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Attorneys for the United States

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA)

v.)

ELNA CO., LTD.,)

Defendant.)

No. 4:16-cr-00365-JD

VIOLATION: 15 U.S.C. § 1
Price Fixing

PLEA AGREEMENT

The United States of America and Elna Co., Ltd. (“defendant”), a corporation organized and existing under the laws of Japan, hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure (“Fed. R. Crim. P.”):

RIGHTS OF DEFENDANT

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

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

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

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

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

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

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

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

12 2. The defendant knowingly and voluntarily waives the rights set out in
13 subparagraphs 1(b)-(g) above. The defendant also knowingly and voluntarily waives the right to
14 file any appeal, any collateral attack, or any other writ or motion, including but not limited to an
15 appeal under 18 U.S.C. § 3742, that challenges the sentence imposed by the Court if that
16 sentence is consistent with or below the recommended sentence in Paragraph 9 of this Plea
17 Agreement, regardless of how the sentence is determined by the Court. This agreement does not
18 affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b). Nothing
19 in this paragraph, however, will act as a bar to the defendant perfecting any legal remedies it may
20 otherwise have on appeal or collateral attack respecting claims of ineffective assistance of
21 counsel or prosecutorial misconduct. The defendant agrees that there is currently no known
22 evidence of ineffective assistance of counsel or prosecutorial misconduct. Pursuant to Fed. R.
23 Crim. P. 7(b), the defendant will waive indictment and plead guilty to a one-count Information
24 that has been filed in the United States District Court for the Northern District of California. The
25 Information charges the defendant with participating, from at least as early as August 2002 until
26 in or about January 2014, in a conspiracy to suppress and eliminate competition by fixing prices
27 and rigging bids of certain electrolytic capacitors in the United States and elsewhere, in violation
28 of the Sherman Antitrust Act, 15 U.S.C. § 1.

2.

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

4 **FACTUAL BASIS FOR OFFENSE CHARGED**

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

7 (a) For purposes of this Plea Agreement, the “relevant period” is the period
8 beginning at least as early as August 2002 until in or about January 2014. During the
9 relevant period, the defendant was a corporation organized and existing under the laws of
10 Japan. The defendant had its principal place of business in Yokohama, Japan. During
11 the relevant period, the defendant manufactured electrolytic capacitors and was engaged
12 in the sale of such electrolytic capacitors in the United States and elsewhere. Electrolytic
13 capacitors are a major subcategory of capacitors, fundamental components of electrical
14 circuits used primarily to store and regulate electrical current. During the relevant period,
15 anticompetitive conduct of the defendant affected a volume of commerce of \$21.5
16 million in shipments of electrolytic capacitors in to the United States.

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

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

1 more of the conspirator firms sold certain foreign-manufactured electrolytic capacitors
2 outside the United States for incorporation into products that were sold in or for delivery
3 to the United States. During the relevant period, certain electrolytic capacitors sold by
4 one or more of the conspirator firms traveled in interstate commerce.

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

8 **ELEMENTS OF THE OFFENSE**

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

10 (a) the conspiracy described in the Information existed at or about the time
11 alleged;

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

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

19 **POSSIBLE MAXIMUM SENTENCE**

20 6. The defendant understands that the statutory maximum penalty that may be
21 imposed against it upon conviction for a violation of Section One of the Sherman Antitrust Act is
22 a fine in an amount equal to the greatest of:

23 (a) \$100 million (15 U.S.C. § 1);

24 (b) twice the gross pecuniary gain the conspirators derived from the crime (18
25 U.S.C. § 3571(c) and (d)); or

26 (c) twice the gross pecuniary loss caused to the victims of the crime by the
27 conspirators (18 U.S.C. § 3571(c) and (d)).

28 7. In addition, the defendant understands that:

4.

