

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) THURSDAY , THE 28<sup>th</sup> DAY  
MR. JUSTICE RAIKES ) OF SEPTEMBER, 2023

B E T W E E N :



CYGNUS ELECTRONICS CORPORATION and SEAN ALLOTT

Plaintiffs

- and -

PANASONIC CORPORATION; PANASONIC CORPORATION OF NORTH AMERICA;  
PANASONIC CANADA INC.; SANYO ELECTRIC CO., LTD.; 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.; HITACHI CANADA; 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.; SAMSUNG ELECTRO-MECHANICS; SAMSUNG ELECTRO-MECHANICS  
AMERICA INC.; SAMSUNG ELECTRONICS CANADA INC.; ROHM CO., LTD.; ROHM  
SEMICONDUCTOR U.S.A., LLC.; HITACHI AIC INC.; HITACHI CHEMICAL ELECTRONICS  
CO., LTD.; FPCAP ELECTRONICS (SUZHOU) CO., LTD.; FUJITSU LTD.; FUJITSU CANADA,  
INC.; HOLY STONE ENTERPRISE CO., LTD.; VISHAY POLYTECH CO., LTD. f/k/a  
HOLYSTONE POLYTECH CO., LTD.; MILESTONE GLOBAL TECHNOLOGY, INC. d/b/a  
HOLYSTONE INTERNATIONAL; and HOLY STONE HOLDINGS CO., LTD.

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*, S.O. 1992, C. 6

**ORDER  
(Settlement Approval - Fujitsu)**

**THIS MOTION** made by the Plaintiffs for an Order approving the settlement agreement entered into with Fujitsu Ltd. and Fujitsu Canada, Inc. (the "Settling Defendants") and dismissing this action as against the Settling Defendants, was heard this day at the Court House, 80 Dundas Street, London, Ontario.

**AND ON READING** the materials filed, including the settlement agreement dated December 15, 2022 attached to this Order as Schedule "A" (the "Settlement Agreement"), and on

hearing the submissions of counsel for the Plaintiffs, Counsel for the Settling Defendants and counsel for the Non-Settling Defendants in the Ontario Electrolytic Action;

**AND ON BEING ADVISED** that the deadline for objecting to the Settlement Agreement has passed and there have been no objections to the Settlement Agreement;

**AND ON BEING ADVISED** that the deadline for opting-out of the Ontario Electrolytic Action has passed, and two opt-outs were received;

**AND ON BEING ADVISED** that the Plaintiffs and the Settling Defendants consent to this Order and that the Non-Settling Defendants take no position on this motion:

1. **THIS COURT ORDERS** that, for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that, in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Ontario Settlement Class.
4. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to section 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.
5. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each member of the Ontario Settlement Class including those Persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of the Ontario Electrolytic Action.

6. **THIS COURT ORDERS** that each Ontario Settlement Class Member who has not validly opted-out of this action shall be deemed to have consented to the dismissal of Released Claims as against the Settling Defendants and its Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice.
7. **THIS COURT ORDERS** that each Other Action commenced in Ontario by any Ontario Settlement Class Member who has not validly opted-out of this action shall be and is hereby dismissed in respect of Released Claims against the Settling Defendants and the Releasees, without costs and with prejudice.
8. **THIS COURT ORDERS** that, upon the Effective Date, subject to paragraphs 10 and 11, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
9. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor who has not validly opted-out of this action, as well as Class Counsel, shall not now or hereafter institute, continue, provide assistance for or maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claim, except for the continuation of the Proceedings against the Non-Settling Defendants or unnamed co-conspirators that are not Releasees or, if the Proceedings are not certified or authorized, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendants or unnamed co-conspirator that is not a Releasee.
10. **THIS COURT ORDERS** that the use of the terms “Releasors” and “Released Claims” in this Order does not constitute a release of claims by those members of the Ontario

Settlement Class who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.

11. **THIS COURT ORDERS** that, upon the Effective Date, each member of the Ontario Settlement Class who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way or to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.
12. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted, unasserted, or asserted in a representative capacity, inclusive of interest, taxes and costs relating to the Released Claims, which were or could have been brought in the Proceedings or otherwise, or could in the future be brought on the basis of the same events, actions and omissions underlying the Proceedings, by any Non-Settling Defendants, any named or unnamed alleged co-conspirator that is not a Releasee, any Settled Defendant, or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Defendants, any named or unnamed alleged co-conspirator that is not a Releasee, any Settled Defendant, or any other Person or party, are barred, prohibited and enjoined in accordance with the terms of this paragraph 10 (unless such claim is made in respect of a claim by a Person who has validly opted out of the Proceedings);
13. **THIS COURT ORDERS** that if this Court ultimately determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise:
  - a. the Ontario Electrolytic Plaintiffs and Ontario Settlement Class members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or

unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;

- b. the Ontario Electrolytic Plaintiffs and Ontario Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee, to include, and shall only seek to recover from the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee, only such claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigation costs claimed pursuant to section 36 of the *Competition Act*), attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee, to the Ontario Electrolytic Plaintiffs and Ontario Settlement Class members, if any, and, for greater certainty, the Ontario Settlement Class members shall be entitled to seek to recover such damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigation costs claimed pursuant to section 36 of the *Competition Act*) on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee, if permitted by law; and

- c. this Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Ontario Electrolytic Action, whether or not the Settling Defendants remain in the Ontario Electrolytic Action or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Ontario Electrolytic Action and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in the Ontario Electrolytic Action and shall not be binding on the Releasees in any other proceeding.
14. **THIS COURT ORDERS** that nothing in this Order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigation costs claimed pursuant to section 36 of the *Competition Act*) or judgment against them in favour of members of the Ontario Settlement Class in the Ontario Electrolytic Action or the rights of Ontario Electrolytic Plaintiffs and Ontario Settlement Class Members to oppose or resist any such arguments, except as provided for in this Order.
15. **THIS COURT ORDERS** that a Non-Settling Defendant may, on motion to this Court determined as if the Settling Defendants remained party to this action, brought on at least ten (10) days' notice to Counsel for the Settling Defendants and not to be brought until the Ontario Electrolytic Action against the Non-Settling Defendants has been certified as a class proceeding (but not including any certification for settlement purposes), seek orders for the following:
  - a. documentary discovery and affidavit(s) of documents from the Settling Defendants in accordance with the *Rules of Civil Procedure*;

- b. oral discovery of representative(s) of the Settling Defendants, the transcript(s) of which may be read in at trial;
  - c. leave to serve request(s) to admit on the Settling Defendants in respect of factual matters; and/or
  - d. the production of representative(s) of the Settling Defendants to testify at trial, with such witness(es) to be subject to cross-examination by counsel for the Non-Settling Defendants.
16. **THIS COURT ORDERS** that the Settling Defendants retains all rights to oppose such motion(s) brought under paragraph 15. Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of Documents to be produced and/or for information obtained from discovery in accordance with paragraph 15. Notwithstanding any provision in this order, on any motion brought pursuant to paragraph 15, this Court may make such orders as to costs and other terms as it considers appropriate.
17. **THIS COURT ORDERS** that a Non-Settling Defendant may serve the motion(s) referred to in paragraph 15 above on the Settling Defendants by service on Counsel for the Settling Defendants in the Ontario Electrolytic Action.
18. **THIS COURT ORDERS** that for purposes of implementation, administration, interpretation and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Settling Defendants acknowledge and attorn to the jurisdiction of this Court solely for the purpose of implementing, administering, interpreting and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.

19. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any Releasors has or may have against the Non-Settling Defendants or named or unnamed alleged co-conspirators who are not Releasees.
20. **THIS COURT ORDERS** that no Releasee shall have any responsibility for and no liability whatsoever relating to the administration of the Settlement Agreement or Distribution Protocol.
21. **THIS COURT ORDERS** that the Settlement Amount shall be held in the Trust Account by Ontario Counsel or its duly appointed agent for the benefit of Settlement Class Members, pending further order of this Court on notice to the Defendants and, after the Effective Date, the Settlement Amount can be used to pay Class Counsels Disbursements incurred for the benefit of the Settlement Classes in the continued prosecution of the Ontario Electrolytic Action against the Non-Settling Defendants. This paragraph shall not be interpreted as affecting the rights of the Plaintiffs or the Settlement Classes to claim such Class Counsel Disbursements in the context of a future costs award in their favour against the Non-Settling Defendants, or the rights of the Non-Settling Defendants to oppose and resist any such claim.
22. **THIS COURT ORDERS** that, upon the Effective Date, the Ontario Electrolytic Action is hereby dismissed as against the Settling Defendants, without costs and with prejudice.
23. **THIS COURT ORDERS** that the approval of the Settlement Agreement is contingent upon parallel orders for approval being made by the BC Court and the Québec Court, and the terms of this Order shall not be effective unless and until the Settlement Agreement is approved by the BC Court and Québec Court, and the BC Action has been dismissed with prejudice and without costs and the Québec Action has been declared settled without costs and without reservations as against the Settling Defendants in the relevant



proceeding by the Courts. If such orders are not secured in British Columbia and Québec, this Order shall be null and void and without prejudice to the rights of the parties to proceed with the Ontario Electrolytic Action and any agreement between the parties incorporated in this Order shall be deemed in any subsequent proceedings to have been made without prejudice.

24. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms, this Order shall be declared null and void without the need for further notice to this Court but with notice to the Ontario Electrolytic Settlement Class and the Non-Settling Electrolytic Defendants. For greater certainty, in those circumstances, any steps taken pursuant to the Settlement Agreement, including but not limited to the issuance of this Order, shall be deemed to not constitute attornment by the Settling Defendants to the jurisdiction of this Court.
25. **THIS COURT ORDERS** that this Order, including but not limited to the approval of the Settlement Agreement and any reasons given by the Court in relation thereto, except as to paragraphs 12 to 17 of the Order, is without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Ontario Electrolytic Action.

