



Court File No. 1899-2015 CP

ONTARIO  
SUPERIOR COURT OF JUSTICE

THE HONOURABLE  
MR. JUSTICE R. RAIKES  
BETWEEN :

)  
)  
)  
OF FRIDAY, THE 31<sup>st</sup> DAY  
OF JANUARY, 2020

SEAN ALLOTT

Plaintiff

- and -

PANASONIC CORPORATION; PANASONIC CORPORATION OF NORTH AMERICA;  
PANASONIC INDUSTRIAL DEVICES SALES COMPANY OF AMERICA; PANASONIC  
CANADA INC.; KOA CORPORATION; KOA SPEER ELECTRONICS, INC.; MURATA  
MANUFACTURING CO., LTD.; MURATA ELECTRONICS NORTH AMERICA, INC.; ROHM  
CO. LTD.; ROHM SEMICONDUCTOR U.S.A., LLC.; VISHAY INTERTECHNOLOGY, INC.;  
YAGEO CORPORATION and YAGEO AMERICA CORPORATION

Defendants

Proceeding under the *Class Proceedings Act, 1992*

Court File No. 989/17 CP

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN :

SEAN ALLOTT

Plaintiff

- and -

HOKURIKU ELECTRIC INDUSTRY CO.; HDK AMERICA INC.; KAMAYA ELECTRIC  
CO., LTD.; KAMAYA, INC.; ALPS ELECTRIC CO., LTD.; ALPS ELECTRIC (NORTH  
AMERICA), INC.; MIDORI PRECISIONS CO., LTD.; MIDORI AMERICA  
CORPORATION; SUSUMU CO., LTD.; SUSUMU INTERNATIONAL (USA) INC.;  
TOKYO COSMOS ELECTRIC CO.;  
and TOCOS AMERICA, INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

## ORDER

**THIS MOTION**, made by the plaintiffs for an order to consolidate claims in Court File No. 1899-2015 CP (**Resistor Claim #1**) and Court File No. 989/17 CP (**Resistor Claim #2**) and for leave to issue a Fresh as Amended Statement of Claim, was heard this day at the Court House, 700 Christina St N, Sarnia, Ontario.

**ON READING** the motion record filed by the plaintiffs, upon hearing the submissions of counsel and upon being advised that the defendants take no position regarding the relief requested:

1. **THIS COURT ORDERS** that Resistor Claim #1 and Resistor Claim #2 are hereby consolidated into one proceeding.
2. **THIS COURT ORDERS** that the consolidated proceedings be continued, in Court File No. 1899-2015 CP, under the following title of proceedings for all documents issued, served or filed after the date of this Order:

Court File No. 1899-2015

### ONTARIO SUPERIOR COURT OF JUSTICE

BETWEEN:

SEAN ALLOTT

Plaintiff

- and -

PANASONIC CORPORATION; PANASONIC CORPORATION OF NORTH AMERICA; PANASONIC CANADA INC.; KOA CORPORATION; KOA SPEER ELECTRONICS, INC.; ROHM CO. LTD.; ROHM SEMICONDUCTOR U.S.A., LLC.; VISHAY INTERTECHNOLOGY, INC; HOKURIKU ELECTRIC INDUSTRY CO.; HDK AMERICA INC.; KAMAYA ELECTRIC CO., LTD.; KAMAYA, INC.; ALPS ELECTRIC CO., LTD.; ALPS ELECTRIC (NORTH AMERICA), INC.; MIDORI PRECISIONS CO., LTD.; MIDORI AMERICA CORPORATION; SUSUMU CO., LTD.; SUSUMU INTERNATIONAL (USA) INC.; TOKYO COSMOS ELECTRIC CO.; and TOCOS AMERICA, INC.

Defendants

*Proceeding Under the Class Proceedings Act, 1992, S.O. 1992, c. 6*

3. **THIS COURT ORDERS** that the plaintiffs shall be granted leave to issue, in Resistor Claim #1, a Fresh as Amended Statement of Claim in accordance with **Schedule "A"** attached hereto.
4. **THIS COURT ORDERS** that, notwithstanding that leave is granted to issue a Fresh as Amended Statement of Claim in Resistor Claim #1, the date on which the statement of claim was issued against a Defendant is the date of issuance of the Resistor Claim #1 or Resistor Claim Claim #2 in which that Defendant was named as a defendant.
5. **THIS COURT ORDERS** that this Order and any reasons given by the Court in connection with it are without prejudice to any position, objection or defence that the Defendants may assert at any time in this or any other proceeding including, without limiting the generality of the foregoing, with respect to any statutory, common law or equitable defences and arguments, including but not limited to limitations issues or defences, jurisdictional issues, whether the Fresh as Amended Statement of Claim discloses a tenable cause of action or otherwise complies with the rules of pleading, and whether it satisfies the requirements of the *Class Proceedings Act, 1992, SO 1992, c 6*.
6. **THIS COURT ORDERS** that that this Order and any reasons given by the Court in connection thereto are without prejudice to the Defendants' rights to seek costs in relation to the amendments to the Statements of Claim, and any right of the Plaintiff in respect of any such arguments.