1 (a) pursuant to §8D1.2(a)(1) of the United States Sentencing Guidelines
2 (“U.S.S.G.,” “Sentencing Guidelines,” or “Guidelines”) or 18 U.S.C. § 3561(c)(1), the
3 Court may impose a term of probation of at least one year, but not more than five years;
4 and if the defendant violates any condition of probation, the Court may, pursuant to 18
5 U.S.C. § 3565, (i) continue the defendant on probation, with or without extending the
6 term or modifying or enlarging the conditions or (ii) revoke the sentence of probation and
7 resentence the defendant;

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

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

12 SENTENCING GUIDELINES

13 8. The defendant understands that the Sentencing Guidelines are advisory, not
14 mandatory, but that the Court must consider, in determining and imposing sentence, the
15 Guidelines Manual in effect on the date of sentencing unless that Manual provides for greater
16 punishment than the Manual in effect on the last date that the offense of conviction was
17 committed, in which case the Court must consider the Guidelines Manual in effect on the last
18 date that the offense of conviction was committed. The parties agree there is no *ex post facto*
19 issue under the November 1, 2016 Guidelines Manual. The Court must also consider the other
20 factors set forth in 18 U.S.C. § 3553(a) in determining and imposing sentence. The defendant
21 understands that the Court will make Guidelines determinations by applying a standard of
22 preponderance of the evidence. The defendant understands that although the Court is not
23 ultimately bound to impose a sentence within the applicable Guidelines range, its sentence must
24 be reasonable based upon consideration of all relevant sentencing factors set forth in 18 U.S.C. §
25 3553(a). Pursuant to U.S.S.G. §1B1.8, the United States agrees that self-incriminating
26 information that the defendant provides to the United States pursuant to this Plea Agreement will
27 not be used to increase the volume of affected commerce attributable to the defendant or in
28

1 determining the defendant's applicable Guidelines range, except to the extent provided in
2 U.S.S.G. §1B1.8(b).

3 SENTENCING AGREEMENT

4 9. Pursuant to Fed. R. Crim. P. 11(c)(1)(B) and subject to the full, truthful, and
5 continuing cooperation of the defendant and its related entities, as defined in Paragraph 13 of this
6 Plea Agreement, the United States agrees that it will recommend, as the appropriate disposition
7 of this case, that the Court impose, a sentence requiring the defendant to pay to the United States
8 a criminal fine of \$3.825 million, payable in installments as set forth below, without interest
9 pursuant to 18 U.S.C. § 3612(f)(3)(A), no order of restitution, and a term of probation ("the
10 recommended sentence"). The defendant agrees that it will not present evidence or arguments to
11 the Court in opposition to the sentencing recommendation made to the Court by the United
12 States. The parties agree that there exists no aggravating or mitigating circumstance of a kind, or
13 to a degree, not adequately taken into consideration by the U.S. Sentencing Commission in
14 formulating the Sentencing Guidelines justifying a departure pursuant to U.S.S.G. §5K2.0. The
15 parties agree not to seek at the sentencing hearing any sentence outside of the Guidelines range
16 nor any Guidelines adjustment for any reason that is not set forth in this Plea Agreement. The
17 parties further agree that the recommended sentence set forth in this Plea Agreement is
18 reasonable.

19 (a) The United States agrees that it will recommend, in the interest of justice
20 pursuant to 18 U.S.C. § 3572(d)(1) and U.S.S.G. §8C3.2(b), that the fine be paid in the
21 following installments: within thirty (30) days of imposition of sentence – \$200,000; at
22 the one-year anniversary of the imposition of sentence ("anniversary") – \$200,000; at the
23 two-year anniversary – \$725,000; at the three-year anniversary – \$900,000; at the four-
24 year anniversary – \$900,000; at the five-year anniversary – \$900,000; provided, however,
25 that the defendant will have the option at any time before the five-year anniversary of
26 prepaying the remaining balance then owing on the fine.
27
28

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

4 (c) In light of the availability of civil cases filed against the defendant,
5 including *In Re: Capacitors Antitrust Litigation* (14-CV-03264-JD), filed in the United
6 States District Court, Northern District of California, which potentially provide for a
7 recovery of a multiple of actual damages, the recommended sentence does not include a
8 restitution order for the offense charged in the Information.

