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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  
MDL No. 3:17-md-02801**

This Document Relates to:  
Indirect Purchaser Actions

**SETTLEMENT AGREEMENT**

1 This Settlement Agreement (“Settlement Agreement”) is made and entered into this 5<sup>th</sup> day  
2 of March, 2019 (the “Execution Date”), by and among Defendant Matsuo Electric Co., Ltd.  
3 (“Matsuo”), and the Indirect Purchaser Plaintiffs (“IPPs”), both individually and on behalf of the  
4 Class in the above-captioned action (collectively, the “Settling Parties”). 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, IPPs are prosecuting the above-captioned action (“Action”) on their own  
9 behalf and on behalf of the Class against Matsuo, other Defendants, and alleged co-conspirators;

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

13 WHEREAS, Matsuo has denied and continues to deny each and all of IPPs’ claims and  
14 allegations of wrongdoing; has not conceded or admitted any liability, or that it violated or breached  
15 any law, regulation, or duty owed to the IPPs in any way or manner; has denied and continues to  
16 deny all charges of wrongdoing or liability against it arising out of any of the conduct, statements,  
17 acts or omissions alleged in the Action; and further denies the allegations that the IPPs or any  
18 member of the Class were harmed by any conduct by Matsuo alleged in the Action or otherwise;

19 WHEREAS, IPPs and Matsuo have engaged in extensive discovery regarding the facts  
20 pertaining to IPPs’ claims and Matsuo’s defenses;

21 WHEREAS, IPPs and Matsuo agree that neither this Settlement Agreement nor any  
22 statement made in the negotiation thereof shall be deemed or construed to be an admission or  
23 evidence of any violation of any statute or law or of any liability or wrongdoing by Matsuo or of the  
24 truth of any of the claims or allegations alleged in the Action;

25 WHEREAS, Class Counsel have concluded, after due investigation and after carefully  
26 considering the relevant circumstances, including, without limitation, the claims asserted in the  
27 IPPs’ Fifth Consolidated Complaint filed in Docket No. 14-cv-03264-JD, the legal and factual  
28 defenses thereto and the applicable law, that it is in the best interests of the IPPs and the Class to

1 enter into this Settlement Agreement to avoid the uncertainties of litigation and to assure that the  
2 benefits reflected herein are obtained for the IPPs and the Class, and, further, that Class Counsel  
3 considers the Settlement set forth herein to be fair, reasonable, adequate, and in the best interests of  
4 the IPPs and the Class;

5 WHEREAS, Matsuo has concluded, despite its belief that it is not liable for the claims  
6 asserted against it in the Action and that it has good defenses thereto, that it will enter into this  
7 Settlement Agreement to avoid further expense, inconvenience, and the distraction of burdensome  
8 and protracted litigation, and thereby to put to rest this controversy with respect to the IPPs and the  
9 Class and avoid the risks inherent in complex litigation; and

10 WHEREAS, arm's length settlement negotiations have taken place between Class Counsel  
11 and Counsel for Matsuo, and this Settlement Agreement, which embodies all of the terms and  
12 conditions of the Settlement between the Settling Parties, both individually and on behalf of the  
13 Class, has been reached as a result of the Settling Parties' negotiations (subject to the approval of  
14 the Court) as provided herein and is intended to supersede any prior agreements or understandings  
15 between the Settling Parties.

16 **AGREEMENT**

17 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the  
18 Settling Parties, by and through their undersigned attorneys of record, in consideration of the  
19 covenants, agreements, and releases set forth herein and for other good and valuable consideration,  
20 the sufficiency of which is hereby admitted and deemed appropriate, that the Action and the  
21 Released Claims as against Matsuo shall be finally and fully settled, compromised and dismissed on  
22 the merits and with prejudice, without costs as to IPPs, the Class, or Matsuo, upon and subject to  
23 the approval of the Court, following notice to the Class, on the following terms and conditions:

24 **Definitions**

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

27 (a) "Action" or "Actions" means *In re Capacitors Antitrust Litigation* – All  
28 Indirect Purchaser Actions, Case No. 3:14-cv-03264-JD, and each of the cases brought on behalf of

1 indirect purchasers previously consolidated and/or included as part of Docket No. 3:14-cv-03264-  
2 JD.

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

5 (c) "Authorized Claimant" means any IPP who, in accordance with the terms of  
6 this Settlement Agreement, is entitled to a distribution consistent with any Distribution Plan or  
7 order of the Court ordering distribution to the Class.

