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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 UNITED STATES OF AMERICA

15 v.

16 MATSUO ELECTRIC COMPANY
17 LIMITED,

18 Defendant.

No. 4:17-CR-00073-JD

**REDACTED VERSION OF DOCUMENT
SOUGHT TO BE SEALED**

**UNITED STATES' SENTENCING
MEMORANDUM, MOTION FOR
DEPARTURE, AND REQUEST FOR
EXPEDITED SENTENCING**

DATE: April 26, 2017 (requested, pending
Court approval)

TIME: 9:30 am

JUDGE: Hon. James Donato

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1 **I. INTRODUCTION**

2 Matsuo Electric Company Limited (“Matsuo”) has agreed to plead guilty to a criminal
3 antitrust charge for its role in a conspiracy to fix prices and rig bids for electrolytic capacitors.
4 It has agreed to pay a \$4.17 million criminal fine and serve a five-year term of probation during
5 which it will report annually on its progress in implementing an effective corporate compliance
6 program. The recommended \$4.17 million fine falls below the guidelines fine range. This
7 reduced fine reflects the value of Matsuo’s substantial assistance in the ongoing electrolytic
8 capacitor investigation. Of all the cooperating companies in this investigation, Matsuo has
9 provided some of the most significant assistance with respect to securing the cooperation of its
10 employees, one of whom has agreed to plead guilty. Matsuo accepts responsibility for its
11 criminal conduct, acknowledges its wrongdoing, is taking steps to strengthen its existing
12 antitrust compliance program, has already provided valuable and substantial assistance in the
13 capacitor investigation, and has pledged continuing cooperation. The government is still
14 pursuing multiple companies and individuals, and it needs Matsuo’s assistance to bring those
15 conspirators to justice.

16 Accompanying this memorandum are: (1) declaration of Paradi Javandel (“Javandel
17 Declaration”); (2) plea agreement between the United States and Matsuo (filed as Exhibit A to
18 the Javandel Declaration), portions of which the government requests be filed under seal to
19 protect the identity of individuals named in Attachment A to the plea agreement; (3) motion,
20 proposed order, and declaration to file portions of the sentencing memorandum and plea
21 agreement under seal; and (4) proposed order for expedited sentencing.

22 The government requests that plea and sentencing occur on the same day, April 26,
23 2017, or on the next available date on the Court’s calendar. Counsel for the defendant has
24 reviewed portions of this memorandum. They have advised the government that they do not
25 oppose the memorandum. Matsuo will separately request expedited sentencing and waive a
26 presentence report.

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1 The United States understands that the Court has a “strong commitment to supporting
2 the development of our next generation of trial lawyers.” Standing Order for Civil Cases, ¶ 13.
3 To that end, and in response to the Court’s standing order, the government advises the Court
4 that Trial Attorney Paradi Javandel, who has less than six years of experience, will appear on
5 behalf of the United States at any scheduled plea and sentencing hearing.

6 **II. BACKGROUND**

7 **A. Product**

8 As described to the Court in previous sentencing memoranda filed in related cases,
9 electrolytic capacitors are fundamental components in electrical circuits. Their primary
10 function is to store and regulate electrical current. Electrolytic capacitors are found in most
11 products that use electricity, including desktop and notebook computers, televisions, DVD
12 players, video and still digital cameras, gaming systems, and car engine and airbag systems.
13 Electrolytic capacitors can be subdivided into tantalum and aluminum electrolytic capacitors.
14 They are purchased by major electronics companies such as Apple, Dell, Intel, Sony, Canon,
15 Foxconn, Nintendo, and Philips.

16 **B. Conspiracy**

17 The government and grand jury investigation to date has uncovered a cartel among
18 Japanese manufacturers of electrolytic capacitors. The cartel—charged as a 17-year continuing
19 conspiracy—began to function at least as early as September 1997 (the precise date of origin
20 still being unknown to the government) and continued until in or about January 2014. The
21 objectives of the charged conspiracy were to minimize and, where possible, eliminate
22 competition through price fixing and bid rigging.

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C. Grand Jury Investigation

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The grand jury investigation continues.

