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9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 **CHIP-TECH, LTD.,**

13 Plaintiff, and on behalf of all
14 others similarly situated,

15 v.

16 **PANASONIC CORPORATION; PANASONIC**
CORPORATION OF NORTH AMERICA;
SANYO ELECTRIC GROUP, LTD.; SANYO
ELECTRONIC DEVICE (U.S.A.)
CORPORATION; TAIYO YUDEN CO., LTD.;
TAIYO YUDEN (USA) INC.; NEC TOKIN
CORPORATION; NEC TOKIN AMERICA,
INC.; KEMET CORPORATION; KEMET
ELECTRONICS CORPORATION; NIPPON
CHEMI-CON CORPORATION; UNITED
CHEMI-CON CORPORATION; HITACHI
CHEMICAL CO., LTD.; HITACHI CHEMICAL
COMPANY AMERICA, LTD.; NICHICON
CORPORATION; NICHICON (AMERICA)
CORPORATION; AVX CORPORATION;
RUBYCON CORPORATION; RUBYCON
AMERICA INC.; ELNA CO., LTD.; ELNA
AMERICA INC.; MATSUO ELECTRIC CO.,
LTD.; TOSHIN KOGYO CO., LTD.; VISHAY
INTERTECHNOLOGY, INC.; SAMSUNG
ELECTRO-MECHANICS; SAMSUNG
ELECTRO-MECHANICS AMERICA, INC.;
ROHM CO., LTD.; and ROHM
SEMICONDUCTOR U.S.A., LLC,

27 Defendants.
28

Case No.

ANTITRUST CLASS ACTION
COMPLAINT

JURY TRIAL DEMANDED

Case No.

ANTITRUST CLASS ACTION COMPLAINT

1 Plaintiff Chip-Tech, Ltd. (“Plaintiff”) brings this action individually, and on behalf of a class of
2 all persons and entities similarly situated (the “Class”), for damages and injunctive relief under the
3 antitrust laws of the United States against defendants Panasonic Corporation; Panasonic Corporation of
4 North America; Sanyo Electric Group, Ltd.; Sanyo Electronic Device (U.S.A.) Corporation; Taiyo
5 Yuden Co., Ltd.; Taiyo Yuden (USA) Inc.; NEC Tokin Corporation; NEC Tokin America, Inc.;
6 KEMET Corporation; KEMET Electronics Corporation; Nippon Chemi-Con Corporation; United
7 Chemi-Con Corporation; Hitachi Chemical Co., Ltd.; Hitachi Chemical Company America, Ltd.;
8 Nichicon Corporation; Nichicon (America) Corporation; AVX Corporation; Rubycon Corporation;
9 Rubycon America Inc.; Elna Co., Ltd.; Elna America Inc.; Matsuo Electric Co., Ltd.; Toshin Kogyo
10 Co., Ltd.; Vishay Intertechnology, Inc.; Samsung Electro-Mechanics; Samsung Electro-Mechanics
11 America, Inc.; ROHM Co., Ltd.; and ROHM Semiconductor U.S.A., LLC (together, the
12 “Defendants”). Plaintiff alleges facts regarding itself based on personal knowledge, and on information
13 and belief as to all other factual allegations, as follows:

14 NATURE OF THE ACTION

15 1. This civil antitrust action seeks damages and injunctive relief for the collusive and
16 concerted restraint of trade in aluminum and tantalum electrolytic capacitors orchestrated by the
17 Defendants—all of whom are leading manufacturers and direct competitors in the global capacitors
18 industry—during a period spanning from at least January 1, 2005 to present (the “Class Period”).

19 2. Capacitors are one of the fundamental components found in electrical circuits. All
20 electronic devices we use today—from the cheapest household appliances to our personal computers to
21 multi-million dollar machinery and vehicles—employ various electrical circuits working in concert to
22 perform the various tasks for which we use them. By electrical current flowing through a circuit, the
23 path for which is usually defined by a printed circuit board (“PCB”), electronic signals can be
24 amplified, simple and complex computations can be performed, data can be moved from one place to
25 another, and the myriad other tasks that make our electronic devices perform can be executed.

26 3. Without the flow of electrical current, circuit boards—as well as the devices that contain
27 them—will not work. Accordingly, circuits must not only have a source for current, but also means for
28 storing and regulating the flow of that current. While either a battery or a connection to an external

1 power supply typically provides current to a circuit, capacitors are integrated into electrical circuits
2 primarily to store charge and govern its flow so that the tasks and applications we ask of our electrical
3 devices have sufficiently available and immediately dischargeable electrical charge to perform when
4 commanded to do so.

5 4. Capacitors are ubiquitous components in the electronic devices we use. Indeed, it is
6 nearly impossible to think of a device that does not contain at least one capacitor. An average
7 smartphone, for example, employs between 300 to 500 capacitors of varying capacitance (*i.e.*, the
8 potential amount of charge a capacitor can store), dielectric (*i.e.*, the insulating material in the capacitor
9 that allows it to hold a charge) and form factors (*i.e.*, size and shape). Computers can contain anywhere
10 between 100 and 700 capacitors mounted on and integrated into their motherboards and
11 daughterboards. Most modern automobiles use hundreds of capacitors in their onboard electrical,
12 navigation, entertainment and diagnostic systems.

13 5. As society's dependence on technology has grown, so too has the demand of electronic
14 device manufacturers for the components necessary to produce their innovative products. Given that
15 capacitors are fundamental to the operation of practically all electronic devices, it is not surprising that
16 the market for capacitors is big business. Indeed, recent reports indicate that global revenues for all
17 manufacturers in the capacitor industry in 2013 totaled approximately \$16 billion based on the sales of
18 trillions of capacitors, and industry analysts estimate that global revenues will reach over \$18 billion for
19 the fiscal year 2014 and over \$20 billion by 2016. These numbers are extraordinary, especially when the
20 average price per unit for capacitors over the last five years has been \$0.01178, or \$11.78 per thousand
21 units.

22 6. The multi-billion dollar market for capacitors, however, is one susceptible to
23 anticompetitive manipulation. Given the significantly high barriers to entering the already mature
24 capacitors manufacturing industry and achieving the large volume of sales required to reach economies
25 of scale and profitability, the global capacitors market is dominated by a limited number of large
26 manufacturers. This is especially true in the market for aluminum and tantalum electrolytic capacitors.
27 The fact that these supposed competitors (specifically the Defendants named herein) sell mutually
28 interchangeable commoditized products and adjust the prices and market availability of their products

1 in concert indicate that true competition in the capacitors market has been foreclosed.

2 7. Generally speaking, capacitors of like capacitance, dielectric and form factor are
3 mutually interchangeable. Price is thus the most obvious differentiation among these products for
4 purchasers. Accordingly, any agreement among manufacturers to fix, raise, maintain or stabilize prices
5 on aluminum and tantalum electrolytic capacitors or to reduce their market availability without
6 justification, reduces or even negates price competition to the detriment of purchasers.

7 8. The threat of anticompetitive manipulation in the aluminum and tantalum electrolytic
8 capacitors market is not a hypothetical concern. Rather, the threat has become reality due to the
9 actions of Defendants, who, as the leading global manufacturers of these types of electrolytic capacitors,
10 have collusively and concertedly manipulated price competition for capacitors directed to both U.S. and
11 international purchasers over nearly a decade. Indeed, after many years of active concealment,
12 Defendants' anticompetitive acts recently have drawn the attention of law enforcement and regulatory
13 agencies in the United States, the People's Republic of China, Japan, South Korea, Taiwan and Europe,
14 all of which opened investigations earlier this year. At least one capacitor manufacturer, believed to be
15 Defendant Panasonic, has self-reported its unlawful price fixing and is cooperating with authorities in at
16 least the United States and China in exchange for amnesty from prosecution, and has disclosed
17 background details regarding the cartel's membership and the scope of Defendants' conspiracy.

18 9. Defendants formed, maintained, enforced and concealed a global cartel. Defendants
19 took these unlawful steps because demand for their aluminum and tantalum electrolytic capacitor
20 product lines began to wane in the early 2000s. While aluminum electrolytic capacitors have been
21 relied upon by electronics manufacturers for decades, and used in products such as televisions, stereos,
22 and desktop computers, they tend to be bulky in size and shape relative to other capacitors and are
23 limited in the amount of capacitance they can provide at smaller sizes. In other words, they lack
24 "volumetric efficiency." As technology has advanced in the last decade toward smaller, more portable
25 and multifunctional devices—*e.g.*, from desktop computers to tablets and smartphones, or from stereos
26 to personal music devices—many electronics manufacturers could no longer afford to provide
27 aluminum electrolytic capacitors a footprint on the PCBs in their streamlined and compact products.

28 10. Tantalum capacitors have significantly better volumetric efficiency than aluminum

1 capacitors because of tantalum's natural non-conductive properties and its thinner dielectric, as well as
2 the ability of manufacturers to produce very small tantalum capacitors with high capacitance. But
3 making these capacitors is expensive; it is a labor- and resource-intensive process. Even without
4 Defendants' anticompetitive acts, tantalum electrolytic capacitors are more expensive than other
5 capacitors. Further, due to certain of their physical properties, tantalum capacitors can short circuit
6 and catch fire if subjected to voltage spikes only slightly more than their rated capacitance value, at
7 times destroying the devices in which they are installed.

8 11. Since at least early 2000s, Defendants have been faced with declining demand for and
9 profits from the sale of their aluminum and tantalum electrolytic capacitor product portfolios.
10 Nonetheless, there remains a sizeable market for these capacitors. Industry analysts report that global
11 revenues for aluminum and tantalum electrolytic capacitors were approximately \$5.74 billion for fiscal
12 year 2013, though this was approximately a \$570 million drop from 2012 and nearly a \$1.1 billion drop
13 from 2005. To slow any further decline in demand, and to ensure that sales of their respective product
14 portfolios would remain profitable, Defendants agreed that price competition among themselves for
15 their mutually interchangeable aluminum and tantalum electrolytic capacitors had to cease.

16 12. For at least the last nine and a half years, Defendants conspired together by directly and
17 indirectly communicating with each other to effectuate a scheme to control market prices of aluminum
18 and tantalum electrolytic capacitors directed toward and sold into the United States market.
19 Defendants also agreed to combine and perform the various acts necessary to achieve the
20 anticompetitive purposes of this scheme.

21 13. This conspiracy was furthered and facilitated by a course of anticompetitive conduct,
22 including agreements and understandings among Defendants to fix, raise, maintain and stabilize prices
23 for aluminum and tantalum electrolytic capacitors and to restrain their respective product output
24 through extending product lead times based on pretextual reasons.

25 14. The conspiracy was facilitated by the cartelized nature of the aluminum and tantalum
26 electrolytic capacitor industry, which is dominated by and consists primarily of Defendants, who in the
27 past held and continue to hold secret discussions, and who made agreements between and among
28 themselves to exchange nonpublic and commercially sensitive information concerning pricing,

1 production capacity, costs, raw materials, and distribution. From the inception of the conspiracy to
2 date, Defendants have concealed their anticompetitive and unlawful conduct from the public, including
3 Plaintiff and the Class, in furtherance of the conspiracy.

4 15. Defendants' cartel has been successful in achieving the anticompetitive and unlawful
5 ends for which it was formed. Through their concerted actions, Defendants created the market
6 conditions that made it economically feasible for all cartel members to fix, raise, maintain or stabilize
7 artificially high prices on the capacitors they sold during the Class Period to purchasers in the United
8 States. Defendants were effective in moderating—and even negating—the normal downward pressures
9 on prices for capacitors caused by price competition, oversupply, reduction of demand and
10 technological change.

11 16. Defendants' anticompetitive and unlawful conduct resulted in the increase or slowed the
12 decrease of aluminum and tantalum capacitor prices for products sold in the United States during the
13 Class Period. As a result, Plaintiff and the Class paid artificially inflated prices for the capacitors they
14 directly purchased from Defendants. By paying these inflated prices, which exceeded the amount
15 Plaintiff and the Class would have paid for the aluminum and tantalum electrolytic capacitors they
16 purchased if pricing for the capacitors had been determined by a competitive market, Plaintiff and the
17 Class have been injured in their business and property and continue to suffer such injuries to date as a
18 direct and proximate result of Defendants' actions.

