

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

CYGNUS ELECTRONICS CORPORATION

Plaintiff

- and -

PANASONIC CORPORATION; PANASONIC CORPORATION OF NORTH AMERICA;  
PANASONIC CANADA INC.; SANYO ELECTRIC CO., LTD.; SANYO NORTH AMERICA  
CORPORATION; TAIYO YUDEN CO., LTD.; TAIYO YUDEN (USA) INC.; TAIYO YUDEN  
(USA) INC. O/A TAIYO YUDEN CANADA; NEC TOKIN CORPORATION; NEC TOKIN  
AMERICA INC.; NEC CANADA 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.; VISHAY INTERTECHNOLOGY INC.; SAMSUNG ELECTRO-  
MECHANICS; SAMSUNG ELECTRO-MECHANICS AMERICA INC.; SAMSUNG  
ELECTRONICS CANADA INC.; ROHM CO., LTD.; ROHM SEMICONDUCTOR U.S.A., LLC.

Defendants

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

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# **PLAINTIFF'S MOTION RECORD**

(Motion for Discontinuances)

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November 18, 2016

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# Tab 1



**ONTARIO  
SUPERIOR COURT OF JUSTICE**

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

**CYGNUS ELECTRONICS CORPORATION**

**Plaintiff**

**- and -**

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**Defendants**

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

**NOTICE OF MOTION**

**THE PLAINTIFF**, Cygnus Electronics Corporation, will make a motion to the Court on  
November 29, 2016 at 10:00 a.m., or as soon thereafter as the motion can be heard, before Mr.  
Justice Raikes, at the Courthouse, 80 Dundas Street, London, Ontario.

**PROPOSED METHOD OF HEARING:**

1. The motion is to be heard orally.

### THE MOTION IS FOR:

1. An Order approving the discontinuance of the within proceeding, without prejudice and without costs, as against the following defendants in accordance with the tolling and standstill agreements reached between the plaintiff and each of the respective defendants:
  - a. NEC Canada Inc.;
  - b. Vishay Intertechnology Inc.; and,
  - c. Taiyo Yuden Co. Ltd., Taiyo Yuden (USA) Inc. and Taiyo Yuden (USA) Inc. o/a Taiyo Yuden Canada;(collectively, the “Standstill Defendants”) pursuant to section 29 of the *Class Proceedings Act*, 1992, S.O. 1992, c. 6;
2. An order approving the discontinuance of the within proceeding as against the defendant Sanyo North America Corporation;
3. An Order granting leave to file an Amended Amended Statement of Claim to remove the Standstill Defendants and the defendant Sanyo North America Corporation in the form attached as **Schedule “A”**;
4. An Order that notice under sections 19 and 29 of the *Class Proceedings Act*, 1992, S.O. 1992, c. 6 is not required; and,
5. Such further and other order and relief as counsel may request and this Honourable Court may deem just.

### THE GROUNDS OF THE MOTION ARE:

1. On August 6, 2014, the Plaintiff issued a Statement of Claim alleging a price-fixing conspiracy among the defendants concerning aluminium and tantalum electrolytic capacitors (“Capacitors”);

2. Following the issuance of the Statement of Claim, plaintiff's counsel continued its investigations of the Standstill Defendants and have had discussions with counsel for each of the respective Standstill Defendants regarding the allegations in the Statement of Claim;
3. The Plaintiff and the Standstill Defendants have entered into Tolling and Standstill Agreements which provide for, among other things, the discontinuance of this action as against the Standstill Defendants;
4. The Tolling and Standstill Agreements toll any and all limitation periods applicable to the claims as of August 6, 2014, the date the Statement of Claim was filed;
5. The discontinuance of the action against the Standstill Defendants will simplify the progress of this action by limiting the role of various named parties without giving up any rights to bring them back into the action should it become advisable or necessary in the future;
6. The agreement to discontinue against the Standstill Defendants is not and shall not be construed as a release of any causes of action that are or may be asserted in the within proceedings;
7. The action should be dismissed as against the defendant Sanyo North America Corporation as the company ceased to exist as of April 1, 2015 due to its merger with and into Panasonic Corporation of North America who remains a defendant in the within proceedings;
8. Counsel for the defendant Sanyo North America Corporation has advised plaintiff's counsel that Panasonic Corporation of North America retains all existing documents and personnel from Sanyo North America Corporation and is responsible for any proven liabilities of Sanyo North America Corporation;