To date, six companies and ten individuals have been charged. The six companies that have been charged are: NEC TOKIN (CR-15-0426-JD), which was sentenced to pay a \$13.8 million fine; Hitachi Chemical (CR-16-0180-JD), which was sentenced to pay a \$3.8 million fine; Rubycon (CR-16-0367-JD), which was sentenced to pay a \$12 million fine; and Elna (CR-16-0365-JD), Holy Stone (CR-16-0366-JD), and Matsuo (CR-17-00073-JD), all three of which await entry of plea and sentencing. The charges against nine of the individuals are together in a second superseding indictment returned December 14, 2016. *See United States v. Matsuzaka et al*, CR-15-0163-JD. None of the indicted individuals has made an initial appearance. A tenth individual who is an employee of Matsuo was recently charged by Information filed on February 8, 2017. *See United States v. Okubo*, CR-17-00074-JD. That individual, Satoshi Okubo, has entered into a plea agreement with the government. His entry of plea and sentence have yet to be scheduled.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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1 **III. MATSUO**

2 **A. Company Background**

3 Matsuo is a publicly-held corporation headquartered in Osaka, Japan. Matsuo’s primary
4 business—the manufacture and sale of tantalum electrolytic capacitors—accounts for
5 approximately 75-85% of total revenue (the remaining revenue comes from the sale of circuit
6 protective elements, film capacitors, and aluminum capacitors). Matsuo was one of the smallest
7 corporate conspirators; its worldwide market share for tantalum electrolytic capacitors is 3-4%.

8 Matsuo operates three factories and has three sales offices in Japan. Matsuo completed
9 liquidation of its U.S. subsidiary in December 2009 and its European subsidiary in March 1999.
10 Matsuo’s capacitors are primarily sold to be incorporated into automobile components followed
11 by electric measuring instruments. Some of Matsuo’s customers include Denso, Continental
12 AG, Atlantic Components, Integra Components, and Ryosan Technologies. From November
13 2001 through January 2014 (the period during which Matsuo is charged with participating in the
14 conspiracy), Matsuo shipped about \$20 million worth of tantalum electrolytic capacitors to the
15 United States. During that same time period, Matsuo also shipped approximately \$700 million
16 worth of electrolytic capacitors to destinations outside the United States.

17 **B. Role in Conspiracy**

18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
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1 **C. Plea Agreement**

2 The plea agreement between the United States and Matsuo is Exhibit A to the Javandel
3 Declaration. Under the Rule 11(c)(1)(C) plea agreement, Matsuo will plead guilty to
4 participating in the electrolytic capacitors conspiracy from at least as early as November 2001
5 until in or about January 2014. The parties have agreed to jointly recommend a sentence of a
6 \$4.17 million fine, a five-year term of probation, no restitution, and a special assessment of
7 \$400. Matsuo has agreed to cooperate in the ongoing electrolytic capacitors investigation. The
8 United States has agreed that it will not bring further criminal charges against Matsuo; its
9 subsidiaries; current directors, officers, or employees of Matsuo and its subsidiaries; or certain
10 individuals identified in paragraph 1 of Attachment A to the plea agreement. The
11 nonprosecution protections do not apply to individuals identified in paragraph 2 of Attachment
12 A.

13 **IV. LEGAL STANDARDS**

14 A district court should begin all sentencing proceedings by correctly calculating the
15 applicable range under the sentencing guidelines. *Gall v. United States*, 552 U.S. 38, 49–50
16 (2007). While the guidelines are now advisory, the district court must consider them along with
17 the other sentencing factors listed in 18 U.S.C. § 3553(a). *United States v. Booker*, 543 U.S.
18 220, 259–60 (2005). Section 3553(a) directs the court to impose a sentence “sufficient, but not
19 greater than necessary” to comply with the purposes set forth in subparagraph two, that is, the
20 need for the sentence imposed to, among other things, reflect the seriousness of the offense,
21 promote respect for the law, provide just punishment for the offense, and afford adequate
22 deterrence. Section 3553(a) further directs a court to consider additional factors such as the
23 nature and circumstances of the offense, the history and characteristics of the defendant, and the
24 need to avoid unwarranted sentencing disparities.

25 **V. RECOMMENDED SENTENCE**

26 **D. Fine**

27 The sentencing guidelines provide a multistep process for determining the guidelines
28 range and sentence for organizations like the defendant that are not operated primarily for

1 criminal purposes. U.S.S.G. §§8C2.1–2.8. First, the court determines the base fine. *Id.*
2 §8C2.4. Second, it calculates a culpability score, uses that score to determine minimum and
3 maximum multipliers, and applies those multipliers to the base fine to yield a guidelines fine
4 range. *Id.* §§8C2.5–2.7. Third, the court considers the various factors in choosing a guidelines
5 fine within that range. *Id.* §8C2.8. Finally, the court may consider various departures from the
6 guidelines fine range, including departures for substantial assistance to authorities in the
7 investigation or prosecution of coconspirators. *Id.* §8C4.1.