19 JURISDICTION AND VENUE

20 17. Plaintiff brings this action on its own behalf as well as that of the Class to recover
21 damages, including treble damages, costs of suit, and reasonable attorney's fees arising from
22 Defendants' violations of Section 1 of the Sherman Act (15 U.S.C. § 1), as well as any and all equitable
23 relief afforded them under the federal laws pleaded herein.

24 18. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a) and
25 Sections 4 and 16 of the Clayton Act (15 U.S.C. §§ 15(a) and 26).

26 19. Jurisdiction and venue are proper in this judicial district pursuant to Section 12 of the
27 Clayton Act (15 U.S.C. § 22), and 28 U.S.C. § 1391(b), (c) and (d), because a substantial part of the
28 events giving rise to Plaintiff's claims occurred in this District, a substantial portion of the affected

1 interstate trade and commerce was carried out in this District, and one or more of the Defendants
2 reside in this District, is licensed to do business in this District, or transacts business in this District. In
3 addition, the media has reported that the Antitrust Division of the United States Department of Justice
4 (“DOJ”) is conducting an investigation into the capacitors industry and that the investigation is being
5 conducted out of the United States Attorney’s Office for the District of Northern California. Based on
6 the DOJ’s past practice with regard to similar antitrust investigations, Plaintiff believes that a federal
7 criminal grand jury either has been or will soon be empaneled in the Northern District of California to
8 hear the DOJ’s evidence derived from this investigation and ultimately decide on whether to criminally
9 indict any capacitors manufacturers (such as one or more of the Defendants in this antitrust class
10 action). Accordingly, the DOJ’s San Francisco-based capacitors industry investigation, and the likely
11 empanelment of a grand jury here, are additional facts confirming the propriety of the Northern District
12 of California as the venue for this antitrust class action.

13 20. Pursuant to Civil Local Rule 3.2 (c) and (e), assignment of this case to the San Francisco
14 Division of the United States District Court for the Northern District of California is proper because
15 the interstate trade and commerce involved and affected by Defendants’ violations of the antitrust laws
16 action was substantially conducted with, directed to or impacted Plaintiff and members of the Class in
17 counties located within the Division.

18 PARTIES

19 Plaintiff

20 21. Plaintiff Chip-Tech, Ltd. is a New York corporation with its principal place of business
21 located at 6 Dubon Court, Farmingdale, New York 11735. Plaintiff purchased aluminum and tantalum
22 electrolytic capacitors directly from one or more Defendants during the Class Period, and has suffered
23 injury as a result of Defendants’ anticompetitive and unlawful conduct.

24 Defendants

25 1. **Panasonic and Sanyo**

26 22. Defendant Panasonic Corporation is a Japanese corporation with its principal place of
27 business located at 1006, Oaza Kadoma, Kadoma-shi, Osaka 571-8501, Japan. Until October 1, 2008,
28 Panasonic Corporation operated under the name of Matsushita Electric Industrial Co., Ltd. During the

1 Class Period, Panasonic Corporation manufactured, sold and distributed aluminum and tantalum
2 electrolytic capacitors either directly or through its subsidiaries, agents or affiliates to customers
3 throughout the United States.

4 23. Defendant Panasonic Corporation of North America, a wholly owned subsidiary of
5 Panasonic Corporation, is a Delaware corporation with its principal place of business located at Two
6 Riverfront Plaza, Newark, New Jersey 07102. During the Class Period, Panasonic Corporation of
7 North America sold and distributed aluminum and tantalum electrolytic capacitors to customers
8 throughout the United States.

9 24. Defendant Sanyo Electric Group, Ltd., a Japanese corporation, is, as of December 2009,
10 a wholly owned subsidiary of Panasonic Corporation, with its principal place of business located at 15-5,
11 Keihan-Hondori, 2-Chome, Moriguchi City, Osaka 570-8677, Japan. During the Class Period, Sanyo
12 Electric Group, Ltd., manufactured, sold and distributed aluminum tantalum electrolytic capacitors
13 either directly or through its subsidiaries, agents or affiliates to customers throughout the United States.

14 25. Defendant Sanyo Electronic Device (U.S.A.) Corporation, a Delaware corporation, is a
15 wholly owned subsidiary of Sanyo Electric Group, Ltd., with its principal place of business located at
16 2055 Sanyo Avenue, San Diego, California 92154. During the Class Period, Sanyo Electronic Device
17 (U.S.A.) Corporation sold and distributed tantalum electrolytic capacitors to customers throughout the
18 United States.

19 26. Defendants Panasonic Corporation, Panasonic Corporation of North America, Sanyo
20 Electric Group, Ltd., and Sanyo Electronic Device (U.S.A.) Corporation are collectively referred to
21 herein as “Panasonic.” With regard to any allegations pertaining to Sanyo Electric Group, Ltd. and
22 Sanyo Electric Device (U.S.A.) Corporation prior to their acquisition by Panasonic, they are referred to
23 herein as “Sanyo.”

24 **2. Taiyo Yuden**

25 27. Defendant Taiyo Yuden Co., Ltd., is a Japanese corporation with its principal place of
26 business located at 6-16-20, Ueno, Taito-ku, Tokyo 110-0005, Japan. During the Class Period, Taiyo
27 Yuden Co., Ltd., manufactured, sold and distributed tantalum electrolytic capacitors either directly or
28 through its subsidiaries, agents or affiliates to customers throughout the United States.

1 28. Defendant Taiyo Yuden (USA) Inc., an Illinois corporation, is a wholly owned
2 subsidiary of Taiyo Yuden Co., Ltd., with its principal place of business located at 10 North Martingale
3 Road, Suite 575, Schaumburg, Illinois 60173. During the Class Period, Taiyo Yuden (USA) Inc. sold
4 and distributed aluminum and/or tantalum electrolytic capacitors to customers throughout the United
5 States.

6 29. Defendants Taiyo Yuden Co., Ltd., and Taiyo Yuden (USA) Inc. are collectively
7 referred to herein as “Taiyo Yuden.”

8 **3. NEC Tokin**

9 30. Defendant NEC Tokin Corporation is a Japanese company with its principal place of
10 business located at 7-1, Kohriyama 6-chome, Taihaku-ku, Sendai-shi, Miyagi 982-8510, Japan. During
11 the Class Period, NEC Tokin Corporation manufactured, sold, and distributed aluminum and/or
12 tantalum electrolytic capacitors either directly or through its subsidiaries, agents or affiliates throughout
13 the United States.

14 31. Defendant NEC Tokin America, Inc., a California Corporation, is a wholly owned
15 subsidiary of NEC Tokin Corporation with its principal place of business located at 2460 North First
16 Street, Suite 220, San Jose, California 95131. During the Class Period, NEC Tokin America, Inc., sold
17 and distributed aluminum and/or tantalum electrolytic capacitors throughout the United States.

18 32. Defendants NEC Tokin Corporation and NEC Tokin America, Inc., are together
19 referred to herein as “NEC Tokin.”

20 **4. KEMET**

21 33. Defendant KEMET Corporation is a Delaware corporation with its principal place of
22 business located at 2835 Kemet Way, Simpsonville, South Carolina 29681. During the Class Period,
23 KEMET Corporation manufactured, sold and distributed aluminum and tantalum electrolytic
24 capacitors directly or through its subsidiaries, agents or affiliates to customers throughout the United
25 States.

26 34. On March 12, 2012, KEMET Corporation announced that it agreed to form a capital and
27 business alliance with NEC Tokin Corporation because of their respective professed interests in
28 increasing its tantalum electrolytic capacitor sales, reducing costs in areas such as procurement and

1 production, sharing their technological knowledge, and benefiting financially through the cross-selling
2 of each other's products. As a result of this alliance, KEMET received 34% of the outstanding shares of
3 NEC Tokin (the remainder being held by non-party NEC Corporation), which provided KEMET with
4 51% of the outstanding voting rights. KEMET currently holds the option to purchase NEC
5 Corporation's shares in NEC Tokin, which would thereby effect an acquisition of NEC Tokin by
6 KEMET.

7 35. Defendant KEMET Electronics Corporation, a Delaware corporation, is a wholly owned
8 subsidiary of KEMET Corporation with its principal place of business located at 2835 Kemet Way,
9 Simpsonville, South Carolina 29681. During the Class Period, KEMET Electronics Corporation
10 manufactured, sold and distributed aluminum and tantalum electrolytic capacitors directly or through
11 its subsidiaries, agents or affiliates to customers throughout the United States.

12 36. Defendants KEMET Corporation and KEMET Electronics Corporation are together
13 referred to herein as "KEMET." The KEMET-NEC Tokin alliance shall be referred to herein as
14 "KEMET-NEC Tokin."

15 **5. Nippon Chemi-Con**

16 37. Defendant Nippon Chemi-Con Corporation is a Japanese corporation with its principal
17 place of business located at 5-6-4, Osaki, Shinagawa-ku, Tokyo 141-8605, Japan. During the Class
18 Period, Nippon Chemi-Con Corporation manufactured, sold, and distributed aluminum electrolytic
19 capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout the
20 United States.

21 38. Defendant United Chemi-Con Corporation, an Illinois Corporation, is a wholly owned
22 subsidiary of Nippon Chemi-Con Corporation with its principal place of business located at 9801 West
23 Higgins Road, Rosemont, Illinois 60018. During the Class Period, United Chemi-Con manufactured,
24 sold and distributed aluminum electrolytic capacitors either directly or through its subsidiaries, agents
25 or affiliates to customers throughout the United States.

26 39. Defendants Nippon Chemi-Con Corporation and United Chemi-Con Corporation are
27 together referred to herein as "Nippon Chemi-Con."
28

1 **6. Hitachi Chemical**

2 40. Defendant Hitachi Chemical Co., Ltd., is a Japanese corporation with its principal place
3 of business located at Grantokyo South Tower, 1-9-2, Marunouchi, Chiyoda-ku, Tokyo, 100-6606,
4 Japan. During the Class Period, Hitachi Chemical Co., Ltd., manufactured, sold, and distributed
5 aluminum electrolytic capacitors either directly or through its subsidiaries, agents or affiliates to
6 customers throughout the United States.

7 41. Defendants Hitachi Chemical Company America, Ltd., a New York corporation, is a
8 wholly owned subsidiary of Hitachi Chemical Co., Ltd. with its principal place of business located at
9 10080 North Wolfe Road, Suite SW3-200, Cupertino, California 95014. During the Class Period,
10 Hitachi Chemical Co. America sold and distributed aluminum electrolytic capacitors to customers
11 throughout the United States.

12 42. Defendants Hitachi Chemical Co., Ltd. and Hitachi Chemical Company America, Ltd.
13 are together referred to herein as “Hitachi.”

14 **7. Nichicon**

15 43. Defendant Nichicon Corporation is a Japanese corporation with its principal place of
16 business located at Karasumadori Oike-agaru, Nakagyo-ku, Kyoto, 604-0845 Japan. During the Class
17 Period and until the company’s sale of its tantalum capacitor production operations to AVX
18 Corporation in February 2013, Nichicon Corporation manufactured, sold, and distributed tantalum
19 electrolytic capacitors either directly or through its subsidiaries, agents or affiliates to customers
20 throughout the United States. During the entire Class Period, Nichicon Corporation manufactured,
21 sold and distributed aluminum electrolytic capacitors either directly or through its subsidiaries, agents
22 or affiliates to customers throughout the United States.

23 44. Defendant Nichicon (America) Corporation, an Illinois corporation, is a wholly owned
24 subsidiary of Nichicon Corporation with its principal place of business located at 927 East State
25 Parkway, Schaumburg, Illinois 60173. During the Class Period and until Nichicon Corporation’s sale of
26 its tantalum capacitor production operations to AVX Corporation in February 2013, Nichicon
27 (America) Corporation sold, and distributed tantalum electrolytic capacitors either directly or through
28 its subsidiaries, agents or affiliates to customers throughout the United States. During the entire Class

1 Period, Nichicon (America) Corporation sold and distributed aluminum electrolytic capacitors to
2 customers throughout the United States.