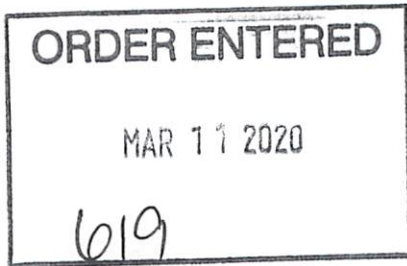
7. **THIS COURT ORDERS** that notice under section 19 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 is not required.

Date: Jan. 31/20



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Mr. Justice Russell Raikes



# Schedule "A"

Court File No.: 1899-2015 CP

## ONTARIO SUPERIOR COURT OF JUSTICE

BETWEEN:

SEAN ALLOTT

Plaintiff

- and -

PANASONIC CORPORATION; PANASONIC CORPORATION OF NORTH AMERICA;  
PANASONIC CANADA INC.; KOA CORPORATION; KOA SPEER ELECTRONICS, INC.;  
ROHM CO. LTD.; ROHM SEMICONDUCTOR U.S.A., LLC.; VISHAY INTERTECHNOLOGY,  
INC.; HOKURIKU ELECTRIC INDUSTRY CO.; HDK AMERICA INC.; KAMAYA ELECTRIC  
CO., LTD.; KAMAYA, INC.; ALPS ELECTRIC CO., LTD.; ALPS ELECTRIC (NORTH  
AMERICA), INC.; MIDORI PRECISIONS CO., LTD.; MIDORI AMERICA CORPORATION;  
SUSUMU CO., LTD.; SUSUMU INTERNATIONAL (USA) INC.;  
TOKYO COSMOS ELECTRIC CO.; and TOCOS AMERICA, INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c.6

### FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS:

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the Plaintiff. The claim made against you is set out in the following pages.

**IF YOU WISH TO DEFEND THIS PROCEEDING**, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

**IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

If you wish to defend this proceeding but are unable to pay legal fees, legal aid may be available to you by contacting a local legal aid office.

Date: September 11, 2015

Issued by:

\_\_\_\_\_  
80 Dundas Street  
London, Ontario  
N6A 6K1

**TO: PANASONIC CORPORATION**  
1006, Oaza Kadoma,  
Kadoma-shi, Osaka 571-8501  
Japan

**AND TO: PANASONIC CORPORATION OF NORTH AMERICA**  
Two Riverfront Plaza,  
Newark, New Jersey 07102  
United States

**AND TO: PANASONIC CANADA INC.**  
5770 Ambler Drive  
Mississauga, Ontario L4W 2T3  
Canada

**AND TO: KOA CORPORATION**  
2-17-2 Midori-Cho,  
Fuchu-Shi, Tokyo 183-0006,  
Japan

**AND TO: KOA SPEER ELECTRONICS, INC.**  
199 Bolivar Drive,  
Bradford, Pennsylvania 16701,  
United States

**AND TO: ROHM CO., LTD.**  
21 Saiin Mizosaki-cho  
Ukyo-ku, Kyoto 615-8585  
Japan

**AND TO: ROHM SEMICONDUCTOR U.S.A., LLC**  
2323 Owen Street, Suite 150  
Santa Clara, California 95054  
United States

- AND TO: VISHAY INTERTECHNOLOGY, INC.**  
63 Lancaster Avenue  
Malvern, Pennsylvania 19355-2143  
United States
- AND TO: HOKURIKU ELECTRIC INDUSTRY CO.**  
3158 Shimo-okubu  
Toyama City, Toyama 939-2292  
Japan
- AND TO: HDK AMERICA INC.**  
200 N. Northwest Highway, Suite 201  
Barrington, Illinois 60010  
United States
- AND TO: KAMAYA ELECTRIC CO., LTD.**  
PSA Building 3F, 6-1-6 Chou  
Yamato-shi Kanagawa 242-0021  
Japan
- AND TO: KAMAYA, INC.**  
6407 Cross Creek Boulevard  
Fort Wayne, Indiana 46818  
United States
- AND TO: ALPS ELECTRIC CO., LTD.**  
1-7, Yukigaya-otsukamachi  
Ota-ku, Tokyo, 145-8501  
Japan
- AND TO: ALPS ELECTRIC (NORTH AMERICA), INC.**  
3151 Jay Street, Suite 101  
Santa Clara, California 95054  
United States
- AND TO: MIDORI PRECISIONS CO., LTD.**  
3-2-8, Shinmeidai,  
Hamura-shi, Tokyo  
Japan
- AND TO: MIDORI AMERICA CORPORATION**  
2501 E. Chapman Avenue, Suite 260  
Fullerton, California 92831  
United States
- AND TO: SUSUMU CO., LTD.**  
14 Umamawashi-Cho  
Kamitoba, Minami-Ku, Kyoto 601-8177  
Japan