Date: October 27, 2023



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The Honourable Mr. Justice Raikes

Schedule "A"

**CAPACITORS CLASS ACTION  
NATIONAL SETTLEMENT AGREEMENT**

Between:

**CYGNUS ELECTRONICS CORPORATION, SEAN ALLOTT, SARA RAMSAY AND OPTION  
CONSUMMATEURS**

(the "Plaintiffs")

and

**FUJITSU LTD. AND FUJITSU CANADA, INC.**

(the "Settling Defendants")

Executed December 15, 2022

**CAPACITORS CLASS ACTION  
NATIONAL SETTLEMENT AGREEMENT**

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**CAPACITORS CLASS ACTION  
NATIONAL SETTLEMENT AGREEMENT**

**RECITALS**

- A. WHEREAS the Proceedings were commenced by the Ontario Plaintiffs in London, Ontario, the BC Plaintiff in Vancouver, British Columbia and the Québec Plaintiff in Montreal, Québec;
- B. WHEREAS the Proceedings allege that certain companies participated in an unlawful conspiracy to fix, raise, maintain or stabilize the price of electrolytic capacitors in Canada, contrary to Part VI of the *Competition Act* and the common law and/or civil law;
- C. WHEREAS the Settling Defendants are named in the Ontario Action and the BC Action but are not named in the Québec Action;
- D. WHEREAS a motion for authorization for settlement purposes only will be brought against the Settling Defendants in the Québec Action, pursuant to the settlement class defined in Schedule "A" and as described in subsection 2.2(2);
- E. WHEREAS the Settling Defendants do not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct alleged in the Proceedings, or otherwise;
- F. WHEREAS the Plaintiffs, Class Counsel and the Settling Defendants agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the Settling Defendants or evidence of the truth of any of the Plaintiffs' allegations against the Settling Defendants, which allegations are expressly denied by the Settling Defendants;
- G. WHEREAS the Settling Defendants are entering into this Settlement Agreement in order to achieve a final and nationwide resolution of all Released Claims asserted or which could have been asserted against the Releasees by the Plaintiffs and the Settlement Class in the Proceedings, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;
- H. WHEREAS the Settling Defendants do not hereby attorn to the jurisdiction of the Courts or any other court or tribunal in respect of any civil, criminal or administrative process

except to the extent they have previously done so in the Proceedings or as expressly provided in this Settlement Agreement with respect to the Proceedings;

- I. WHEREAS Counsel for the Settling Defendants and Class Counsel have engaged in extensive arm's-length settlement discussions and negotiations, on an intermittent basis from as early as 2016, resulting in this Settlement Agreement relating to Canada;
- J. WHEREAS as a result of these settlement discussions and negotiations, the Settling Defendants and the Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Settling Defendants and the Plaintiffs, both individually and on behalf of the Settlement Classes they represent or seek to represent, subject to approval of the Courts;
- K. WHEREAS Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, having regard to the burdens and expense in prosecuting the Proceedings, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the Settlement Classes they represent or seek to represent;
- L. WHEREAS the Parties therefore wish to and hereby finally resolve on a national basis, without admission of liability, the Proceedings as against the Settling Defendants;
- M. WHEREAS the Québec Action has already been authorized by judgement of the Québec Court, on March 22, 2019;
- N. WHEREAS for the purposes of settlement only, the Parties now consent to certification or authorization of the Proceedings as class proceedings and to the Settlement Classes and a Common Issue in respect of each of the Proceedings solely for the purposes of implementing this Settlement Agreement in a coordinated and consistent manner across Canada and contingent on approvals by the Courts as provided for in this Settlement Agreement, on the express understanding that such certification or authorization shall not derogate from the respective rights of the Parties in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason

- O. WHEREAS an opt-out process has already been provided to the Settlement Classes on a national basis; and
- P. WHEREAS the Plaintiffs assert that they are adequate class representatives for the Settlement Classes they seek to represent and will seek to be appointed representative plaintiffs in their respective Proceedings;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, it is agreed by the Parties that the BC Action and the Ontario Action be settled and dismissed with prejudice as to the Settling Defendants, without costs as to the Parties, or the Releasees, and that the Québec Action shall be settled as to the Settling Defendants, without costs to the Parties, or the Releasees, subject to the approval of the Courts, on the following terms and conditions:

#### SECTION 1 - DEFINITIONS

For the purposes of this Settlement Agreement only, including the Recitals and Schedules hereto:

- (1) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices and the costs of claims administration, but excluding Class Counsel Fees.
- (2) **Approval Hearings** mean the hearings to approve the motions brought by Class Counsel for the Courts' approval of the settlement provided for in this Settlement Agreement.
- (3) **BC Action** means the proceeding commenced by the BC Plaintiff before the BC Court that is identified in Schedule "A" to this Settlement Agreement.
- (4) **BC Counsel** means Camp Fiorante Matthews Mogerman<sup>LLP</sup>.
- (5) **BC Court** means the Supreme Court of British Columbia.
- (6) **BC Plaintiff** means Sara Ramsay.
- (7) **BC Settlement Class** means the settlement class in respect of the BC Action that is defined in Schedule "A" to this Settlement Agreement.



- (8) **Claims Administrator** means the firm to be proposed by Class Counsel and appointed by the Courts to administer the Settlement Amount in accordance with the provisions of the Settlement Agreement and the Distribution Protocol, and any employees of such firm.
- (9) **Class Counsel** means Ontario Counsel, Québec Counsel and BC Counsel.
- (10) **Class Counsel Disbursements** include the disbursements and applicable taxes incurred by Class Counsel in the prosecution of the Proceedings, as well as any adverse costs awards issued against the Plaintiffs in the Proceedings.
- (11) **Class Counsel Fees** include the fees of Class Counsel, GST or HST (as the case may be) and other applicable taxes or charges thereon, including any amounts payable by Class Counsel or the Settlement Class Members to any other body or Person, including the Fonds d'aide aux actions collectives in Québec, as a result of the Settlement Agreement.
- (12) **Class Period** means September 1, 1997 to December 31, 2014.
- (13) **Common Issue** means: Did the Settling Defendants conspire to fix, raise, maintain or stabilize the price of, or allocate markets and customers of, Electrolytic Capacitors directly or indirectly in Canada during the Class Period? If so, what damages, if any, did Settlement Class Members suffer?
- (14) **Counsel for the Settling Defendants** means Lenczner Slaght<sup>LLP</sup>.
- (15) **Courts** means the Ontario Court, the Québec Court and the BC Court.
- (16) **Defendants** means the entities named as defendants in any of the Proceedings as set out in Schedule "A" to this Settlement Agreement, and any Persons added as defendants in the Proceedings in the future. For greater certainty, Defendants includes, without limitation, the Settling Defendants.
- (17) **Distribution Protocol** means the plan to be developed by Class Counsel for distributing the Settlement Amount, plus accrued interest and less approved Administration Expenses and Class Counsel Fees and Disbursements, to Settlement Class Members, as approved by the Courts.

- (18) **Documents** means all papers, computer or electronic records, or other materials within the scope of Rule 1.03(1) and Rule 30.01(1) of the Ontario *Rules of Civil Procedure* and any copies, reproductions or summaries of the foregoing, including microfilm copies and computer images.
- (19) **Effective Date** means the date when the Final Orders have been received from all Courts approving this Settlement Agreement.
- (20) **Electrolytic Capacitors** means aluminum and tantalum electrolytic capacitors.
- (21) **Excluded Person** means each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing.
- (22) **Execution Date** means the date on the cover page, as of which the Parties have executed this Settlement Agreement.
- (23) **Final Order(s)** means a final judgment entered by a Court approving this Settlement Agreement in accordance with its terms, once the time to appeal such judgment has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the approval of this Settlement Agreement in accordance with its terms, upon a final disposition of all appeals.
- (24) **Non-Settling Defendant(s)** means any Defendant that is not: (i) a Settling Defendant; (ii) a Settled Defendant; or (iii) a Defendant against whom the Proceedings have been dismissed or discontinued, either before or after the Execution Date.
- (25) **Notice of Certification and of Approval Hearings** means the form or forms of notice, agreed to by the Plaintiffs and the Settling Defendants, or such other form or forms of notice as may be approved by the Courts, which informs the Settlement Class of: (i) the certification or authorization of the Proceedings as class proceedings for settlement purposes; (ii) the dates and locations of the Approval Hearings; and, (iii) the process by which a Settlement Class Member may object to the settlement.
- (26) **Ontario Counsel** means Foreman & Company Professional Corporation.
- (27) **Ontario Court** means the Ontario Superior Court of Justice.

- (28) **Ontario Action** means the proceeding commenced by the Ontario Plaintiffs before the Ontario Court as identified in Schedule “A” to this Settlement Agreement.
- (29) **Ontario Plaintiffs** means Cygnus Electronics Corporation and Sean Allott.
- (30) **Ontario Settlement Class** means the settlement class in respect of the Ontario Action that is defined in Schedule “A” to this Settlement Agreement.
- (31) **Other Actions** means any other actions or proceedings, excluding the Proceedings, relating to Released Claims commenced by a Settlement Class Member either before or after the Effective Date.
- (32) **Party and Parties** means the Settling Defendants, the Plaintiffs, and, where necessary, the Settlement Class Members.
- (33) **Person(s)** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.
- (34) **Plaintiffs** means the Ontario Plaintiffs, Québec Plaintiffs and the BC Plaintiff.
- (35) **Proceedings** means the Ontario Action, the Québec Action, and the BC Action as defined in Schedule “A” to this Settlement Agreement.
- (36) **Proportionate Liability** means the proportion of any judgment that, had the Settling Defendants not settled, the Ontario or the BC Court, as applicable, would have apportioned to the Settling Defendants and the other Releasees in respect of the Released Claims.
- (37) **Québec Action** means the proceedings commenced by the Québec Plaintiffs before the Québec Court identified in Schedule “A” to this Settlement Agreement.
- (38) **Québec Counsel** means Belleau Lapointe s.e.n.c.r.l.
- (39) **Québec Court** means the Superior Court of Québec.
- (40) **Québec Plaintiff** means Option consommateurs.

- (41) **Québec Settlement Class** means the settlement class in respect of the Québec Action that is defined in Schedule “A” to this Agreement.
- (42) **Recitals** means the recitals to this Settlement Agreement.
- (43) **Released Claims** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, damages of any kind including compensatory, punitive or other damages, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers’ fees (including Class Counsel Fees and Class Counsel Disbursements), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, in this or any other Canadian or foreign jurisdiction (all of the foregoing, collectively, “Claims” or, individually, a “Claim”), that the Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall or may have, relating in any way to any conduct occurring anywhere that is alleged or that could have been alleged in the Proceedings or that is arising from their factual predicate, during the Class Period, including, without limitation, any Claims, whether in Canada or elsewhere, as a result of or in connection with an alleged conspiracy or other unlawful agreement or any other horizontal or vertical, or unilateral or coordinated, anti-competitive conduct (whether that conduct occurred in Canada or elsewhere) in connection with the purchase, sale, pricing, discounting, marketing or distributing of Electrolytic Capacitors whether sold directly, or indirectly as part of products containing Electrolytic Capacitors, in Canada during the Class Period, including, without limitation, any claims for consequential, subsequent or follow on harm that arise after the Class Period in respect of any agreement or conduct arising from the factual predicate of the Proceedings, or any amended complaint or pleading therein, that occurred during the Class Period. For greater certainty, nothing herein shall be construed to release any Claims arising from breach of contract, for negligence, bailment, failure to deliver, lost goods, delayed or damaged goods or any similar claim between the Releasees and Releasors relating to Electrolytic Capacitors.
- (44) **Releasee(s)** means, jointly and severally, individually and collectively, the Settling Defendants and all of their present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other Persons, partnerships or corporations

with whom any of the former have been, or are now, affiliated and all of their past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives, and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing. No other Defendants are Releasees.