3 45. Defendants Nichicon Corporation and Nichicon (America) Corporation are together
4 referred to herein as “Nichicon.”

5 **8. AVX**

6 46. Defendant AVX Corporation is a Delaware Corporation with its principal place of
7 business located at One AVX Boulevard, Fountain Inn, South Carolina 29644. It is a subsidiary of
8 Kyocera Corporation, a Japanese corporation that owns approximately 72% of the outstanding common
9 stock in AVX Corporation. In or about February 2013, AVX acquired Nichicon’s tantalum capacitor
10 production facilities in Japan and China, thereby expanding their global tantalum capacitor
11 manufacturing operations. During the Class Period, AVX Corporation manufactured, sold and
12 distributed tantalum electrolytic capacitors either directly or through its subsidiaries, agents or affiliates
13 to customers throughout the United States.

14 47. Defendant AVX Corporation is referred to herein as “AVX.”

15 **9. Rubycon**

16 48. Defendant Rubycon Corporation is a Japanese corporation with its principal place of
17 business located at 1938-1, Nishi-Minowa, Ina-City, Nagano 399-4593, Japan. During the Class Period,
18 Rubycon Corporation manufactured, sold, and distributed aluminum electrolytic capacitors either
19 directly or through its subsidiaries, agents or affiliates to customers throughout the United States.

20 49. Defendant Rubycon America Inc., an Illinois corporation, is a wholly owned subsidiary
21 of Rubycon Corporation with its principal place of business located at 4293 Lee Avenue, Gurnee,
22 Illinois 60031. During the Class Period, Rubycon America Inc. sold and distributed aluminum
23 electrolytic capacitors to customers throughout the United States.

24 50. Defendants Rubycon Corporation and Rubycon America Inc. are together referred to
25 herein as “Rubycon.”

26 **10. Elna**

27 51. Defendant Elna Co., Ltd., is a Japanese corporation with its principal place of business
28 located at 3-8-11 Shin-Yokohama, Kohoku-ku, Yokohama, Kanagawa Prefecture, 222-0033, Japan.

1 During the Class Period, Elna Co., Ltd., manufactured, sold, and distributed aluminum electrolytic
2 capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout the
3 United States.

4 52. Defendant Elna America Inc., a California corporation, is a wholly owned subsidiary of
5 Elna Co., Ltd., with its principal place of business located at 879 West 190th Street, Suite 100, Gardena,
6 California 90248. During the Class Period, Elna America Inc. sold and distributed aluminum
7 electrolytic capacitors to customers throughout the United States.

8 53. Defendants Elna Co., Ltd., and Elna America Inc. are together referred to herein as
9 “Elna.”

10 **11. Matsuo**

11 54. Defendant Matsuo Electric Co., Ltd., is a Japanese corporation with its principal place of
12 business located at 3-5- Sennari-cho, Toyonaka-shi, Osaka 561-8558, Japan. During the Class Period,
13 Matsuo Electric Co., Ltd., manufactured, sold and distributed aluminum and tantalum electrolytic
14 capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout the
15 United States. Matsuo Electric Co., Ltd., is referred to herein as “Matsuo.”

16 **12. Toshin Kogyo**

17 55. Defendant Toshin Kogyo Co., Ltd., is a Japanese corporation with its principal place of
18 business at Tsukasa Bldg. 2-15-4, Uchikanda Chiyoda-ku, Tokyo, Japan. During the Class Period,
19 Toshin Kogyo Co., Ltd., manufactured, sold, and distributed aluminum and tantalum electrolytic
20 capacitor products either directly or through its subsidiaries or affiliates throughout the United States.
21 Toshin Kogyo Co., Ltd., is referred to herein as “Toshin Kogyo.”

22 **13. Vishay**

23 56. Defendant Vishay Intertechnology, Inc., is a Delaware corporation with its principal
24 place of business located at 63 Lancaster Avenue, Malvern, Pennsylvania 19355. During the Class
25 Period, Vishay Intertechnology, Inc., manufactured, sold, and distributed aluminum and tantalum
26 electrolytic capacitors either directly or through its subsidiaries, agents or affiliates to customers
27 throughout the United States. Vishay Intertechnology, Inc., is referred to herein as “Vishay.”
28

1 **14. SEMCO**

2 57. Defendant Samsung Electro-Mechanics is a South Korean corporation with its principal
3 place of business located at Gyeonggi-Do Suwon-Si Youngtong-Gu Maeyoung-Ro 150 (Maetan-Dong)
4 443-743, South Korea. It is a wholly-owned subsidiary of Samsung Group, a South Korean *chaebol* (*i.e.*,
5 a business conglomerate). During the Class Period, Samsung Electro-Mechanics manufactured, sold,
6 and distributed tantalum electrolytic capacitors either directly or through its subsidiaries, agents or
7 affiliates to customers throughout the United States.

8 58. Defendant Samsung Electro-Mechanics America, Inc., a California corporation, is a
9 subsidiary of Samsung Electro-Mechanics with its principal place of business located at 3333 Michelson
10 Drive, Suite 500, Irvine, California 92612. During the Class Period, Samsung Electro-Mechanics
11 America, Inc., sold and distributed tantalum electrolytic capacitors to customers throughout the United
12 States.

13 59. Defendants Samsung Electro-Mechanics and Samsung Electro-Mechanics America,
14 Inc., are together referred to herein as “SEMCO.”

15 **15. ROHM**

16 60. Defendant ROHM Co., Ltd., is a Japanese corporation with its principal place of
17 business located at 21 Saiin Mizosaki-cho, Ukyo-ku, Kyoto 615-8585 Japan. During the Class Period,
18 ROHM Co., Ltd. manufactured, sold, and distributed tantalum electrolytic capacitors either directly or
19 through its subsidiaries, agents or affiliates to customers throughout the United States.

20 61. Defendant ROHM Semiconductor U.S.A., LLC, a Delaware limited liability
21 corporation, is a subsidiary of ROHM Co., Ltd. with its principal place of business located at 2323
22 Owen Street, Suite 150, Santa Clara, California 95054. During the Class Period, ROHM
23 Semiconductor U.S.A., LLC, sold and distributed tantalum electrolytic capacitors to customers
24 throughout the United States.

25 62. Defendants ROHM Co., Ltd., and ROHM Semiconductor U.S.A., LLC, are together
26 referred to herein as “ROHM.”

27 63. Collectively, the Defendants named in paragraphs 22 to 62 are referred to herein as
28 “Defendants.”

AGENTS AND CO-CONSPIRATORS

64. The anticompetitive and unlawful acts alleged against the Defendants in this class action complaint were authorized, ordered or performed by Defendants' respective officers, agents, employees, or representatives, while actively engaged in the management, direction, or control of Defendants' businesses or affairs.

65. Various persons and/or firms not named as Defendants herein may have participated as co-conspirators in the violations alleged herein and may have performed acts and made statements in furtherance thereof.

66. Each Defendant acted as the principal, agent or joint venturer of, or for other Defendants with respect to the acts, violations, and common course of conduct alleged herein. In particular, each Defendant headquartered outside the United States relied on their agents in the United States to implement, enforce and conceal the cartel through their global sales and marketing systems.

CLASS ALLEGATIONS

67. Plaintiff brings this action on behalf of itself and as a class action pursuant to Federal Rules of Civil Procedure, Rule 23(a) and (b)(3), on behalf of a similarly situated Class, which is defined as follows:

All persons and entities who purchased aluminum and/or tantalum electrolytic capacitors in the United States directly from one or more of Defendants, or from any predecessors, parents, subsidiaries, agents or affiliates thereof, at any time between January 1, 2005, and the present.

68. The Class definition encompasses those who purchased aluminum and/or tantalum electrolytic capacitors directly from any of the Defendants, even if the capacitors purchased were manufactured, sold or distributed by an affiliated entity, principal, agent or co-conspirator.

69. This definition of the Class specifically excludes the following persons or entities:

- a. Any of the Defendants named herein;
- b. Any of the Defendants' co-conspirators;
- c. Any of Defendants' parent companies, subsidiaries, and affiliates;
- d. Any of Defendants' officers, directors, management, employees, subsidiaries, affiliates or agents;

- e. All governmental entities; and
- f. The judges and chambers staff in this case, as well as any members of their immediate families.

70. Plaintiff does not know the exact number of Class members, because such information is in the exclusive control of Defendants. Plaintiff is informed and believe that, due to the nature of the trade and commerce involved, there are thousands of Class members geographically dispersed throughout the United States and elsewhere, such that joinder of all Class members in the prosecution of this action is impracticable.

71. Plaintiff's claims are typical of the claims of its fellow Class members because Plaintiff directly purchased aluminum and tantalum electrolytic capacitors from certain of the Defendants named herein, Plaintiff and all Class members were damaged by the same wrongful conduct of Defendants as alleged herein, and the relief sought herein is common to all members of the Class.

72. Numerous questions of law or fact common to the entire Class—including, but not limited to those identified below—arise from Defendants' anticompetitive and unlawful conduct:

- a. Whether Defendants combined and/or conspired to fix, raise, maintain, or stabilize prices of aluminum and tantalum electrolytic capacitors sold at any time during the Class Period to purchasers in the United States;
- b. Whether Defendants (1) shared among themselves nonpublic and competitively sensitive information pertaining to their respective pricing of the various makes and models of aluminum and tantalum electrolytic capacitors in their product portfolios, (2) concertedly fixed, raised, maintained or stabilized prices of aluminum and tantalum capacitors sold at any time during the Class Period to purchasers in the United States, (3) concertedly restricted the amount of aluminum and tantalum electrolytic capacitors they made available for sale and ultimately sold in the United States, and (4) committed other conduct in furtherance of the conspiracy alleged herein;
- c. Whether Defendants' conduct caused the prices of aluminum and tantalum electrolytic capacitors sold at any time during the Class Period to purchasers in the

1 United States to be artificially fixed, raised, maintained or stabilized at
2 noncompetitive prices;

3 d. Whether Plaintiff and the other members of the Class were injured by Defendants'
4 conduct and, if so, the appropriate Class-wide measure of damages; and

5 e. Whether Plaintiff and other members of the Class are entitled to, among other
6 things, injunctive relief, and, if so, the nature and extent of such relief.

7 73. These and other questions of law and fact are common to the Class and predominate
8 over any questions affecting the Class members individually.

9 74. Plaintiff will fairly and adequately represent the interests of the Class because it directly
10 purchased capacitors from one or more Defendants and it has no conflicts with any other members of
11 the Class. Furthermore, Plaintiff has retained sophisticated and competent counsel who is experienced
12 in prosecuting antitrust class actions, as well as other complex litigation.

13 75. Defendants have acted on grounds generally applicable to the Class, thereby making final
14 injunctive relief appropriate with respect to the Class as a whole.

15 76. This class action is superior to alternatives, if any, for the fair and efficient adjudication
16 of this controversy. Prosecution the claims pleaded herein as a class action will eliminate the possibility
17 of repetitive litigation. There will be no material difficulty in the management of this action as a class
18 action.

19 77. The prosecution of separate actions by individual Class members would create the risk of
20 inconsistent or varying adjudications, establishing incompatible standards of conduct for Defendants.

21 **TRADE AND COMMERCE**

22 78. During the Class Period, each Defendant, directly or through one or more of their
23 respective parents, subsidiaries, agents or affiliates, sold aluminum and/or tantalum electrolytic
24 capacitors in the United States in a continuous and uninterrupted flow of interstate commerce and
25 foreign commerce, including through and into this judicial district.

26 79. During the Class Period, Defendants collectively controlled the market for aluminum
27 and tantalum electrolytic capacitors, both globally and also in the United States.

28 80. Defendants' business activities substantially affected interstate trade and commerce in

1 the United States and caused antitrust injury in the United States to Plaintiffs and members of the
2 Class.

