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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: CAPACITORS ANTITRUST LITIGATION

Master Docket No.: 3:17-md-2801-JD
Case No.: 3:14-cv-3264-JD

THIS DOCUMENT RELATES TO:
ALL DIRECT PURCHASER ACTIONS

**DECLARATION OF EUGENE
KRZYWINSKI ON BEHALF OF eIQ
ENERGY, INC.**

I, Eugene Krzywinski, hereby declare as follows:

1. My name is Eugene Krzywinski. I am the President and Chief Executive Officer at eIQ Energy, Inc. (“eIQ”), and I am one of the class representatives in this case. I testified at the trial in March of 2020, and again at the trial in December 2021. I submit this Declaration in support of the Direct Purchaser Class’s Motion for Attorney Fees and Reimbursement of Expenses. If asked to testify, I could competently testify to the facts set forth in this Declaration. I make this declaration pursuant to 28 U.S.C. § 1746.

2. I founded eIQ in 2007 with other experts in power electronics, power semiconductors and power conversion architectures. Our mission was to provide power conversion technologies to the renewable energy world. Our main office is located at 294 Brokaw Rd, Santa Clara, California, where we currently have approximately 5 employees.

3. On August 1, 2014, we filed a class action lawsuit in the District of New Jersey against capacitor manufacturers alleging a conspiracy to fix, maintain and stabilize prices for film, tantalum

1 and aluminum capacitors. We subsequently refiled our complaint in the Northern District of California
2 on September 11, 2014 where other actions were pending against the same capacitor manufacturers.
3 We filed our lawsuit despite our concern that participating in the litigation could impair our ongoing
4 and potential future business operations. Nonetheless, we believed that enforcing the antitrust laws is
5 important and we decided to take the risk and pursue the litigation in order to hold the defendants to
6 account for their unlawful actions.

7 4. Following the filing of our initial complaints, our company agreed to be a class
8 representative in the subsequent Consolidated Class Complaints (a consolidated class action complaint
9 was filed December 4, 2014 and a second amended consolidated class action complaint was filed July
10 22, 2015).

11 5. Because eIQ is a relatively small company, the obligation to respond to our lawyer’s
12 questions and to assemble information and documents for litigation principally fell upon myself and
13 eIQ’s former CEO Michael Lamb, though it also included some input from other eIQ employees. Both
14 Michael Lamb and I had diverse responsibilities and were usually very busy dealing with the regular
15 crises” associated with operating a small high-tech start-up company. Therefore, the time spent
16 obtaining information to prosecute this case often pulled us away from regular work responsibilities.
17 We often had to juggle these tasks as best we could to meet our responsibilities as a class representative
18 and to our business commitments which were typically time-sensitive. After Mr. Lamb left eIQ in
19 2016, the responsibility for providing information and assistance to counsel fell almost exclusively on
20 me.

21 6. The following persons assisted in providing information for this lawsuit:

<u>Name</u>	<u>Title at Time</u>
Eugene Krzywinski	Chief Technical Officer / Chief Executive Officer
Michael Lamb	Chief Executive Officer
James Allen	Engineer
William Reed	Engineer

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23
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25 7. Specific Litigation Tasks. The following summarizes the various tasks we performed to
26 assist counsel in the prosecution of this lawsuit and an estimate of the number of hours devoted to each
27 task. Throughout this litigation contact was maintained by me, with the assistance of several other
28 employees and/or executives of eIQ, in order to monitor the case, provide input, comply with discovery

1 obligations, and fulfill various other duties on behalf of the Class, including consultations with counsel
2 about technical issues related to capacitor applications and consultations related to the settlements in
3 this case. The time spent working on this case as detailed below is time that otherwise would have been
4 spent by our executives and employees in connection with their regular job responsibilities.

5 (a) Fact Gathering. Throughout the litigation but during the early stages in particular, we assisted
6 our attorneys in gathering information about the capacitor industry, focusing at the outset on application
7 issues such as interchangeability and substitutability. We gathered documents to assist counsel and
8 conferred with them to provide them with sufficient information to file our lawsuit and to further prepare the
9 case. It is estimated that we spent approximately 32 hours on these types of tasks.