**AND TO: SUSUMU INTERNATIONAL (USA) INC.**  
460 Bergen Boulevard, Suite 226  
Palisades Park, New Jersey 07650  
United States

**AND TO: TOKYO COSMOS ELECTRIC CO.**  
2-12-1 Sobudai  
Zama, Kanagawa 252-8550  
Japan

**AND TO: TOCOS AMERICA, INC.**  
1177 E. Tower Road  
Schaumburg, Illinois 60173  
United States



**CLAIM**

1. **THE PLAINTIFF CLAIMS** on behalf of himself and the class:
  - a) an Order pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c.6 (the "*CPA*"), certifying this action as a class proceeding and appointing the plaintiff as the representative plaintiff on behalf of the class;
  - b) general damages calculated on an aggregate basis or otherwise for breach of the *Competition Act*, R.S.C. 1985, c. C-34 (the "*Competition Act*"), conspiracy, unlawful means tort, and unjust enrichment, in an amount sufficient to compensate the plaintiff and the other class members for the harm done to them as a result of the defendants' unlawful conduct;
  - c) punitive damages in an amount to be determined at trial;
  - d) an equitable rate of interest on all sums found due and owing to the plaintiff and the other class members and, further, or in the alternative, pre- and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. 43;
  - e) an accounting, restitution, and disgorgement for common law conspiracy, unjust enrichment, waiver of tort, and unlawful means tort;
  - f) an Order compelling the creation of a litigation trust to hold and distribute the monetary relief awarded pursuant to a plan of administration and distribution under sections 25 and 26 of the *CPA*;
  - g) an injunction enjoining the defendants from conspiring or agreeing with each other, or others, to raise, maintain, fix, or stabilize the price of Resistors;

- h) an Order compelling the creation of a conspicuous notice program to the class members pursuant to section 19 of the *CPA* in order to facilitate the plan of distribution claimed herein;
- i) costs of investigation and prosecution of this proceeding pursuant to section 36 of the *Competition Act*;
- j) costs for the administration of the plan of distribution for relief obtained in this action;
- k) costs of this action on a substantial indemnity scale including applicable taxes; and
- l) such further and other relief as this Honourable Court may deem just.

#### **THE NATURE OF THE ACTION**

2. This action arises from a conspiracy between the defendants to fix, raise, maintain, or stabilize the price of linear resistors in Canada during the Class Period.
3. The defendants and their unnamed co-conspirators manufactured, marketed, distributed, and/or sold linear resistors in Canada and throughout the world. The defendants had market power to sell linear resistors in Canada throughout the Class Period.
4. Resistors are among the most exceedingly common electrical parts in existence. They are within virtually every electrical product, including cellular telephones, computers, disc drives, monitors, automotive electronic assemblies, television sets, and stereo amplifiers. As their name implies, resistors serve to provide a certain amount of resistance which regulates the current in an electrical circuit. Due to the fact that many electrical parts and components possess the ability to transmit more electrical current than might be needed

or necessary, resistors regulate the voltage transmitted in a circuit to enable an electrical product to properly function.

5. While many types of resistors exist, they can be divided into two main types: linear and non-linear. This action concerns only linear resistors ("Resistors"). The current produced in a linear resistor is directly proportional to the voltage applied to the resistor. If the voltage going into a linear resistor increases, the resistance also increases, as does the current produced. In contrast, the current produced by non-linear resistors is not directly proportional to the voltage applied.
6. The defendants manufactured, sold, and distributed Resistors directly or indirectly to original equipment manufacturers ("OEMs"), to electronic manufacturing service providers ("EMS Providers") who manufacture electric circuit products that contain Resistors and are integrated into end-use products manufactured by others, and to third party electronics distributors that sell Resistors to various consumers and others in Canada, Asia, Europe, the United States, and elsewhere for export to and sale in Canada.
7. During the period commencing as early as July 9, 2003 to the present or, alternatively, to the date of judgment (the "Class Period"), it is alleged that the defendants and their senior executives participated in illegal and secretive meetings and made unlawful agreements relating to the prices for Resistors.
8. The conduct of the defendants and their co-conspirators caused injury to the plaintiff and the other class members; namely, that they were compelled to pay, and did pay, artificially inflated prices, directly or indirectly, for Resistors (the "Overcharge").
9. Damages and equitable remedies are claimed. The application of the doctrine of waiver of tort is also sought.

## THE PLAINTIFF AND THE CLASS

10. Sean Allott (the "Plaintiff"), is an individual resident in the City of London, in the Province of Ontario. Sean Allott is an IT professional and a significant personal consumer of electronic products. During the Class Period, Sean Allott purchased products which contained Resistors manufactured by one or more of the defendants.