3 FACTUAL ALLEGATIONS

4 **I. WHAT CAPACITORS DO AND HOW THEY WORK**

5 81. Capacitors are electronic components that serve as one of the fundamental building
6 blocks of all types of electrical circuits. Virtually every electrical circuit contains one or more
7 capacitors. In the taxonomy of electrical components, capacitors are categorized as “passive”
8 components. That is, capacitors do not require electrical power to operate. Instead, the physical
9 properties of the materials that compose a passive component cause it to perform the task for which it is
10 employed.

11 82. Generally, a capacitor is used in an electric circuit to store electrical charge. In this
12 regard, it is distinguished from a battery in that a battery provides electrical charge to a circuit.
13 Capacitors can store charges for long periods of time, even when removed from an electric circuit, and
14 they can charge and discharge fully and instantaneously when required to do so. The amount of charge
15 the capacitor can hold at a given voltage defines its capacitance.

16 83. In its basic form, a capacitor consists of two or more parallel conductive metal plates that
17 are neither connected to nor touching each other, but are electrically separated by some form of
18 insulating material. The insulating layer between a capacitor’s plates is commonly called the dielectric.
19 When a voltage is applied to the two plates, an electric field is created between them; positive charge
20 will collect on one plate and negative charge on the other. The dielectric, a non-conductive material,
21 does not permit the electric current to flow between the metal plates.

22 84. One way to visualize how a capacitor stores a charge is to imagine it as a municipal water
23 tower hooked into a town’s water supply. A water tower “stores” water pressure—when the water
24 system pumps produce more water than a town needs, the excess is stored in the water tower. Then, at
25 times of high demand, the excess water flows out of the tower to keep the pressure up. A capacitor
26 stores electrical charge in the same way and can then release it when an electric circuit requires a charge
27 to execute a task.

28 85. The most commonly used dielectrics used in capacitors are composed of ceramics,

1 aluminum, film or a rare metal called tantalum.

2 **II. TYPES OF CAPACITORS AND THEIR USES**

3 86. Capacitors are usually distinguished from each other by whether they are electrolytic or
4 electrostatic. Electrolytic capacitors are polarized, meaning that they have positive and negative leads
5 that must be positioned the correct way in an electric circuit (*i.e.*, the positive lead, the cathode, must go
6 to the positive side of the power source, and the negative lead, or anode, must go to the negative side).
7 In contrast, electrostatic capacitors are not polarized (*i.e.*, they do not have a positive and negative
8 leads) and therefore can be installed in either direction with respect to the flow of current.

9 87. Electrolytic capacitors have historically been considered to have higher capacitance than
10 electrostatic capacitors. Because of their ability to hold larger charges, electrolytic capacitors have
11 typically been used for power filtering, coupling or buffering in sophisticated electrical devices, such as
12 televisions, computers, mobile phones, smart phones, tablets, and technology used by the medical,
13 military industrial and aerospace industries.

14 88. Electrolytic and electrostatic capacitors are further distinguished within these two
15 categories by the material from which their dielectrics are made. Electrolytic capacitors use aluminum
16 or tantalum dielectrics, whereas ceramic capacitors are electrostatic. Flux capacitors are not part of this
17 case.

18 **A. Electrolytic Capacitors**

19 **1. Aluminum Capacitors**

20 89. Aluminum electrolytic capacitors are made of two aluminum foils and a paper spacer
21 soaked in electrolyte. One of the two aluminum foils is covered with an oxide layer serving as the
22 dielectric, and that foil acts as the anode, while the uncoated foil acts as a cathode. The anode,
23 electrolyte-soaked paper and cathode are stacked. The stack is then wound up, placed into a cylindrical
24 enclosure usually made of aluminum and connected to an electric circuit through surface mounting on
25 PCBs or attached by radial or axial pins.

26 90. The thinness of the aluminum oxide layer dielectric allows for relatively high
27 capacitance, though an aluminum capacitor's capacitance can only increase by increasing the surface
28 area covered by the dielectric. This requires additional stacking and winding of the foil layers, thus

1 increasing the capacitors' physical size. As a result, aluminum capacitors typically have lower
2 volumetric efficiency than tantalum or certain types of ceramic capacitors. Further, aluminum
3 capacitors have a higher propensity to leak the charge they hold as opposed to tantalum and certain
4 types of ceramic capacitors.

5 91. Aluminum capacitors frequently are used in a variety of larger electronic devices, such as
6 consumer audio and video devices, televisions, video game consoles, desktop and laptop computers,
7 automotive electronics and power inverters.

8 2. Tantalum Capacitors

9 92. Tantalum capacitors exploit the tendency of tantalum metal to form a non-conductive
10 protective oxide surface layer. They consist of tantalum powder sintered (*i.e.*, formed by high pressure)
11 into a pellet shape—often called a “sponge”—as the negative plate of the capacitor, with the tantalum
12 pentoxide forming on the pellet's surface serving as the dielectric, and an electrolytic solution or
13 conductive solid serving as the positive plate. The dielectric layer thus can be very thin—thinner than
14 the similar layer in, for instance, an aluminum electrolytic capacitor. Accordingly, a tantalum capacitor
15 can have high capacitance in a small volume, and thus can have high volumetric efficiency. Tantalum
16 capacitors historically have primarily been used in the computer end market, as well as the
17 telecommunications end market.

18 93. Tantalum capacitors are, however, susceptible to short-circuiting or catastrophic
19 thermal runaway failure and destruction by fire if subject to inconsistent voltage or voltage spikes, as
20 such inconsistencies can tax and break down the capacitor's extremely thin dielectric.

21 94. Aside from the risk of catastrophic failure, tantalum capacitors are generally reliable.
22 They have high resistance to leaking charge and have lower equivalent series resistance (*i.e.*, the speed
23 at which electric charge is released from the capacitor) than aluminum electrolytic capacitors of the
24 same capacitance rating. Accordingly, tantalum capacitors at times are used in complex electronic
25 devices in which their small size and high capacitance are required, *e.g.*, mobile phones, smart phones,
26 personal computers, tablet devices and automotive electronics.

27 95. The Defendant tantalum capacitor manufacturers have, at various times over the last
28 decade, claimed that shortages of raw tantalum ore have caused the high prices for their capacitors and

1 the longer lead times for their production. Specifically, Defendants raised supply shock concerns to
2 industry analysts and the investing public at various times in 1997, 2000, 2008, 2011 and 2012 based on
3 concerns that certain tantalum mines were closing, other mines were not producing ore at the necessary
4 levels, and the worry that tantalum's designation as a "conflict mineral" under Section 1502 of the
5 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") would reduce
6 their access to ore and/or would increase the market premium for conflict-free tantalum ore. Dodd-
7 Frank requires that companies sourcing tantalum use independent private sector auditors to audit their
8 supply chains and submit annual conflict minerals reports to the Securities and Exchange Commission.

9 96. The availability and cost of tantalum ore, along with the numerous steps required to
10 manufacture tantalum capacitors, has been explained by Defendants and some industry analysts as the
11 reason why these capacitors have historically been so expensive. As a result, the use of tantalum
12 capacitors is usually limited to applications where the specific high capacitance they provide is required.

13 **B. Ceramic Electrostatic Capacitors**

14 97. A ceramic capacitor is a non-polarized capacitor made out of two or more alternating
15 layers of ceramic and metal in which the ceramic material acts as the dielectric and the metal acts as the
16 electrodes. The ceramic dielectric is a mixture of finely ground granules of paraelectric or ferroelectric
17 materials, modified by mixed oxides that are necessary to achieve the capacitor's desired
18 characteristics. The great plasticity of ceramic raw material enables manufacturers to produce an
19 enormous diversity of styles, shapes and dimensions of capacitors. Because the thickness of the ceramic
20 dielectric layer can be easily controlled and produced by the desired application voltage, ceramic
21 capacitors are available with rated voltages up to the 30 kV range. Currently, the smallest discrete
22 ceramic capacitor is about the physical size of the head of a pin, though advances in materials science
23 and refinement of manufacturing processes may eventually permit fabrication of even smaller
24 components.

25 98. The most prevalent form of ceramic capacitor is known as a multilayer ceramic capacitor
26 ("MLCC"). Industry analysts report that for fiscal year 2014, MLCCs are estimated to account for
27 approximately 95% of the global ceramic market in terms of volume and approximately 94% in terms of
28 value. MLCCs are constructed with alternating layers that result in single capacitors connected in

1 parallel. This method, called “stacking” increases the component’s capacitance because its surface
2 area is increased by stacking up multiple layers of ceramic dielectric materials and metal electrode
3 materials.

4 99. Technological and material advancements have permitted manufacturers to increase the
5 number of layers in MLCCs while at the same time miniaturizing the components. The result of these
6 improvements is that MLCCs tend to have higher greater volumetric efficiency than aluminum
7 electrolytic capacitors, and can also compete with tantalum electrolytic capacitors in small form factor
8 applications. Both aluminum and tantalum electrolytic capacitors, however, must increase in physical
9 size to increase capacitance. The capacitance of aluminum electrolytic capacitors can be increased only
10 through tightly winding aluminum metal foil, thereby increasing the surface area as well as the total size
11 of the component. In similar fashion, capacitance in tantalum electrolytic capacitors is increased only
12 by expanding the size of the tantalum pellet in the capacitor, which in turn increases the total size of the
13 capacitor.

14 100. Currently, MLCCs typically cost only a fraction of aluminum or tantalum electrolytic
15 capacitors. Ceramics, however, are not an easy cure for purchasers seeking to save costs on the
16 electronic devices they produce that require high capacitance in a small form factor, *e.g.*, mobile phones,
17 smart phones and tablet computers. Because electric circuits are designed to accommodate specific
18 types of active and passive components with specific technical and operational characteristics, ceramic
19 capacitors cannot immediately be integrated into PCBs or other types of circuits that require either
20 aluminum or tantalum electrolytic capacitors. Stated differently, capacitors with differing capacitance,
21 dielectric and form factor are not interchangeable with each other. Redesigning and reengineering a
22 product’s electrical circuits is therefore required to accommodate any changes to the electrical
23 components contained within them. This is a lengthy, resource-intensive effort that requires a product
24 manufacturer essentially to redesign a product and change and redefine its supply chain resources, all
25 while still working to meet ongoing demand for its finished products.

26 **III. THE MARKET CONDITIONS IN WHICH DEFENDANTS’ CONSPIRACY** 27 **ORIGINATED**

28 101. Generally, capacitors are purchased by one of three categories of purchasers: (1) original

1 equipment manufacturers (“OEMs”) who install capacitors directly into their products; (2) electronic
2 manufacturing service providers (“EMS Providers”) who manufacture PCBs and other electric circuit
3 products that contain capacitors and which are integrated into end-use products manufactured by
4 others; and (3) third-party electronics distributors that sell capacitors to various consumers.

5 102. The demand for capacitors over the last decade has been largely tied to the demand for
6 consumer electronics, which currently accounts for approximately 90% of global unit demand. The
7 computer end-use market segment historically has accounted for a significant portion of global capacitor
8 consumption, but that segment has experienced decreasing sales of high-passive component content
9 laptops and desktops in recent years. Industry analysts have indicated that declining demand for these
10 products has negatively impacted the demand for tantalum and aluminum capacitors, which have
11 historically derived close to 50% of their revenues from the computer market. In addition, the consumer
12 audio-video segment, which has also historically accounted for a significant portion of global capacitor
13 consumption, has also faced significant decreasing sales over the last decade due to portable music
14 devices, tablets and smart phones meeting modern consumers’ audio-visual needs. The fall off of the
15 audio-visual market had a significant impact on the demand for aluminum electrolytic capacitors.