9. The discontinuance of the action against the defendant Sanyo North America Corporation will simplify the progress of the action without giving up any rights on behalf of the class as Panasonic Corporation of North America, a named defendant, is responsible for any proven liabilities of Sanyo North America Corporation;
10. *The Class Proceedings Act 1992*, S.O., 1990, including but not limited to ss. 12 and 29;
11. *The Rules of Civil Procedure*, in particular Rules 23 and 26; and,
12. Such further and other grounds as counsel may advise and this Honourable Court permits.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. The affidavit of Stephanie Legdon, sworn November 18, 2016; and,
2. Such further and other evidence as counsel may advise and this Honourable Court may deem just.

Dated: November 18, 2016

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**Schedule "A"**

Court File No.: 3795/14

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

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

**CYGNUS ELECTRONICS CORPORATION**

**Plaintiff**

**- and -**

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PANASONIC CANADA INC.; SANYO ELECTRIC CO., LTD.; ~~SANYO NORTH  
AMERICA CORPORATION; TAIYO YUDEN CO., LTD.; TAIYO YUDEN (USA) INC.;~~  
~~TAIYO YUDEN (USA) INC. O/A TAIYO YUDEN CANADA;~~ NEC TOKIN  
CORPORATION; NEC TOKIN AMERICA INC.; ~~NEC CANADA 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.; ~~VISHAY INTERTECHNOLOGY INC.;~~ SAMSUNG ELECTRO-  
MECHANICS; SAMSUNG ELECTRO-MECHANICS AMERICA INC.; SAMSUNG  
ELECTRONICS CANADA INC.; ROHM CO., LTD.; and ROHM SEMICONDUCTOR  
U.S.A., LLC.

**Defendants**

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

**AMENDED 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: August 6, 2014

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: SANYO ELECTRIC CO., LTD.**  
 5-5, Keihan-Hondori, 2-Chome  
 Moriguchi City, Osaka 570-8677  
 Japan

**AND TO: ~~SANYO NORTH AMERICA CORPORATION~~**  
~~2055 Sanyo Avenue~~  
~~San Diego, California 92154~~  
~~United States~~

**AND TO: ~~TAIYO YUDEN CO., LTD.~~**  
~~6-16-20, Ueno, Taite-ku~~  
~~Tokyo 110-0005~~  
~~Japan~~

**AND TO: ~~TAIYO YUDEN (USA) INC.~~**  
~~10 North Martingale Road, Suite 575~~  
~~Schaumburg, Illinois 60173~~  
~~United States~~

**AND TO: ~~TAIYO YUDEN (USA) INC. O/A TAIYO YUDEN CANADA~~**  
~~55 Northfield Drive East, Suite 265~~  
~~Waterloo, Ontario, N2K 3T6~~  
~~Canada~~