11. The Plaintiff seeks to represent a class consisting of:

*All persons and entities in Canada, other than persons or entities resident in British Columbia, who purchased Resistors or products which contained Resistors during the Class Period.*

## THE DEFENDANTS

12. The defendants are jointly and severally liable for the actions of, and damages allocable to their co-conspirators including any unnamed co-conspirators.

13. Where a particular entity within a corporate family of the defendants engaged in anti-competitive conduct, it did so on behalf of all entities within that corporate family. The individual participants in the conspiratorial meetings and discussions entered into agreements on behalf of, and reported these meetings and discussions to, their respective corporate families.

14. Various persons, partnerships, sole proprietors, firms, corporations, and individuals not named as defendants in this lawsuit, the identities of which are presently unknown, have participated as co-conspirators with the defendants in the unlawful behaviour alleged herein and have performed acts and made statements in furtherance of the conspiracy or in furtherance of the anticompetitive conduct.

***Panasonic***

15. The Defendant, Panasonic Corporation, is a Japanese corporation with its principal place of business located at 1006, Oaza Kadoma, Kadoma-shi, Osaka 571-8501, Japan. During the Class Period, Panasonic Corporation manufactured, marketed, sold and/or distributed Resistors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
16. The Defendant, Panasonic Corporation of North America, a wholly-owned subsidiary of Panasonic Corporation, is a Delaware corporation with its principal place of business located at Two Riverfront Plaza, Newark, New Jersey 07102, United States. During the Class Period, Panasonic Corporation of North America manufactured, marketed, sold and/or distributed Resistors to customers throughout Canada, either directly or through its business units, subsidiaries, agents or affiliates, including, without limitation, its business unit Panasonic Industrial Devices Sales Company of America.
17. The Defendant, Panasonic Canada Inc., a subsidiary of Panasonic Corporation of North America, is a Canadian corporation with its principal place of business located at 5770 Ambler Drive, Mississauga, Ontario L4W 2T3, Canada. During the Class Period, Panasonic Canada Inc. manufactured, marketed, sold and/or distributed Resistors to customers throughout Canada.
18. The defendants, Panasonic Corporation, Panasonic Corporation of North America, and Panasonic Canada Inc., are collectively referred to herein as "Panasonic."

**KOA**

19. The Defendant, KOA Corporation, is a Japanese corporation, with its principal place of business at 2-17-2 Midori-Cho, Fuchu-Shi, Tokyo 183-0006, Japan. During the Class Period, KOA Corporation manufactured, marketed, sold and/or distributed Resistors either directly or through its subsidiaries, agents, or affiliates, to customers throughout Canada.
20. The Defendant, KOA Speer Electronics, Inc., a wholly-owned subsidiary of KOA Corporation, is a Delaware corporation with its principal place of business located at 199 Bolivar Drive, Bradford, Pennsylvania 16701, United States. During the Class Period, KOA Speer Electronics, Inc. manufactured, marketed, sold and/or distributed Resistors to customers throughout Canada.
21. The defendants, KOA Corporation and KOA Speer Electronics, Inc. are collectively referred to herein as "KOA."

**ROHM**

22. The Defendant, ROHM Co., Ltd., is a Japanese corporation, with its principal place of business at 21 Saiin Mizosaki-cho, Ukyo-ku, Kyoto 615-8585 Japan. During the Class Period, ROHM Co., Ltd. manufactured, marketed, sold and/or distributed Resistors either directly or through its subsidiaries, agents, or affiliates, to customers throughout Canada.
23. The Defendant, ROHM Semiconductor U.S.A., LLC, a wholly-owned subsidiary of ROHM Co., Ltd., is a Delaware limited liability corporation with its principal place of business located at 2323 Owen Street, Suite 150, Santa Clara, California 95054, United States. During the Class Period, ROHM Semiconductor U.S.A., LLC manufactured, marketed, sold and/or distributed Resistors to customers throughout Canada.

24. The defendants, ROHM Co., Ltd. and ROHM Semiconductor U.S.A., LLC, are collectively referred to herein as "ROHM."

***Vishay***

25. The Defendant, Vishay Intertechnology, Inc. ("Vishay"), is a Delaware corporation, with its principal place of business at 63 Lancaster Avenue, Malvern, Pennsylvania 19355-2143, United States. During the Class Period, Vishay manufactured, marketed, sold and/or distributed Resistors either directly or through its subsidiaries, agents, or affiliates, to customers throughout Canada.

***HDK***

26. The defendant, Hokuriku Electric Industry Co., is a Japanese corporation with its principal place of business located at 3158 Shimo-okubu, Toyama City, Toyama 939-2292, Japan. During the Class Period, Hokuriku Electric Industry Co. manufactured, marketed, sold, and/or distributed Resistors either directly or through its subsidiaries, agents, or affiliates to customers throughout Canada.
27. The defendant, HDK America Inc., is an Illinois corporation with its principal place of business located at 200 N. Northwest Highway, Suite 201, Barrington, Illinois 60010, United States. During the Class Period, HDK America Inc. manufactured, marketed, sold, and/or distributed Resistors either directly or through its subsidiaries, agents, or affiliates to customers throughout Canada.
28. The defendants, Hokuriku Electric Industry Co. and HDK America Inc., are collectively referred to herein as "HDK."