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

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

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

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

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

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

27 (j) "Defendant" or "Defendants" means Nichicon Corporation and Nichicon  
28 (America) Corporation, Nippon Chemi-Con Corp., United Chemi-Con, Inc., Hitachi Chemical Co.,

1 Ltd., Hitachi AIC Inc., Hitachi Chemical Co. America, Ltd., Inc., Rubycon Corp., Rubycon  
2 America Inc., Panasonic Corp., Panasonic Corp. of North America, SANYO Electric Co., Ltd.,  
3 SANYO Electronic Device (U.S.A.) Corp., Elna Co., Ltd. and Elna America Inc., Matsuo Electric  
4 Co., Ltd., NEC TOKIN Corp., NEC TOKIN America Inc., Fujitsu Media Devices, Ltd., Nissei  
5 Electric Co., Ltd., Nitsuko Electronics Corp., Okaya Electric Industries Co., Ltd., Shinyei  
6 Technology Co., Ltd., Shinyei Capacitor Co., Ltd., Soshin Electric Co., Ltd., Taitso Corp., Toshin  
7 Kogyo Co., Ltd., Holy Stone Enterprise Co., Ltd., Holy Stone Holdings Co., Ltd., Holy Stone  
8 Polytech Co., Ltd., and Milestone Global Technology, Inc.

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

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

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

- 17 1. All parties have executed this Settlement Agreement;
- 18 2. The Court has preliminarily approved the Settlement Agreement and  
19 accompanying motion after providing notice to the Class as defined herein;
- 20 3. The Court has entered a Final Judgment; and
- 21 4. The Final Judgment (as more fully described in ¶ 6) has become final,

22 with the occurrence of the following: (A) the entry by the Court of a final order approving the  
23 Settlement Agreement under Federal Rules of Civil Procedure ("Rule") 23(e) together with entry of  
24 a final judgment dismissing the Action and all claims therein against Matsuo with prejudice as to all  
25 Class Members ("Final Judgment"), and (B) the expiration of the time for appeal or to seek  
26 permission to appeal from the Court's approval of the Settlement Agreement and entry of the Final  
27 Judgment or, if an appeal from an approval and Final Judgment is taken, the affirmance of such  
28 Final Judgment in its entirety, without modification, by the court of last resort to which an appeal of

1 such Final Judgment may be taken, provided, however, a modification or reversal on appeal of any  
2 amount of Class Counsel's fees and expenses awarded by the Court from the Settlement Fund or  
3 any plan of allocation or distribution of the Settlement Fund shall not be deemed a modification of  
4 all or part of the terms of this Settlement Agreement or the Final Judgment. It is agreed that neither  
5 the provisions of Rule 60 nor the All Writs Act, 28 U.S.C. § 1651, shall be taken into account in  
6 determining the above-stated times.

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

12 (o) "Escrow Agent" means the agent jointly designated by Class Counsel and  
13 Matsuo, and any successor agent.

14 (p) "Execution Date" means the date of the last signature set forth on the  
15 signature pages below.

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

1 (r) "Gross Settlement Fund" means the Settlement Amount plus any interest that  
2 may accrue.

3 (s) "IPPs" means Michael Brooks, CAE Sound, Steve Wong, Toy-Knowlogy  
4 Inc., AGS Devices, Co., AGS Devices, Ltd., J&O Electronics, Nebraska Dynamics, Inc., Angstrom,  
5 Inc., MakersLED, and In Home Tech Solutions, Inc., as well as any other Person added as an IPP in  
6 the Actions.

7 (t) "Judgment" means the order of judgment and dismissal of the Action with  
8 prejudice.

9 (u) "Net Settlement Fund" means the Gross Settlement Fund, less the payments  
10 set forth in ¶ 16.

11 (v) "Matsuo" means collectively Matsuo Electric Co., Ltd., and its past, present  
12 and future direct and indirect parents, members, subsidiaries, and Affiliates, and the past, present,  
13 and future respective officers, directors, employees, managers, members, partners, agents,  
14 shareholders (in their capacity as shareholders), debtholders (in their capacity as debtholders),  
15 attorneys and legal representatives, assigns, servants, and representatives, and the predecessors,  
16 successors, heirs, executors, administrators, and assigns of each of the foregoing.