10 (b) Formal Discovery – Collecting and Producing Paper and Electronic Documents. As a
11 class representative we were required to archive and later gather and produce large volumes of paper
12 documents and electronic information and data reflecting our business operations, including our
13 purchases and use of capacitors. In order to respond to the Defendants’ discovery requests we
14 performed the following tasks (with estimated time for each task): we collected for production 11
15 banker’s boxes of hard-copy documents (6 hours), we located and searched over 50.2 mb of e-mail files
16 for 6 “key” custodians (24 hours); we retrieved from storage the physical work station computers used
17 by 5 key custodians and searched local hard-drives to extract relevant documents (24 hours); and we
18 worked to retrieve and restore over 300 gb of electronically stored business records for 10 agreed-on
19 key custodians that were archived on a “Barracuda” network backup drive that had been
20 decommissioned and required computer forensic analysis (20 hours). In total we estimate that these
21 tasks took approximately 74 hours.

22 (c) Responding to Formal Discovery. We also reviewed written responses to defendants’
23 discovery demands, some of which was prepared by reference to the documents we provided,
24 including: discovery demands served by Nippon Chemi-Con on or about February 13, 2015
25 (interrogatories, requests for production of documents and requests for admission); Defendants’ first set
26 of Interrogatories (served April, 2015); Defendants’ second set of Interrogatories (served June 3, 2015);
27 Defendants third set of Interrogatories (served February 1, 2018) and Defendants’ first set of Requests
28

1 for Admission (served February 1, 2018). We estimate that our time reviewing the written responses on
2 behalf of eIQ took approximately 8 hours.

3 (d) Responding to NCC’s Rule 12(b)(2) Motion to Dismiss. In connection with NCC’s Rule
4 12(b)(2) motion, we located shipping materials related to our purchases of capacitors directly from NCC,
5 including purchase records that indicated that NCC shipped products directly from its Japan offices to our
6 California offices. Michael Lamb, our CEO at the time, prepared a declaration that was filed in conjunction
7 with Class Counsel’s opposition to NCC’s Rule 12(b)(2) motion. We estimate that eIQ spent approximately
8 10 hours on issues related to the NCC Rule 12(b)(2) motion, including our time retrieving documents, our
9 time consulting with our attorneys, and our time preparing a declaration that accompanied Class Counsel’s
10 response to NCC’s Rule 12(b)(2) motion.

11 (e) Rule 30(b)(6) Deposition. I served as our company designee and appeared for a Rule
12 30(b)(6) deposition. The topics for which I was required to prepare and provide testimony were quite
13 extensive. These were the topics set forth in the deposition notice served on behalf of all named
14 defendants:

- 15 (1) YOUR proposed, attempted, AND actual purchases of ANY CAPACITORS from ANY
16 entity, including, but not limited to, the dates, quantities, types, manufacturers,
17 specifications, technical requirements, product characteristics, price quotes, actual
18 prices, AND terms AND conditions of those CAPACITOR purchases, AND the details
19 of negotiations of those purchases, including ANY discounts, rebates, OR price
20 reductions, that serve as the basis for YOUR allegations in the COMPLAINTS that
21 YOU are a “direct” purchaser of CAPACITORS.
- 22 (2) YOUR perception, knowledge, AND/OR monitoring of the supply, demand, market
23 conditions, pricing, AND discounting of CAPACITORS, including YOUR budgets,
24 forecasts, OR strategies with respect to YOUR purchases of ANY CAPACITORS.
- 25 (3) YOUR sales of ANY CAPACITORS, including YOUR customers OR potential
26 customers, the prices at AND time periods during which YOU sold such
27 CAPACITORS, AND the manner in which YOU established pricing for YOUR sales of
28 such CAPACITORS.
- 29 (4) ALL facts that YOU contend support YOUR allegations in the COMPLAINTS that the
30 alleged unlawful conspiracy:
 - 31 a. Resulted in the setting of prices of CAPACITORS OR the allocation of
32 customers with respect to Original Equipment Manufacturer (“OEM”), Contract
33 Manufacturer (“CM”), AND/OR non-OEM AND non-CM sales of
34 CAPACITORS;

- b. Restricted the output OR restrained the capacity of CAPACITORS sold in the United States;
- c. Affected the CAPACITORS' industry outside the context of OEM procurement events OR CM procurement events for CAPACITORS;
- d. Existed over at least the CLASS PERIOD;
- e. Harmed others in the putative CLASS; AND
- f. Was fraudulently concealed from YOU, including the identification, description, date, location, source, AND persons involved in ALL statements that YOU read, heard, OR otherwise became aware of upon which YOU base this contention.