9 (d) The United States and the defendant agree to recommend jointly that the
10 Court order a five-year term of probation, with the following conditions: (1) the
11 development of a corporate compliance program consistent with U.S.S.G. § 8B2.1,
12 including antitrust compliance standards and procedures to be followed by all officers,
13 directors, and employees who have any responsibility for the sale or marketing of
14 electrolytic capacitors; (2) the implementation of the corporate compliance program,
15 including: (i) training on a periodic basis concerning the requirements of the antitrust
16 laws and the above standards and procedures; and (ii) periodic communications by high-
17 level personnel reinforcing the defendant's commitment to the corporate compliance
18 program and adherence to the antitrust laws; and (3) the submission of annual written
19 reports by the defendant to the Antitrust Division of the U.S. Department of Justice and
20 the United States Probation Office on the defendant's progress in implementing the
21 corporate compliance program. In addition, pursuant to U.S.S.G. §8D1.3(a), the
22 defendant will not commit another federal, state, or local crime during the term of
23 probation. The development and implementation of the corporate compliance program
24 shall apply to the defendant, its subsidiaries, and any entity in which, after the date of
25 signature of this Plea Agreement, the defendant has a greater than 50% ownership
26 interest. The parties agree that the term and conditions of probation imposed by the
27 Court will not void this Plea Agreement.

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1 fully and truthfully with the United States in the prosecution of this case, the current federal
2 investigation of violations of federal antitrust and related criminal laws involving the
3 manufacture or sale of electrolytic capacitors, any federal investigation resulting therefrom, and
4 any litigation or other proceedings arising or resulting from any such investigation to which the
5 United States is a party (collectively, "Federal Proceeding"). Federal Proceeding includes, but is
6 not limited to, an investigation, prosecution, litigation, or other proceeding regarding obstruction
7 of, the making of a false statement or declaration in, the commission of perjury or subornation of
8 perjury in, the commission of contempt in, or conspiracy to commit such offenses in, a Federal
9 Proceeding. The defendant's subsidiaries for purposes of this Plea Agreement are entities that
10 the defendant had a greater than 50% ownership interest in as of the date of signature of this Plea
11 Agreement. The full, truthful, and continuing cooperation of the defendant and its related
12 entities will include, but not be limited to:

13 (a) producing to the United States all documents, information, and other
14 materials, wherever located, not protected under the attorney-client privilege or the work-
15 product doctrine, (and with translations into English), in the possession, custody, or
16 control of the defendant and its related entities, that are requested by the United States in
17 connection with any Federal Proceeding; and

18 (b) using their best efforts to secure the full, truthful, and continuing
19 cooperation of the current and former directors, officers, and employees of the defendant
20 and its related entities as may be requested by the United States, but excluding the
21 individuals listed in Paragraph 2 of Attachment A. Such efforts will include, but not be
22 limited to, making these persons available in the United States and at other mutually
23 agreed-upon locations, at the defendant's expense, for interviews and the provision of
24 testimony in grand jury, trial, and other judicial proceedings in connection with any
25 Federal Proceeding. Current directors, officers, and employees are defined for purposes
26 of this Plea Agreement as individuals who are directors, officers, or employees of the
27 defendant or any of its related entities as of August 19, 2016.

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1 14. The full, truthful, and continuing cooperation of the current directors, officers,
2 and employees of the defendant and its related entities, and the individuals listed in Paragraph 1
3 of Attachment A, will be subject to the procedures and protections of this paragraph and will
4 include, but not be limited to:

5 (a) producing in the United States and at other mutually agreed-upon
6 locations all documents, including claimed personal documents, and other materials,
7 wherever located, not protected under the attorney-client privilege or the work-product
8 doctrine, (and with translations into English), that are requested by attorneys and agents
9 of the United States in connection with any Federal Proceeding;

10 (b) making himself or herself available for interviews in the United States and
11 at other mutually agreed-upon locations, not at the expense of the United States, upon the
12 request of attorneys and agents of the United States in connection with any Federal
13 Proceeding;