17 (w) "Notice, Administrative and Claims Administration Costs" means the  
18 reasonable sum of money not to exceed \$250,000 to be paid out of the Gross Settlement Fund to  
19 pay for notice to the Class and related administrative and claims administration costs.

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

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

28

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

20           (aa)    “Releasees” refers jointly and severally, individually and collectively to  
21 Matsuo as defined in ¶ 1(v) above.

22           (bb)    “Releasers” refers jointly and severally, individually and collectively to the  
23 IPPs and each and every member of the Class on their own behalf and on behalf of their respective  
24 past, present, and/or future direct and indirect parents, members, subsidiaries and Affiliates, and  
25 their past, present and/or future officers, directors, employees, managers, members, partners, agents,  
26 shareholders (in their capacity as shareholders), attorneys and legal representatives, servants, and  
27 representatives, and the predecessors, successors, heirs, executors, administrators and assigns of  
28 each of the foregoing.



1 (cc) "Settlement" means the settlement of the Released Claims set forth herein.

2 (dd) "Settlement Amount" means exactly two million and five-hundred thousand  
3 dollars (\$2,500,000.00).

4 (ee) "Settling Parties" means, collectively, the IPPs (on behalf of themselves and  
5 the Class) and Matsuo.

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

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

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

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

22 3. ***Motion for Preliminary Approval.*** At a time to be determined by Class Counsel, but  
23 convenient to Matsuo's counsel, Class Counsel shall submit this Settlement Agreement to the Court  
24 and shall apply for entry of a Preliminary Approval Order, requesting, *inter alia*, preliminary  
25 approval of the Settlement. Class Counsel shall endeavor to make this submission within 6 months  
26 of the Execution Date. The motion shall include (a) the proposed Preliminary Approval Order, and  
27 (b) a definition of the proposed settlement Class pursuant to Rule 23.  
28

1           4.     ***Proposed Notice.*** At a time to be determined in their sole discretion, Class Counsel  
2 shall submit to the Court for approval a proposed form of, method for, and schedule for  
3 dissemination of notice to the Class. Class Counsel shall endeavor to make this submission within 6  
4 months of the Execution Date. To the extent practicable and to the extent consistent with this  
5 paragraph, Class Counsel may seek to coordinate this notice program with other settlements that  
6 have or may be reached in the Action to reduce the expense of notice. This motion shall recite and  
7 ask the Court to find that the proposed form of and method for dissemination of the notice to the  
8 Class constitutes valid, due and sufficient notice to the Class, constitutes the best notice practicable  
9 under the circumstances, and complies fully with the requirements of Rule 23.

10           5.     ***Claims Administrator.*** IPPs shall retain a reputable and capable Claims  
11 Administrator, which shall be responsible for the claims administration process including  
12 distribution to Class Members pursuant to a court-approved plan of distribution. The fees and  
13 expenses of the Claims Administrator shall be paid exclusively out of the Settlement Fund. In no  
14 event shall Matsuo be separately responsible for any fees or expenses of the Claims Administrator.

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

19                 (a)     certifying the Class, as defined in this Settlement Agreement, pursuant to  
20 Rule 23, solely for purposes of this Settlement;

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

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

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

- 1 (e) discharging and releasing the Releasees from all Released Claims;
- 2 (f) permanently barring and enjoining the institution and prosecution, by IPPs  
3 and Class Members, of any other action against the Releasees in any court asserting any claims  
4 related in any way to the Released Claims;
- 5 (g) reserving continuing and exclusive jurisdiction over the Settlement, including  
6 all future proceedings concerning the administration, consummation and enforcement of this  
7 Settlement Agreement;
- 8 (h) determining pursuant to Rule 54(b) that there is no just reason for delay and  
9 directing entry of a final judgment as to Matsuo; and
- 10 (i) containing such other and further provisions consistent with the terms of this  
11 Settlement Agreement to which the parties expressly consent in writing.

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

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

23 9. Upon the date that the Court enters an order preliminarily approving the Settlement,  
24 IPPs and members of the Class shall be barred and enjoined from commencing, instituting or  
25 continuing to prosecute any action or any proceeding in any court of law or equity, arbitration  
26 tribunal, administrative forum or other forum of any kind worldwide based on the Released Claims.  
27 Nothing in this provision shall prohibit the IPPs or Class Counsel from continuing to participate in  
28

1 discovery in the Action that is initiated by other plaintiffs or that is subject to and consistent with  
2 the cooperation provisions set forth in ¶¶ 32-35.