(5) The specific injury that YOU allege YOU suffered because of the unlawful conspiracy alleged in the COMPLAINTS AND ALL damages YOU allege that YOU suffered as a result thereof, the amount of damages, how the damages were calculated, AND ALL facts that YOU contend support the damages that YOU are claiming.

(6) YOUR COMMUNICATIONS with ANY manufacturer, marketer, retailer, OR distributor of CAPACITORS concerning ANY CAPACITORS, including, but not limited to, COMMUNICATIONS regarding actual OR proposed purchases of CAPACITORS, including pricing, rebates, discounts, OR other terms offered by competing manufacturers, marketers, retailers AND/OR distributors.

(7) YOUR corporate structure AND/OR organization, including, but not limited to, ALL departments OR other sub-units, divisions, parents, subsidiaries, affiliates, AND joint ventures, AND the identity of ALL of YOUR personnel involved in the purchase, sale, AND/OR use of CAPACITORS from ANY entity.

(8) The location AND manner in which YOU maintain, retain, AND destroy YOUR DOCUMENTS relevant to this litigation, including

- g. YOUR records of proposed, attempted, AND actual purchases of ANY CAPACITORS from ANY entity AND/OR sales of ANY CAPACITORS to ANY entity;
- h. YOUR knowledge of the source, location, AND custody of ANY information relevant to the allegations set forth in the COMPLAINTS, AND YOUR efforts to collect, maintain, AND preserve such information; AND
- i. The source, location, AND custody of DOCUMENTS requested by DEFENDANTS in this litigation, including, without limitation, DOCUMENTS in paper OR electronic form.

(9) YOUR responses to ANY interrogatories served by DEFENDANTS, the identity of ALL PERSONS who provided information contained in YOUR responses, AND ANY information that may relate to those interrogatories AND/OR YOUR responses;

- 1 j. YOUR responses to ANY interrogatories served by DEFENDANTS, the identity of
2 ALL PERSONS who provided information contained in YOUR responses, AND
3 ANY information that may relate to those interrogatories AND/OR YOUR
4 responses;
- 5 k. The circumstances that led YOU to participate in this lawsuit, including ANY AND
6 ALL efforts YOU have made to investigate YOUR allegations AND claims;
- 7 l. The relationship between YOU AND Direct Purchaser Plaintiffs' counsel, including
8 the circumstances AND substance of ANY COMMUNICATIONS between YOU
9 AND Direct Purchaser Plaintiffs' counsel before their engagement as counsel, AND
10 ANY AND ALL agreements YOU have with Direct Purchaser Plaintiffs' counsel;
11 AND
- 12 m. YOUR duties AND responsibilities as a named Direct Purchaser Plaintiff in this
13 lawsuit AND ANY prior experience as a class representative AND/OR a plaintiff in
14 other litigations, AND YOUR knowledge of other members of the putative CLASS.
- 15 (10) YOUR knowledge of the subjects identified in the above SUBJECT AREAS at the
16 time YOU became involved in this lawsuit, AND the identity of ALL PERSONS with
17 knowledge of the subjects identified in the above SUBJECT AREAS.

18 In addition to the above topics, defendant NCC served a separate Rule 30(b)(6) notice that
19 included the following topics:

- 20 (1) Your purchases of Large Can Capacitors in the United States.
- 21 (2) Your suppliers of Large Can Capacitors in the United States.
- 22 (3) Your end use of Large Can Capacitors in the United States.
- 23 (4) Your sale of Large Can Capacitors in the United States.
- 24 (5) Your knowledge or understanding of pricing practices for Large Can Capacitors sold in the
25 United States.
- 26 (6) Your damages alleged in the Operative Complaint as a result of your purchase of Large Can
27 Capacitors in the United States.
- 28 (7) Your knowledge or understanding of supply, demand, market conditions, market reports,
and financial reports for Large Can Capacitors.
- (8) Your Employees responsible for purchasing or selling Large Can Capacitors in the United
States.