14 (c) responding fully and truthfully to all inquiries of the United States in
15 connection with any Federal Proceeding, without falsely implicating any person or
16 intentionally withholding any information, subject to the penalties of making a false
17 statement or declaration (18 U.S.C. §§ 1001, 1623), obstruction of justice (18 U.S.C. §
18 1503, *et seq.*), or conspiracy to commit such offenses;

19 (d) otherwise voluntarily providing the United States with any material or
20 information not requested in (a) – (c) of this paragraph and not protected under the
21 attorney-client privilege or work-product doctrine that he or she may have that is related
22 to any Federal Proceeding;

23 (e) when called upon to do so by the United States in connection with any
24 Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings in the
25 United States fully, truthfully, and under oath, subject to the penalties of perjury (18
26 U.S.C. § 1621), making a false statement or declaration in grand jury or court
27 proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401-402), and obstruction of
28 justice (18 U.S.C. § 1503, *et seq.*); and

1 (f) agreeing that, if the agreement not to prosecute him or her in this Plea
2 Agreement is rendered void under subparagraph 16(c), the statute of limitations period
3 for any Relevant Offense, as defined in subparagraph 16(a), will be tolled as to him or her
4 for the period between August 19, 2016 and six (6) months after the date that the United
5 States gave notice of its intent to void its obligations to that person under this Plea
6 Agreement.

7 This Paragraph 14 does not apply to the individuals listed in Paragraph 2 of Attachment A,
8 regardless of their employment status, or to any former director, officer, or employee of the
9 defendant or its related entities, except those listed in Paragraph 1 of Attachment A.

10 GOVERNMENT'S AGREEMENT

11 15. Subject to the full, truthful, and continuing cooperation of the defendant and its
12 related entities, as defined in Paragraph 13 of this Plea Agreement, and upon the Court's
13 acceptance of the guilty plea called for by this Plea Agreement and the imposition of sentence,
14 the United States agrees that it will not bring further criminal charges against the defendant or
15 any of its related entities for any act or offense committed before August 19, 2016 that was
16 undertaken in furtherance of an antitrust conspiracy involving the manufacture or sale of
17 electrolytic capacitors. The nonprosecution terms of this paragraph do not apply to (a) any acts
18 of subornation of perjury (18 U.S.C. § 1622), making a false statement (18 U.S.C. § 1001),
19 obstruction of justice (18 U.S.C. § 1503, *et seq.*), contempt (18 U.S.C. §§ 401-402), or
20 conspiracy to commit such offenses; (b) civil matters of any kind; (c) any violation of the federal
21 tax or securities laws or conspiracy to commit such offenses; or (d) any crime of violence.

22 16. The United States agrees to the following:

23 (a) Upon the Court's acceptance of the guilty plea called for by this Plea
24 Agreement and the imposition of sentence and subject to the exceptions noted in
25 subparagraph 16(c), the United States agrees that it will not bring criminal charges
26 against any current director, officer, or employee of the defendant or its related entities,
27 or any individual listed in Paragraph 1 of Attachment A, for any act or offense committed
28 before August 19, 2016 and while that person was acting as a director, officer, or

1 employee of the defendant or its related entities that was undertaken in furtherance of an
2 antitrust conspiracy involving the manufacture or sale of electrolytic capacitors
3 (“Relevant Offense”), except that the protections granted in Paragraph 16 do not apply to
4 the individuals listed in Paragraph 2 of Attachment A, regardless of their employment
5 status, or to any former director, officer, or employee of the defendant or its related
6 entities, except those listed in Paragraph 1 of Attachment A;

7 (b) Should the United States determine that any current director, officer, or
8 employee of the defendant or its related entities, or any individual listed in Paragraph 1 of
9 Attachment A, may have information relevant to any Federal Proceeding, the United
10 States may request that person’s cooperation under the terms of this Plea Agreement by
11 written request delivered to counsel for the individual (with a copy to the undersigned
12 counsel for the defendant) or, if the individual is not known by the United States to be
13 represented, to the undersigned counsel for the defendant;