3 **Releases**

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

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

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

22 13. ***Waiver of California Civil Code § 1542 and Similar Laws.*** The Releasors  
23 acknowledge that, by virtue of the execution of this Settlement Agreement, and for the  
24 consideration received hereunder, it is their intention to release, and they are releasing, all Released  
25 Claims, even Unknown Claims. In furtherance of this intention, the Releasors expressly waive and  
26 relinquish, to the fullest extent permitted by law, any rights or benefits conferred by the provisions  
27 of California Civil Code § 1542, as set forth in ¶ 1(ff), or equivalent, similar or comparable laws or  
28 principles of law. The Releasors acknowledge that they have been advised by Class Counsel of the

1 contents and effects of California Civil Code § 1542, and hereby expressly waive and release with  
2 respect to the Released Claims any and all provisions, rights and benefits conferred by California  
3 Civil Code § 1542 or by any equivalent, similar or comparable law or principle of law in any  
4 jurisdiction. The Releasors may hereafter discover facts other than or different from those which  
5 they know or believe to be true with respect to the subject matter of the Released Claims, but the  
6 Releasors hereby expressly waive and fully, finally and forever settle and release any known or  
7 unknown, suspected or unsuspected, foreseen or unforeseen, asserted or unasserted, contingent or  
8 non-contingent, and accrued or unaccrued claim, loss or damage with respect to the Released  
9 Claims, whether or not concealed or hidden, without regard to the subsequent discovery or  
10 existence of such additional or different facts. The release of unknown, unanticipated, unsuspected,  
11 unforeseen, and unaccrued losses or claims in this paragraph is not a mere recital.

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

18 **Settlement Fund**

19 15. *Settlement Payment.* Matsuo shall pay by wire transfer the Settlement Amount to the  
20 Escrow Agent pursuant to escrow instructions provided by Class Counsel in three payments: the  
21 first payment of \$833,000 USD will be due within 30 days of the Court's issuance of an order  
22 preliminarily approving the Settlement; the second payment of \$833,000 USD will be due no later  
23 than one year after the first payment; and the third payment of \$834,000 USD will be due no later  
24 than two years after the first payment, but in no event no later than December 31, 2020. The  
25 Settlement Amount constitutes the total amount of payment that Matsuo is required to make in  
26 connection with this Settlement Agreement. This amount shall not be subject to reduction, and upon  
27 the occurrence of the Effective Date, no funds shall revert to Matsuo except as provided herein. The  
28 Escrow Agent shall only act in accordance with the mutually agreed escrow instructions.

1           16.     ***Disbursements Prior to Effective Date.*** No amount may be disbursed from the Gross  
2 Settlement Fund unless and until the Effective Date, except that: (a) Notice, Administrative and  
3 Claims Administration Costs may be paid from the Gross Settlement Fund which may not exceed  
4 \$250,000, as they become due; (b) Taxes and Tax Expenses (as defined in ¶ 20 below) may be paid  
5 from the Gross Settlement Fund as they become due, and (c) attorneys' fees and reimbursement of  
6 litigation costs may be paid, as ordered by the Court, which may be disbursed during the pendency  
7 of any appeals, which may be taken from the judgment to be entered by the Court finally approving  
8 this Settlement.

9           17.     ***Refund by Escrow Agent.*** If the Settlement as described herein is not finally  
10 approved by any court, or it is terminated as provided herein, or the Judgment is overturned on  
11 appeal or by writ, the Gross Settlement Fund, including the Settlement Amount and all interest  
12 earned on the Settlement Amount while held in escrow, excluding only Notice, Administrative and  
13 Claims Administration Costs and Taxes and/or Tax Expenses (as defined in below), shall be  
14 refunded, reimbursed and repaid by the Escrow Agent to Matsuo within five (5) business days after  
15 receiving notice pursuant to ¶ 41 below.

16           18.     ***Refund by Class Counsel.*** If the Settlement as described herein is not finally  
17 approved by any court, or it is terminated as provided herein, or the Judgment as described herein is  
18 not approved or entered or is overturned on appeal or by writ, any attorneys' fees and costs  
19 previously paid pursuant to this Settlement Agreement (as well as interest on such amounts) shall be  
20 refunded, reimbursed and repaid by Class Counsel to Matsuo within thirty (30) business days after  
21 receiving notice pursuant to ¶ 41 below.