**AND TO: NEC TOKIN CORPORATION**  
 7-1, Kohriyama 6-chome, Taihaku-ku  
 Sendai-shi, Miyagi 982-8510  
 Japan

**AND TO: NEC TOKIN AMERICA INC.**  
 2460 North First Street, Suite 220  
 San Jose, California, 95131  
 United States

**AND TO: ~~NEC CANADA INC.~~**  
~~5995 Avebury Road~~  
~~Mississauga, Ontario, L5R 3P9~~  
~~Canada~~

**AND TO: KEMET CORPORATION**  
 2835 Kemet Way  
 Simpsonville, South Carolina 29681  
 United States

**AND TO: KEMET ELECTRONICS CORPORATION**  
 2835 Kemet Way  
 Simpsonville, South Carolina 29681  
 United States

**AND TO: NIPPON CHEMI-CON CORPORATION**  
5-6-4, Osaki,  
Shinagawa-ku, Tokyo 141-8605  
Japan

**AND TO: UNITED CHEMI-CON CORPORATION**  
9801 West Higgins Road  
Rosemont, Illinois 60018  
United States

**AND TO: HITACHI CHEMICAL CO., LTD.**  
Grantokyo South Tower, 1-9-2  
Marunouchi Chiyoda-ku, Tokyo, 100-6606  
Japan

**AND TO: HITACHI CHEMICAL COMPANY AMERICA, LTD.**  
10080 North Wolfe Road, Suite SW3-200  
Cupertino, California 95014  
United States

**AND TO: HITACHI CANADA**  
5450 Explorer Drive, Suite 501  
Mississauga, Ontario, L4W 5M1  
Canada

**AND TO: NICHICON CORPORATION**  
Karasumadori Oike-agaru  
Nakagyo-ku, Kyoto, 604-0845  
Japan

**AND TO: NICHICON (AMERICA) CORPORATION**  
927 East State Parkway  
Schaumburg, Illinois 60173  
United States

**AND TO: AVX CORPORATION**  
One AVX Boulevard  
Fountain Inn, South Carolina 29644-9039  
United States

**AND TO: RUBYCON CORPORATION**  
1938-1, Nishi-Minowa  
Ina-City, Nagano Prefecture 399-4593  
Japan

**AND TO: RUBYCON AMERICA INC.**  
4293 Lee Avenue  
Gurnee, Illinois 60031  
United States

**AND TO: ELNA CO., LTD.**  
 3-8-11 Shin-Yokohama  
 Kohoku-ku, Yokohama, Kanagawa Prefecture, 222-0033  
 Japan

**AND TO: ELNA AMERICA INC.**  
 879 West 190th Street, Suite 100  
 Gardena, California 90248  
 United States

**AND TO: MATSUO ELECTRIC CO., LTD.**  
 3-5-3 Sennari-cho  
 Toyonaka-shi, Osaka 561-8558  
 Japan

**AND TO: TOSHIN KOGYO CO., LTD.**  
 Tsukasa Bldg. 2-15-4  
 Uchikanda Chiyoda-ku, Tokyo  
 Japan

~~**AND TO: VISHAY INTERTECHNOLOGY, INC.**~~  
~~63 Lancaster Avenue~~  
~~Malvern, Pennsylvania 19355-2143~~  
~~United States~~

**AND TO: SAMSUNG ELECTRO-MECHANICS**  
 Gyeonggi-Do Suwon-Si Youngtong-Gu Maeyoung-Ro 150  
 (Maetan-Dong) 443-743  
 South Korea

**AND TO: SAMSUNG ELECTRO-MECHANICS AMERICA, INC.**  
 3333 Michelson Drive, Suite 600  
 Irvine, California 92612  
 United States

**AND TO: SAMSUNG ELECTRONICS CANADA INC.**  
 2050 Derry Road West  
 Mississauga, Ontario, L5N 0B9  
 Canada

**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

## CLAIM

1. **THE PLAINTIFF CLAIMS** on behalf of itself and the class:
  - a. an Order pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, CHAPTER 6, certifying this action as a class proceeding and appointing the plaintiff as the representative plaintiff for the Class;
  - b. general damages calculated on an aggregate basis or otherwise for breach of the *Competition Act*, RSC 1985 c. C-34 (the "*Competition Act*"), conspiracy, unlawful means tort and unjust enrichment, in an amount sufficient to compensate the plaintiff and the 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, post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, Chapter C.43;
  - e. an accounting, restitution, 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 Capacitors;

- h. an Order compelling the creation of a conspicuous notice program to 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 court deems just.