- (45) **Releasors** means, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members, on behalf of themselves and any Person or entity claiming by or through them as a present or former, direct or indirect, parent, subsidiary, affiliate, division or department, predecessor, successor, shareholder, partner, director, owner of any kind, agent, principal, employee, contractor, attorney, heir, executor, administrator, insurer, devisee, assignee, trustee, servant, contractor or representative of any kind, other than Persons who opted out of the Proceedings in accordance with orders of the Courts.
- (46) **Schedules** means the schedules to this Settlement Agreement.
- (47) **Settled Defendant(s)** means any Defendant (excluding the Settling Defendants) that has executed or executes its own settlement agreement in the Proceedings and whose settlement agreement has become or becomes effective in accordance with its terms, whether or not such settlement agreement is in existence at the Execution Date.
- (48) **Settlement Agreement** means this agreement, including the Recitals and Schedules.
- (49) **Settlement Amount** means four hundred sixty-five thousand Canadian dollars (CAD \$465,000.00) to be paid by Fujitsu Ltd..
- (50) **Settlement Class(es)** means all Persons included in the Ontario Settlement Class, the Québec Settlement Class and the BC Settlement Class.
- (51) **Settlement Class Member(s)** means a member of a Settlement Class.
- (52) **Settling Defendant(s)** means Fujitsu Ltd. and Fujitsu Canada, Inc.
- (53) **Trust Account** means a guaranteed investment vehicle, liquid money market account or equivalent security offered by a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, SC 1991, c 46) or a Provincially Registered Credit Union (listed under the *Credit Unions and Caisses Populaires Act, 1994*, S.O. 1994, c. 11) held at a Canadian

financial institution under the control of Ontario Counsel for the benefit of the Settlement Class Members or the Settling Defendants, as provided for in this Settlement Agreement.

- (54) **U.S. Litigation** means the direct and indirect purchaser class proceedings in the United States which pertain to film, aluminum and tantalum electrolytic capacitors which have been consolidated and are proceeding as class actions litigation under the general style of cause, for both direct and indirect purchaser class proceedings, *In re: Capacitors Antitrust Litigation*, case number 3:14-cv-03264-JD, U.S. District Court for the Northern District of California.

## **SECTION 2 - SETTLEMENT APPROVAL**

### **2.1 Best Efforts**

- (1) The Parties shall use their best efforts to implement this Settlement Agreement and to secure the prompt, complete and final dismissal with prejudice of the Proceedings as against the Settling Defendants in the Ontario Action and BC Action, and a prompt, complete settlement of the Québec Action as against the Settling Defendants as described in this Settlement Agreement. The Parties agree that the Plaintiffs may seek permission from the Courts to conduct a coordinated hearing of the settlement approval motions on a national basis.

### **2.2 Motions Seeking Approval of Notice and Certification or Authorization**

- (1) Subject to subsection 2.2(3), the Ontario Plaintiffs and BC Plaintiff shall bring motions before the Courts, at such time as the Plaintiffs in their sole discretion deem appropriate, for orders approving the Notice of Certification and of Approval Hearings and certifying or authorizing each of the Proceedings commenced in their respective jurisdictions as a class proceeding as against the Settling Defendants (for settlement purposes only).
- (2) The Québec Plaintiff shall bring a motion for authorization for settlement purposes only against the Settling Defendants in the Québec Action, and for approval of the Notice of Certification and of Approval Hearings, at such time as the Plaintiffs in their sole discretion deem appropriate. Counsel for the Settling Defendants confirms that it will accept service of all proceedings necessary to give effect to this Settlement Agreement on behalf of the Settling Defendants; it being understood that such acceptance is strictly limited to this

purpose and that the Settling Defendants do not hereby waive any right to oppose the jurisdiction of the Québec Court in respect of the Québec Action;

- (3) The Ontario order approving the Notice of Certification and of Approval Hearings and certifying the Ontario Action for settlement purposes shall be proposed to the Ontario Court substantially in the form attached as Schedule "B". The form and content of the BC order approving the Notice of Certification and of Approval Hearing as against the Settling Defendants for settlement purposes shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the Ontario order attached as Schedule "B", as may be modified by the Ontario Court.

### **2.3 Motions Seeking Approval of the Settlement**

- (1) As soon as practicable after the orders referred to in subsection 2.2(1) and (2) have been granted and the Notice of Certification and of Approval Hearings has been published, the Plaintiffs shall bring motions before the Courts for orders approving this Settlement Agreement.
- (2) The Ontario Action order approving this Settlement Agreement shall be proposed to the Ontario Court substantially in the form attached as Schedule "C". The Québec Action and BC Action orders approving this Settlement Agreement shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the Ontario order attached as Schedule "C", as may be modified by the Ontario Court.
- (3) This Settlement Agreement shall only become final on the Effective Date.

### **2.4 Pre-Motion Confidentiality**

- (1) Until the first of the motions required by subsection 2.2 is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior consent of Counsel for the Settling Defendants and Class Counsel, as the case may be, except to legal counsel or as required for the purposes of financial reporting or the preparation of financial records (including tax returns and financial statements), as necessary to give effect to the terms of this Settlement Agreement, or as otherwise required by law.

- (2) Upon the Date of Execution, Class Counsel may provide a copy of this Settlement Agreement to the Courts and to the Non-Settling Defendants.

### **SECTION 3 - SETTLEMENT BENEFITS**

#### **3.1 Payment of Settlement Amount**

- (1) On the Execution Date, Class Counsel shall provide the necessary deposit information or wiring information, whichever is necessary to remit payment, to Counsel for the Settling Defendants. Within forty-five (45) days of the Execution Date, Fujitsu Ltd. shall pay the Settlement Amount to Class Counsel for deposit into the Trust Account.
- (2) The Settlement Amount shall be inclusive of all amounts, including interest and costs. The Settlement Amount and other consideration to be provided in accordance with the terms of this Settlement Agreement shall be provided in full satisfaction of the Released Claims against the Releasees.
- (3) The Releasees shall have no obligation to pay any amount in addition to the Settlement Amount in respect to the Released Claims, for any reason, pursuant to or in furtherance of this Settlement Agreement or the Proceedings.
- (4) Ontario Counsel or its duly appointed agent shall maintain the Trust Account as provided for in this Settlement Agreement.
- (5) Ontario Counsel or its duly appointed agent shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Courts obtained after notice to the Parties.

#### **3.2 Taxes and Interest**

- (1) Except as hereinafter provided, all interest earned on the Settlement Amount shall accrue to the benefit of the Settlement Class and shall become and remain part of the Trust Account.
- (2) Subject to subsection 3.2(3), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account shall be the responsibility of the Settlement Class. Ontario Counsel or its duly appointed agent shall be solely responsible to fulfill all tax reporting and payment requirements arising from the monies in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes



(including interest and penalties) due with respect to the income earned on the monies in the Trust Account shall be paid from the Trust Account.

- (3) The Settling Defendants shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned by the monies in the Trust Account or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is not approved, is terminated or otherwise fails to take effect, in which case the interest earned on the Settlement Amount in the Trust Account shall be paid to the Settling Defendants who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by Ontario Counsel or its duly appointed agent.

## **SECTION 4 - COOPERATION**

### **4.1 Extent of Cooperation**

- (1) Within sixty (60) days after the Effective Date, or at a time mutually agreed upon by the Parties acting reasonably, the Settling Defendants shall undertake all reasonable efforts to identify and produce to the Plaintiffs and Class Counsel:
  - (a) a summary of the sales amounts of Electrolytic Capacitors during the Class Period; and
  - (b) if requested, the Settling Defendants will provide relevant documents that are the basis of such summary, to the extent such documents are available to the Settling Defendants.
- (2) The Settling Defendants agree to provide answers to reasonable follow-up questions from Class Counsel, to the extent they are able to do so, in respect of the sales amounts disclosed and any documents that are produced.
- (3) The Settling Defendants consent that the Plaintiffs may request and receive from any other Settled Defendant that has agreed to provide cooperation to the Plaintiffs in the Ontario, Québec and BC Actions copies of:
  - (a) any deposition transcripts for depositions of current or former employees, officers or directors of the Releasees in the U.S. Litigation (including exhibits thereto), all

to be provided in electronic form if available and any pre-existing translations of the foregoing into English;

- (b) any declarations or affidavits of current or former employees, officers or directors of the Releasees, including all exhibits thereto, taken in the U.S. Litigation, and any pre-existing translations into English;
  - (c) electronic copies of any responses to written interrogatories by the Releasees, including all schedules thereto, taken in the U.S. Litigation, and any pre-existing translations into English;
  - (d) electronic copies of any responses to requests to admit provided by the Releasees in the U.S. Litigation and any pre-existing translations into English;
- (4) If requested by Class Counsel, the Settling Defendants agree to use reasonable efforts to:
- (a) authenticate by affidavit any of their Documents or data produced in accordance with subsection 4.1(1) to the extent the Settling Defendants can establish their authenticity and that the request is made prior to the cease of the Settling Defendants' cooperation obligations provided for in Section 4.1(7);
- (5) Nothing in this Settlement Agreement shall require, or shall be construed to require, the Settling Defendants, or any representative or employee of the Settling Defendants, to disclose or produce any Documents or information that is legally privileged or to disclose or produce any Documents or information in breach of any order, non-disclosure, privacy or confidentiality obligation, regulatory directive, rule or law of this or any jurisdiction, it being understood and agreed that no non-disclosure or confidentiality obligation applies or shall apply to prevent the productions contemplated by subsections 4.1(1).
- (6) If any of the Documents referenced in 4.1(1) are accidentally or inadvertently disclosed or produced, such Documents shall be promptly returned to the Settling Defendants and the Documents and the information contained therein shall not be disclosed or used, directly or indirectly, except with the express written permission of the Settling Defendants, and the production of such Documents shall in no way be construed to have waived in any manner any privilege, doctrine, law, or protection attached to such Documents.

