

1 MARVIN N. PRICE, JR. (D.C.B.N. 367149)
2 U.S. Department of Justice
3 Antitrust Division
4 950 Pennsylvania Avenue NW
5 Washington, DC 20530
6 Telephone: (202) 307-0719
7 marvin.price@usdoj.gov

8 Attorney for the United States

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 UNITED STATES OF AMERICA

13 v.

14 NIPPON CHEMI-CON CORPORATION,

15
16 Defendant.

No. 4:17-CR-00540-JD

17 VIOLATION: 15 U.S.C. § 1
18 Price Fixing

19 **PLEA AGREEMENT**

20 The United States of America and Nippon Chemi-Con Corporation ("defendant"), a
21 corporation organized and existing under the laws of Japan, hereby enter into the following Plea
22 Agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure ("Fed. R.
23 Crim. P."):

24 **RIGHTS OF DEFENDANT**

- 25 1. The defendant understands its rights:
- 26 (a) to be represented by an attorney;
 - 27 (b) to be charged by Indictment;
 - 28 (c) as a corporation organized and existing under the laws of Japan, to decline
to accept service of the Summons in this case, and to contest the jurisdiction of the

PLEA AGREEMENT
U.S. v. NIPPON CHEMI-CON, 17-CR-00540-JD

1 United States to prosecute this case against it in the United States District Court for the
2 Northern District of California;

3 (d) to plead not guilty to any criminal charge brought against it;

4 (e) to have a trial by jury, at which it would be presumed not guilty of the
5 charge and the United States would have to prove every essential element of the charged
6 offense beyond a reasonable doubt for it to be found guilty;

7 (f) to confront and cross-examine witnesses against it and to subpoena
8 witnesses in its defense at trial;

9 (g) to appeal its conviction if it is found guilty; and

10 (h) to appeal the imposition of sentence against it.

11 **AGREEMENT TO PLEAD GUILTY AND WAIVE CERTAIN RIGHTS**

12 2. The defendant knowingly and voluntarily waives:

13 (a) the rights set out in subparagraphs 1(c)-(g) above.

14 (b) the right to appeal the conviction, the judgment, and orders of the Court,
15 as well as any aspect of the sentence including but not limited to an appeal under 18
16 U.S.C. § 3742. This agreement does not affect the rights or obligations of the United
17 States as set forth in 18 U.S.C. § 3742(b)-(c). Nothing in this paragraph, however, will
18 act as a bar to the defendant perfecting any legal remedies it may otherwise have
19 respecting claims of ineffective assistance of counsel. The defendant agrees that there is
20 currently no known evidence of ineffective assistance of counsel.

21 (c) the right to file any collateral attack on the conviction or sentence.

22 (d) the right to raise any defense or objection to the Indictment based on any
23 statute of limitations.

24 3. The defendant will plead guilty to a one-count Indictment that has been filed in
25 the United States District Court for the Northern District of California. The Indictment charges
26 the defendant with participating, from at least as early as September 1997 until in or about
27 January 2014, in a conspiracy to suppress and eliminate competition by fixing prices and rigging
28 bids of electrolytic capacitors sold in the United States and elsewhere in violation of the Sherman

1 Antitrust Act, 15 U.S.C. § 1. The defendant will plead guilty to this criminal charge pursuant to
2 the terms of this Plea Agreement and will make a factual admission of guilt to the Court in
3 accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below.

4 **FACTUAL BASIS FOR OFFENSE CHARGED**

5 4. Had this case gone to trial, the United States would have presented evidence
6 sufficient to prove the following facts:

7 (a) For purposes of this Plea Agreement, the "relevant period" is that period
8 beginning at least as early as November 2001 until in or about January 2014. During the
9 relevant period, the defendant was a corporation organized and existing under the laws of
10 Japan. The defendant had its principal place of business in Tokyo, Japan. During the
11 relevant period, the defendant manufactured electrolytic capacitors and was engaged in
12 the sale of such electrolytic capacitors in the United States and elsewhere. Electrolytic
13 capacitors are a major subcategory of capacitors, fundamental components of electrical
14 circuits used primarily to store and regulate electrical current.