***Kamaya***

29. The defendant, Kamaya Electric Co., Ltd., is a Japanese corporation with its principal place of business located at PSA Building 3F, 6-1-6 Chou, Yamato-shi Kanagawa, 242-0021, Japan. During the Class Period, Kamaya Electric Co., Ltd. manufactured, marketed, sold, and/or distributed Resistors either directly or through its subsidiaries, agents, or affiliates to customers throughout Canada.
30. The defendant, Kamaya, Inc., a subsidiary of Kamaya Electric Co., Ltd., is a corporation with its principal place of business located at 6407 Cross Creek Boulevard, Fort Wayne, Indiana 46818, United States. During the Class Period, Kamaya, Inc. manufactured, marketed, sold, and/or distributed Resistors either directly or through its subsidiaries, agents, or affiliates to customers throughout Canada.
31. The defendants, Kamaya Electric Co., Ltd. and Kamaya, Inc., are collectively referred to herein as "Kamaya."

***Alps***

32. The defendant, Alps Electric Co., Ltd., is a Japanese corporation with its principal place of business located at 1-7, Yukigaya-otsukamachi, Ota-ku, Tokyo, 145-8501, Japan. During the Class Period, Alps Electric Co., Ltd. manufactured, marketed, sold, and/or distributed Resistors either directly or through its subsidiaries, agents, or affiliates to customers throughout Canada.
33. The defendant, Alps Electric (North America), Inc. is a subsidiary of Alps Electric Co., Ltd. with its principal place of business located at 3151 Jay Street, Suite 101, Santa Clara, California 95054, United States. During the Class Period, Alps Electric (North America),



Inc. manufactured, marketed, sold, and/or distributed Resistors either directly or through its subsidiaries, agents, or affiliates to customers throughout Canada.

34. The defendants, Alps Electric Co., Ltd. and Alps Electric (North America), Inc., are collectively referred to herein as "Alps."

***Midori***

35. The defendant, Midori Precisions Co., Ltd., is a Japanese corporation with its principal place of business located at 3-2-8, Shinmeidai, Hamura-shi, Tokyo, Japan. During the Class Period, Midori Precisions Co., Ltd. manufactured, marketed, sold, and/or distributed Resistors either directly or through its subsidiaries, agents, or affiliates to customers throughout Canada.

36. The defendant, Midori America Corporation, is a wholly owned subsidiary of Midori Precisions Co., Ltd. with its principal place of business located at 2501 E. Chapman Avenue, Suite 260, Fullerton, California 92831, United States. During the Class Period, Midori America Corporation manufactured, marketed, sold, and/or distributed Resistors either directly or through its subsidiaries, agents, or affiliates to customers throughout Canada.

37. The defendants, Midori Precisions Co., Ltd. and Midori America Corporation, are collectively referred to herein as "Midori."

***Susumu***

38. The defendant, Susumu Co., Ltd., is a Japanese corporation with its principal place of business located at 14 Umamawashi-Cho, Kamitoba, Minami-Ku, Kyoto, 601-8177, Japan. During the Class Period, Susumu Co., Ltd. manufactured, marketed, sold, and/or

distributed Resistors either directly or through its subsidiaries, agents, or affiliates to customers throughout Canada.

39. The defendant, Susumu International (USA) Inc. is a subsidiary of Susumu Co., Ltd. with its principal place of business located at 460 Bergen Boulevard, Suite 226, Palisades Park, New Jersey 07650, United States. During the Class Period, Susumu International (USA) Inc. manufactured, marketed, sold, and/or distributed Resistors either directly or through its subsidiaries, agents, or affiliates to customers throughout Canada.
40. The defendants, Susumu Co., Ltd. and Susumu International (USA) Inc., are collectively referred to herein as "Susumu."

#### ***TOCOS***

41. The defendant, Tokyo Cosmos Electric Co., is a Japanese corporation with its principal place of business located at 2-12-1 Sobudai, Zama, Kanagawa 252-8550, Japan. During the Class Period, Tokyo Cosmos Electric Co. manufactured, marketed, sold, and/or distributed Resistors either directly or through its subsidiaries, agents, or affiliates to customers throughout Canada.
42. The defendant, TOCOS America, Inc., is a wholly owned subsidiary of Tokyo Cosmos Electric Co. with its principal place of business located at 1177 E. Tower Road, Schaumburg, Illinois 60173, United States. During the Class Period, TOCOS America, Inc. manufactured, marketed, sold, and/or distributed Resistors either directly or through its subsidiaries, agents, or affiliates to customers throughout Canada.
43. The defendants, Tokyo Cosmos Electric Co. and TOCOS America, Inc., are collectively referred to herein as "TOCOS."