14 (c) If any person requested to provide cooperation under subparagraph 16(b)
15 fails to comply fully with his or her obligations under Paragraph 14, then the terms of this
16 Plea Agreement as they pertain to that person and the agreement not to prosecute that
17 person granted in this Plea Agreement will be rendered void, and the United States may
18 prosecute such person criminally for any federal crime of which the United States has
19 knowledge, including, but not limited to, any Relevant Offense;

20 (d) Except as provided in subparagraph 16(e), information provided by a
21 person described in subparagraph 16(b) to the United States under the terms of this Plea
22 Agreement pertaining to any Relevant Offense, or any information directly or indirectly
23 derived from that information, may not be used against that person in a criminal case,
24 except in a prosecution for perjury or subornation of perjury (18 U.S.C. §§ 1621-22),
25 making a false statement or declaration (18 U.S.C. §§ 1001, 1623), obstruction of justice
26 (18 U.S.C. § 1503, *et seq.*), contempt (18 U.S.C. §§ 401-402), or conspiracy to commit
27 such offenses;

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1 (e) If any person who provides information to the United States under this
2 Plea Agreement fails to comply fully with his or her obligations under Paragraph 14 of
3 this Plea Agreement, the agreement in subparagraph 16(d) not to use that information or
4 any information directly or indirectly derived from it against that person in a criminal
5 case will be rendered void;

6 (f) The nonprosecution terms of Paragraph 16 do not apply to civil matters of
7 any kind; any violation of the federal tax or securities laws or conspiracy to commit such
8 offenses; any crime of violence; or perjury or subornation of perjury (18 U.S.C. §§ 1621-
9 22), making a false statement or declaration (18 U.S.C. §§ 1001, 1623), obstruction of
10 justice (18 U.S.C. § 1503, *et seq.*), contempt (18 U.S.C. §§ 401-402), or conspiracy to
11 commit such offenses; and

12 (g) Documents provided under subparagraphs 13(a) and 14(a) will be deemed
13 responsive to outstanding grand jury subpoenas issued to the defendant or any of its
14 related entities.

15 17. The United States agrees that when any person travels to the United States for
16 interviews, grand jury appearances, or court appearances pursuant to this Plea Agreement, or for
17 meetings with counsel in preparation therefor, the United States will take no action, based upon
18 any Relevant Offense, to subject such person to arrest, detention, or service of process, or to
19 prevent such person from departing the United States. This paragraph does not apply to an
20 individual's commission of perjury or subornation of perjury (18 U.S.C. §§ 1621-22), making a
21 false statement or declaration (18 U.S.C. §§ 1001, 1623), obstruction of justice (18 U.S.C. §
22 1503, *et seq.*), contempt (18 U.S.C. §§ 401-402), or conspiracy to commit such offenses.

23 18. The defendant understands that it may be subject to suspension or debarment
24 action by state or federal agencies other than the United States Department of Justice, Antitrust
25 Division, based upon the conviction resulting from this Plea Agreement, and that this Plea
26 Agreement in no way controls what action, if any, other agencies may take. However, the
27 Antitrust Division agrees that, if requested, it will advise the appropriate officials of any
28 governmental agency considering such action of the fact, manner, and extent of the cooperation

1 of the defendant and its related entities as a matter for that agency to consider before determining
2 what action, if any, to take. The defendant nevertheless affirms that it wants to plead guilty
3 regardless of any suspension or debarment consequences of its plea.

4 **REPRESENTATION BY COUNSEL**

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

9 **VOLUNTARY PLEA**

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

16 **VIOLATION OF PLEA AGREEMENT**

17 21. The defendant agrees that, should the United States determine in good faith,
18 during the period that any Federal Proceeding is pending, that the defendant or any of its related
19 entities have failed to provide full, truthful, and continuing cooperation, as defined in
20 Paragraph 13 of this Plea Agreement, or have otherwise violated any provision of this Plea
21 Agreement, except for the conditions of probation, violations of which are subject to 18 U.S.C. §
22 3565, the United States will notify counsel for the defendant in writing by personal or overnight
23 delivery, email, or facsimile transmission and may also notify counsel by telephone of its
24 intention to void any of its obligations under this Plea Agreement (except its obligations under
25 this paragraph), and the defendant and its related entities will be subject to prosecution for any
26 federal crime of which the United States has knowledge, including, but not limited to, the
27 substantive offenses relating to the investigation resulting in this Plea Agreement. The defendant
28 may seek Court review of any determination made by the United States under this paragraph to