## **NATURE OF THE ACTION**

- 2. This action arises from a conspiracy between the defendants to fix, raise, maintain, or stabilize prices of aluminum and tantalum electrolytic capacitors (“Capacitors”) in Canada during the Class Period.
- 3. The defendants and their unnamed co-conspirators manufactured, marketed, distributed and/or sold Capacitors in Canada and throughout the world. The defendants had market power in the market for Capacitors in Canada throughout the Class Period.
- 4. Capacitors are electronic components that serve as one of the fundamental building blocks of all types of electrical circuits. Virtually every electrical circuit contains one or



more capacitors. Generally, a capacitor is used in an electric circuit to store an electrical charge.

5. In its basic form, a capacitor consists of one or more pairs of conductors, separated by an insulator, with wires connected to the two conducting plates.
6. The defendants sold aluminum and/or tantalum capacitors to original equipment manufacturers (“OEMs”) and others in Canada, Asia, Europe, the United States, and elsewhere.
7. During the period commencing September ~~January~~ 1, ~~1997~~2005 and continuing up to the present (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 Capacitors.
8. The conduct of the defendants and their co-conspirators caused injury to the plaintiff and the class members, namely that they were compelled to pay, and did pay, artificially inflated prices, directly or indirectly for Capacitors (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. The plaintiff, Cygnus Electronics Corporation (“Cygnus”) is an Ontario Corporation, carrying on business in the contract electronics manufacturing field. During the Class Period, Cygnus was a purchaser of aluminum and tantalum electrolytic capacitors manufactured by the Defendants.

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

All persons and entities in Canada who purchased electrolytic capacitors or products which contained electrolytic capacitors between September 1, 1997, and the present, other than (1) all persons and entities resident in British Columbia and, (2) all persons and entities other than legal persons established for a private interest, partnership or association, who had under its direction or control more than 50 persons bound to it by contract of employment who purchased said products in Quebec during that period.

~~All persons and entities in Canada who purchased Capacitors or products which contained Capacitors between January 1, 2005, and the present.~~

## DEFENDANTS

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

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. Until

October 1, 2008, Panasonic Corporation operated under the name of Matsushita Electric Industrial Co., Ltd. During the Class Period, Panasonic Corporation manufactured, marketed, sold and/or distributed Capacitors 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 sold and/or distributed Capacitors to customers throughout Canada.
17. On or around April 1, 2015, Panasonic Corporation of North America merged with Sanyo North America Corporation. Sanyo North America Corporation, was until the time of its merger with Panasonic Corporation of North America, a Delaware corporation and a wholly owned subsidiary of the defendant, Sanyo Electric Co., Ltd., with its principal place of business located at 2055 Sanyo Avenue, San Diego, California 92154. During the Class Period until the date of the merger, Sanyo North America Corporation sold and/or distributed Capacitors to customers throughout Canada. As a result of the merger, the defendant, Panasonic Corporation of North America is responsible for any proven liabilities of Sanyo North America Corporation.
- ~~47-18.~~ 18. The defendant Panasonic Canada Inc., a subsidiary of Panasonic Corporation of North America, is a Canadian corporation with its principle place of business located at 5770 Ambler Drive, Mississauga, Ontario L4W 2T3, Canada. During the Class Period, Panasonic Corporation Canada Inc. sold and/or distributed Capacitors to customers throughout Canada.

~~18-19.~~ The defendant Sanyo Electric Co., Ltd., a Japanese corporation, is, as of December 2009, a wholly owned subsidiary of Panasonic Corporation, with its principal place of business located at 5-5, Keihan-Hondori, 2-Chome, Moriguchi City, Osaka 570-8677, Japan. During the Class Period, Sanyo Electric Co. Group, Ltd., manufactured, marketed, sold and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~19.~~ ~~The defendant Sanyo North America Corporation, a Delaware corporation, is a wholly owned subsidiary of Sanyo Electric Group, Ltd., with its principal place of business located at 2055 Sanyo Avenue, San Diego, California 92154. During the Class Period, Sanyo Electronic Device (U.S.A.) Corporation sold and/or distributed Capacitors to customers throughout Canada.~~

20. The defendants Panasonic Corporation, Panasonic Corporation of North America, Panasonic Canada Inc., ~~Panasonic Canada Inc., and~~ Sanyo Electric Co. Group, Ltd., ~~and Sanyo Electronic Device (U.S.A.) Corporation~~ are collectively referred to herein as “Panasonic.” With regard to any allegations pertaining to Sanyo Electric Co. Group, Ltd. ~~and Sanyo Electronic Device (U.S.A.) Corporation~~ prior to ~~its~~their acquisition by Panasonic, ~~it is they are~~ referred to herein as “Sanyo.”