44. The defendants named in paragraphs 15 to 43 are collectively referred to herein as the "Defendants."

## **FACTUAL BACKGROUND**

### ***Resistors and the Resistors Industry***

45. Resistors are one of the most common, if not the most common, components in electronics. The purpose of Resistors is to regulate the amount of current and voltage in an electrical circuit by restricting the flow of current (i.e. electrons) in the circuit (as compared with capacitors, which store the charge in a circuit). Resistors are essential components in electrical circuits.
46. The structure and characteristics of the market for Resistors in Canada are conducive to the conspiracy alleged herein.
47. The market demand for Resistors is high and an increase in the price of Resistors results in only a small decline, if any, of the number sold. The demand for Resistors is stable because there is no close substitute for them. The inflexible demand for Resistors has facilitated the collusion of the Defendants and allowed them to collectively raise their prices without triggering customer substitution and lost revenue.
48. There are substantial barriers that preclude, reduce, or make more difficult entry into the Resistors market. Resistors are expensive to manufacture. A supply chain must be established for all new materials. New entrants into the market face high and lengthy start-up costs. New fabrication operations are required to meet the market demand and to adjust to technological changes. The Defendants have developed longstanding manufacturing capabilities and relationships within the Resistors industry.

49. There are no close substitutes for Resistors in Canada. Resistors are one of the fundamental components found in electrical circuits and are in virtually all electronic components and devices in use today. There are no alternatives to Resistors.
50. A Resistor is a commodity product that is interchangeable among the Defendants: while different sub-types of Resistors are not interchangeable (e.g. different sizes and power), each one is homogenous with another in its category. A Resistor manufactured by one of the Defendants can be exchanged for a product of another Defendant with the same technical and operational specifications.
51. The Defendants dominate the global market for Resistors, including the sale of Resistors in Canada.

***The Conspiracy to Fix the Price of Resistors***

52. The acts alleged under this heading are, collectively, referred to as the "Conspiracy Acts."
53. During the Class Period, the Defendants and their unnamed co-conspirators conspired and/or agreed with each other to fix, maintain, increase, or control the price for the supply of Resistors and/or to enhance unreasonably the prices of Resistors and/or to unduly lessen competition in the sale of Resistors in Canada.
54. During the Class Period, senior executives and employees of the Defendants, acting in their capacities as agents for the Defendants, engaged in communications, conversations, and attended meetings with each other at times and places, some of which are unknown to the Plaintiff. As a result of the communications and meetings the Defendants and their

unnamed co-conspirators unlawfully conspired and/or agreed to:

- a) unreasonably enhance the prices of Resistors in Canada;
- b) fix, maintain, increase, or control the prices of Resistors in Canada;
- c) monitor and enforce adherence to an agreed-upon pricing scheme for Resistors in Canada;
- d) restrain trade in the sale of Resistors in Canada; and
- e) unduly lessen competition in the sale of Resistors in Canada.

55. In furtherance of the conspiracy, during the Class Period the Defendants and/or their servants and agents:

- a) fixed, maintained, increased, controlled, and/or enhanced unreasonably the prices of Resistors in Canada;
- b) communicated secretly, in person and by telephone, to discuss and fix prices of Resistors;
- c) made formal agreements with respect to the prices of Resistors;
- d) exchanged information regarding the prices of Resistors for the purposes of monitoring and enforcing adherence to the agreed-upon prices;
- e) rigged bids for the sale of Resistors to OEMs and their subsidiaries;
- f) allocated sales, territories, customers, or markets for the supply of Resistors;
- g) fixed, maintained, controlled, prevented, or lessened the production and/or the supply of Resistors; and
- h) disciplined any conspirator which failed to comply with the conspiracy.

56. During the Class Period, the Defendants and/or their servants and agents took active steps to, and did, conceal the unlawful conspiracy from the Plaintiff and the other class members.
57. Among other means of communicating, the Defendants were motivated to conspire and their predominant purposes and predominant concerns were to harm the Plaintiff and the other class members who purchased Resistors by requiring them to pay unlawfully high prices for Resistors.
58. Trade associations provide opportunities for the Defendants to meet frequently and exchange information to facilitate collusion. One such organization is the Japan Electronics and Information Technology Industries Association ("JEITA") which is located in Tokyo, Japan. All of the Defendants have been involved with and/or are members of this organization, which provided the vehicle by which the Defendants and their unnamed co-conspirators colluded to fix prices of Resistors.
59. JEITA hosts the "CEATEC Japan" exhibition every fall. This exhibition is well attended by company representatives. Several of the Defendants have been exhibitors.
60. The Electronic Components Board (the "ECB") is a subcommittee of JEITA which includes a Passive Components Committee (the "PCC"). All of the Defendants are members of the ECB. The ECB meets regularly to discuss its projects, including preparing global statistics of the electronics industry, investigation and research for market forecasts, preparation for safety problems, and preparation for environmental problems.
61. The industry is highly concentrated and these meetings provide industry players with multiple opportunities to meet and conspire.