- (7) The obligations of the Settling Defendants to cooperate as particularized in Section 4.1 shall not be affected by the release provisions contained in Section 6 of this Settlement Agreement. Except for the consent referred to in 4.1(3), the obligations of the Settling Defendants to cooperate shall cease at the earlier of (i) the date of final judgment in the Proceedings as against all Defendants and (ii) two years after the Execution Date. Notwithstanding this paragraph, if it is determined by a Court at any time prior to the date of final judgment in the Proceedings as against all Defendants that an authentication under 4.1(4)(a) is inadequate to allow for the admission of Documents or data as evidence in the Proceedings, the Settling Defendants agree to provide reasonable assistance to Class Counsel to rectify the issue. For greater certainty, the Plaintiffs' failure to strictly enforce any of the deadlines for the Settling Defendants to provide cooperation pursuant to this Section 4.1 is not a waiver of the cooperation rights granted by Section 4.1.
- (8) If the Settling Defendants materially breach this Section 4.1, the Plaintiffs may move before the Courts to enforce the terms of this Settlement Agreement or set aside the approval of the Settlement Agreement or a part thereof, and may exercise any rights they have to seek or obtain testimony, discovery, information or Documents from current officers, directors and/or employees of the Settling Defendants.
- (9) Subject to subsection 4.1(8) and 4.1(10), the provisions set forth in this Section 4.1 are the exclusive means by which the Plaintiffs and Class Counsel may obtain discovery, information or Documents from the Settling Defendants and other Releasees, including the officers, directors or employees of the Settling Defendants and other Releasees as at the Effective Date, and the Plaintiffs and Class Counsel agree that they shall not pursue any other means of discovery against, or seek to compel the evidence of, the Settling Defendants and the other Releasees or their current officers, directors, employees, agents, or counsel, whether in Canada or elsewhere and whether under the rules or laws of any Canadian or foreign jurisdiction.
- (10) For greater clarity, the Plaintiffs do not in any case waive any rights they have to seek or obtain testimony, discovery, information or Documents from those officers, directors and/or employees of the Settling Defendants and other Releasees who, as at the Effective Date, are former officers, directors and/or employees of the Settling Defendants and other Releasees.

- (11) A material factor influencing the Settling Defendants' decision to execute this Settlement Agreement is their desire to limit the burden and expense of this litigation. Accordingly, Class Counsel agree to exercise good faith in seeking cooperation from the Settling Defendants, agree not to seek information that is not necessary, cumulative or duplicative and agree otherwise to avoid imposing undue or unreasonable burdens or expenses on the Settling Defendants.
- (12) The scope of the Settling Defendants' cooperation under this Settlement Agreement shall be limited to the allegations asserted in the Proceedings as presently filed.
- (13) The Settling Defendants shall make their best efforts to ensure the accuracy of any of the documents or information described in this Section 4.1, but do not represent that they can or will produce a complete set of any of the documents or information described in that Section.

#### **4.2 Limits on Use of Documents**

- (1) It is understood and agreed that all Documents and information made available or provided by the Settling Defendants to the Plaintiffs and Class Counsel under this Settlement Agreement, shall be used only in connection with the prosecution of the claims in the Proceedings, and shall not be used directly or indirectly for any other purpose, except to the extent that the Documents or information are or become publicly available. The Plaintiffs and Class Counsel agree they will not disclose the Documents and information provided by the Settling Defendants except: (i) to experts, consultants or third-party service providers retained by them in connection with the Proceedings who have agreed to comply with the provisions of this Settlement Agreement and any confidentiality orders issued pursuant to subsection 4.2(2); (ii) to the extent that the Documents or information are or become publicly available; (iii) as necessary for the prosecution of the Proceedings; or (iv) as otherwise required by law. Subject to the foregoing, the Plaintiffs and Class Counsel shall take reasonable precautions to ensure and maintain the confidentiality of such Documents and information, and of any work product of Class Counsel that discloses such Documents and information, except to the extent that the Documents and information are or become publicly available.
- (2) If the Plaintiffs intend to produce for discovery or file in the Proceedings any Documents or other information provided by the Settling Defendants as cooperation under the

Settlement Agreement (and there is not already a confidentiality order that applies), the Plaintiffs shall provide the Settling Defendants with an advance description of the Documents or other information sought to be produced or filed at least thirty (30) days in advance of the proposed production or filing, in order that the Settling Defendants may move to obtain a sealing or confidentiality order or similar relief. If, within the thirty (30) day period, the Settling Defendants do not so move, the Plaintiffs and Class Counsel can produce or file the information or Documents in the ordinary course. If, within that thirty (30) day period, the Settling Defendants so move, the Plaintiffs and Class Counsel shall not disclose the confidential Documents or information until the Settling Defendants' motion has been decided and all applicable appeal periods have expired, except, so as not to delay prosecution of the Proceedings, Class Counsel may: (i) provide, on an interim basis, Documents or information to counsel for the Non-Settling Defendants provided that counsel for the Non-Settling Defendants agree that, until the Settling Defendants' motion has been decided and all applicable appeal periods have expired, they will keep the Documents or information on an external counsel only basis and will only disclose such Documents or information to independent expert(s) retained by a Party for the purposes of the Proceedings, as well as secretarial, clerical or other support personnel of such expert(s) to whom disclosure is reasonably necessary. An independent expert may not be an employee of a Plaintiff or Defendant in the Proceedings, or a competitor of the Settling Defendants; and (ii) file such Documents or information with the relevant Court in sealed envelopes or other appropriate containers, segregated from the public record, endorsed with the title of the Proceeding and the following statement: "This envelope/box/container containing documents which are filed by [name of Party] and subject to a pending confidentiality motion is not to be opened nor the contents thereof to be displayed or revealed to any non-Court personnel except by order of the Court" and such records shall not form part of the public record in the relevant Proceeding except upon order of the relevant Court or by agreement of all Parties and/or the Settling Defendants whose confidential information is contained therein.

- (3) In the event that a Person applies for an order requiring the Plaintiffs to disclose or produce any Documents or information provided by the Settling Defendants as cooperation under this Settlement Agreement, the Plaintiffs shall notify the Settling Defendants of such application promptly upon becoming aware of it and no later than ten (10) days after disclosure or production is sought, in order that the Settling Defendants may move to oppose such disclosure or production. In no circumstances shall the Plaintiffs or Class

Counsel apply for or consent to such an application for disclosure or production. The Plaintiffs and Class Counsel shall not disclose the confidential information or Documents until the Settling Defendants' motion has been decided and a final order has been issued requiring the Plaintiffs and/or Class Counsel to produce the relevant information or Documents, except: (i) to the extent such information or Documents are or become otherwise publicly available; (ii) as ordered to do so by a Court; or (iii) in the event that the Person making the request is a Non-Settling Defendant, so as not to delay prosecution of the relevant Proceeding(s), Class Counsel may provide, on an interim basis, Documents or information to counsel for the Non-Settling Defendants provided that counsel for the Non-Settling Defendants agree and give assurances that, until a final order has been issued requiring the Plaintiffs and/or Class Counsel to produce the relevant information or Documents, and all applicable appeal periods have expired, the Documents or information will remain with external counsel and will only be disclosed to independent expert(s) retained by a Party for the purposes of the relevant Proceeding, as well as secretarial, clerical or other support personnel of such expert(s) to whom disclosure is reasonably necessary. An independent expert may not be an employee of a Plaintiff or Defendant in the relevant Proceeding, or a competitor of the Settling Defendants.

## **SECTION 5 - DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST**

### **5.1 Distribution Protocol**

- (1) After the Effective Date, at a time wholly within the discretion of Class Counsel, but on notice to the Settling Defendants, Class Counsel will make an application seeking orders from the Courts approving the Distribution Protocol.
- (2) Class Counsel will ensure that the Distribution Protocol complies with the requirements of Québec law, including without limitation: (i) in respect of remittances to the *Fonds d'Aide of actions collectives*; and (ii) in the event that there is any remaining balance in the Trust Account that must be allocated *cy pres* or otherwise to one or more recipients.

## **SECTION 6 - OPTING-OUT**

### **6.1 The Opt-Out Deadline has Expired**

- (1) The deadline to opt-out of the Proceedings expired on October 24, 2018, pursuant to Orders of the Ontario, BC and Québec Courts.

## SECTION 7 - RELEASES AND DISMISSALS

### 7.1 Release of Releasees

- (1) Upon the Effective Date, subject to subsection 7.2, in consideration of payment of the Settlement Amount, the without costs dismissal or settlement of the Proceedings, and for other valuable consideration set forth in this Settlement Agreement, the Releasors forever and absolutely release and forever discharge the Releasees from the Released Claims.

### 7.2 Covenant Not to Sue

- (1) Notwithstanding subsection 7.1, upon the Effective Date, for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasors do not release the Releasees, but instead covenant and undertake not to make any claim in any way or to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

### 7.3 No Further Claims

- (1) Upon the Effective Date, the Releasors and Class Counsel shall not now or hereafter institute, continue, provide assistance for or maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee, or against any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claim, except for the continuation of the Proceedings against the Non-Settling Defendants or unnamed co-conspirators that are not Releasees or, if the Proceedings are not certified or authorized, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendants or unnamed co-conspirator that is not a Releasee. For the purposes of this subsection 7.3(1), Class Counsel includes anyone currently employed by or a partner with Class Counsel.
- (2) Subsection 7.3 shall be inoperative to the extent that it requires any lawyer who is a member of the Law Society of British Columbia to breach his or her obligations under section 3.2-10 of the Law Society of British Columbia's *Code of Professional Conduct for British Columbia* by refraining from participation or involvement in any claim or action in a British Columbia court.

#### **7.4 Dismissal of the Proceedings**

- (1) Upon the Effective Date, the Ontario Action, and the BC Action shall be dismissed, with prejudice and without costs, as against the Settling Defendants.
- (2) Upon the Effective Date, the Québec Action shall be settled, without costs as against the Settling Defendants, and the Parties shall sign and file a notice of settlement in the Québec Court in respect of the Québec Action.

#### **7.5 Dismissal of Other Actions**

- (1) Upon the Effective Date, each member of the Ontario Settlement Class and BC Settlement Class shall be deemed to irrevocably consent to the dismissal, without costs and with prejudice, of his, her or its Other Actions against the Releasees.
- (2) Upon the Effective Date, all Other Actions commenced in British Columbia or Ontario by any Settlement Class Member shall be dismissed against the Releasees, without costs and with prejudice.
- (3) Each Person who would have been a member of the Québec Settlement Class but has opted-out in accordance with the second paragraph of Article 580 of the Québec Code of Civil Procedure and who makes a claim and receives a benefit under this Settlement Agreement shall be deemed to irrevocably consent to the dismissal, without costs and without reservation, of his, her or its Other Actions against the Releasees.
- (4) Each Other Action commenced in Québec by a person who would have been a member of the Québec Settlement Class but has opted-out in accordance with the second paragraph of Article 580 of the Québec Code of Civil Procedure and who makes a claim and receives benefits under this Settlement Agreement shall be dismissed as against the Releasees, without costs and without reservation.