### **~~Taiyo Yuden~~**

~~21.~~ ~~The defendant Taiyo Yuden Co., Ltd., is a Japanese corporation with its principal place of business located at 6-16-20, Ueno, Taito-ku, Tokyo 110-0005, Japan. During the Class Period, Taiyo Yuden Co., Ltd., manufactured, marketed, sold and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.~~

~~22. The defendant Taiyo Yuden (USA) Inc., an Illinois corporation, is a wholly owned subsidiary of Taiyo Yuden Co., Ltd., with its principal place of business located at 10 North Martingale Road, Suite 575, Schaumburg, Illinois 60173, United States. During the Class Period, Taiyo Yuden (USA) Inc. sold and/or distributed Capacitors to customers throughout Canada.~~

~~23. The defendant Taiyo Yuden (USA) Inc. o/a Taiyo Yuden Canada is a wholly owned subsidiary of Taiyo Yuden Co., Ltd., with its principal place of business located at 10 North Martingale Road, Suite 575, Schaumburg, Illinois 60173, United States, operating under the Canadian registered business name, Taiyo Yuden Canada. Taiyo Yuden Canada is operating business at 55 Northfield Drive East, Suite 265, Waterloo, Ontario, N2K 3T6, Canada. During the Class Period, Taiyo Yuden Canada sold and/or distributed Capacitors to customers throughout Canada.~~

~~24. The defendants Taiyo Yuden Co., Ltd., Taiyo Yuden (USA) Inc. and Taiyo Yuden (USA) Inc. o/a Taiyo Yuden Canada are collectively referred to herein as "Taiyo Yuden."~~

### **NEC Tokin**

~~25.~~21. The defendant NEC Tokin Corporation, a subsidiary of NEC Corporation, is a Japanese company with its principal place of business located at 7-1, Kohriyama 6-chome, Taihaku-ku, Sendai-shi, Miyagi 982-8510, Japan. During the Class Period, NEC Tokin Corporation manufactured, marketed, sold, and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates throughout Canada.

~~26.~~22. The defendant NEC Tokin America, Inc., a California Corporation, is a wholly owned subsidiary of NEC Tokin Corporation with its principal place of business located at 2460 North First Street, Suite 220, San Jose, California 95131, United States. During the

Class Period, NEC Tokin America, Inc., sold and/or distributed Capacitors throughout Canada.

~~27. The defendant NEC Canada Inc. is a subsidiary of NEC Corporation, with its principal place of business located at 5995 Avebury Road, Mississauga, Ontario, L5R 3P9, Canada. During the Class Period, NEC Canada Inc. sold and/or distributed Capacitors throughout Canada.~~

~~28.~~ 23. The defendants NEC Tokin Corporation, and NEC Tokin America, Inc., and ~~NEC Canada Inc.~~, are together referred to herein as “NEC Tokin Corporation.”

### **KEMET**

~~29.~~ 24. Defendant KEMET Corporation is a Delaware corporation with its principal place of business located at 2835 Kemet Way, Simpsonville, South Carolina 29681, United States. During the Class Period, KEMET Corporation manufactured, marketed, sold and/or distributed Capacitors directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~30.~~ 25. On March 12, 2012, KEMET Corporation announced that it agreed to form a capital and business alliance with NEC Tokin Corporation because of their respective professed interests in increasing its tantalum electrolytic capacitor sales, reducing costs in areas such as procurement and production, sharing their technological knowledge, and benefiting financially through the cross-selling of each other’s products. As a result of this alliance, KEMET received 34% of the outstanding shares of NEC Tokin (the remainder being held by non-party NEC Corporation), which provided KEMET with 51% of the outstanding voting rights. KEMET currently holds the option to purchase NEC

Corporation's shares in NEC Tokin, which would thereby effect an acquisition of NEC Tokin by KEMET.