62. At a July 2003 meeting of the PCC, the Defendants and their unnamed co-conspirators agreed to provide each other with company-specific information, including information and data relating to each company's current sales, changes in production of linear resistors, domestic and foreign price status, overseas production status, status of shift to overseas production, and export trends. These agreements neutralized competition among the Defendants and their unnamed co-conspirators throughout the Class Period.
63. The PCC convened multiple times a year throughout the Class Period and continuing to the present. In addition to the regular PCC meetings, additional meetings, telephone calls, and e-mail discussions took place between individual Defendants and their unnamed co-conspirators throughout the Class Period in furtherance of their ongoing conspiracy.
64. Another organization is the Electronic Components Industry Association ("ECIA"), which is located in Alpharetta, Georgia. Some of the Defendants have been involved with and/or are members of this organization.
65. The ECIA hosts an annual "Executive Conference", and held regional series meetings on September 29, 2015 and October 4, 2016 in Toronto. The regional series has in the past been well attended by company representatives. The industry is highly concentrated, and these meetings provide industry players with multiple additional opportunities to meet and conspire.
66. The Canadian subsidiaries of the foreign Defendants participated in and furthered the objectives of the conspiracy by knowingly modifying their competitive behaviour in accordance with instructions received from their respective parent companies, and thereby acted as their agents in carrying out the conspiracy and are liable for such acts.

67. The Conspiracy Acts alleged in this claim to have been done by each Defendant were authorized, ordered, and done by each Defendant's officers, directors, agents, employees, or representatives while engaged in the management, direction, control, or transaction of its business affairs.

### ***Regulatory Investigations***

68. In June of 2015, the Antitrust Division of the United States Department of Justice ("DOJ") commenced an investigation into the price-fixing of Resistors. The DOJ's investigation into the Resistors industry appears to be related to its price-fixing investigation into the capacitors industry. The two cases appear to be part of a larger probe by the DOJ into the market for passive electronic components.
69. The DOJ concluded its investigation into the price-fixing of Resistors in the summer of 2016.
70. In addition to the DOJ investigation, there have also been investigations by foreign antitrust authorities. For example, the Korea Fair Trade Commission has recently conducted an on-site investigation into suspected price-fixing of resistors. Further, in or around June of 2014, the Japanese Fair Trade Commission commenced an investigation and has conducted raids at the offices of some Resistors manufacturers. These investigations are ongoing at this time.

## **CAUSES OF ACTION**

### ***Breach of the Competition Act***

71. The Conspiracy Acts are in breach of section 45 of Part VI of the *Competition Act*, caused injury to the Plaintiff and the other class members, and render the Defendants jointly and



severally liable to pay damages and costs of investigation pursuant to section 36 of the *Competition Act*.

72. The Plaintiff and the other class members did not discover, and could not discover through the exercise of reasonable diligence, the existence of the claims sued upon until recently because the Defendants and their co-conspirators actively, intentionally, and purposively concealed the existence of the combination and conspiracy from the Plaintiff and the other class members.
73. Further, the Canadian subsidiaries of the foreign Defendants are liable to the Plaintiff and the other class members pursuant to section 36 of the *Competition Act* for acts in contravention of section 45(1) of the *Competition Act*.

#### ***Civil Conspiracy***

74. Further, and in the alternative, the Conspiracy Acts were unlawful acts under the *Competition Act* and/or in restraint of trade directed towards the Plaintiff and the other class members. The Defendants and their unknown co-conspirators knew that the unlawful acts alleged herein would likely cause injury to the Plaintiff and other class members and, as such, the Defendants are jointly and severally liable for the tort of civil conspiracy. Further, or alternatively, the predominant purpose of the Conspiracy Acts was to injure the Plaintiff and other class members, and the Defendants are jointly and severally liable for the tort of conspiracy to injure.
75. The Plaintiff and other class members suffered damages as a result of the Defendants' conspiracy.

***Unlawful Means Tort***

76. Further, and in the alternative, the Conspiracy Acts were unlawful acts intended to cause the Plaintiff and the other class members economic loss, as an end in itself or as a necessary means of enriching the Defendants.
77. The Conspiracy Acts undertaken by the Defendants were unlawful under the laws of the jurisdictions where the Conspiracy Acts took place and are actionable by third parties, including OEMs, EMS Providers and third-party electronics distributors of Resistors located outside of Canada, or would be actionable by those third parties located outside of Canada if they had suffered a loss. As such, the Defendants are jointly and severally liable for the unlawful means tort.
78. The Plaintiff and the other class members suffered damages as a result of the Defendants' unlawful means tort. Each of the Defendants is jointly and severally liable to pay the resulting damages.