22           19.     ***No Additional Payments by Matsuo.*** Under no circumstances will Matsuo be  
23 required to pay more or less than the Settlement Amount pursuant to this Settlement Agreement and  
24 the Settlement set forth herein. For purposes of clarification, the payment of any Fee and Expense  
25 Award (as defined in ¶ 29 below), the Notice, Administrative and Claims Administrative Costs, and  
26 any other costs associated with the implementation of this Settlement Agreement shall be  
27 exclusively paid from the Settlement Amount.  
28

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

26 26. ***Balance Remaining in Net Settlement Fund.*** If there is any balance remaining in  
27 the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), Class  
28 Counsel may reallocate such balance among Authorized Claimants in an equitable and economic

1 fashion, distribute the remaining funds through *cy pres*, or allow the money to escheat to federal or  
2 state governments, subject to Court approval. In no event shall the Net Settlement Fund revert to  
3 Matsuo.

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

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

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

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

24       30.     ***Award of Fees and Expenses Not Part of Settlement.*** The procedure for, and the  
25 allowance or disallowance by the Court of, the Fee and Expense Application are not part of the  
26 Settlement set forth in this Settlement Agreement and are to be considered by the Court separately  
27 from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set  
28 forth in this Settlement Agreement. Any order or proceeding relating to the Fee and Expense

1 Application, or any appeal from any Fee and Expense Award or any other order relating thereto or  
2 reversal or modification thereof, shall not operate to terminate or cancel this Settlement Agreement,  
3 or affect or delay the finality of the Judgment and the Settlement of the Action as set forth herein.  
4 No order of the Court or modification or reversal on appeal of any order of the Court concerning  
5 any Fee and Expense Award or Distribution Plan shall constitute grounds for cancellation or  
6 termination of this Settlement Agreement.

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

12 **Cooperation**

13 32. *Cooperation as Consideration.* In return for the Release and Discharge provided  
14 herein, Matsuo agrees to pay the Settlement Amount and agrees to work in good faith to provide  
15 cooperation to IPPs in the form of trial witnesses and attorney proffers to the extent this cooperation  
16 does not prejudice the defense of any other legal action against Matsuo or unduly interfere with  
17 Matsuo's business. The Settling Parties recognize that Matsuo is a defendant in other cases brought  
18 by different plaintiffs concerning allegations of violations of antitrust laws regarding Capacitors.

19 33. *Cooperation Subject to and Consistent with Prior Obligations.* Matsuo and the IPPs  
20 shall not be obligated to provide cooperation that would violate an applicable court order or  
21 Matsuo's commitments to the United States Department of Justice or any other domestic or foreign  
22 governmental entity or abrogate any privilege or work product protections. Additionally, IPPs and  
23 Matsuo will make reasonable efforts to accommodate the other's efforts to minimize duplication in  
24 the providing of any cooperation.

25 34. *Further Cooperation.* The Settling Parties agree to the following, except that all  
26 cooperation obligations by Matsuo shall cease if IPPs cease to be a party in the Action against all  
27 other Defendants.

28

1 (a) If, Matsuo produces any declarations, documents, data, or other responses to  
2 discovery to any other plaintiff in the Action, Matsuo will produce the same to IPPs.

3 (b) Each of the parties shall cooperate in good faith to authenticate for evidence  
4 purposes only, upon reasonable notice of not less than 60 days, to the extent possible, a reasonable  
5 number of documents and/or things produced by Matsuo in the Action, whether by declarations,  
6 affidavits, depositions, hearings and/or trials as may be necessary for the Action, without the need  
7 for the other party to issue any subpoenas, letters rogatory, letters of request, or formal discovery  
8 requests to the other.

9 (c) Matsuo agrees IPPs may ask questions at depositions of Matsuo witnesses  
10 noticed by other plaintiffs in the litigation.

11 (d) Matsuo agrees that to the extent it has not already done so, it will in a good  
12 faith, upon not less than 60 days' notice, respond in writing to reasonable requests for clarification  
13 of the transactional, production, and cost data that Matsuo produced in the Action and also about its  
14 methods of pricing Capacitors.

15 (e) At the request of IPP counsel, Matsuo shall in good faith, upon not less than  
16 60 days' notice, make up to two (2) current employees available to IPPs at trial for testimony. IPPs  
17 will reimburse Matsuo for reasonable business class airfare, \$75 per day for up to three (3) days for  
18 meals, and up to three (3) nights of reasonable hotel expenses (not to exceed \$400 per night per  
19 witness) for each witness who is made available for trial testimony in the United States and any  
20 necessary translator fees.