~~31.~~ 26. The defendant KEMET Electronics Corporation, a Delaware corporation, is a wholly owned subsidiary of KEMET Corporation with its principal place of business located at 2835 Kemet Way, Simpsonville, South Carolina 29681, United States. During the Class Period, KEMET Electronics Corporation manufactured, marketed, sold and/or Capacitors directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~32.~~ 27. The defendants KEMET Corporation and KEMET Electronics Corporation are together referred to herein as "KEMET." The KEMET-NEC Tokin alliance shall be referred to herein as "KEMET-NEC Tokin."

### ***Nippon Chemi-Con***

~~33.~~ 28. The defendant Nippon Chemi-Con Corporation is a Japanese corporation with its principal place of business located at 5-6-4, Osaki, Shinagawa-ku, Tokyo 141-8605, Japan. During the Class Period, Nippon Chemi-Con Corporation manufactured, marketed, sold, and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~34.~~ 29. The defendant United Chemi-Con Corporation, an Illinois Corporation, is a wholly owned subsidiary of Nippon Chemi-Con Corporation with its principal place of business located at 9801 West Higgins Road, Rosemont, Illinois 60018, United States. During the Class Period, United Chemi-Con manufactured, marketed, sold and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~35.~~ 30. The defendants Nippon Chemi-Con Corporation and United Chemi-Con Corporation are together referred to herein as “Nippon Chemi-Con.”

### **Hitachi Chemical**

~~36.~~ 31. The defendant Hitachi Chemical Co., Ltd., is a Japanese corporation with its principal place of business located at Grantokyo South Tower, 1-9-2, Marunouchi, Chiyoda-ku, Tokyo, 100-6606, Japan. During the Class Period, Hitachi Chemical Co., Ltd., manufactured, marketed, sold, and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~37.~~ 32. The defendant Hitachi Chemical Company America, Ltd., a New York corporation, is a wholly owned subsidiary of Hitachi Chemical Co., Ltd. with its principal place of business located at 10080 North Wolfe Road, Suite SW3-200, Cupertino, California 95014, United States. During the Class Period, Hitachi Chemical Co. America sold and/or distributed Capacitors to customers throughout Canada.

~~38.~~ 33. The defendant Hitachi Canada, a subsidiary of Hitachi America Ltd. is a Canadian Corporation with its principle place of business located at 5450 Explorer Drive, Suite 501, Mississauga Ontario, L4W 5M1, Canada. During the Class Period, Hitachi Canada sold and/or distributed Capacitors to customers throughout Canada.

~~39.~~ 34. The defendants Hitachi Chemical Co., Ltd., Hitachi Chemical Company America, Ltd., and Hitachi Canada are all part of the Hitachi Group, and are together referred to herein as “Hitachi.”



**Nichicon**

~~40-35.~~ The defendant Nichicon Corporation is a Japanese corporation with its principal place of business located at Karasumadori Oike-agaru, Nakagyo-ku, Kyoto, 604-0845 Japan. During the Class Period and until the company's sale of its tantalum capacitor production operations to AVX Corporation in February 2013, Nichicon Corporation manufactured, marketed, sold, and distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers Canada. During the entire Class Period, Nichicon Corporation manufactured, marketed, sold and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~41-36.~~ The defendant Nichicon (America) Corporation, an Illinois corporation, is a wholly owned subsidiary of Nichicon Corporation with its principal place of business located at 927 East State Parkway, Schaumburg, Illinois 60173, United States. During the Class Period and until Nichicon Corporation's sale of its tantalum capacitor production operations to AVX Corporation in February 2013, Nichicon(America) Corporation sold, and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~42-37.~~ The defendants Nichicon Corporation and Nichicon (America) Corporation are together referred to herein as "Nichicon."