1 Because of the numerous deposition topics, preparation for the deposition was very time
2 consuming and required the collection of information from several employees within the company and the
3 review of company records in order to be adequately prepared to answer deposition questions. Prior to the
4 deposition, I received and reviewed over 2,500 pages of documents. I had several telephone conversations
5 with counsel and I and other employees met with counsel to prepare for the deposition. Following the
6 deposition, we took time to review the testimony to ensure its accuracy. In total, about 40 hours was spent
7 on preparing for and testifying at deposition, including the work of William Reed, Jim Allen and Michael
8 Lamb who helped me gather and review relevant information and who also attended part of the pre-
9 deposition preparation session with counsel.

10 f. Deposition of Michael Lamb. In addition to my deposition as the eIQ Rule 30(b)(6)
11 representative, Defendants also took the deposition of Michael Lamb, eIQ's former CEO. In order to
12 prepare for his deposition, Mr. Lamb met with counsel and reviewed approximately 1,000 pages of
13 documents. Following his deposition, we took the time to review the testimony to ensure its accuracy. In
14 total Mr. Lamb spent approximately 10 hours preparing for and testifying at deposition, and approximately 3
15 hours were spent by Mr. Lamb and me reviewing the testimony to ensure its accuracy.

16 g. Trial testimony. Although I was concerned about the COVID-19 pandemic, I agreed to
17 testify on behalf of the Class at the first jury trial which began in March 2020 before that trial was
18 ultimately suspended due to the pandemic. I decided to testify because I believed it was important to present
19 my testimony to the jury and to ensure that the antitrust laws are enforced. In advance of the March 2020
20 trial, I had several telephone calls with counsel and met with counsel for two days. In order to assist with
21 the presentation, I located business records, including a business card I had on file for an NCC sales
22 executive which was introduced at trial as Trial Exhibit 1. I also located and provided an exemplar of eIQ's
23 VBoost unit that incorporates a film capacitor and that was used as a demonstrative exhibit at trial. I
24 estimate that I spent approximately 26 hours preparing for my February 2020 trial testimony. I attended the
25 first two days of trial, including the opening statements, and I was called to testify on March 4, 2020. I
26 estimate that I spent approximately 30 hours attending and testifying at the March 2020 trial. My trial
27 testimony from the March 2020 trial is attached to this Declaration as Exhibit A.
28

1 8. Although I still was concerned about the COVID-19 pandemic, I was subsequently
2 asked to and agreed to testify at the November 2021 trial. I agreed to do so because I believed more
3 than ever that it is important that the antitrust laws are enforced. I met with counsel remotely twice to
4 prepare for my testimony, and I met with counsel for one full day to further prepare for my testimony. I
5 estimate I spent approximately 16 hours preparing for my November 2021 trial testimony. I attended
6 the first day of trial, including opening statements, and I testified on November 30, 2021, which was
7 the second day of the trial. I estimate that I spent approximately 20 hours attending and testifying at the
8 November-December 2021 trial. My testimony in the November 2021 trial is attached to this
9 declaration as Exhibit B.

10 9. To date, eIQ has received \$1,711.23 from prior settlements as a direct purchaser based
11 on claim forms it submitted to the Claims Administrator. I committed the significant time and effort
12 necessary to serve as a class representative, despite the fact that eIQ's capacitor purchasers were
13 comparatively small, because I believe in the importance of free and fair competition and because too
14 often companies get away with anticompetitive practices when their customers consider it too
15 inconvenient to fight back. I felt that holding these companies to account for the harm they caused eIQ
16 and others was the right thing to do

17 10. I am proud of what I and eIQ have done in this case. I and eIQ were not informed of the
18 amount class counsel would request for us on our behalf until the Class's Motion for Preliminary
19 Approval. In light of our extensive efforts which have significantly benefited the Class, including
20 testifying twice at trial despite the COVID-19 pandemic, we respectfully suggest that a Service Award
21 in the amount of Class Counsel's request would be fair.

22 I declare under penalty of perjury that the foregoing is true and correct. Executed on June 15th,
23 2022.

24
25
26 By:


Eugene Krzywinski