8 **1. Determining the Base Fine**

9 The starting point for determining the base fine is section 8C2.4. It states that the base
10 fine is the greatest of three alternatives. The first alternative is the amount from a table in
11 subsection 8C2.4(d) corresponding to the offense level. U.S.S.G. §8C2.4(a)(1). In Matsuo’s
12 case, that amount is \$250,000¹. The second base-fine alternative is pecuniary gain. *Id.*
13 §8C2.4(a)(2). As explained in the sentencing memorandum filed in *United States v. Hitachi*
14 *Chemical* (CR-16-0180-JD, Dkt. 12, pgs. 9-11), pecuniary gain should not be used in this case
15 because calculating it would unduly complicate and prolong the sentencing process. *Id.*
16 §8C2.4(c). The third base-fine alternative is pecuniary loss. *Id.* §8C2.4(a)(3). But because the
17 antitrust offense guideline in Chapter Two contains a special instruction, 20 percent of the
18 volume of affected commerce should be used instead of pecuniary loss. *Id.* §8C2.4(b);
19 §2R1.1(d)(1). Here, Matsuo’s agreed-upon volume of affected commerce is \$20.3 million.
20 Twenty percent of that is **\$4.06 million**. This number should be used as the base fine because it
21 is the greatest of the three alternatives.

22 The starting point for calculating Matsuo’s volume of affected commerce is the value of
23 all electrolytic capacitors shipped by Matsuo to customers in the United States between
24 November 2001 and January 2014, the period for which Matsuo is charged with participating in

25 ¹ Matsuo’s base offense level is twelve (§2R1.1(a)). To that, a one-level increase is added to
26 reflect bid-rigging conduct (§2R1.1(b)(1)). Then, a four-level increase is added based on the
27 agreed-upon volume of affected commerce of \$20.3 million (§2R1.1(b)(2)(D)). Thus, Matsuo’s
28 combined offense level is seventeen (12 + 1 + 4). For an offense level of seventeen, the offense
level fine table (§8C2.4(d)) gives a base of fine of \$250,000 (per the Guidelines in effect on
November 1, 2014, as directed by §8C2.4(e)(1) of the 2016 Guidelines).

1 the conspiracy. As reflected in Matsuo's transactional sales data, that number is \$20.3 million,
 2 a small percentage of the approximately \$731.41 million in electrolytic capacitor sales Matsuo
 3 made worldwide during the same period.

4 Matsuo's agreed-upon volume of affected commerce does not include every sale
 5 worldwide. Again, the starting point is sales of capacitors shipped to customers in the United
 6 States. While not required under the guidelines or case law, the government has taken an
 7 approach to volume of commerce that is calibrated to reflect the harm and effect in the United
 8 States and is consistent with the approach taken in other Antitrust Division matters. The
 9 government believes this approach achieves a fair and deterrent sentence. A criminal fine is not
 10 the only financial consequence Matsuo will potentially face as a result of its conviction. Matsuo
 11 is a defendant in the parallel civil litigation pending before this Court, where a plea agreement is
 12 *prima facie* evidence of liability, 15 U.S.C. § 16(a). It is also under investigation by various
 13 foreign competition authorities. The Taiwan Fair Trade Commission (TFTC) and the Japan Fair
 14 Trade Commission (JFTC) have already imposed fines of NT \$24.3 million and JPY \$427.65
 15 million, respectively, against Matsuo. Javandel Decl., Exs. B, C (TFTC and JFTC
 16 announcements).

17 2. Calculating the Guidelines Fine

18 After considering the base fine, a court then calculates a fine range by determining a
 19 culpability score and applying minimum and maximum multipliers to the base fine:

20 (a) **Base Fine:** The base fine is 20% of the volume of affected **\$4.06**
 21 commerce of \$20.3 million (§2R1.1(d)(1) and §8C2.4(b)). **million**

22 (b) Culpability Score

23 i. **Base:** Five points are assigned as a starting point for **+5**
 24 calculating the culpability score (§8C2.5(a)).

25 ii. **Involvement in or Tolerance of Criminal Activity:** The **+3**
 26 parties have agreed that the unit of the organization within
 27 which the offense was committed had more than 200
 28 employees but fewer than 1,000 employees and that an
 individual within high-level personnel of the unit
 participated in, condoned, or was willfully ignorant of the
 offense (§8C2.5(b)(3)). The parties agree that a three-level

upward adjustment is warranted.