**AVX**

~~43-38.~~ The defendant AVX Corporation is a Delaware Corporation with its principal place of business located at One AVX Boulevard, Fountain Inn, South Carolina 29644-9039, United States. It is a subsidiary of Kyocera Corporation, a Japanese corporation that owns approximately 72% of the outstanding common stock in AVX Corporation. In or

about February 2013, AVX acquired Nichicon's tantalum capacitor production facilities in Japan and China, thereby expanding their global tantalum capacitor manufacturing operations. During the Class Period, AVX Corporation manufactured, marketed, sold and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~44-39.~~ The defendant AVX Corporation is referred to herein as "AVX."

### ***Rubycon***

~~45-40.~~ The defendant Rubycon Corporation is a Japanese corporation with its principal place of business located at 1938-1, Nishi-Minowa, Ina-City, Nagano Prefecture 399-4593, Japan. During the Class Period, Rubycon Corporation manufactured, marketed, sold, and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~46-41.~~ The defendant Rubycon America Inc., an Illinois corporation, is a wholly owned subsidiary of Rubycon Corporation with its principal place of business located at 4293 Lee Avenue, Gurnee, Illinois 60031, United States. During the Class Period, Rubycon America Inc. sold and/or distributed Capacitors to customers throughout Canada.

~~47-42.~~ The defendants Rubycon Corporation and Rubycon America Inc. are together referred to herein as "Rubycon."

### ***Elna***

~~48-43.~~ The defendant Elna Co., Ltd., is a Japanese corporation with its principal place of business located at 3-8-11 Shin-Yokohama, Kohoku-ku, Yokohama, Kanagawa Prefecture, 222-0033, Japan. During the Class Period, Elna Co., Ltd., manufactured,

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

~~49-44.~~ The defendant Elna America Inc., a California corporation, is a wholly owned subsidiary of Elna Co., Ltd., with its principal place of business located at 879 West 190th Street, Suite 100, Gardena, California 90248, United States. During the Class Period, Elna America Inc. sold and/or distributed Capacitors to customers throughout the Canada.

~~50-45.~~ The defendants Elna Co., Ltd., and Elna America Inc. are together referred to herein as “Elna.”

### ***Matsuo***

~~51-46.~~ The defendant Matsuo Electric Co., Ltd., is a Japanese corporation with its principal place of business located at 3-5-3 Sennari-cho, Toyonaka-shi, Osaka 561-8558, Japan. During the Class Period, Matsuo Electric Co., Ltd., manufactured, marketed, sold and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~52-47.~~ Matsuo Electric Co., Ltd., is referred to herein as “Matsuo.”

### ***Toshin Kogyo***

~~53-48.~~ The defendant Toshin Kogyo Co., Ltd., is a Japanese corporation with its principal place of business at Tsukasa Bldg. 2-15-4, Uchikanda Chiyoda-ku, Tokyo, Japan. During the Class Period, Toshin Kogyo Co., Ltd., manufactured, marketed, sold, and/or distributed Capacitors products either directly or through its subsidiaries or affiliates throughout Canada.

~~54-49.~~ Toshin Kogyo Co., Ltd., is referred to herein as “Toshin Kogyo.”

***Vishay***

~~55. The defendant Vishay Intertechnology, Inc., is a Delaware corporation with its principal place of business located at 63 Lancaster Avenue, Malvern, Pennsylvania 19355-2143, United States. During the Class Period, Vishay Intertechnology, Inc., manufactured, marketed, sold, and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.~~

***SEMCO***

~~56.~~50. The defendant Samsung Electro-Mechanics is a South Korean corporation with its principal place of business located at Gyeonggi-Do Suwon-Si Youngtong-Gu Maeyoung-Ro 150 (Maetan-Dong) 443-743, South Korea. It is a wholly-owned subsidiary of Samsung Group, a South Korean *chaebol* (a business conglomerate). During the Class Period, Samsung Electro-Mechanics manufactured, marketed, sold, and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~57.~~51. The defendant Samsung Electro-Mechanics America, Inc., a California corporation, is a subsidiary of Samsung Electro-Mechanics with its principal place of business located at 3333 Michelson Drive, Suite 600, Irvine, California 92612, United States. During the Class Period, Samsung Electro-Mechanics America, Inc., sold and/or distributed Capacitors to customers throughout Canada.