### **SECTION 8 - BAR ORDER AND WAIVER OF SOLIDARITY**

#### **8.1 Ontario and British Columbia Bar Order**

- (1) The Plaintiffs and the Settling Defendants agree that the Ontario order and British Columbia order approving this Settlement Agreement must include a bar order in respect of the Ontario Electrolytic Action and the BC Action which includes the following terms:



- (a) A provision that all claims for contribution, indemnity or other claims over, whether asserted, unasserted, or asserted in a representative capacity, inclusive of interest, taxes and costs relating to the Released Claims, which were or could have been brought in the Proceedings or otherwise, or could in the future be brought on the basis of the same events, actions and omissions underlying the Proceedings, by any Non-Settling Defendants, any named or unnamed alleged co-conspirator that is not a Releasee, any Settled Defendant, or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Defendants, any named or unnamed alleged co-conspirator that is not a Releasee, any Settled Defendant, or any other Person or party, are barred, prohibited and enjoined in accordance with the terms of this subsection (unless such claim is made in respect of a claim by a Person who has validly opted-out of the Proceedings);
  
- (b) A provision that if the Ontario Court or BC Court, as applicable, ultimately determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise:
  - (i) the Ontario Plaintiffs or BC Plaintiff, as applicable, and the Ontario Settlement Class or BC Settlement Class, as applicable, shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;
  
  - (ii) the Ontario Plaintiffs or BC Plaintiff, as applicable, and the Ontario Settlement Class or BC Settlement Class, as applicable, shall limit their claims against the Non-Settling Defendants and/or, named or unnamed alleged co-conspirators and/or, any other Person or party that is not a Releasee, to include, and shall be entitled to recover from the Non-Settling Defendants and/or, named or unnamed alleged co-conspirators and/or, any other Person or party that is not a Releasee, only such claims for damages (including punitive damages, if any), restitutionary award,

disgorgement of profits, interest and costs (including investigation costs claimed pursuant to section 36 of the *Competition Act*) attributable to the aggregate of the several liability of the Non-Settling Defendants and/or, named or unnamed alleged co-conspirators and/or, any other Person or party that is not a Releasee, to the Ontario Plaintiffs or BC Plaintiff, as applicable, and the Ontario Settlement Class or BC Settlement Class, as applicable, if any, and, for greater certainty, the Ontario Settlement Class or BC Settlement Class shall be entitled to seek to recover such damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigation costs claimed pursuant to section 36 of the *Competition Act*) on a joint and several basis as between the Non-Settling Defendants and/or, named or unnamed alleged co-conspirators and/or, any other Person or party that is not a Releasee, if permitted by law; and

- (iii) the Ontario Court and the BC Court, as applicable, shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Ontario Action or BC Action, as applicable, whether or not the Settling Defendants remain in the Ontario Action or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Ontario Action or BC Action, as applicable, and any determination by the Court in respect of the Proportionate Liability of the Releasees shall only apply in the Ontario Action or BC Action, as applicable, and shall not be binding on the Releasees in any other proceeding.
- (c) A provision that nothing in the British Columbia and Ontario orders approving this Settlement Agreement, as applicable, shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigation costs claimed pursuant to section 36 of the *Competition Act*), or judgment against them in favour of members of the Ontario Settlement Class or BC Settlement Class, as applicable, in the Ontario Action or BC Action, as applicable, or the rights of Ontario Plaintiffs and Ontario Settlement Class Members or BC Plaintiffs and BC Settlement Class

Members, as applicable, to oppose or resist any such arguments, except as provided for in this section 8.1;

- (d) A provision that a Non-Settling Defendant may, on motion to the Ontario Court or BC Court, as applicable, and on at least ten (10) days' notice to Counsel for the Settling Defendants, and not to be brought until the Ontario Action or BC Action, as applicable, against the Non-Settling Defendants has been certified as a class proceeding (but not including any certification for settlement purposes), seek Orders for the following, which order shall be determined as if the Settling Defendants remained a party to the Ontario Action or BC Action, as applicable:
  - (i) documentary discovery and an affidavit of documents (list of documents in British Columbia) from the Settling Defendants in accordance with the relevant rules of civil procedure;
  - (ii) oral discovery of a representative of the Settling Defendants, the transcript of which may be read in at trial;
  - (iii) leave to serve a request to admit (notice to admit in British Columbia) on the Settling Defendants in respect of factual matters; and/or
  - (iv) the production of a representative of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
  
- (e) A provision that the Settling Defendants retain all rights to oppose such motion(s) brought pursuant to subsection 8.1(1)(d). Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of Documents to be produced and/or for information obtained from discovery in accordance with subsection 8.1(1)(d). Notwithstanding any provision in the Ontario and British Columbia orders approving this Settlement Agreement, on any motion brought pursuant to subsection 8.1(1)(d), the Ontario Court or BC Court, as applicable, may make such orders as to costs and other terms as it considers appropriate.

- (f) A provision that a Non-Settling Defendant may serve the motion(s) referred to in subsection 8.1(1)(d) on the Settling Defendants by service on Counsel for the Settling Defendants in the relevant Proceeding.
- (2) To the extent that such an order is granted pursuant to subsection 8.1(1)(d) and discovery is provided to the Non-Settling Defendants, a copy of all discovery provided, whether oral or documentary in nature, shall be provided by the Settling Defendants to the Plaintiffs and Class Counsel within ten (10) days of such discovery being provided to a Non-Settling Defendant(s).

## **8.2 Québec Waiver or Renunciation of Solidarity Order**

- (1) The Plaintiffs and the Settling Defendants agree that the Québec order approving this Settlement Agreement must include a waiver or renunciation of solidarity in respect of the Québec Action which includes the following:
  - (a) the Québec Plaintiff and the Québec Settlement Class expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts, deeds or other conduct of the Releasees relating to the Released Claims;
  - (b) the Québec Plaintiff and the Québec Settlement Class shall henceforth only be able to claim and recover damages, including punitive damages, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) attributable to the conduct of the Non-Settling Defendants, the sales by the Non-Settling Defendants, and/or other applicable measure of proportionate liability of the Non-Settling Defendants;
  - (c) any claims in warranty or any other claim or joinder of parties to obtain any contribution or indemnity from the Releasees relating to the Released Claims shall be inadmissible and void in the context of the Québec Action; and
  - (d) the ability of Non-Settling Defendants to seek discovery from the Settling Defendants shall be determined according to the provisions of the *Code of Civil Procedure*, and the Settling Defendants shall retain and reserve all of their rights to oppose such discovery under any applicable law.

### **8.3 Claims Against Other Entities Reserved**

- (1) Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by the Releasors against any Person other than the Releasees.

## **SECTION 9 - EFFECT OF SETTLEMENT**

### **9.1 No Admission of Liability**

- (1) The Parties expressly reserve all of their rights if this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason. The Parties further agree that, whether or not this Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by any of the Releasees, or of the truth of any of the claims or allegations contained in the Proceedings, or any other pleading filed by the Plaintiffs or any other Settlement Class Member.

### **9.2 Agreement Not Evidence**

- (1) The Parties agree that, whether or not it is not approved, is terminated or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law or as provided in this Settlement Agreement.

## **SECTION 10 - CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY**

- (1) The Parties agree that the Proceedings shall be certified or authorized as class proceedings as against the Settling Defendants solely for purposes of settlement of the Proceedings and the approval of this Settlement Agreement by the Courts, and such

certification or authorization shall not be used or relied on as against the Defendants for any other purpose or in any other proceeding.

- (2) The Plaintiffs agree that, in the motions for certification or authorization of the Proceedings as class proceedings for settlement purposes and for the approval of this Settlement Agreement, the only common issue that they will seek to define is the Common Issue and the only classes that they will assert are the Ontario Settlement Class, the Québec Settlement Class and the BC Settlement Class.
- (3) The Parties agree that the certification or authorization of the Proceedings as against the Settling Defendants for the purpose of implementing this Settlement Agreement, shall not derogate in any way from the rights of the Plaintiffs as against the Non-Settling Defendants, except as expressly set out in this Settlement Agreement.

## **SECTION 11 - NOTICE TO SETTLEMENT CLASS**

### **11.1 Notices Required**

- (1) The proposed Settlement Class shall be given the following notice: (i) Notice of Certification and of Approval Hearings (in English and in French as necessary); and (ii) notice of termination (if the Settlement Agreement is terminated or otherwise fails to take effect).
- (2) Within thirty (30) days after the Execution Date, or at a time mutually agreed upon by the Parties acting reasonably, but not later than issuance of the Court's Order approving notice under Section 2.2, the Settling Defendants shall provide Class Counsel with a customer list with last known contact information for each customer in Canada, if any, who purchased Electrolytic Capacitors directly from the Settling Defendants during the Class Period for the purpose of facilitating direct notice to the Settling Defendants' customers.

### **11.2 Form and Distribution of Notices**

- (1) The form of the notices referred to in subsection 11.1 and how and where they are published and distributed shall be as agreed to by the Plaintiffs and the Settling Defendants and, failing agreement, as ordered by the Courts.
- (2) The Plaintiffs shall bring and seek to schedule motions before the Courts seeking orders from the Courts approving the notices described in subsection 11.1. The Plaintiffs may

determine the time of these motions in their full and complete discretion, after consultation with the Settling Defendants, and subject to subsection 2.2.

## **SECTION 12 - ADMINISTRATION AND IMPLEMENTATION**

### **12.1 Mechanics of Administration**

- (1) Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement and the Distribution Protocol shall be determined by the Courts on motions brought by Class Counsel at a time within the discretion of Class Counsel, except that the timing of the motions to approve the Settlement Agreement shall be determined after consultation with the Settling Defendants, and subject to subsection 2.3.

## **SECTION 13 - CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES**

- (1) The Releasees shall not be liable for any fees, disbursements or taxes of any of Class Counsel's, the Plaintiffs' or Settlement Class Members' respective lawyers, experts, advisors, agents, or representatives.
- (2) Class Counsel shall pay the costs of the notices required by subsection 11.1 and any costs of translation required by subsection 15.12 from the Trust Account, as they become due. For greater certainty, Class Counsel may pay for the costs of the notices before the Effective Date and may seek approval from the Court to recover those costs as a disbursement at any time.
- (3) Class Counsel may seek the Courts' approval to pay Class Counsel Fees contemporaneously with seeking approval of this Settlement Agreement. Class Counsel's court-approved fees shall be paid from the Trust Account after the Effective Date.
- (4) Except as provided herein, Administration Expenses may only be paid out of the Trust Account after the Effective Date.

## **SECTION 14 - NON-APPROVAL OR TERMINATION OF SETTLEMENT AGREEMENT**

### **14.1 Right of Termination**

- (1) In the event that:
- (a) any Court declines to certify or authorize the Settlement Class, for settlement purposes only, as contemplated by this agreement;
  - (b) the Ontario Court or the BC Court declines to dismiss the Proceedings against the Settling Defendants or the Québec Action is not fully settled as against the Settling Defendants;
  - (c) any Court declines to approve this Settlement Agreement or any material term thereof, and the Parties agree that the releases, bar orders, waiver or renunciation of solidarity and covenants not to sue contemplated by this Settlement Agreement are all material terms;
  - (d) any Court approves this Settlement Agreement in a materially modified form;
  - (e) any Court issues an order approving this Settlement Agreement in a form that is materially inconsistent with the terms of this Settlement Agreement or not substantially in the form attached to this Settlement Agreement as Schedule "C";  
or
  - (f) any order approving this Settlement Agreement made by the Courts do not become Final Orders;

the Settling Defendants and the Plaintiffs shall have the right to terminate this Settlement Agreement by delivering a written notice pursuant to subsection 15.18, within thirty (30) days following the event described above. Except as provided for in subsection 14.4, if the Settling Defendants or the Plaintiffs exercise their right to terminate, the Settlement Agreement shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

- (2) In addition, if the Settlement Amount is not paid in accordance with Section 3.1(1), the Plaintiffs shall have the right to terminate this Settlement Agreement by delivering a written notice pursuant to subsection 15.18 or move before the Courts to enforce the terms of this Settlement Agreement.