15 (b) During the relevant period, the defendant, through its officers and
16 employees, including high-level personnel of the defendant, participated in a conspiracy
17 among manufacturers of electrolytic capacitors, the primary purpose of which was to fix
18 prices and rig bids of certain electrolytic capacitors manufactured outside of the United
19 States and sold in the United States and elsewhere. In furtherance of the conspiracy, the
20 defendant, through its officers and employees, at times engaged in discussions and
21 attended meetings with representatives of other manufacturers of electrolytic capacitors.
22 During these discussions and meetings, the conspirators agreed to fix the price and/or rig
23 bids of certain electrolytic capacitors manufactured outside of the United States to be sold
24 in the United States and elsewhere.

25 (c) During the relevant period, the defendant and its coconspirators
26 manufactured electrolytic capacitors outside the United States and sold them in the
27 United States or for delivery to the United States. During the relevant period, defendant
28 and its coconspirators sold foreign-manufactured electrolytic capacitors outside the

1 United States for incorporation into products that were sold in or for delivery to the
2 United States. During the relevant period, electrolytic capacitors sold by one or more of
3 the conspirator firms traveled in, and substantially affected, interstate commerce.

4 (d) Acts in furtherance of this conspiracy were carried out within the
5 Northern District of California. Electrolytic capacitors that were the subject of this
6 conspiracy were sold by one or more of the conspirators to customers in this District.

7 **ELEMENTS OF THE OFFENSE**

8 5. The elements of the charged offense are that:

9 (a) the conspiracy described in the Indictment existed at or about the time
10 alleged;

11 (b) the defendant knowingly became a member of the conspiracy; and

12 (c) the conspiracy described in the Indictment either (1) substantially affected
13 interstate and U.S. import trade or commerce in electrolytic capacitors or occurred within
14 the flow of interstate or U.S. import trade or commerce in electrolytic capacitors, or (2)
15 had a direct, substantial, and reasonably foreseeable effect on interstate or U.S. import
16 trade or commerce in electrolytic capacitor-containing products and that effect, in part,
17 gives rise to the charge in the Indictment.

18 **POSSIBLE MAXIMUM SENTENCE**

19 6. The defendant understands that the statutory maximum penalty which may be
20 imposed against it upon conviction for its violation of Section One of the Sherman Antitrust Act
21 is a fine of \$100 million (15 U.S.C. § 1).

22 7. In addition, the defendant understands that:

23 (a) pursuant to § 8D1.2(a)(1) of the United States Sentencing Guidelines
24 ("U.S.S.G.," "Sentencing Guidelines," or "Guidelines") or 18 U.S.C. § 3561(c)(1), the
25 Court may impose a term of probation of at least one year, but not more than five years;
26 and if the defendant violates any condition of probation, the Court may, pursuant to 18
27 U.S.C. § 3565, (i) continue the defendant on probation, with or without extending the
28

1 term or modifying or enlarging the conditions or (ii) revoke the sentence of probation and
2 resentence the defendant;

3 (b) pursuant to U.S.S.G. § 8B1.1 or 18 U.S.C. § 3563(b)(2) or § 3663(a)(3),
4 the Court may order it to pay restitution to the victims of the offense; and

5 (c) pursuant to 18 U.S.C. § 3013(a)(2)(B), the Court is required to order the
6 defendant to pay a \$400 special assessment upon conviction for the charged crime.

7 **SENTENCING GUIDELINES**

8 8. The defendant understands that the Sentencing Guidelines are advisory, not
9 mandatory, but that the Court must consider, in determining and imposing sentence, the
10 Guidelines Manual in effect on the date of sentencing unless that Manual provides for greater
11 punishment than the Manual in effect on the last date that the offense of conviction was
12 committed, in which case the Court must consider the Guidelines Manual in effect on the last
13 date that the offense of conviction was committed. The parties agree there is no *ex post facto*
14 issue under the November 1, 2016 Guidelines Manual. The Court must also consider the other
15 factors set forth in 18 U.S.C. § 3553(a) in determining and imposing sentence. The defendant
16 understands that the Court will make Guidelines determinations by applying a standard of
17 preponderance of the evidence. The defendant understands that although the Court is not
18 ultimately bound to impose a sentence within the applicable Guidelines range, its sentence must
19 be reasonable based upon consideration of all relevant sentencing factors set forth in 18 U.S.C.
20 § 3553(a).