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| 2 | iii. Prior History: Matsuo does not have any prior history of | 0 |
| 3 | misconduct (§8C2.5(c)). | |
| 4 | iv. Violation of Order: Matsuo has not violated any orders | 0 |
| 5 | (§8C2.5(d)). | |
| 6 | v. Obstruction of Justice: The government is not aware of any | 0 |
| 7 | conduct by Matsuo that impeded or obstructed justice | |
| 8 | (§8C2.5(e)). | |
| 9 | vi. Effective Compliance and Ethics Program: Matsuo did not | 0 |
| 10 | have an effective compliance and ethics program with | |
| 11 | respect to antitrust violations at the time the offense | |
| 12 | occurred. The parties agree that no downward adjustment is | |
| 13 | warranted (§8C2.5(f)). | |
| 14 | vii. Self-Reporting, Cooperation, and Acceptance of | -2 |
| 15 | Responsibility: Matsuo has fully cooperated in the | |
| 16 | investigation and clearly demonstrated recognition and | |
| 17 | affirmative acceptance of responsibility for its criminal | |
| 18 | conduct. The parties agree that a two-point reduction is | |
| 19 | warranted. (§8C2.5(g)(2)). | |
| 20 | (c) Total Culpability Score | 6 |
| 21 | (d) Minimum and Maximum Multipliers: Based on a culpability | 1.2 – 2.4 |
| 22 | score of 6, the minimum multiplier is 1.2 and the maximum | |
| 23 | multiplier is 2.4 (§8C2.6). | |
| 24 | (e) Minimum and Maximum Fine Range: Applying the minimum and | \$4.87– |
| 25 | maximum multipliers to the base fine of \$4.06 million, the fine | \$9.74 |
| 26 | range is between \$4.87 million and \$9.74 million (§8C2.7). | million |

23 The parties have agreed that within the guidelines fine range of \$4.87–\$9.74 million,
 24 before accounting for a substantial assistance downward departure, Matsuo’s fine should be
 25 **\$5.85 million**. Section 8C2.8 lists factors a court should consider when determining the amount
 26 of the fine within the applicable guideline range. Of the listed factors, one is used to adjust
 27 Matsuo’s fine above the \$4.87 million minimum to \$5.85 million. The upward adjustment
 28 (\$974,271 above the \$4.87 million minimum) accounts for the relative timeliness of Matsuo’s

1 cooperation and acceptance of responsibility. While Matsuo has accepted responsibility and
2 cooperated in the investigation, it did not do so as quickly as other cooperating companies. *Id.*
3 §8C2.8(a)(9) (allowing for adjustment within the fine range for “partial but incomplete
4 satisfaction” of any culpability-score provision).

5 **3. Motion for Substantial Assistance Departure**

6 Under guidelines section 8C4.1(a), a court may depart from the guidelines, “[u]pon
7 motion of the government stating that the defendant provided substantial assistance in the
8 investigation or prosecution of another organization that has committed an offense, or in the
9 investigation or prosecution of an individual not directly affiliated with the defendant who has
10 committed an offense.” The size of the departure is determined by such factors as “the
11 significance and usefulness of the organization’s assistance, taking into consideration the
12 government’s evaluation of the assistance rendered,” and the nature, extent, and timeliness of
13 the assistance. *Id.* §8C4.1(b)(1)–(3).

14 Here, Matsuo has provided substantial and valuable cooperation, as described below.
15 The government, therefore, moves for a downward departure under section 8C4.1 to reduce
16 Matsuo’s fine below the \$5.85 million guidelines fine. Taking into account Matsuo’s
17 cooperation, the parties’ agreed-upon recommended fine is **\$4.17 million**, a number below the
18 guidelines range. Given Matsuo’s financial situation, the parties recommend, in the interest of
19 justice, that the fine be paid in six equal installments of \$695,000 over five years, with interest.

20 The government relies heavily on insider cooperation to break up cartels which, by their
21 nature, are secretive. Cooperation from cartel insiders is extraordinarily valuable, and indeed
22 essential, in the investigation and prosecution of price-fixing conspiracies. [REDACTED]

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Matsuo has agreed to provide continuing cooperation. Paragraph 13 of the plea agreement requires the defendant's full, truthful, and continuing cooperation. This paragraph requires the company to, among other things, produce documents with English translations and use its best efforts to secure the cooperation of current and former directors, officers, and employees. These efforts include making individuals available in the United States for interviews and trial testimony, at the company's expense. Failure to provide continuing cooperation is a breach of the plea agreement. Should any disputes arise as to Matsuo's continuing cooperation, the government will be able to bring those disputes to the Court's attention.