- (3) Any order, ruling or determination made by any Court with respect to Class Counsel Fees or the Distribution Protocol shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

**14.2 Effect of Non-Approval or Termination of Settlement Agreement**

- (1) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason:

(a) no motion to certify or authorize any of the Proceedings as a class proceeding on the basis of this Settlement Agreement, or to approve this Settlement Agreement, which has not been decided, shall proceed;

(b) the Parties will cooperate in seeking to have any issued order certifying or authorizing a Proceeding as a class proceeding on the basis of the Settlement Agreement or approving this Settlement Agreement set aside and declared null and void and of no force or effect, and any Person shall be estopped from asserting otherwise;

(c) any prior certification or authorization of a Proceeding as a class proceeding on the basis of this Settlement Agreement, including the definitions of the Settlement Class and the Common Issue pursuant to this Settlement Agreement, shall be without prejudice to any position that any of the Parties may later take on any issue in the Proceedings or any other litigation;

(d) within ten (10) days of such termination having occurred, Class Counsel shall make reasonable efforts to destroy all Documents or other materials provided by the Settling Defendants under this Settlement Agreement or containing or reflecting information derived from such Documents or other materials received from the Settling Defendants, including any notes or work product of Class Counsel, and, to the extent Class Counsel has disclosed any Documents or information provided by the Settling Defendants or related notes or work product of Class Counsel to any other Person, shall recover and destroy such Documents or material. Class Counsel shall provide Counsel for the Settling Defendants with a written certification by Class Counsel of such destruction within ten (10) days of termination; and

- (e) any steps taken pursuant to this Settlement Agreement shall not constitute attornment by the Settling Defendants to the jurisdiction of the Courts. For greater certainty, Class Counsel agree that they shall, jointly with the Counsel to the Settling Defendants, submit to the Court in connection with any motion challenging jurisdiction that any steps taken pursuant to this Settlement Agreement do not constitute attornment by the Settling Defendants to the jurisdiction of the Courts.

#### **14.3 Allocation of Settlement Amount Following Termination**

- (1) If the Settlement Agreement is terminated, Ontario Counsel shall, within thirty (30) business days of the written notice advising that the Settlement Agreement has been terminated in accordance with its terms, return to the Settling Defendants the Settlement Amount, plus all accrued interest thereon and less taxes paid on interest, any costs incurred with respect to the notices required by subsection 11.1, and any costs of translation required by subsection 15.12.

#### **14.4 Survival of Provisions After Termination**

- (1) If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, the provisions of subsections 3.2(3), 9.1, 9.2, 11.1, 11.2, 14.2, 14.3, 14.4 15.5 and 15.6 and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of subsections 3.2(3), 9.1, 9.2, 11.1, 11.2, 14.2, 14.3, 14.4, 15.5 and 15.6 within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

### **SECTION 15 - MISCELLANEOUS**

#### **15.1 Motions for Directions**

- (1) Class Counsel or the Settling Defendants may apply to the Courts as may be required for directions in respect of the interpretation, implementation and administration of this Settlement Agreement. Unless the Courts order otherwise, motions for directions that do not relate specifically to matters affecting the Québec Action or the BC Action shall be determined by the Ontario Court.

- (2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties except for those motions concerned solely with the implementation and administration of the Distribution Protocol.

### **15.2 Releasees Have No Liability for Administration**

- (1) The Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement or Distribution Protocol.

### **15.3 Headings, etc.**

- (1) In this Settlement Agreement:
  - (a) the division of the Settlement Agreement into sections and subsections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
  - (b) the terms “this Settlement Agreement,” “hereof,” “hereunder,” “herein,” and similar expressions refer to this Settlement Agreement and not to any particular section, subsection, or other portion of this Settlement Agreement.

### **15.4 Computation of Time**

- (1) In the computation of time in this Settlement Agreement, except where a contrary intention appears,
  - (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
  - (b) only in the case where the time for doing an act expires on a holiday as “holiday” is defined in the *Rules of Civil Procedure*, RRO 1990, Reg 194, the act may be done on the next day that is not a holiday.

### **15.5 Ongoing Jurisdiction**

- (1) Each of the Courts shall retain exclusive jurisdiction over the action commenced in its jurisdiction and the Parties thereto.

- (2) The Parties agree that no Court shall make any order or give any direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a complementary order or direction being made or given by the other Court(s) with which it shares jurisdiction over that matter.
- (3) Notwithstanding subsections 15.5(1) and 15.5(2) the Ontario Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement and the Parties attorn to the jurisdiction of the Ontario Court for such purposes. Issues related to the administration of this Settlement Agreement, the Trust Account, and other matters not specifically related to the claim of a Québec Settlement Class member or a BC Settlement Class member shall be determined by the Ontario Court.
- (4) Notwithstanding subsections 15.5(1), 15.5(2), and 15.5(3) or anything else in this Settlement Agreement, the Parties agree that the Settling Defendants do not hereby attorn to the jurisdiction of the Courts or any other court or tribunal in respect of any civil, criminal or administrative process except to the extent they have previously done so in the Proceedings. The Parties agree that, as of the Effective Date, the Settling Defendants shall be deemed to have attorned to the jurisdiction of the Courts, solely for the purposes expressly provided in this Settlement Agreement with respect to the Proceedings.

#### **15.6 Governing Law**

- (1) Subject to section 15.6(2), this Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- (2) Notwithstanding section 15.6(1), for matters relating specifically to the BC Action or the Québec Action, the BC Court or the Québec Court, as applicable, shall apply the law of its own jurisdiction and the laws of Canada applicable therein.

#### **15.7 Entire Agreement**

- (1) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior

obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

**15.8 Amendments**

- (1) This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties, and any such modification or amendment must be approved by the Courts with jurisdiction over the matter to which the amendment relates.

**15.9 Binding Effect**

- (1) This Settlement Agreement shall be binding upon, and ensure to the benefit of, the Plaintiffs, the Settlement Class Members, the Settling Defendants, the Releasors, the Releasees and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made by the Plaintiffs shall be binding upon all Releasors and every covenant and agreement made by the Settling Defendants shall be binding upon all of the Releasees.

**15.10 Counterparts**

- (1) This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or electronic signature shall be deemed an original signature for purposes of executing this Settlement Agreement.
- (2) The Parties agree that either Party's failure to strictly enforce a right granted to it under this Settlement Agreement is not a waiver of that right.

**15.11 Negotiated Agreement**

- (1) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

#### **15.12 Language**

- (1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related Documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais. Nevertheless, if required by the Courts, Class Counsel and/or a translation firm selected by Class Counsel shall prepare a French translation of the Settlement Agreement, the cost of which shall be paid from the Settlement Amount. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

#### **15.13 Transaction**

- (1) This Settlement Agreement constitutes a transaction in accordance with Articles 2631 and following of the *Civil Code of Québec*, and the Parties are hereby renouncing any errors of fact, of law, and/or of calculation.

#### **15.14 Recitals**

- (1) The Recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

#### **15.15 Schedules**

- (1) The Schedules annexed hereto form part of this Settlement Agreement.

#### **15.16 Acknowledgements**

- (1) Each of the Parties hereby affirms and acknowledges that:
  - (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood this Settlement Agreement;
  - (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
  - (c) he, she or the Party's representative fully understands each term of this Settlement Agreement and its effect; and

- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of this Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

#### **15.17 Authorized Signatures**

- (1) Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties identified above their respective signatures and their law firms.

#### **15.18 Notice**

- (1) Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or document shall be provided by e-mail, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

#### **FOR THE PLAINTIFFS AND CLASS COUNSEL:**

**Foreman & Company  
Professional Corporation**

c/o Jonathan Foreman  
4 Covent Market Place  
London, ON N6A 1E2

Tel: (519) 914-1175  
Fax: (226) 884-5340  
E-mail: jforeman@foremancompany.com

**Camp Fiorante Matthews Mogerman<sup>LLP</sup>**

c/o David G.A. Jones  
400-856 Homer St,  
Vancouver, BC V6B 2W

Tel: (604) 331-9530  
Fax: (604) 689-7554  
E-mail: djones@cfmlawyers.ca

**Belleau Lapointe s.e.n.c.r.l.**

c/o Maxime Nasr  
300 Place d'Youville, Office B-10  
Montreal, Québec H2Y 2B6

Tel: (514) 987-6700  
Fax: (514) 987-6886  
E-mail: mnasr@belleaulapointe.com

**FOR THE SETTLING DEFENDANTS:**

**Lenczner Slaght** <sup>LLP</sup>

c/o Paul-Erik Veel, J. Thomas Curry, Lauren Mills  
Taylor  
130 Adelaide St. W. #2600,  
Toronto, ON M5H 3P5

Tel : (416) 865-2842  
Fax : (416) 865-2861  
E-mail: pveel@litigate.com, tcurry@litigate.com,  
lmillstaylor@litigate.com

**15.19 Date of Execution**

(1) The Parties have executed this Settlement Agreement as of the date on the cover page.

**Cygnus Electronics and Sean Allott**, by their counsel

Name of Authorized Signatory: Jonathan Foreman



Signature of Authorized Signatory: \_\_\_\_\_

**Foreman & Company Professional Corp.**  
Ontario Counsel

**Sara Ramsay**, by her counsel

Name of Authorized Signatory: Jonathan Foreman, per CFM



Signature of Authorized Signatory: \_\_\_\_\_

**Camp Fiorante Matthews Mogerman** <sup>LLP</sup>  
BC Counsel

**Option consommateurs**, by its counsel

Name of Authorized Signatory: \_\_\_\_\_

Signature of Authorized Signatory: \_\_\_\_\_

**Belleau Lapointe s.e.n.c.r.l**  
Québec Counsel



**FOR THE SETTLING DEFENDANTS:**

**Lenczner Slaght** <sup>LLP</sup>

c/o Paul-Erik Veel, J. Thomas Curry, Lauren Mills  
Taylor  
130 Adelaide St. W. #2600,  
Toronto, ON M5H 3P5

Tel : (416) 865-2842  
Fax : (416) 865-2861  
E-mail: pveel@litigate.com, tcurry@litigate.com,  
lmillstaylor@litigate.com

**15.19 Date of Execution**

(1) The Parties have executed this Settlement Agreement as of the date on the cover page.