***Unjust Enrichment***

79. The Defendants have each been unjustly enriched by the receipt of the Overcharge. The Plaintiff and the other class members have suffered a corresponding deprivation in the amount of the Overcharge.
80. Since the Overcharge that was received by the Defendants from the Plaintiff and the other class members resulted from the Defendants' wrongful or unlawful acts, there is and can be no juridical reason justifying the Defendants retaining any part of the Overcharge.

81. The Defendants are required to make restitution to the Plaintiff and the other class members for the entire Overcharge because, among other reasons:
- a) the Defendants were unjustly enriched by receipt of the Overcharge;
  - b) the Plaintiff and the other class members suffered a deprivation by paying the Overcharge;
  - c) the Defendants engaged in inappropriate conduct and committed wrongful acts by engaging in the conspiracies alleged in this claim;
  - d) the Overcharge was acquired in such circumstances that the Defendants may not in good conscience retain it;
  - e) justice and good conscience require restitution;
  - f) the integrity of the marketplace would be undermined if the court did not order restitution; and
  - g) there are no factors that would, in respect of the artificially induced Overcharge, render restitution unjust.
82. Equity and good conscience require the Defendants to make restitution to the Plaintiff and the other class members of the artificially-induced Overcharge from the sale of Resistors or, alternatively, to disgorge that amount to the Plaintiff and the other class members.

***Waiver of Tort***

83. Further, or alternatively, the Plaintiff pleads and relies on the doctrine of waiver of tort and states that the Defendants' conduct, including the alleged breaches of the Competition Act, constitute conduct which can be waived in favour of an election to receive restitutionary or other equitable remedies.

## REMEDIES

### *Damages*

84. As a result of the Conspiracy Acts:
- a) the prices of Resistors and products containing Resistors have been unreasonably enhanced and/or fixed at artificially high and non-competitive levels; and
  - b) competition in the sale of Resistors has been unduly restrained.
85. During the Class Period, the Plaintiff and the other class members purchased Resistors and products containing Resistors. By reason of the alleged violations of the *Competition Act* and the common law, the Plaintiff and the other class members have been overcharged for those Resistors and products containing Resistors by paying more than they would have paid in the absence of the illegal conspiracy. As a result, the Plaintiff and the other class members have suffered damages.
86. The Plaintiff asserts that the Overcharge is capable of being quantified on an aggregate basis as the difference between the prices actually paid by the class members and the prices which would have been paid in the absence of the unlawful conspiracy.
87. All amounts payable to the class on account of damages and disgorgement should be calculated on an aggregate basis, pursuant to section 24 of the *CPA*, or otherwise.

### *Punitive Damages*

88. The Defendants' conduct was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful, and in contumelious disregard of the Plaintiff's rights and the rights of the other class members. As such, the Defendants are liable to pay aggravated, exemplary, and punitive damages.

***Plan of Distribution***

89. Such damages ought to be held in a litigation trust and distributed pursuant to a Plan of Distribution under sections 25 and 26 of the *CPA*.

***Injunction***

90. The Plaintiff claims that the Defendants be permanently enjoined from carrying on business in contravention of the applicable laws.

***Conspicuous Notice Plan***

91. The Plaintiff requests the creation of a conspicuous and comprehensive notice program affording notice to the class members of the illegality of the Overcharge, interest, and other amounts paid by them and owing to them by the Defendants, pursuant to section 19 of the *CPA*.

**STATUTES RELIED UPON**

92. The Plaintiff pleads and relies upon the *Class Proceedings Act, 1992*, S.O. 1992, c.6 as amended, the *Competition Act*, RSC 1985, c.C-34 as amended, and the *Courts of Justice Act*, R.S.O. 1990, c. 43.

**SERVICE OUTSIDE ONTARIO**

93. This originating process may be served without Court order outside of Ontario in that the claim is:

- a) in respect of a tort committed in Ontario [*Rule 17.02(g)*];

- b) in respect of damages sustained in Ontario arising from a tort or a breach of contract wherever committed [*Rule* 17.02(h)]; and
- c) against a person carrying on business in Ontario [*Rule* 17.02(p)].

94. The Plaintiff proposes that this action be tried in the City of London, in the Province of Ontario.

September 11, 2015

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**Lawyers for the Plaintiff**

SEAN ALLOTT

v.

PANASONIC CORPORATION., et al.

Court File No. 1899-2015 CP

Plaintiff

Defendants

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the *Class Proceedings Act, 1992*

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**FRESH AS AMENDED STATEMENT OF CLAIM**

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Plaintiff

v. PANASONIC CORPORATION, et al.  
v. HOKURIKU ELECTRIC INDUSTRY CO., et al.

Defendants

Court File No. 1899-15 CP  
Court File No. 989/17 CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the *Class Proceedings Act, 1992*

**ORDER  
(Motion to Consolidate)**

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