21 **SENTENCING AGREEMENT**

22 9. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the defendant
23 agree that the appropriate disposition of this case is, and agree to recommend jointly that the
24 Court impose, a sentence requiring the defendant to pay to the United States a criminal fine
25 between \$40 million and \$60 million, payable in full before the fifteenth (15th) day after the date
26 of judgment, no order of restitution, and a five-year term of probation ("recommended
27 sentence"). The parties agree not to seek at the sentencing hearing any sentence outside of the
28 Guidelines range nor any Guidelines adjustment for any reason that is not set forth in this Plea

1 Agreement. The parties further agree that the recommended sentence set forth in this Plea
2 Agreement, including a fine within the recommended range, is reasonable. In light of unique
3 circumstances not adequately taken into consideration by the Sentencing Commission in
4 formulating the Guidelines, the recommended sentence may include a departure from the
5 otherwise applicable Guidelines range (*see* 15 U.S.C § 1 and U.S.S.G. § 8C3.1(b)), consistent
6 with 18 U.S.C. § 3553(b) and U.S.S.G. § 5K2.0.

7 (a) The defendant understands that the Court will order it to pay a \$400
8 special assessment, pursuant to 18 U.S.C. § 3013(a)(2)(B), in addition to any fine
9 imposed.

10 (b) In light of the availability of civil cases filed against the defendant,
11 including *In re: Capacitors Antitrust Litigation* (No. 14-CV-03264-JD), filed in the
12 United States District Court, Northern District of California, which potentially provide
13 for a recovery of a multiple of actual damages, the recommended sentence does not
14 include a restitution order for the offense charged in the Indictment.

15 (c) The United States and the defendant agree to recommend jointly that the
16 Court order a five-year term of probation, with the following conditions: (1) the
17 development of a corporate compliance program consistent with U.S.S.G. § 8B2.1,
18 including antitrust compliance standards and procedures to be followed by all officers,
19 directors, and employees who have any responsibility for the sale or marketing of
20 electrolytic capacitors; (2) the implementation of the corporate compliance program,
21 including: (i) training on a periodic basis concerning the requirements of the antitrust
22 laws and the above standards and procedures; and (ii) periodic communications by high-
23 level personnel reinforcing the defendant's commitment to the corporate compliance
24 program and adherence to the antitrust laws; and (3) the submission of annual written
25 reports by the defendant to the Antitrust Division of the U.S. Department of Justice and
26 the United States Probation Office on the defendant's progress in implementing the
27 corporate compliance program. The development and implementation of the corporate
28 compliance program shall apply to the defendant, its subsidiaries, and any entity in

1 which, after the date of signature of this Plea Agreement, the defendant has a greater than
2 50% ownership interest. The parties agree that the term and conditions of probation
3 imposed by the Court will not void this Plea Agreement.

4 10. The United States and the defendant understand that the Court retains complete
5 discretion to accept or reject the recommended sentence provided for in Paragraph 9 of this Plea
6 Agreement.

7 (a) If the Court does not accept the recommended sentence, the United States
8 and the defendant agree that this Plea Agreement, except for subparagraph 10(b) below,
9 will be rendered void.

10 (b) If the Court does not accept the recommended sentence, the defendant will
11 be free to withdraw its guilty plea (Fed. R. Crim. P. 11(c)(5) and (d)). If the defendant
12 withdraws its plea of guilty, this Plea Agreement, the guilty plea, and any statement made
13 in the course of any proceedings under Fed. R. Crim. P. 11 regarding the guilty plea or
14 this Plea Agreement or made in the course of plea discussions with an attorney for the
15 government will not be admissible against the defendant in any criminal or civil
16 proceeding, except as otherwise provided in Fed. R. Evid. 410. In addition, the defendant
17 agrees that, if it withdraws its guilty plea pursuant to this subparagraph of this Plea
18 Agreement, the statute of limitations period for any offense referred to in Paragraph 11 of
19 this Plea Agreement will be tolled for the period between the date of signature of this
20 Plea Agreement and the date the defendant withdrew its guilty plea or for a period of
21 sixty (60) days after the date of signature of this Plea Agreement, whichever period is
22 greater.