**Cygnus Electronics and Sean Allott**, by their counsel

Name of Authorized Signatory: \_\_\_\_\_

Signature of Authorized Signatory: \_\_\_\_\_  
**Foreman & Company Professional Corp.**  
Ontario Counsel

**Sara Ramsay**, by her counsel

Name of Authorized Signatory: \_\_\_\_\_

Signature of Authorized Signatory: \_\_\_\_\_  
**Camp Fiorante Matthews Mogerman** <sup>LLP</sup>  
BC Counsel

**Option consommateurs**, by its counsel

Name of Authorized Signatory: \_\_\_\_\_  
*Maxime Dasr*

Signature of Authorized Signatory: \_\_\_\_\_  
*[Handwritten Signature]*  
**Belleau Lapointe s.e.n.c.r.l**  
Québec Counsel

**Fujitsu Ltd. and Fujitsu Canada, Inc.**, by their counsel

Name of Authorized Signatory

Paul-Erik Veel



Signature of Authorized Signatory:  
(I have authority to bind Fujitsu Ltd.  
and Fujitsu Canada, Inc.)

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**Lenczner Slaght** <sup>LLP</sup>  
Counsel for the Settling Defendants

**SCHEDULE “A”  
PROCEEDINGS**

Proceeding	Plaintiff(s)	Defendants	Settlement Class
<p>Ontario Superior Court of Justice Court File No. 3795/14 CP (the “Ontario Action”)</p>	<p>Cygnus Electronics Corporation and Sean Allott</p>	<p>Panasonic Corporation; Panasonic Corporation of North America; Panasonic Canada Inc.; Sanyo Electric Co., Ltd.; 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.; Hitachi Canada; 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.; Samsung Electro-Mechanics; Samsung Electro-Mechanics America Inc.; Samsung Electronics Canada Inc.; Rohm Co., Ltd.; Rohm Semiconductor U.S.A., LLC; Hitachi AIC Inc.; Hitachi Chemical Electronics Co., Ltd.; FPCAP Electronics (Suzhou) Co., Ltd.; Fujitsu Ltd.; Fujitsu Canada, Inc.; Holy Stone Enterprise Co., Ltd.; Vishay Polytech Co., Ltd. f/k/a Holystone Polytech Co., Ltd.; Milestone Global Technology, Inc. d/b/a Holystone International; and Holy Stone Holdings Co., Ltd. .</p>	<p>All Persons in Canada who purchased Electrolytic Capacitors or a product containing an Electrolytic Capacitor during the Class Period other than (1) all BC Settlement Class members (2) all Québec Settlement Class members and (3) Excluded Persons.</p>
<p>Québec Superior Court (District of Montreal), File No. 500-06-000704-144 (the “Québec Action”)</p>	<p>Option consommateurs</p>	<p>Panasonic Corporation; Sanyo Electric Group Ltd.; NEC Tokin Corporation; Nippon Chemi-Con Corporation; Hitachi Chemical Co. Ltd.; Nichicon Corporation; Hitachi AIC Inc.; Elna Co. Ltd.; Holy Stone Enterprise Co., Ltd.; Holy Stone Holdings Co., Ltd; Matsuo Electric Co., Ltd.; Rohm Co., Ltd.; Rubycon Corporation; Toshin Kogyo Co., Ltd.</p>	<p>All Persons who purchased in Québec at least one Electrolytic Capacitor or a product containing at least one Electrolytic Capacitor during the Class Period, except Excluded Persons.</p>

Proceeding	Plaintiff(s)	Defendants	Settlement Class
<p>British Columbia Supreme Court (Vancouver Registry) Court File No. S-146293 (the "BC Action")</p>	<p>Sara Ramsay</p>	<p>Panasonic Corporation f/k/a/ Matsushita Electric Industrial Co., Ltd.; Panasonic Corporation of North America; Panasonic Canada Inc.; Sanyo Electric Co., Ltd.; Sanyo Electronic Device (U.S.A.) Corp.; Sanyo North America Corporation; Taiyo Yuden Co., Ltd.; Taiyo Yuden (USA) Inc.; NEC Tokin Corporation; NEC Tokin America, Inc.; KEMET Electronics Corporation; Nippon Chemi-Con Corporation; United Chemi-Con, Inc.; Hitachi Chemical Co., Ltd.; Hitachi AIC Inc.; Hitachi Chemical Co. America, Ltd.; Hitachi Canada; Fujitsu Ltd.; Fujitsu Canada, Inc.; Nichicon Corporation; FPCAP Electronics (Suzhou) Co., Ltd.; Nichicon (America) Corporation; AVX Corporation; Rubycon Corporation; Rubycon America Inc.; Elna Co., Ltd.; Elna America Inc.; Matsuo Electric Co., Ltd.; Toshin Kogyo Co., Ltd.; Holy Stone Enterprise Co., Ltd.; Milestone Global Technology, Inc. d.b.a Holystone International; Vishay Intertechnology, Inc.; Vishay Polytech Co., Ltd. f/k/a/ Holy Stone Polytech Co., Ltd.; Samsung Electro-Mechanics; Samsung Electro-Mechanics America Inc.; Samsung Electronics Canada Inc.; ROHM Co., Ltd. and ROHM Semiconductor U.S.A., LLC</p>	<p>All Persons in British Columbia who purchased Electrolytic Capacitors or a product containing an Electrolytic Capacitor during the Class Period except Excluded Persons.</p>

SCHEDULE "B"

Court File No. 3795/14 CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE \_\_\_\_\_ ) , THE DAY  
 ) OF , 2022

B E T W E E N :

CYGNUS ELECTRONICS CORPORATION and SEAN ALLOTT

Plaintiffs

- and -

PANASONIC CORPORATION; PANASONIC CORPORATION OF NORTH AMERICA;  
PANASONIC CANADA INC.; SANYO ELECTRIC CO., LTD.; 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.; HITACHI CANADA; 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.; SAMSUNG ELECTRO-MECHANICS; SAMSUNG ELECTRO-MECHANICS  
AMERICA INC.; SAMSUNG ELECTRONICS CANADA INC.; ROHM CO., LTD.; ROHM  
SEMICONDUCTOR U.S.A., LLC.; HITACHI AIC INC.; HITACHI CHEMICAL ELECTRONICS  
CO., LTD.; FPCAP ELECTRONICS (SUZHOU) CO., LTD.; FUJITSU LTD.; FUJITSU CANADA,  
INC.; HOLY STONE ENTERPRISE CO., LTD.; VISHAY POLYTECH CO., LTD. f/k/a  
HOLYSTONE POLYTECH CO., LTD.; MILESTONE GLOBAL TECHNOLOGY, INC. d/b/a  
HOLYSTONE INTERNATIONAL; and HOLY STONE HOLDINGS CO., LTD.

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*, S.O. 1992, c. 6

**ORDER**

**(Certification, Opt-Out and Notice Approval)**

**THIS MOTION** made by the Plaintiffs for an Order certifying this proceeding as a class proceeding for settlement purposes as Fujitsu Ltd. and Fujitsu Canada, Inc. (the "Settling Defendants") and approving the notice of settlement approval hearings and the method of dissemination of said notice was heard this day at the Court House, 80 Dundas Street, London, Ontario.

**ON READING** the materials filed, including the settlement agreement dated ●, 2022 attached to this Order as Schedule “A” (the “Settlement Agreement”), and on hearing the submissions of counsel for the Plaintiffs, Counsel for the Settling Defendants, and counsel for the Non-Settling Defendants in the Ontario Electrolytic Action;

**AND ON BEING ADVISED** that ● has consented to being appointed as notice provider in accordance with the terms of this Order;

**AND WHEREAS** that the opt-out period provided pursuant to the Order of this Court made on ●, satisfied the requirement of section 9 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, for the purposes of this action, that no further opt-out period is necessary and that the opt-out period expired on ●;

**AND ON BEING ADVISED** that the Plaintiffs and the Settling Defendants consent to this Order and that the Non-Settling Defendants take no position on this motion:

1. **THIS COURT ORDERS** that, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that the Ontario Electrolytic Action is certified as a class proceeding as against the Settling Defendants for settlement purposes only.
3. **THIS COURT ORDERS** that the “Ontario Settlement Class” is certified as follows:

All Persons or entities in Canada who purchased Electrolytic Capacitors or a product containing an Electrolytic Capacitor between September 1, 1997 and December 31, 2014, other than (1) all BC Settlement Class members and (2) all Québec Settlement Class members and (3) Excluded Persons.

Electrolytic Capacitor means: aluminum and tantalum electrolytic capacitors; and,

Electrolytic Class Period means: September 1, 1997 to December 31, 2014.

Excluded Person means: each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant’s subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing, and those Persons who opt-out of the Proceedings in accordance with the orders of the applicable Courts.

4. **THIS COURT ORDERS** that the Ontario Electrolytic Action is certified on the basis of the following issue which is common to the Ontario Settlement Class:

Did the Settling Defendants conspire to fix, raise, maintain or stabilize the price of, or allocate markets and customers of, Electrolytic Capacitors directly or indirectly in Canada during the Class Period? If so, what damages, if any, did Settlement Class Members suffer?

5. **THIS COURT ORDERS** that the plaintiffs, Cygnus Electronics Corporation and Sean Allott are appointed as the representative plaintiffs for the Ontario Settlement Class.
6. **THIS COURT ORDERS** that this Order, including but not limited to the certification of this action against the Settling Defendants for settlement purposes and the definitions of the Ontario Settlement Class, Class Period and Common Issue, and any reasons given by the Court in connection with this Order, is without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Ontario Electrolytic Action and, without restricting the generality of the foregoing, may not be relied on by any Person to establish jurisdiction, the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the Ontario Electrolytic Action, as against the Non-Settling Defendants.
7. **THIS COURT ORDERS** that the notice of certification and settlement approval hearing (the "Notice") is hereby approved substantially in the form attached hereto as Schedule "B".
8. **THIS COURT ORDERS** that the plan of dissemination of the Notice (the "Plan of Dissemination") is hereby approved in the form attached hereto as Schedule "C" and that the Notice shall be disseminated in accordance with the Plan of Dissemination.
9. **THIS COURT ORDERS** that ● is appointed to disseminate the Notice in accordance with the terms of this Order.
10. **THIS COURT ORDERS** that this Order is contingent upon parallel orders being made by the BC Court and the Québec Court, and the terms of this Order shall not be effective unless and until such orders are made by the BC Court and the Québec Court.
11. **THIS COURT ORDERS** that if the Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, this Order shall

be deemed to have been set aside and declared null and void and of no force or effect, without the need for any further Order of this Court. In those circumstances, a case management conference shall be convened to seek directions, including in respect of the need for and form and content of additional notice to Ontario Settlement Class Members. For greater certainty, in those circumstances, any steps taken pursuant to the Settlement Agreement, including but not limited to the issuance of this Order, shall be deemed to not constitute attornment by the Settling Defendants to the jurisdiction of this Court.