16 103. Over the past decade, ceramic electrostatic capacitors have outperformed the other
17 primary capacitor dielectrics (specifically the tantalum and aluminum electrolytics) in terms of volume
18 of products globally consumed and the value of that demand. In terms of volume, industry data shows
19 that unit consumption of ceramic capacitors over the last decade has increased 7%, from approximately
20 84% for fiscal year 2004 to an estimated 91% for 2014. During the same period, consumption of
21 tantalum electrolytic capacitors dropped from approximately 2.5% of global volume for fiscal year 2004
22 to an estimated 1.1% for 2014, and consumption of aluminum electrolytic capacitors dropped from
23 approximately 9.9% for fiscal year 2004 to an estimated 6.8% for fiscal year 2014.

24 104. The value of the tantalum electrolytic capacitors sold over the last decade has declined
25 from approximately 12.6% of the global value for fiscal year 2004 to an estimated 10.4% for 2014, while
26 the global value of aluminum electrolytic capacitors has declined from approximately 33.1% for fiscal
27 year 2004 to an estimated 22.6% for 2014.

28 105. The North and South American market for capacitors accounts for approximately \$2.2

1 billion for fiscal year 2014, or roughly 12 percent of the global market. Ceramics account for
2 approximately 47% of capacitor consumption in the Americas, followed by aluminum capacitors with
3 approximately 17%, and tantalum capacitors with 14%.

4 106. Aluminum and tantalum electrolytic capacitor manufacturers have faced stagnant
5 and/or reduced demand over the last decade.

6 107. With specific regard to aluminum electrolytic capacitors, purchasers began to find them
7 too volumetrically inefficient to be useful in many electronic devices sold today. Historically, most
8 electronic devices have been larger physically than they are today. In the past, the larger footprint
9 required by aluminum capacitors on PCBs found in devices such as televisions, stereo equipment, and
10 personal computers was not problematic.

11 108. With the development of technologies and processes that allowed manufacturers to
12 miniaturize certain types of capacitors while, at the same time, increasing their volumetric efficiency,
13 manufacturers of electronic devices began to design and produce smaller, more portable and more
14 functionally integrated products that met, if not surpassed, the complexity of predecessor devices that
15 used aluminum capacitors. For many consumer-focused devices—*e.g.*, smart phones, tablet computers,
16 laptop computers, personal navigation devices—smaller capacitors with greater capacitance had to be
17 used to execute the various complex tasks for which the devices were employed. Because many of these
18 new electronic devices have essentially come to replace the devices that historically used bulky
19 aluminum capacitors—*e.g.*, tablets, smart phones and personal music devices replacing televisions,
20 personal computers and stereos—the market for aluminum electrolytic capacitors had grown relatively
21 stagnant as of late 2004, but noticeably declined starting in late 2007 to early 2008.

22 109. With specific regard to tantalum electrolytic capacitors, demand declined over the last
23 decade in large part because they were often unavailable and, as a result, expensive. Though tantalum
24 electrolytic capacitors have a high volumetric efficiency and other operational characteristics often
25 desired by OEMs and EMS Providers for use in small form factor applications, many purchasers over
26 time came to expect that their demand for tantalum capacitors could not economically be met.

27 110. Manufacturing tantalum electrolytic capacitors is a labor- and resource-intensive
28 process. Industry sources have noted there are over 70 steps required to be taken to manufacture a

1 tantalum electrolytic capacitor. The manufacturing process for these capacitors is completely different
2 from that required for making aluminum electrolytic or even ceramic capacitors, and it requires
3 different raw materials, supply chains and fabrication operations. Further, the limited availability of
4 tantalum ore, especially when compared to availability of raw materials required to make other
5 capacitors, has been claimed by tantalum capacitor manufacturers as a cause for limited production and
6 high costs.

7 111. Many capacitor purchasers make products that specifically require tantalum electrolytic
8 capacitors and the electrical circuits incorporated in these products cannot be redesigned and
9 reengineered to use any other capacitors. As a result, these purchasers have no choice but to weather
10 the availability and cost issues attendant to using tantalum capacitors. Other purchaser's products,
11 however, are not solely dependent on the specific performance tantalum capacitors provide the electric
12 circuits they employ. In those instances, purchasers over time undertook the lengthy and resource-
13 intensive effort to redesign and reengineer the electric circuits they employ in their manufactured
14 products to incorporate more available and affordable capacitors containing dielectrics other than
15 tantalum. This gradual—and therefore not immediate—process accounts for much of the decrease in
16 demand for tantalum electrolytic capacitors over at least the last decade.

17 112. The decline in demand for both aluminum and tantalum electrolytic capacitors began in
18 early 2000s, though it became more pronounced when the global economy crashed starting in late 2007.
19 The global financial crisis caused consumer demand at all levels—globally and domestically—to fall
20 significantly. According to industry data, consumption for capacitors dropped nearly 10% globally
21 between fiscal year 2008 and 2009. Though economic stimulus packages orchestrated by the United
22 States, China and EU countries caused some growth in the volume of capacitors consumed in fiscal year
23 2011, global consumption still dropped year over year approximately 7% in 2012 and 14% in 2013.

24 113. By the close of fiscal year 2008, global consumption for aluminum electrolytic capacitors
25 had already declined approximately 14% from 2005. This decline has continued to the present day, with
26 consumption in 2014 estimated to be approximately 30% lower than it was in 2005. Similarly, by the
27 close of fiscal year 2008, global consumption for tantalum capacitors dropped approximately 37% from
28 2005, and with consumption in 2014 estimated to be approximately 53% less than it was in 2005.

IV. DEFENDANTS' COLLUSIVE ANTICOMPETITIVE PRACTICES

114. In the context of this marked decline in demand for aluminum and tantalum electrolytic capacitors since at least the early 2000s, any price competition among the Defendants for the mutually interchangeable and substitutable components they produce would be sure to reduce any profitability they could hope to reap from these product markets. Specifically, given the significant costs related to running Defendants' respective capacitor manufacturing operations, keeping abreast of technological change and innovation, as well as the ongoing variable costs of raw materials, labor and distribution chain operations, Defendants' profit margins on aluminum and tantalum electrolytic capacitors would, by the operation of basic principles of economics, grow thinner if they were required to compete against each other for sales.

115. At least prior to the beginning of 2005, Defendants each were aware of the significant market share each of them held, both individually and collectively, in the mature, yet declining market for aluminum and tantalum electrolytic capacitors. Relatedly, Defendants each were also aware of the inability of capacitor manufacturers with smaller market share to successfully compete against them and meet market demand due to their evident capacity and resource constraints.

116. Additionally, at least prior to the beginning of 2005, Defendants were aware that their aluminum and tantalum electrolytic capacitors products of like capacitance, dielectric and form factor are in most instances mutually interchangeable for each other. For example, one manufacturer's aluminum electrolytic capacitors of a given capacitance and form factor often can be substituted for another manufacturer's aluminum capacitors with the same capacitance and form factors; the same goes for tantalum electrolytic capacitors produced by different manufacturers with the same capacitance and form factors. Aluminum electrolytic capacitors, however, are not mutually interchangeable with tantalum electrolytic capacitors, and vice versa.

117. Further, Defendants were also aware of how fundamentally necessary capacitors are to the function of electric circuits, and how other types of passive electrical components (*e.g.*, inductors, resistors) cannot serve as a substitute for or a functional equivalent to an aluminum or tantalum electrolytic capacitor.

118. Finally, Defendants were aware that all types of purchasers—OEMs, EMS Providers

1 and third-party distributors—were almost always committed to inflexible production or delivery
2 deadlines to their respective customers, and therefore would incur any price increases on the capacitors
3 they required to avoid the usually greater cost of production delays or customer dissatisfaction.

4 119. In their collective and individual consideration of the market conditions, Defendants
5 agreed to operate as a cartel to foreclose competition and protect each of its members from price
6 competition. By forming this cartel, Defendants intended to wring as much profitability out of the
7 aluminum and tantalum electrolytic capacitors market as possible before their product portfolios for
8 these capacitors become technologically obsolete or became consigned to the comparatively
9 unprofitable niche market.

10 120. Defendants together reached an agreement to concertedly fix prices and reduce output
11 on aluminum and tantalum electrolytic capacitors some time before, and in any event no later than,
12 January 1, 2005. This agreement was reached through both oral and written communication among
13 executives, officers, sales representatives and employees of the Defendant companies. The exchanges
14 of these communications occurred in person, through electronic or paper correspondence, text
15 messaging or telephonic or video communications in the period preceding the beginning of the Class
16 Period.

17 121. The specific date upon which Defendants' cartel and their collusive behavior
18 commenced (assuming it is even capable of determination given the nature of secret conspiracies) is
19 information known only to Defendants. Plaintiff will amend this class action complaint upon
20 discovering sufficient evidence pointing to a specific start date for Defendants' conspiracy.

21 122. Defendants intended to restrain trade in aluminum and tantalum electrolytic capacitors
22 primarily in two ways.

23 123. First, Defendants agreed to end price competition among themselves as to their
24 respective aluminum and tantalum electrolytic capacitors product portfolios by concertedly fixing,
25 raising, maintaining or stabilizing the prices for these products, thereby removing the prices offered to
26 purchasers from a competitive market.

27 124. To achieve their collective goal of artificially setting the price for their respective
28 aluminum and tantalum electrolytic capacitor product portfolios, each of the Defendants shared with

1 each other, either through correspondence or during in-person meetings, confidential and competitively
2 sensitive information pertaining to their product pricing. By way of illustration and not limitation,
3 Defendants shared, among other things, information pertaining to the fixed and variable costs that
4 impacted their product pricing. With knowledge of each other's competitively sensitive information,
5 Defendants were able to collectively determine and coordinate the pricing for the mutually
6 interchangeable products in their respective capacitor portfolios.

7 125. Defendants were able to maintain the concerted pricing on their aluminum and tantalum
8 electrolytic capacitors through regular interaction with and communication among members of the
9 cartel on the topic of pricing, and by publishing pricing information and cross-reference materials (*i.e.*,
10 charts or other materials that identify which capacitors of a given Defendant are mutually
11 interchangeable for capacitors of another Defendant) and sharing them with both the public and
12 Defendants' largest third-party authorized distributors, most of whom distribute capacitors for a
13 significant number of Defendants.

14 126. If at any time any of the Defendants priced any of its portfolio products outside the
15 cartel's coordinated pricing, the Defendant would become aware either through notice from its fellow
16 cartel members or from its largest third party authorized distributors. The pricing for the product at
17 issue would then adjust back to the price determined by the cartel's members.

18 127. Defendants' concerted pricing has gone unnoticed to date for many reasons, including,
19 by way of example and without limitation: (1) the sheer number and variety of aluminum and tantalum
20 electrolytic capacitors in Defendants' respective product portfolios makes it difficult for purchasers to
21 track market-wide movement in pricing, especially when purchasers are primarily interested in only
22 products with a specific capacitance, dielectric and form factor; (2) pricing for these capacitors changes
23 frequently; and (3) noncompetitive pricing is masked at times by high volume sales of these
24 commoditized products, in which bulk purchasers may receive volume discounts.

25 128. Aside from concertedly setting non-competitive prices for their aluminum prices,
26 Defendants also agreed to concertedly quote product lead times to purchasers. This permitted
27 Defendants to meter out the supply of their mutually interchangeable products available on the market,
28 thereby keeping demand high and, at times, unmet.

1 129. Defendants agreed to restrain their output in an effort to curb the practice of certain
2 purchasers who would buy large lots of products from Defendants when prices appeared to be low, but
3 would abstain when prices were higher. Defendants intended their practice of quoting similar
4 production lead times for their mutually interchangeable products to smooth out the inconsistent
5 volume of purchases by these purchasers. At the same time, Defendants intended this practice to
6 complement their efforts to artificially maintain a non-competitive price for their products.

7 130. To achieve the cartel's goal of quoting uniform production lead times to purchasers,
8 Defendants regularly interacted and communicated with other Defendants in the cartel on the topic of
9 product lead times.