1 void any of its obligations under this Plea Agreement. The defendant agrees that, in the event
2 that the United States is released from its obligations under this Plea Agreement and brings
3 criminal charges against the defendant or its related entities for any offense referred to in
4 Paragraph 15 of this Plea Agreement, the statute of limitations period for such offense will be
5 tolled for the period between August 19, 2016 and six (6) months after the date the United States
6 gave notice of its intent to void its obligations under this Plea Agreement.

7 22. The defendant understands and agrees that in any further prosecution of it or its
8 related entities resulting from the release of the United States from its obligations under this Plea
9 Agreement because of the defendant's or any of its related entities' violation of this Plea
10 Agreement, any documents, statements, information, testimony, or evidence provided by it, its
11 related entities, or their current or former directors, officers, or employees, to attorneys or agents
12 of the United States, federal grand juries, or courts, and any leads derived therefrom, may be
13 used against it or its related entities. In addition, the defendant unconditionally waives its right
14 to challenge the use of such evidence in any such further prosecution, notwithstanding the
15 protections of Fed. R. Evid. 410.

16 **ENTIRETY OF AGREEMENT**

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

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

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

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28 ///

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

4 Respectfully submitted,

5
6
7 BY: K. Murata
8 KENICHIRO MURATA
9 Director and Senior Executive Officer,
10 and General Manager,
11 Corporate Planning Division
12 Representative of Elna Co., Ltd.

BY: Howard J. Parker
JACKLIN CHOU LEM
HOWARD J. PARKER
Trial Attorneys
U.S. Department of Justice
Antitrust Division

13
14
15 Dated: September 28, 2017

Dated: 10/10/2017

16 BY: Heather T. TeWKsbury
17 THOMAS MUELLER
18 HEATHER TEWKSBURY
19 Wilmer Cutler Pickering Hale and Dorr
20 Counsel for Elna Co., Ltd.

21
22
23 Dated: 9/28/17

Case P. 10/12/17

10/12/17

10/12/17

10/12/17

10/12/17

10/12/17

1 Paragraphs 1 and 2 below are referenced in Paragraphs 13(b), 14, and 16(a)-(b) of the
2 Plea Agreement between the United States of America and Elna Co., Ltd. ("the defendant"),
3 signed by the United States on October 10, 2017. As part of that plea agreement, the
4 United States and the defendant agree to the lists of names of certain individuals that are set forth
5 below in Paragraphs 1 and 2.

- 6 1. [No names.]
- 7 2. Satoshi Ohkubo, Tokuo Tatai.

8
9 Respectfully submitted,

10
11
12 BY: K. Murata
13 KENICHIRO MURATA
14 Director and Senior Executive Officer,
15 and General Manager,
16 Corporate Planning Division
17 Representative of Elna Co., Ltd.

12 BY: Howard J. Parker
13 JACKLIN CHOI LEM
14 HOWARD J. PARKER
15 Trial Attorneys
16 U.S. Department of Justice
17 Antitrust Division

18 Dated: September 28, 2017

18 Dated: 10/10/2017

19
20
21 BY: Thomas Mueller
22 THOMAS MUELLER
23 HEATHER TEWKSBURY
24 Wilmer Cutler Pickering Hale and Dorr
25 Counsel for Elna Co., Ltd.