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1 **E. Probation**

2 Chapter 8, Part D of the sentencing guidelines addresses corporate probation. The
3 guidelines require probation in a number of situations, which are laid out in section 8D1.1(a).
4 When a sentence of probation is imposed in felony cases such as this one, the term of probation
5 must be at least one year but not more than five years. U.S.S.G. §8D1.2; 18 U.S.C. §
6 3561(c)(1). If a sentence of probation is imposed, some conditions of probation are mandatory,
7 while some are discretionary. *See* U.S.S.G. §§8D1.3, 8D1.4 (recommended conditions for
8 corporate probation); 18 U.S.C. § 3563(a) (mandatory conditions) and 3563(b) (discretionary
9 conditions).

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5 The government does not normally recommend probation under circumstances like these
6 where the defendant has made demonstrable improvements in its compliance program. The
7 parties, nevertheless, jointly recommend a five-year term of probation during which Matsuo will
8 continue to develop and implement an effective corporate compliance program. During its term
9 of probation, Matsuo will submit annual written reports to the Department of Justice Antitrust
10 Division and the Probation Office describing its implementation progress. The term and
11 conditions of probation jointly recommended for Matsuo are identical to what the Court
12 imposed when it sentenced coconspirators Hitachi Chemical and Rubycon. No party
13 recommends a compliance monitor, and none was imposed on Hitachi Chemical or Rubycon.

14 **F. Restitution**

15 The parties have agreed to recommend that restitution not be imposed. Under the
16 Clayton Act, 15 U.S.C. §§ 15, *et seq.*, victims of antitrust offenses may bring civil suits to
17 recover treble damages for antitrust injury. In this case, victims have indeed filed civil suits
18 seeking treble damages. Those cases are pending before this Court. *See In Re: Capacitors*
19 *Antitrust Litigation* (14-CV-03264-JD). Moreover, the Mandatory Victim Restitution Act of
20 1996 does not mandate restitution for Title 15 offenses, such as the one at hand, but only for
21 crimes of violence and certain Title 18 and Title 21 offenses. 18 U.S.C. § 3663A(c)(1)(A).

22 **VI. CRIME VICTIMS**

23 Under the Crime Victims' Rights Act, 18 U.S.C. § 3771, the government will notify
24 crime victims of the date and time of plea and sentencing in this matter. The government will
25 continue to comply with its obligations under the Crime Victims' Rights Act, including
26 notifying crime victims of any public court proceedings in connection with this matter.

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28 //

1 **VII. REQUEST FOR EXPEDITED SENTENCING**

2 Federal Rule of Criminal Procedure 32(c)(1)(A)(ii) permits the Court to impose sentence
3 without the preparation of a presentence report if the Court finds that the information in the
4 record enables it to meaningfully exercise its sentencing authority under 18 U.S.C. § 3553, and
5 the Court explains its finding on the record. *See also* Criminal Local Rule 32-1(b). The
6 government submits that the information contained in this memorandum, the accompanying
7 Javandel Declaration and attached materials, and the plea agreement are sufficient to enable the
8 Court to exercise its sentencing authority meaningfully without a presentence report.

9 **VIII. CONCLUSION**

10 The parties respectfully recommend that the Court sentence Matsuo to pay a \$4.17
11 million criminal fine, no restitution, and a special assessment of \$400 and to serve a five-year
12 term of probation. The parties jointly recommend that the \$4.17 million criminal fine be paid
13 over five years, plus any accrued interest, in six equal installments of \$695,000. The United
14 States requests that the Court grant the government's motion for a downward departure in
15 recognition of Matsuo's substantial assistance, resulting in the recommended fine of \$4.17
16 million, a number that departs downward from the guidelines range. Finally, the parties also
17 request that the plea and sentencing take place on the same date, April 26, 2017, or the earliest
18 date available on the Court's calendar.

19
20 DATED: March 24, 2017

Respectfully submitted,

21
22 /s/ Paradi Javandel
23 PARADI JAVANDEL
24 Trial Attorney
25 U.S. Department of Justice
26 Antitrust Division
27
28