23 **GOVERNMENT'S AGREEMENT**

24 11. Upon the Court's acceptance of the guilty plea called for by this Plea Agreement
25 and the imposition of the recommended sentence, the United States agrees that it will not bring
26 further criminal charges against the defendant for any act or offense committed before the date of
27 signature of this Plea Agreement that was undertaken in furtherance of an antitrust conspiracy
28 involving the manufacture or sale of electrolytic capacitors. While the United States does not

1 contemplate the filing of any additional criminal charges against defendant's current or former
2 officers or employees based on the charge in the Indictment in this case, nothing in this
3 agreement affects or limits the ability of the United States to prosecute charges already filed
4 against defendant's current or former officers or employees. The nonprosecution terms of this
5 paragraph do not apply to (a) any acts of subornation of perjury (18 U.S.C. § 1622), making a
6 false statement (18 U.S.C. § 1001), obstruction of justice (18 U.S.C. § 1503 *et seq.*), contempt
7 (18 U.S.C. §§ 401-402), or conspiracy to commit such offenses; (b) civil matters of any kind; (c)
8 any violation of the federal tax or securities laws or conspiracy to commit such offenses; or (d)
9 any crime of violence.

10 **REPRESENTATION BY COUNSEL**

11 12. The defendant has been represented by counsel and is fully satisfied that its
12 attorneys have provided competent legal representation. The defendant has thoroughly reviewed
13 this Plea Agreement and acknowledges that counsel has advised it of the nature of the charge,
14 any possible defenses to the charge, and the nature and range of possible sentences.

15 **VOLUNTARY PLEA**

16 13. The defendant's decision to enter into this Plea Agreement and to tender a plea of
17 guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises,
18 or representations other than the representations contained in this Plea Agreement. The United
19 States has made no promises or representations to the defendant as to whether the Court will
20 accept or reject the recommendations contained within this Plea Agreement.

21 **VIOLATION OF PLEA AGREEMENT**

22 14. The defendant agrees that, should the United States determine in good faith that
23 the defendant has violated any provision of this Plea Agreement, the United States will notify
24 counsel for the defendant in writing by personal or overnight delivery, email, or facsimile
25 transmission and may also notify counsel by telephone of its intention to void any of its
26 obligations under this Plea Agreement (except its obligations under this paragraph), and the
27 defendant will be subject to prosecution for any federal crime of which the United States has
28 knowledge including, but not limited to, the substantive offenses relating to the investigation

1 resulting in this Plea Agreement. The defendant may seek Court review of any determination
2 made by the United States under this paragraph to void any of its obligations under this Plea
3 Agreement. The defendant agrees that, in the event that the United States is released from its
4 obligations under this Plea Agreement and brings criminal charges against the defendant for any
5 offense referred to in Paragraph 11 of this Plea Agreement, the statute of limitations period for
6 such offense will be tolled for the period between the date of signature of this Plea Agreement
7 and six (6) months after the date the United States gave notice of its intent to void its obligations
8 under this Plea Agreement.

9 15. The defendant understands and agrees that in any further prosecution
10 of it resulting from the release of the United States from its obligations under this Plea
11 Agreement because of the defendant's violation of this Plea Agreement, any documents,
12 statements, information, testimony, or evidence provided by it or its U.S. subsidiary United
13 Chemi-Con, Inc. to attorneys or agents of the United States, federal grand juries, or courts, and
14 any leads derived therefrom, may be used against it. In addition, the defendant unconditionally
15 waives its right to challenge the use of such evidence in any such further prosecution.

16 **ENTIRETY OF AGREEMENT**

17 16. This Plea Agreement constitutes the entire agreement between the United States
18 and the defendant concerning the disposition of the criminal charge in this case. This Plea
19 Agreement cannot be modified except in writing, signed by the United States and the defendant.

20 17. The undersigned is authorized to enter this Plea Agreement on behalf of the
21 defendant as evidenced by the Resolution of the Board of Directors of the defendant attached to,
22 and incorporated by reference in, this Plea Agreement.

23 18. The undersigned attorneys for the United States have been authorized
24 by the Attorney General of the United States to enter this Plea Agreement on behalf of the
25 United States.

1 19. A facsimile or PDF signature will be deemed an original signature for the purpose
2 of executing this Plea Agreement. Multiple signature pages are authorized for the purpose of
3 executing this Plea Agreement.

4 DATED: May 11, 2018
5

6 Respectfully submitted,

7
8
9 BY: T. Nakamura
10 Takashi Nakamura
11 Department Manager
12 Administration Headquarters
13 Nippon Chemi-Con Corporation

BY: Marvin Price, Jr.
Marvin N. Price, Jr.
Director of Criminal Enforcement
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue NW
Washington, DC 20530

14
15
16
17 BY: Roberto Finzi
18 Roberto Finzi
19 Paul, Weiss, Rifkind, Wharton & Garrison LLP
20 Counsel for Nippon Chemi-Con Corporation
21
22
23
24
25
26
27
28