26 Dated: 9/29/17

at the time of the...
...
October 10, 2017

George F. Brown

Mr. [Name]

10/10/2017

September 28, 2017

[Signature]

10/10/17

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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION
16

17 UNITED STATES OF AMERICA) No. 4:16-cr-00365-JD
18)
19 v.)
20) VIOLATION: 15 U.S.C. § 1
21 ELNA CO., LTD.,) Price Fixing
22)
23 Defendant.)
24) ATTACHMENT A TO PLEA
25) AGREEMENT
26)
27)
28)

**RESOLUTIONS OF THE BOARD OF DIRECTORS RELATING TO
PLEA AGREEMENT WITH U.S. DEPARTMENT OF JUSTICE**

The following resolutions were approved by the Board of Directors (the “Board”) of ELNA Co. Ltd., a Japanese corporation (the “Corporation”) on September 28, 2017:

WHEREAS, on March 27, 2014, Elna America, Inc., an Indiana corporation and wholly-owned subsidiary of the Corporation (“Elna America”), received a grand jury subpoena from the Antitrust Division of the United States Department of Justice (“DOJ”) requesting documents and information as part of an investigation into possible anticompetitive behavior among suppliers to the capacitor industry (the “Investigation”);

WHEREAS, the Corporation has been cooperating with the DOJ in its Investigation since March 2014;

WHEREAS, the Corporation previously entered into plea agreements with the United States of America on August 19, 2016 and April 13, 2017, pursuant to which the Corporation agreed to waive indictment, plead guilty to the charges set forth in the plea agreement and the criminal information to be filed therewith, and pay the amount of the criminal fine specified (\$4 million and \$3.825 million, respectively) in exchange for the DOJ’s agreement, as set forth in the plea agreement, to bring no further criminal charges against the Corporation, its subsidiaries or their respective officers, directors and employees (other than those individuals expressly excluded from the plea agreement);

WHEREAS, the Northern District of California District Court (the “Court”) refused to accept the latter plea agreement on June 14, 2017, and again on September 13, 2017;

WHEREAS, the DOJ has proposed that the Corporation enter into an updated plea agreement with the United States of America, pursuant to which the Corporation would agree substantially the same terms as the second plea agreement with the following exceptions:

- that the criminal fine specified (\$3.825 million) in this third plea agreement is the joint recommendation of DOJ and the Corporation and is not binding on the Court; and
- the volume of commerce, which is the basis for calculating the advisory United States Sentencing Guidelines fine range, was further investigated by DOJ, discussed with the Corporation, and subsequently reduced from \$52 million to \$21.5 million;

WHEREAS, Mr. Kenichiro Murata, Director, Senior Executive Officer, and General Manager, Corporate Planning Division of the Corporation, presented the Board with the terms contained in the updated plea agreement, including the following material terms (the “Settlement Terms”):

- the entry of a guilty plea by the Corporation to each of the counts charged in the criminal information;
- the payment by the Corporation of a criminal fine and up to \$400 in special assessments to the United States pursuant to the sentence imposed by the Court in its discretion; and

- the use of the best efforts of the Corporation in securing the full, truthful and continuing cooperation of employees of the Corporation and its subsidiaries as requested by the DOJ, with the exception of those employees that are excluded from the non-prosecution protections of the plea agreement.

WHEREAS, the Board has determined that it is advisable and in the best interests of the Corporation and its stockholders to reach a final and certain resolution regarding the DOJ's Investigation by entering into a plea agreement substantially on the Settlement Terms;

NOW, THEREFORE, BE IT RESOLVED, that the Board approves the final form of plea agreement attached hereto as Exhibit A, and authorizes and directs the Corporation to enter into the final form of plea agreement attached hereto as Exhibit A; and

FURTHER RESOLVED, that the Board authorizes Kenichiro Murata, Senior Executive Officer and General Manager, Corporate Planning Division of the Corporation, acting individually, to do the following on behalf of the Corporation: (i) execute the final form of plea agreement attached hereto as Exhibit A, (ii) enter a guilty plea to each of the counts charged in the criminal information to be filed by the DOJ pursuant to the final form of plea agreement attached hereto as Exhibit A, and (iii) admit and allocute with respect to the conduct charged therein.

I, Kenichiro Murata, Director, Senior Executive Officer, and General Manager, Corporate Planning Division of the Corporation, certify that the resolutions set out above are the resolutions that were passed by the Board of the Corporation at a board meeting duly held on September 28, 2017.

BY: *K. Murata*
KENICHIRO MURATA
Director, Senior Executive Officer, and
General Manager, Corporate Planning Division
Elna Co., Ltd.

Dated: *September 28, 2017*