Date:

\_\_\_\_\_  
The Honourable \_\_\_\_\_



CYGNUS ELECTRONICS CORPORATION, et v. PANASONIC CORPORATION, et al.

Court File No. 3795/14 CP

Plaintiffs

Defendants

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the *Class Proceedings Act*,  
1992

**ORDER**

**(Certification, Opt-Out and Notice Approval)**

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**Schedule "C"**

Court File No. 3795/14 CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE \_\_\_\_\_ ) , THE DAY  
) OF , 2022

**B E T W E E N :**

CYGNUS ELECTRONICS CORPORATION and SEAN ALLOTT

Plaintiffs

- and -

PANASONIC CORPORATION; PANASONIC CORPORATION OF NORTH AMERICA;  
PANASONIC CANADA INC.; SANYO ELECTRIC CO., LTD.; 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.; HITACHI CANADA; 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.; SAMSUNG ELECTRO-MECHANICS; SAMSUNG ELECTRO-MECHANICS  
AMERICA INC.; SAMSUNG ELECTRONICS CANADA INC.; ROHM CO., LTD.; ROHM  
SEMICONDUCTOR U.S.A., LLC.; HITACHI AIC INC.; HITACHI CHEMICAL ELECTRONICS  
CO., LTD.; FPCAP ELECTRONICS (SUZHOU) CO., LTD.; FUJITSU LTD.; FUJITSU CANADA,  
INC.; HOLY STONE ENTERPRISE CO., LTD.; VISHAY POLYTECH CO., LTD. f/k/a  
HOLYSTONE POLYTECH CO., LTD.; MILESTONE GLOBAL TECHNOLOGY, INC. d/b/a  
HOLYSTONE INTERNATIONAL; and HOLY STONE HOLDINGS CO., LTD.

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*, S.O. 1992, C. 6

**ORDER  
(Settlement Approval)**

**THIS MOTION** made by the Plaintiffs for an Order approving the settlement agreement entered into with Fujitsu Ltd. and Fujitsu Canada, Inc. (the "Settling Defendants") and dismissing this action as against the Settling Defendants, was heard this day at the Court House, 80 Dundas Street, London, Ontario.

**AND ON READING** the materials filed, including the settlement agreement dated ●, 2022 attached to this Order as Schedule "A" (the "Settlement Agreement"), and on hearing the

submissions of counsel for the Plaintiffs, Counsel for the Settling Defendants and counsel for the Non-Settling Defendants in the Ontario Electrolytic Action;

**AND ON BEING ADVISED** that the deadline for objecting to the Settlement Agreement has passed and there have been ● objections to the Settlement Agreement;

**AND ON BEING ADVISED** that the deadline for opting-out of the Ontario Electrolytic Action has passed, and there were ● opt-outs;

**AND ON BEING ADVISED** that the Plaintiffs and the Settling Defendants consent to this Order and that the Non-Settling Defendants take no position on this motion:

1. **THIS COURT ORDERS** that, for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that, in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Ontario Settlement Class.
4. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to section 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.
5. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each member of the Ontario Settlement Class including those Persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of the Ontario Electrolytic Action.
6. **THIS COURT ORDERS** that each Ontario Settlement Class Member who has not validly opted-out of this action shall be deemed to have consented to the dismissal of Released Claims as against the Settling Defendants and its Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice.
7. **THIS COURT ORDERS** that each Other Action commenced in Ontario by any Ontario Settlement Class Member who has not validly opted-out of this action shall be and is

hereby dismissed in respect of Released Claims against the Settling Defendants and the Releasees, without costs and with prejudice.

8. **THIS COURT ORDERS** that, upon the Effective Date, subject to paragraphs 10 and 11, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
9. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor who has not validly opted-out of this action, as well as Class Counsel, shall not now or hereafter institute, continue, provide assistance for or maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claim, except for the continuation of the Proceedings against the Non-Settling Defendants or unnamed co-conspirators that are not Releasees or, if the Proceedings are not certified or authorized, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendants or unnamed co-conspirator that is not a Releasee.
10. **THIS COURT ORDERS** that the use of the terms “Releasors” and “Released Claims” in this Order does not constitute a release of claims by those members of the Ontario Settlement Class who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.
11. **THIS COURT ORDERS** that, upon the Effective Date, each member of the Ontario Settlement Class who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way or to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.
12. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted, unasserted, or asserted in a representative capacity, inclusive of interest, taxes and costs relating to the Released Claims, which were or could have been brought in the Proceedings or otherwise, or could in the future be brought on the basis of the same events, actions and omissions underlying the Proceedings, by any Non-Settling Defendants, any named or unnamed alleged co-conspirator that is not a Releasee, any Settled Defendant, or any other Person or party against a Releasee, or by a Releasee

against any Non-Settling Defendants, any named or unnamed alleged co-conspirator that is not a Releasee, any Settled Defendant, or any other Person or party, are barred, prohibited and enjoined in accordance with the terms of this paragraph 10 (unless such claim is made in respect of a claim by a Person who has validly opted out of the Proceedings);

13. **THIS COURT ORDERS** that if this Court ultimately determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise:

- a. the Ontario Electrolytic Plaintiffs and Ontario Settlement Class members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;
- b. the Ontario Electrolytic Plaintiffs and Ontario Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee, to include, and shall only seek to recover from the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee, only such claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigation costs claimed pursuant to section 36 of the *Competition Act*), attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee, to the Ontario Electrolytic Plaintiffs and Ontario Settlement Class members, if any, and, for greater certainty, the Ontario Settlement Class members shall be entitled to seek to recover such damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigation costs claimed pursuant to section 36 of the *Competition Act*) on a joint and several basis as between the Non-Settling

Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee, if permitted by law; and

- c. this Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Ontario Electrolytic Action, whether or not the Settling Defendants remain in the Ontario Electrolytic Action or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Ontario Electrolytic Action and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in the Ontario Electrolytic Action and shall not be binding on the Releasees in any other proceeding.
14. **THIS COURT ORDERS** that nothing in this Order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigation costs claimed pursuant to section 36 of the *Competition Act*) or judgment against them in favour of members of the Ontario Settlement Class in the Ontario Electrolytic Action or the rights of Ontario Electrolytic Plaintiffs and Ontario Settlement Class Members to oppose or resist any such arguments, except as provided for in this Order.
  15. **THIS COURT ORDERS** that a Non-Settling Defendant may, on motion to this Court determined as if the Settling Defendants remained party to this action, brought on at least ten (10) days' notice to Counsel for the Settling Defendants and not to be brought until the Ontario Electrolytic Action against the Non-Settling Defendants has been certified as a class proceeding (but not including any certification for settlement purposes), seek orders for the following:
    - a. documentary discovery and an affidavit of documents from the Settling Defendants in accordance with the *Rules of Civil Procedure*;
    - b. oral discovery of a representative of the Settling Defendants, the transcript of which may be read in at trial;
    - c. leave to serve a request to admit on the Settling Defendants in respect of factual matters; and/or

- d. the production of a representative of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
16. **THIS COURT ORDERS** that the Settling Defendants retains all rights to oppose such motion(s) brought under paragraph 15. Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of Documents to be produced and/or for information obtained from discovery in accordance with paragraph 15. Notwithstanding any provision in the Ontario and British Columbia orders approving this Settlement Agreement, on any motion brought pursuant to paragraph 15, the Ontario Court or BC Court, as applicable, may make such orders as to costs and other terms as it considers appropriate.
17. **THIS COURT ORDERS** that a Non-Settling Defendant may serve the motion(s) referred to in paragraph 15 above on the Settling Defendants by service on Counsel for the Settling Defendants in the Ontario Electrolytic Action.
18. **THIS COURT ORDERS** that for purposes of implementation, administration, interpretation and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Settling Defendants acknowledge and attorn to the jurisdiction of this Court solely for the purpose of implementing, administering, interpreting and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.
19. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any Releasors has or may have against the Non-Settling Defendants or named or unnamed alleged co-conspirators who are not Releasees.
20. **THIS COURT ORDERS** that no Releasee shall have any responsibility for and no liability whatsoever relating to the administration of the Settlement Agreement or Distribution Protocol.
21. **THIS COURT ORDERS** that the Settlement Amount shall be held in the Trust Account by Ontario Counsel or its duly appointed agent for the benefit of Settlement Class Members, pending further order of this Court on notice to the Defendants and, after the Effective Date, the Settlement Amount can be used to pay Class Counsels Disbursements incurred for the benefit of the Settlement Classes in the continued prosecution of the Ontario

Electrolytic Action against the Non-Settling Defendants. This paragraph shall not be interpreted as affecting the rights of the Plaintiffs or the Settlement Classes to claim such Class Counsel Disbursements in the context of a future costs award in their favour against the Non-Settling Defendants, or the rights of the Non-Settling Defendants to oppose and resist any such claim.

22. **THIS COURT ORDERS** that, upon the Effective Date, the Ontario Electrolytic Action is hereby dismissed as against the Settling Defendants, without costs and with prejudice.
23. **THIS COURT ORDERS** that the approval of the Settlement Agreement is contingent upon parallel orders for approval being made by the BC Court and the Québec Court, and the terms of this Order shall not be effective unless and until the Settlement Agreement is approved by the BC Court and Québec Court, and the BC Action has been dismissed with prejudice and without costs and the Québec Action has been declared settled without costs and without reservations as against the Settling Defendants in the relevant proceeding by the Courts. If such orders are not secured in British Columbia and Québec, this Order shall be null and void and without prejudice to the rights of the parties to proceed with the Ontario Electrolytic Action and any agreement between the parties incorporated in this Order shall be deemed in any subsequent proceedings to have been made without prejudice.
24. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms, this Order shall be declared null and void on subsequent motion made on notice. For greater certainty, in those circumstances, any steps taken pursuant to the Settlement Agreement, including but not limited to the issuance of this Order, shall be deemed to not constitute attornment by the Settling Defendants to the jurisdiction of this Court.



25. **THIS COURT ORDERS** that this Order, including but not limited to the approval of the Settlement Agreement and any reasons given by the Court in relation thereto, except as to paragraphs 12 to 17 of the Order, is without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Ontario Electrolytic Action.

Date:

\_\_\_\_\_  
The Honourable \_\_\_\_\_

CYGNUS ELECTRONICS CORPORATION, et al. v. PANASONIC CORPORATION, et al.  
Plaintiffs Defendants

Court File No. 3795/14 CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the *Class Proceedings Act*,  
1992

**ORDER  
(Settlement Approval)**

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CYGNUS ELECTRONICS CORPORATION, et al. v. PANASONIC CORPORATION, et al.  
Plaintiffs

PANASONIC CORPORATION, et al.  
Defendants

Court File No. 3795/14 CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the *Class Proceedings Act*,  
1992

**ORDER  
(Settlement Approval - Fujitsu)**

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