21 (f) IPPs agree to withdraw all outstanding discovery served on Matsuo, and  
22 neither Matsuo nor IPPs shall file motions against the other during the pendency of the Agreement  
23 except to enforce the terms of the Settlement Agreement.

24 35. *Resolution of Disputes.* To the extent the Settling Parties disagree about the  
25 interpretation or enforcement of any terms of this Settlement Agreement relating to future  
26 cooperation by Matsuo, or about the triggering of the threshold specified in the Confidential  
27 Termination Agreement referenced in ¶ 38(b), they agree to submit such disputes for binding  
28 resolution by the Honorable James Donato or another mutually agreed neutral.

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

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

8 37. ***Failure of Effective Date to Occur.*** If, for whatever reason, the Effective Date does  
9 not occur or is not met, then this Settlement Agreement shall be cancelled and terminated, subject to  
10 and in accordance with ¶ 41, below, unless the Settling Parties mutually agree in writing to proceed  
11 with this Settlement Agreement.

12 38. **Exclusions.**

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

21 (b) Matsuo shall have the option to rescind and terminate this Settlement  
22 Agreement in its entirety and without liability of any kind if based on available data, the aggregate  
23 purchases of Electrolytic Capacitors purchased from distributors by Class Members that opt out  
24 pursuant to ¶ 38(a) of this Settlement Agreement exceeds a threshold agreed to by IPPs and Matsuo  
25 in the Confidential Termination Agreement that has been executed separately by IPPs and Matsuo.  
26 Matsuo shall exercise this option to rescind and terminate this Settlement Agreement by providing  
27 ten (10) business days written notice to Class Counsel. Upon such rescission and termination, IPPs  
28 and Matsuo will notify the Court immediately and withdraw all pending motions filed to effectuate

1 this Settlement. IPPs and Matsuo will also, as may be required by the Court, submit the  
2 Confidential Termination Agreement to the Court for in-camera review. In the event that Matsuo  
3 exercises its option to rescind and terminate this Settlement Agreement: (i) this Settlement  
4 Agreement shall be null and void as to Matsuo, and shall have no force or effect and shall be  
5 without prejudice to the rights and contentions of Releasees and Releasors in this or any other  
6 litigation; (ii) the Gross Settlement fund shall be refunded promptly to Matsuo, minus such payment  
7 (as set forth in this Settlement Agreement) of Notice and Administrative Costs and Taxes and Tax  
8 Expenses, consistent with the provisions of ¶¶16 and 20.

9       39.     **Objections.** Settlement Class Members who wish to object to any aspect of the  
10 Settlement must file with the Court a written statement containing their objection by end of the  
11 period to object to the Settlement. Any award or payment of attorneys' fees made to counsel to an  
12 objector to the Settlement shall only be made by Court order and upon a showing of the actual  
13 benefit conferred to the Class. In determining any such award of attorneys' fees to an objectors'  
14 counsel, the Court will consider the demonstrated incremental value to the Class caused by any  
15 such objection. Any award of attorneys' fees by the Court will be conditioned on the objector and  
16 his or her attorney stating under penalty of perjury that no payments shall be made to the objector  
17 based on the objector's participation in the matter - other than as ordered by the Court. Matsuo  
18 shall not be responsible for any such payments.

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

1 Application or Distribution Plan, or any modification or reversal on appeal of such order, shall  
2 constitute grounds for cancellation or termination of this Settlement Agreement by any Settling  
3 Party. Without limiting the foregoing, Matsuo shall have, in its sole and absolute discretion, the  
4 option to terminate the Settlement in its entirety in the event that the Judgment, upon becoming  
5 Final, does not provide for the dismissal with prejudice of all the Action against Matsuo.