10 131. Defendants regularly provided to purchasers and the public pretextual excuses for the
11 increase of production lead times, such as problems obtaining raw materials (*e.g.*, tantalum ore)
12 necessary for production, shipping delays, and production delays caused by natural disasters (*e.g.*, the
13 2011 Tohoku earthquake and tsunami, typhoons in Asia, flooding in Thailand and other countries
14 where Defendants' capacitor manufacturing facilities are located). Because the justifications
15 Defendants provided for long production lead times were credible, customers were lulled into believing
16 them, despite Defendants' conspiracy. Defendants concertedly coordinated to lengthen these
17 production lead times unjustifiably in order to foster the cartel's scheme to maintain noncompetitive
18 prices for the Defendants' aluminum and tantalum electrolytic capacitors.

19 132. The effects of Defendants' concerted and collusive actions were significant and, in fact,
20 were counter to what the market would expect given the comparative and continual decline in demand
21 for aluminum and tantalum electrolytic capacitors that began in the early 2000s. Notably, industry and
22 government data suggests that per unit prices for aluminum and tantalum electrolytic capacitors began
23 to stabilize in 2005.

24 133. From 2005 to present, industry data shows that per unit prices for tantalum electrolytic
25 capacitors have increased approximately \$0.008, or \$8.82 per thousand.

26 134. In 2005, aluminum electrolytic capacitors began to stop their price decline from
27 approximately \$55.06 per thousand in 2003. In 2005, industry data shows that the price per unit for
28 aluminum electrolytic capacitors was \$46.76 per thousand units, and their per unit price hovered

1 between approximately \$40.00 and \$46.00 per thousand until 2013. In effect, Defendants' conspiracy
2 permitted manufacturers of aluminum electrolytic capacitors (the Defendants herein) to slow the
3 market-driven decline in price for their products, and to fix prices at supracompetitive levels.

4 **V. INDUSTRY CHARACTERISTICS INDICATING AND FACILITATING**
5 **DEFENDANTS' CONSPIRACY TO RESTRAIN TRADE IN THE ALUMINUM AND**
6 **TANTALUM ELECTROLYTIC CAPACITOR MARKET**

7 135. For at least as long as the Class Period, the aluminum and tantalum electrolytic capacitor
8 industry has demonstrated numerous characteristics that have served to facilitate Defendants'
9 conspiracy. By way of illustration and not limitation, the industry has exhibited (1) market
10 concentration among a limited number of participants; (2) high barriers to entry for new market
11 participants; (3) mutual interchangeability of Defendants' products; (4) inelasticity of demand; (5)
12 commoditization; (6) weak demand in a mature market; (7) a large number of purchasers with limited
13 purchasing power; and (8) ease of information sharing among Defendants.

14 **A. Market Concentration**

15 136. Despite the ascendancy of ceramic capacitors as the dominant product in the global
16 capacitors market, the market for aluminum and tantalum electrolytic capacitors remains quite
17 significant. In 2004, the global volume of aluminum and tantalum electrolytic capacitors consumed was
18 approximately 12% of the market. Consumption for 2014 is estimated to be approximately 8% of global
19 volume. The revenues for these sales—given the higher per unit price of both aluminum and tantalum
20 electrolytic capacitors relative to ceramic capacitors—approximate an estimated \$6 billion for fiscal
21 year 2014 alone. Industry data show that aluminum and tantalum capacitors together currently account
22 for approximately 31% of North and South American capacitor consumption (most of which are
23 presumably consumed in North America), which is valued at approximately \$680 million.

24 137. Market power in the aluminum and tantalum electrolytic manufacturing industry itself is
25 highly concentrated—a fact that is conducive to the type of collusive activity alleged herein.

26 138. Though there are a relatively large number of companies that produce aluminum
27 electrolytic capacitors and sell them into the global and U.S. markets, significant market power is
28 concentrated in the Defendants. In all, industry data show that the 13 largest manufacturers of
aluminum electrolytic capacitors account for approximately 92% of the market's current revenue.

1 Specifically, industry analysts report that Defendants Nippon Chemi-Con, Nichicon, Rubycon,
2 Panasonic, AVX and Elna currently together hold approximately 65% of the global market. Adding in
3 the smaller market shares of Defendants Hitachi, Matsuo and Toshin Kogyo, Defendants' collective
4 share in the aluminum electrolytic capacitors market is approximately 70%.

5 139. Given the relatively small market share (*i.e.*, mostly 3% or less) and capacity constraints
6 of the other (non-Defendant) companies selling products in the global aluminum electrolytic capacitors
7 market, the Defendants' concerted actions have impacted pricing and output in the aluminum capacitor
8 market during the Class Period. There was not a reasonable threat that manufacturers who were not
9 members of the cartel could undercut the cartel's concerted pricing and meet all or a significant part of
10 market demand for mutually interchangeable aluminum capacitors at more competitive prices.

11 140. Industry data show that the seven largest manufacturers of tantalum electrolytic
12 capacitors account for approximately 95% of the global market's current revenue. Industry analysts
13 report that Defendants KEMET-NEC Tokin, Panasonic, AVX, Vishay SEMCO and ROHM currently
14 together hold approximately 90% of the global market.

15 141. Given the relatively small market share (*i.e.*, mostly 3% or less) and capacity constraints
16 of the other companies selling products in the global electrolytic capacitors market, the Defendants'
17 concerted actions have impacted pricing and output in the tantalum capacitor market during the Class
18 Period. There was not a reasonable threat that manufacturers who were not included in the cartel could
19 undercut the cartel's concerted pricing and meet all or a significant part of market demand for mutually
20 interchangeable capacitors at more competitive prices.

21 **B. High Barriers to Entry**

22 142. In a market free of price fixing, higher profits draw in other market participants who wish
23 to capture a share of profits. Where members of a cartel conspire to raise prices in a market, those
24 higher prices generate higher profits for the cartel's members. In industries characterized by
25 substantial barriers to entry, however, cartel members may be able to raise prices to supracompetitive
26 levels and reap high levels of profits.

27 143. Companies seeking to manufacture and sell aluminum and tantalum electrolytic
28 capacitors without having any prior involvement in the capacitors market face various significant

1 barriers to their entry.

2 144. The electrolytic capacitors manufacturing industry is a mature one dominated by
3 established corporations, each having diverse product portfolios, multinational operations and global
4 market reach. These companies have significant experience in the global capacitors industry and
5 established reputations with both sellers of raw materials and purchasers of finished capacitors. These
6 companies typically have access to significant financial resources that not only allow them to commit
7 the capital necessary to bring online new fabrication operations and facilities or to expand/retrofit
8 existing ones to meet market demand and adjust to technological changes, but also to establish and
9 secure necessary supply chain commitments for all raw materials they require. Defendants are all
10 established manufacturers in the electrolytic capacitors industry.

11 145. For a prospective capacitor manufacturer, setting up competitive manufacturing
12 operations and supply chain operations is a significant financial and logistic hurdle to market entry. A
13 new entrant seeking to build electrolytic capacitors fabrication operations and facilities faces not only
14 the sizeable cost of building fabrication plants, but also the costs of acquiring the necessary production
15 technology, hiring and retaining skilled and knowledgeable manpower, and securing the raw materials
16 and supply chain commitments necessary to manufacture competitive products. These costs would
17 exceed hundreds of millions of dollars. Many of the Defendant manufacturers have developed internal
18 processing capabilities for raw materials and have established relationships with raw materials
19 producers that all but insure that their requirements will be met.

20 146. These hurdles, however, are not the only barriers a new market entrant faces. For a new
21 market entrant consistently to products and sell competitively and to create and sustain a diverse
22 product portfolio, it must invest in substantial research and development operations. Additionally, the
23 new entrant must create and maintain global sales and marketing operations so that its products can be
24 attractive to capacitor purchasers and disrupt their existing relationships with the established
25 electrolytic capacitor manufacturers.

26 147. Ultimately, to be competitive, a new market entrant has to commit to significant
27 financial and operational undertakings to establish itself in an industry where—in the absence of any
28 price manipulation—profit margins are not large and economies of scale must be achieved in order to

1 reach profitability. Moreover, because the global demand for capacitors has shifted significantly in
2 favor of ceramics over the last decade, a new market entrant's commitment of the necessary financing
3 and resources to establish itself in the electrolytic capacitors market would be fraught with risk.

4 148. The fact that no new manufacturers have begun producing exclusively aluminum or
5 tantalum electrolytic capacitors in well over a decade—other than through acquisition of companies or
6 business units already producing specific electrolytic capacitor products—strongly suggests that the
7 electrolytic capacitors market is foreclosed to new competition.

8 **C. Mutual Interchangeability of Defendants' Electrolytic Capacitors**

9 149. As noted earlier, capacitors of like capacitance, dielectric, and form factor are mutually
10 interchangeable. A specific aluminum or tantalum electrolytic capacitor manufactured by one of the
11 Defendants therefore can be exchanged for a product of another Defendant with the same technical and
12 operational specifications. There are no other defining physical characteristics that differentiate
13 Defendants' various aluminum or tantalum electrolytic capacitor products from each other.

14 150. Defendants are aware of the fungibility of their specific products. Indeed, Defendants
15 have made product cross-reference materials available through their respective web sites, product
16 catalogs, and/or other materials distributed to capacitor purchasers. These cross-reference materials
17 identify a specific Defendants' capacitor product by either product number or technical and operational
18 specifications, and it identifies specific mutually interchangeable products manufactured by competitor
19 Defendants.

20 151. In addition to many of Defendants' products being directly interchangeable, products
21 with differing capacitance, dielectric and form factor—depending on circuit design and certain
22 technical requirements—can be interchangeable for each other. There are a number of general rules
23 recognized in the capacitors industry that govern such interchangeability, for example: (1) using a
24 capacitor with a higher capacitance value than the circuit requires is sometimes acceptable; (2) a
25 capacitor with a better capacitance tolerance can replace a looser tolerance component; (3) a capacitor
26 with a higher voltage rating may be used in place of, or as a substitute for, a lower voltage rated
27 component; (4) a physically smaller capacitor may be acceptable if lead spacing is the same and
28 electrical specifications differences are acceptable; (5) a capacitor with a better temperature rating can

1 replace a lower temperature rated component; (6) a capacitor with a more stable temperature
2 coefficient can replace a component with a less stable temperature coefficient; (7) a capacitor with a
3 lower dissipation factor can replace one with a higher dissipation factor; (8) a capacitor with a lower
4 ESR can replace one with a higher ESR; (9) a capacitor with a higher ripple current rating can replace
5 one with a lower ripple current rating; and (10) a capacitor with a lower leakage current rating can
6 replace one with a higher leakage current rating.

7 152. Because purchasers are aware of the mutual interchangeability of Defendants' respective
8 capacitor products of like capacitance, dielectric and form factor, along with the possibility that certain
9 products that are not directly fungible can still replace each other, Defendants present purchasers a
10 broad portfolio of product choices that can meet their needs. Accordingly, but for Defendants' non-
11 competitive maintenance of pricing, price would be the primary means of competition among
12 Defendants in the aluminum and tantalum electrolytic capacitor market.

13 **D. Inelastic Demand**

14 153. Inelastic demand means that increases in price result in limited declines in quantity sold
15 in the market. For a cartel to profit from raising prices above competitive levels, demand must be
16 inelastic at competitive prices such that cartel members are able to raise prices without triggering a
17 decline in sales revenue that would make the price increase unprofitable. In simple terms, demand is
18 inelastic when the loss in volume arising from a price increase is small relative to the magnitude of the
19 increase in price, allowing higher prices to increase revenues and profits.

20 154. The demand for aluminum and tantalum electrolytic capacitors is inelastic. When there
21 are few or no substitutes for a product, purchasers have little choice but to pay higher prices in order to
22 produce their product. As set forth above, capacitors serve as a fundamental component in the electric
23 circuits employed to make functional a wide variety of products within different end-markets. No other
24 type of passive electrical component (*e.g.*, inductors, resistors) can serve as a substitute or a functional
25 equivalent to a capacitor in an electric circuit. Accordingly, a purchaser that is either an OEM or an
26 EMS Provider simply cannot design an electric circuit to bypass its need for a capacitor with a certain
27 capacitance, dielectric and form factor.

28 155. Capacitors are also often a comparatively inexpensive cost input in electrical devices, so

1 a purchaser facing higher prices for capacitors would generally pay that increased price rather than
2 forgo its opportunity to sell the device that includes the capacitors.

