. shall be excluded from the calculations subject to this paragraph.

After meeting and conferring with Class Counsel, Rubycon may elect to terminate this Settlement Agreement in accord with the foregoing paragraphs by serving written notice on Class Counsel by email and overnight courier and by filing a copy of such notice with the Court no later than thirty (30) days before the date for the final approval hearing of this Settlement Agreement, except that Rubycon shall have a minimum of ten (10) business days in which to decide whether to terminate this Settlement Agreement after receiving the final opt out list. In the event that Rubycon exercises its option to terminate this Settlement Agreement: (i) this Settlement Agreement shall be null and void as to Rubycon, and shall have no force or effect and shall be without prejudice to the rights and contentions of Releasees and Releasers in this or any other litigation; and (ii) the Settlement fund paid by Rubycon, plus interest thereon, shall be refunded promptly to Rubycon, minus such payment (as set forth in this Settlement Agreement) of Notice, Administrative, and Claims Administration Costs and Taxes and Tax Expenses, consistent with the provisions of ¶¶ 16 and 20.

42. **Objections.** Members of the Settlement Classes who wish to object to any aspect of the Settlement must file with the Court a written statement containing their objection by end of the period to object to the Settlement. Any award or payment of attorneys' fees made to counsel to an objector to the Settlement shall only be made by Court order and upon a showing of the benefit conferred to the class. In determining any such award of attorneys' fees to an objectors'



counsel, the Court will consider the incremental value to the Classes caused by any such objection. Any award of attorneys' fees by the Court will be conditioned on the objector and his or her attorney stating under penalty of perjury that no payments shall be made to the objector based on the objector's participation in the matter - other than as ordered by the Court.

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

44. ***Termination.*** Unless otherwise ordered by the Court, in the event that the Effective Date does not occur or this Settlement Agreement should terminate, or be cancelled or otherwise fail to become effective for any reason, including, without limitation, in the event that Rubycon



elects to terminate this Settlement Agreement pursuant to ¶ 40, the Settlement as described herein is not finally approved by the Court, or the Judgment is reversed or vacated following any appeal taken therefrom, then:

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

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

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

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

(e) the terms and provisions of this Settlement Agreement, with the exception of ¶¶ 45-47 (which shall continue in full force and effect), shall be null and void and shall have no further force or effect with respect to the Settling Parties, and neither the existence nor the terms of this Settlement Agreement (nor any negotiations preceding this Settlement Agreement nor any acts performed pursuant to, or in furtherance of, this Settlement Agreement) shall be used in the Actions or in any other action or proceeding for any purpose (other than to enforce the terms remaining in effect); and

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

**No Admission of Liability**

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

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

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

**Miscellaneous Provisions**

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

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

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

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

52. ***Authorization to Enter Settlement Agreement.*** The undersigned representatives of Rubycon represent that they are fully authorized to enter into and to execute this Settlement Agreement on behalf of Rubycon. Class Counsel, on behalf of Indirect Purchaser Plaintiffs and the Classes, represent that they are, subject to Court approval, expressly authorized to take all

action required or permitted to be taken by or on behalf of the Indirect Purchaser Plaintiffs and the Classes pursuant to this Settlement Agreement to effectuate its terms and to enter into and execute this Settlement Agreement and any modifications or amendments to the Settlement Agreement on behalf of the Classes that they deem appropriate.

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

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

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

If directed to Rubycon, address notice to:

SHERMAN & STERLING  
Djordje Petkoski  
401 9th Street N.W., Suite 800  
Washington, DC 20004  
Telephone: (202) 508-8083  
Facsimile: (202) 508-8100  
Djordje.Petkoski@shearman.com

54. ***Confidentiality of Settlement Negotiations.*** Class Counsel shall keep strictly 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 Rubycon may issue a press release regarding execution of the Settlement Agreement and the amount paid in connection with the Settlement Agreement.

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

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

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

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

waiver of any other breach, whether prior, subsequent or contemporaneous, of this Settlement Agreement.

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

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

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


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

INDIRECT PURCHASER PLAINTIFFS' CLASS COUNSEL, on behalf of Indirect

Purchaser Plaintiffs individually and on behalf of the Classes.

By:   
Adam J. Zapala  
COTCHETT, PITRE & MCCARTHY  
San Francisco Airport Office Center  
840 Malcolm Road, Suite 200  
Burlingame, CA 94010  
Telephone: (650) 697-6000  
Fax: (650) 697-0577  
azapala@cpmlegal.com

DEFENDANT RUBYCON

By:   
Djordje Petkoski  
SHERMAN & STERLING  
401 9th Street N.W.  
Washington, DC 20004  
Telephone: (202) 508-8083  
Facsimile: (202) 508-8100  
Djordje.Petkoski@shearman.com