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

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

19 (b) within thirty (30) business days after written notification of such event is sent  
20 by Counsel for Matsuo to Class Counsel, all attorneys' fees and costs which have been disbursed to  
21 Class Counsel pursuant to Court order shall be refunded, reimbursed and repaid by Class Counsel to  
22 Matsuo; if said amount or any portion thereof is not returned within such thirty (30) day period,  
23 then interest shall accrue thereon at the rate of ten percent (10%) per annum until the date that said  
24 amount is refunded, reimbursed and repaid;

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

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

4 (e) the terms and provisions of this Settlement Agreement, with the exception of  
5 ¶¶ 40, 42-44 (which shall continue in full force and effect), shall be null and void and shall have no  
6 further force or effect with respect to the Settling Parties, and neither the existence nor the terms of  
7 this Settlement Agreement (nor any negotiations preceding this Settlement Agreement nor any acts  
8 performed pursuant to, or in furtherance of, this Settlement Agreement) shall be used in the Action  
9 or in any other action or proceeding for any purpose (other than to enforce the terms remaining in  
10 effect); and

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

13 **No Admission of Liability**

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

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

26 44. ***Use of Agreement as Evidence.*** Neither this Settlement Agreement nor the  
27 Settlement, nor any act performed or document executed pursuant to or in furtherance of this  
28 Settlement Agreement or the Settlement: (a) is or may be deemed to be or may be used as an



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

15 **Miscellaneous Provisions**

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

20       46.     ***Consent to Jurisdiction.*** Except as set forth in paragraph 35, Matsuo and each Class  
21 Member hereby irrevocably submit to the exclusive jurisdiction of the Court only for the specific  
22 purpose of any suit, action, proceeding or dispute arising out of or relating to this Settlement  
23 Agreement or the applicability of this Settlement Agreement. Solely for purposes of such suit,  
24 action, or proceeding, to the fullest extent that they may effectively do so under applicable law,  
25 Matsuo and the Class Members irrevocably waive and agree not to assert, by way of motion, as a  
26 defense or otherwise, any claim or objection that they are not subject to the jurisdiction of the Court  
27 or that the Court is in any way an improper venue or an inconvenient forum. Nothing herein shall be  
28 construed as a submission to jurisdiction for any purpose other than any suit, action, proceeding, or

1 dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement  
2 Agreement.

3       47.    ***Resolution of Disputes; Retention of Exclusive Jurisdiction.*** Except as set forth in  
4 paragraph 35, any disputes between or among Matsuo and any Class Members concerning matters  
5 contained in this Settlement Agreement and the Confidential Termination Agreement referenced in  
6 ¶ 38(b) shall, if they cannot be resolved by negotiation and agreement, be submitted to the Court.  
7 The Court shall retain exclusive jurisdiction over the implementation and enforcement of this  
8 Settlement Agreement.

9       48.    ***Binding Effect.*** This Settlement Agreement shall be binding upon, and inure to the  
10 benefit of, the successors and assigns of the parties hereto. Without limiting the generality of the  
11 foregoing, each and every covenant and agreement herein by IPPs and Class Counsel shall be  
12 binding upon all Class Members.

13       49.    ***Authorization to Enter Settlement Agreement.*** The undersigned representatives of  
14 Matsuo represent that they are fully authorized to enter into and to execute this Settlement  
15 Agreement on behalf of Matsuo. Class Counsel, on behalf of IPPs and the Class, represent that they  
16 are, subject to Court approval, expressly authorized to take all action required or permitted to be  
17 taken by or on behalf of IPPs and the Class pursuant to this Settlement Agreement to effectuate its  
18 terms and to enter into and execute this Settlement Agreement and any modifications or  
19 amendments to the Settlement Agreement on behalf of the Class that they deem appropriate.

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

28       If directed to the IPPs, address notice to:

1 COTCHETT, PITRE & MCCARTHY  
Adam J. Zapala (azapala@cpmlegal.com)  
2 840 Malcolm Road, Suite 200  
Burlingame, CA 94010  
3 Telephone: (650) 697-6000  
Facsimile: (650) 697-0577  
4

If directed to Matsuo, address notice to:

5 DENTONS US LLP  
6 Bonnie Lau (bonnie.lau@dentons.com)  
7 One Market Plaza, Spear Tower, 24<sup>th</sup> Floor  
San Francisco, CA 94105  
8 Telephone: (415) 882-5000  
Facsimile: (415) 882-0300  
9

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

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

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

23 54. **Choice of Law.** This Settlement Agreement shall be considered to have been  
24 negotiated, executed and delivered, and to be wholly performed, in the State of California, and the  
25 rights and obligations of the parties to this Settlement Agreement shall be construed and enforced in  
26 accordance with, and governed by, the substantive laws of the State of California without giving  
27 effect to that State's choice of law principles.  
28

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

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

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

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

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

CLASS COUNSEL, on behalf of IPPs individually and on behalf of the Class.

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