3 156. Though the specific capacitors that Defendants manufacture are either mutually
4 interchangeable for each other when a specific electric circuit is designed to incorporate them, this does
5 not demonstrate price elasticity. Rather, this fact affirms the ubiquitous need for capacitance in electric
6 circuits and the inability of purchasers of capacitors to forgo their use in their products or find a cost-
7 effective, functional substitute for them.

8 157. Indeed, demand inelasticity for capacitors is particularly acute when a given electric
9 circuit or an electronic device requires not just a capacitor, but one with a specific capacitance,
10 dielectric and form factor. In that instance, a purchaser has no choice but to buy a specific capacitor
11 with the required technical and operational characteristics.

12 **E. Commoditization**

13 158. When a product is characterized as a commodity, market participants typically compete
14 on the basis of price rather than other attributes such as product quality or customer service. Where
15 competition occurs principally on the basis of price, it is easier to implement and monitor a cartel
16 because price is more often objectively measurable and observable than non-price factors such as
17 service.

18 159. Because aluminum and tantalum electrolytic capacitors are mass-produced products
19 generally sold by Defendants in lots of 1,000 pieces that have relatively standardized technical and
20 operational characteristics for the various mutually interchangeable models manufactured and sold by
21 the Defendants, the electrolytic capacitor products at issue are largely commoditized.

22 160. Defendants recognize that their aluminum and tantalum capacitors are commoditized
23 products. Based on the type of electrolytic capacitor they produce, Defendants face relatively similar
24 raw materials and production costs. Accordingly, even without Defendants' sharing of confidential and
25 competitively sensitive information as part of their price-fixing conspiracy, Defendants would have
26 approximate knowledge of each other's costs and the bases for their respective prices. However, by
27 having access to their co-conspirators' pricing information, Defendants can more easily implement
28 their scheme to maintain noncompetitive prices for aluminum and tantalum electrolytic capacitors.

1 **F. Weak Demand**

2 161. Static or declining demand is one factor which makes the formation of a collusive
3 arrangement more likely. Under normal business conditions, when faced with weak demand conditions,
4 firms will attempt to increase sales by taking market share from competitors by decreasing prices. For
5 this reason, firms faced with static or declining demand have a greater incentive to collude to avoid price
6 competition with competitors in order to ballast their declining business.

7 162. As alleged herein, the overall demand for aluminum and tantalum capacitors has declined
8 significantly since the early 2000s. Demand for aluminum and tantalum electrolytic capacitors is closely
9 tied to the demand for consumer electronics. Over the past decade, declining sales of desktop computers
10 and television sets have weakened demand for passive electronic components and capacitors in
11 particular. In 2012, for example, sales of televisions and desktop computers declined roughly 10% from
12 the previous year, whereas demand for laptop computers declined only 2%. The impact of this decline
13 in consumer electronic demand on capacitor demand is evident in the static growth observed by the
14 overall market and the negative growth trends reported in some segments by certain Defendants.

15 163. For instance, Nichicon's 2013 Annual Report states that the company's 21.7% decrease in
16 capacitor sales "is attributed to declining demand for digital home electronics and inverter equipment."
17 Similarly, Taiyo Yuden's 2013 Annual Report notes that "[t]he electronics industry, to which
18 [Taiyo Yuden] belongs, has seen continued growth from the smartphone and tablet device markets. In
19 contrast to this, the PC and television markets remain sluggish. Overall this has caused weaker demand
20 for electronic components." AVX Corporation made the same observation in its 2013 Annual Report
21 stating, "[o]verall sales prices for our commodity component products declined during 2013."

22 **G. Large Number of Purchasers With Limited Purchasing Power**

23 164. In a market with many purchasers, each of whom forms a small share of the total
24 marketplace, there is less incentive for cartel members to cheat on collusive pricing arrangements, since
25 each potential sale is small while the risk of disrupting the collusive pricing agreement carries large
26 penalties.

27 165. In the market for aluminum and tantalum electrolytic capacitors, Defendants each have
28 historically sold and currently sell to a wide number of purchasers around the globe, the vast majority of

1 whom during the Class Period make up no more than 10% of each Defendant's respective annual net
2 sales, year over year.

3 166. Defendants therefore had many reasons during the Class Period to coordinate pricing
4 and market supply availability with each other within the auspices of their cartel.

5 167. Defendants concertedly priced their respective capacitor products during the Class
6 Period, and also provided lockstep quotation of production lead times to purchasers.

7 **H. Ease of Information Sharing Among Defendants**

8 168. Because of their common membership in trade associations and interrelated business
9 relationships between certain executives, officers, and employees of the Defendants, there were many
10 opportunities both before and during the Class Period for Defendants to collude by discussing
11 competitive information regarding their respective aluminum and tantalum electrolytic capacitor
12 products. The ease of communication was facilitated by the use of meetings, telephone conversations,
13 e-mail messages, written correspondence and text messaging. Defendants took advantage of these
14 opportunities to discuss, and agree upon, their pricing for the various types of capacitors they produce.

15 169. Industry trade associations make a market more susceptible to collusive behavior
16 because they can provide a pretext under which conspirators can exchange sensitive company
17 information such as pricing and market allocation.

18 170. A number of industry trade associations exist in the capacitor industry. One of the
19 largest trade associations for the industry, the Electronic Components Industry Association ("ECIA"),
20 claims Defendants AVX, KEMET and Panasonic as members. According the ECIA, its members are
21 granted access to "industry peers and executive networking," and events where they can be "face-to-
22 face with leaders of the authorized electronic components industry." Likewise, the European Passive
23 Components Industry Association provides similar networking opportunities, and it includes
24 Defendants Nichicon, AVX and Panasonic among its members.

25 171. Aside from these formalized means of exchanging information among each other,
26 Defendants have among them numerous informal links between their former and current colleagues,
27 co-venturers, or partners employed by other Defendant companies. These links provided them the
28 means and opportunity to exchange competitively sensitive information. Despite the billions of dollars

1 of revenue generated by the capacitors industry worldwide, it is still a narrow segment of the overall
2 electronic components industry, and the key decision-makers for the major producers had personal
3 access to each other both directly and indirectly.

4 172. Further, Defendants can procure relatively detailed competitive information from
5 industry analysts. The capacitor industry is analyzed by a limited number of market research firms that
6 deal in detailed industry data. Each of these firms offers, for a fee, market data on pricing, supply, and
7 other key indicators of market activity as well as market projections. The capacity and pricing
8 information procured by these analysts is provided directly from industry participants, including certain
9 of Defendants. Given the limited number of analysts that cover the capacitors industry, those that do
10 are often provided highly detailed information and direct access to decision-makers for the capacitors
11 manufacturers, including Defendants.

12 **VI. CURRENT U.S. AND INTERNATIONAL ANTITRUST INVESTIGATIONS INTO** 13 **ANTICOMPETITIVE PRACTICES IN THE CAPACITORS INDUSTRY**

14 173. Defendants' conspiracy to artificially fix, raise, maintain or stabilize prices for aluminum
15 and tantalum electrolytic capacitors, as well as to restrict the output of such capacitors, has only
16 recently been discovered by law enforcement and regulatory authorities both in the United States and
17 throughout Asia.

18 174. In April 2014, the Antitrust Division of the United States Department of Justice
19 ("DOJ") confirmed to industry sources that the government has opened an investigation into price
20 fixing in the capacitors industry, and sources report that this investigation is being conducted out by the
21 United States Attorney's Office for the Northern District of California.

22 175. Media and industry sources have reported that this investigation has been ongoing for
23 some time, and that the DOJ has been coordinating its efforts to investigate the capacitors industry with
24 the People's Republic of China's National Development and Reform Commission ("NDRC"), an
25 agency entrusted with regulating price-related anticompetitive activity by the Chinese State Council.
26 During March 2014, the NDRC conducted several raids on Chinese operations of Japanese capacitors
27 manufacturers.

28 176. Media and industry sources indicate that a member of the cartel—believed to be

1 Panasonic, a Defendant in this action—has approached U.S. and Chinese authorities to self-report its
2 involvement in the conspiracy and to request prosecutorial leniency and amnesty.

3 177. The U.S. Antitrust Criminal Penalty Enhancement and Reform Act (“ACPERA”)
4 provides leniency benefits for a participant in a price-fixing conspiracy that voluntarily discloses its
5 conduct to the Department of Justice (“DOJ”). A November 19, 2008 presentation on the DOJ’s
6 website explains that “[a conditional leniency] applicant must admit its participation in a criminal
7 antitrust violation involving price fixing...before it will receive a conditional leniency letter.” One of
8 the leniency benefits for a conspirator that is accepted into the ACPERA program is that the applicant is
9 not charged with a criminal offense and is not required to plead guilty to criminal charges.

10 178. By applying for leniency through ACPERA, the cartel member believed to be Panasonic
11 must have admitted to price fixing in the capacitors industry.

12 179. On or about July 2, 2014, the NDRC publicly confirmed its investigation into the
13 capacitors industry through a report by published in the China Price Supervision and Antitrust Journal
14 and written by Xu Kunlin, Director-General of the NDRC’s Price Supervision and Antimonopoly
15 Bureau. In this report, Xu revealed that one Japanese capacitor company self-reported its cartel activity
16 in March 2014, and that this company and other Japanese capacitor manufacturers held regular
17 conferences to exchange market information related to their products. Media and industry sources
18 have quoted Xu as saying that the Japanese manufacturer seeking amnesty would receive complete
19 leniency.

20 180. The United States and the PRC, however, are not the only countries investigating price
21 fixing in the capacitors industry.

22 181. Media and industry sources report that the Japan Fair Trade Commission (“JFTC”) has
23 been investigating price fixing of aluminum and tantalum electrolytic capacitors for some time now. On
24 or about June 24, 2014, the JFTC conducted raids of approximately eight capacitors manufacturers
25 believed to be members of the cartel, including Panasonic, NEC Tokin, Hitachi Chemical, Nichicon
26 and Nippon Chemi-Con. According to media reports citing sources close to the JFTC’s investigation,
27 sales executives and other officials from the raided companies discussed and decided on price increases
28 for capacitors for at least several years. It is reported that the JFTC suspects that the raided companies

1 formed a cartel in order to boost profits after they had suffered financial setbacks following the global
2 financial crisis stemming from the collapse of Lehman Brothers in 2008 and the 2011 Tohoku
3 earthquake and tsunami in Eastern Japan.

4 182. Since the beginning of 2014, investigations into the capacitors industry also have been
5 opened by the South Korean Fair Trade Commission, the Taiwanese Fair Trade Commission, and the
6 European Commission's competition authority.

7 183. To date, few of the Defendants have commented about their being subject to these raids.
8 Defendant Panasonic has confirmed that it was raided by both the JFTC and South Korean authorities.

9 184. Defendant Taiyo Yuden has admitted to having been raided by the NDRC and has stated
10 that it is cooperating with Chinese authorities.

11 185. Defendant NEC Tokin has confirmed that it has been contacted or raided by American,
12 Chinese and European authorities and has stated that it is cooperating with authorities.

13 186. Toshin Kogyo has confirmed that it has been contacted by Japanese, Chinese and
14 Taiwanese authorities.

15 187. For some of Defendants—especially Panasonic and Sanyo—these investigations are not
16 the first time they have been scrutinized by law enforcement and competition authorities for
17 anticompetitive behavior. These Defendants have a documented history of cartel behavior and
18 antitrust price-fixing recidivism.

19 188. Both Panasonic and Sanyo have been investigated by the DOJ in the last several years for
20 participating in price-fixing conspiracies involving automotive parts and lithium ion battery cells.

21 189. Panasonic pled guilty for its role in a nearly six and a half year-long conspiracy to fix
22 prices of switches, steering angle sensors, and automotive high intensity discharge ballasts installed in
23 cars sold in the United States and elsewhere.

24 190. Panasonic agreed to pay a \$45.8 million criminal fine, and a number of its executives pled
25 guilty in exchange for limited fines and imprisonment.

26 191. Sanyo agreed to plead guilty for its role in a year and a half long conspiracy to fix prices
27 on cylindrical lithium ion battery cells sold worldwide for use in notebook computer battery packs, and
28 agreed to pay a \$10.731 million criminal fine.

VII. FRAUDULENT CONCEALMENT

192. Plaintiff has had neither actual nor constructive knowledge of the pertinent facts constituting their claims for relief asserted herein, despite their diligence in trying to discover such facts. Plaintiff and members of the Class did not discover, and could not have discovered through the exercise of reasonable diligence, the existence of the conspiracy alleged herein until in or about March 2014, when investigations by the DOJ and competition and law enforcement authorities in the People's Republic of China, Japan, Taiwan, South Korea and the European Commission were made public.

193. Defendants engaged in a secret conspiracy that did not give rise to facts that would put Plaintiff or the Class on inquiry notice that there was a conspiracy among capacitor manufacturers to artificially fix, raise, maintain or stabilize prices for aluminum or tantalum electrolytic capacitors, as well as to restrict their respective output by unjustifiably extending production lead times. In fact, Defendants had secret discussions about price and output and, in furtherance of the conspiracy, they agreed not to discuss publicly the nature of the scheme. Defendants also gave pretextual justifications for the pricing changes and the reductions in output that occurred during the Class Period.

194. Indeed, Defendants relied on a variety of market-based explanations for pricing changes and reductions in output through extension of production lead times in order to conceal the conspiracy.

195. With regard to aluminum electrolytic capacitors, Defendants often attributed price changes and increased production lead times to difficulties procuring the necessary raw materials to manufacturer their products.

196. For example, in 2010, Defendants Nichicon, Nippon Chemi-Con and Panasonic each made a number public statements to industry and technology media in which they attributed supply limitations and price quote adjustments to shortages of aluminum foil and increasing costs for other raw materials required for manufacturing.

197. These explanations are belied by industry reports and data that characterize aluminum foil as a widely available raw material, and aluminum electrolytic capacitors as being the product least susceptible to raw material price shocks.

198. With regard to tantalum electrolytic capacitors, Defendants often attributed price changes and increased production lead times to difficulties procuring the necessary tantalum to

1 manufacturer their products.

2 199. For example, in 2010 and 2011, Defendants Vishay and Panasonic each made a number
3 public statements to industry and technology media attributing supply limitations and pricing
4 adjustments for their tantalum electrolytic capacitors to raw materials supply issues.

5 200. These explanations are belied by industry and other media reports that criticize the lack
6 of true visibility into the market for tantalum, highlight tantalum capacitor manufacturers' close ties
7 and business arrangements with tantalum mining operations, and recognize manufacturers' efforts to
8 process certain raw materials in-house.

9 201. Additionally, these explanations are belied by certain other Defendants, such as
10 KEMET, which noted in a 2010 "Tantalum Market Update" letter in that

11 the tantalum capacitor industry is running at or near capacity, as
12 witnessed by the increased lead times. *This immediate issue is not the result*
13 *of raw material availability but due to the lack of investment in capacity over*
14 *the last 10 years—a consequence of industry pricing pressures which have*
15 *driven margins to a point where we have been unable to realize reinvestment*
16 *economics.* (Emphasis added.)

17 202. Aside from the product-specific explanations noted above, Defendants at various times
18 during the Class Period also issued a multitude of other non-market excuses for pricing changes and
19 reductions in output, such as labor shortages and shipping delays due to weather in Asia.

20 203. More specifically, from 2011 to 2013, Defendants Hitachi Chemical, Nippon Chemi-
21 Con, Nichicon, Rubycon and Elna attributed some degree of production delays to the lasting effects of
22 the 2011 Tohoku earthquake and tsunami in eastern Japan.

23 204. Further, in 2011, Defendants NEC Tokin and ROHM attributed production delays to
24 flooding in Thailand.

25 205. Even if the explanations Defendants provided were partially grounded on real events,
26 Defendants still unjustifiably and disproportionately manipulated prices or extended production lead
27 times beyond any reasonably justifiable adjustments necessary to account for any actual pricing impact
28 or lead time increases. Indeed, the excuses given by Defendants for their price changes and extended
production lead times were always misleading (if not outright false), because they lulled Plaintiff and
members of the Class into believing that the price changes and extended production lead times were the

1 normal result of competitive and economic market forces, rather than the product of collusive, unlawful
2 efforts. As alleged herein, Defendants and their co-conspirators made statements in the media in
3 support of price changes that were presumed to be true and were designed to convince members of the
4 Class to pay purportedly legitimate prices.

5 206. Defendants' explanations for price changes and extended lead times were pretextual,
6 and materially false or misleading, and served only to cover up Defendants' conspiracy. As a result of
7 Defendants' fraudulent concealment of their conspiracy, the running of any statute of limitations has
8 been tolled with respect to any claims that Plaintiff and the Class members have as a result of the
9 anticompetitive and unlawful conduct alleged herein.

10 **VIII. EFFECTS OF DEFENDANTS' CONSPIRACY ON THE U.S. MARKET FOR**
11 **ALUMINUM AND TANTALUM ELECTROLYTIC CAPACITORS AND INJURY TO**
12 **PLAINTIFF AND THE CLASS**

13 207. Defendants' combination and conspiracy as set forth herein has had the following
14 effects, among others:

- 15 a. Restraint on price competition among Defendants in the sale of their respective
16 aluminum and tantalum electrolytic capacitors during the Class Period to purchasers
17 in the United States;
- 18 b. Prices for aluminum and tantalum electrolytic capacitors sold by Defendants during
19 the Class Period to purchasers in the United States have been raised, fixed,
20 maintained, and stabilized at artificial and non-competitive levels;
- 21 c. The supply of Defendants' aluminum and tantalum electrolytic capacitors available
22 for sale during the Class Period to purchasers in the United States has been
23 artificially and unjustifiably restrained; and
- 24 d. Direct purchasers from Defendants have been deprived of the benefit of free and
25 open competition on the basis of price in the market for aluminum and tantalum
26 electrolytic capacitors.

27 208. As a direct and proximate result of Defendants' anticompetitive and unlawful conduct,
28 Plaintiff and the Class have been injured in their business and property in that, during the Class Period,
they paid more for the aluminum or tantalum electrolytic capacitors they purchased directly from

1 Defendants than they would have in the absence of Defendants' conduct.

2 209. Plaintiff and the Class have been damaged in an amount subject to proof and to be
3 determined at trial.

4 **CLAIM FOR RELIEF**

5 **RESTRAINT OF TRADE IN VIOLATION OF**
6 **THE SHERMAN ACT § 1**
7 **15 U.S.C. § 1**
8 **(Alleged against all Defendants)**

9 210. Plaintiff hereby repeats and incorporates by reference each proceeding and succeeding
10 paragraph as though fully set forth herein.

11 211. This claim is pleaded as to all Defendants.

12 212. Beginning at least as early as January 1, 2005, the exact date being unknown to Plaintiff
13 and the Class and exclusively within the knowledge of Defendants, Defendants entered into a
14 continuing combination or conspiracy to unreasonably restrain trade and commerce in violation of
15 Section 1 of the Sherman Act (15 U.S.C. § 1) by artificially reducing or eliminating competition for the
16 pricing of aluminum and tantalum electrolytic capacitors directly sold to purchasers in the United
17 States.

18 213. In particular, Defendants have combined and conspired to raise, fix, maintain or stabilize
19 the prices of aluminum and tantalum electrolytic capacitors sold to purchasers in the United States
20 during the Class Period.

21 214. Additionally, Defendants have combined and conspired to set artificial and unjustified
22 production lead times to limit available supply of aluminum and tantalum electrolytic capacitors sold to
23 purchasers in the United States during the Class Period.

24 215. As a result of Defendants' and their co-conspirators' unlawful conduct and acts taken in
25 furtherance of their conspiracy, prices for aluminum and tantalum electrolytic capacitors sold to
26 purchasers in the United States during the Class Period were raised, fixed, maintained or stabilized at
27 various times, and the available supply of these products were at times artificially limited, thereby
28 eliminating natural price competition among Defendants who, in a market unfettered by their
manipulation, would have competed against each other on the basis of price for sales of these

1 capacitors.

2 216. The combination or conspiracy among Defendants consisted of a continuing agreement,
3 understanding and concerted action among Defendants and their co-conspirators.

4 217. For purposes of formulating and effectuating their combination or conspiracy,
5 Defendants and their co-conspirators did those things they combined or conspired to do, including:

- 6 a. Participating in meetings and conversations to discuss their respective prices and
7 supply of aluminum and tantalum electrolytic capacitors and how they could
8 effectively coordinate their actions to restrain trade for these products;
- 9 b. Communicating in writing and orally to raise, fix, maintain or stabilize prices for
10 aluminum and tantalum electrolytic capacitors, and to set artificial and unjustified
11 production lead times to limit available supply of these capacitors;
- 12 c. Agreeing to coordinate and manipulate the prices and available supply of capacitors
13 directly sold to purchasers in the United States in a manner that deprived the
14 purchasers of free and open price competition;
- 15 d. Issuing or signaling to each other price announcements, price quotations and
16 production lead times for specific aluminum and tantalum electrolytic capacitor
17 products in accordance with the agreements Defendants reached among themselves;
- 18 e. Selling aluminum and tantalum electrolytic capacitors to purchasers in the United
19 States at noncompetitive and artificial prices Defendants collusively determined; and
- 20 f. Providing pretextual justifications to purchasers and the public to explain any raises,
21 maintenance, or stabilization of the prices for Defendants aluminum and tantalum
22 electrolytic capacitors.

23 218. Defendants' anticompetitive and unlawful conduct is per se illegal.

24 219. As a result of Defendants' anticompetitive and unlawful conduct, Plaintiff and members
25 the Class have been injured in their businesses and property in that they have paid more for the
26 aluminum or tantalum electrolytic capacitors they purchased during the Class Period than they
27 otherwise would have paid in the absence of Defendants' conduct.
28

DEMAND FOR JUDGMENT

WHEREFORE, Plaintiff Chip-Tech, Ltd., requests that the Court enter judgment on its behalf and on behalf of the Class defined herein, by adjudging and decreeing that:

A. This action may proceed as a class action, with Plaintiff serving as the Class Representative, and with Plaintiff's counsel as Class Counsel;

B. Defendants have combined and conspired in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and that Plaintiff and the Class have been injured in their business and property as a result of Defendants' violations;

C. Plaintiff and the Class are entitled to recover damages sustained by them, as provided by the federal antitrust laws under which relief is sought herein, and that a joint and several judgment in favor of Plaintiff and the Class be entered against Defendants in an amount subject to proof at trial, which is to be trebled in accordance with Section 4 of the Clayton Act, 15 U.S.C.S. § 15;

D. Plaintiff and the Class are entitled to pre-judgment and post-judgment interest on the damages awarded them, and that such interest be awarded at the highest legal rate from and after the date this class action complaint is first served on Defendants;

E. Plaintiff and the Class are entitled to equitable relief appropriate to remedy Defendants' past and ongoing restraint of trade, including:

- a. A judicial determination declaring the rights of Plaintiff and the Class, and the corresponding responsibilities of Defendants; and
- b. Issuance of a permanent injunction against Defendants and their parents, subsidiaries, affiliates, successors, transferees, assignees and the respective officers, directors, partners, agents, and employees thereof and all other persons acting or claiming to act on their behalf from continuing and maintaining the conspiracy or agreements alleged herein;

F. Defendants are to be jointly and severally responsible financially for the costs and expenses of a Court-approved notice program through post and media designed to give immediate notification to the Class;

G. Plaintiff and the Class recover their costs of this suit, including reasonable attorneys'

1 fees as provided by law; and

2 H. Plaintiff and the Class receive such other or further relief as may be just and proper.

3 **JURY TRIAL DEMANDED**

4 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demands a trial by jury of all the
5 claims asserted in this complaint so triable.

6 Dated: July 18, 2014

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8
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