~~58.~~52. The defendant Samsung Electronics Canada Inc., a subsidiary of Samsung Electronics, an affiliate of Samsung Electro-Mechanics, is a Canadian corporation, with its principle place of business located at 2050 Derry Road West, Mississauga, Ontario L5N, 0B9,

Canada. During the Class Period, Samsung Electronics Canada Inc. sold and/or distributed Capacitors to customers throughout Canada.

~~59-53.~~ The defendants Samsung Electro-Mechanics, Samsung Electro-Mechanics America, Inc., and Samsung Electronics Canada Inc. are together referred to herein as “SEMCO.”

### ***ROHM***

~~60-54.~~ The defendant ROHM Co., Ltd., is a Japanese corporation with its principal place of business located at 21 Saiin Mizosaki-cho, Ukyo-ku, Kyoto 615-8585 Japan. During the Class Period, ROHM Co., Ltd. manufactured, marketed, sold, and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~61-55.~~ The defendant ROHM Semiconductor U.S.A., LLC, a Delaware limited liability corporation, is a subsidiary of ROHM Co., Ltd. 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, sold and/or distributed Capacitors to customers throughout Canada.

~~62-56.~~ The defendants ROHM Co., Ltd., and ROHM Semiconductor U.S.A., LLC, are together referred to herein as “ROHM.”

~~63-57.~~ Collectively, the Defendants named in paragraphs ~~165~~ to ~~6357~~ are referred to herein as “Defendants.”

## FACTUAL BACKGROUND

### *The Capacitors Industry*

~~64-58.~~ The structure and the characteristics of the market for Capacitors in Canada are conducive to the conspiracy alleged herein.

~~65-59.~~ There are substantial barriers that preclude, reduce, or make more difficult entry into the Capacitors market. New fabrication operations are required to meet the market demand and to adjust to technological changes. The industry also requires the establishment of a necessary supply chain for all raw materials. The defendant manufacturers have developed longstanding relationships and their own processing capabilities for these raw materials.

~~66-60.~~ There are no close substitutes for Capacitors in Canada. Capacitors are one of the fundamental components found in electrical circuits and all electronic devices that are used today. There is no alternative to Capacitors in Canada.

~~67-61.~~ Capacitors are a commodity product that is interchangeable among the defendants. Capacitors of like technical and operational specification are mutually interchangeable. A specific Capacitor manufactured by one of the defendants can be exchanged for a product of another defendant with the same technical and operational specifications.

~~68-62.~~ The price of Capacitors provided to OEMs and their subsidiaries is reflected, in whole or in part, in the price of electronics purchased in Canada.

~~69-63.~~ The defendants dominate the global Capacitors market, including the sale of Capacitors in Canada.

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

~~70-64.~~ The acts alleged under this heading are, collectively, the “Conspiracy Acts”.

~~71-65.~~ During the Class Period, the defendants and unnamed co-conspirators conspired and/or agreed with each other to fix, maintain, increase, or control the price for the supply of Capacitors and/or to enhance unreasonably the prices of Capacitors and/or to lessen unduly competition in the sale of Capacitors in Canada.

~~72-66.~~ 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 unnamed co-conspirators unlawfully conspired and/or agreed to:

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

~~73-67.~~ 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 Capacitors in Canada;

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

~~74-68.~~ During the Class Period and continuing to the present, the defendants and/or their servants and agents, took active steps to, and did, conceal the unlawful conspiracy from the class members.

~~75-69.~~ The defendants were motivated to conspire and their predominant purposes and predominant concerns were to harm the plaintiff and the class members who purchased Capacitors by requiring them to pay unlawfully high prices for Capacitors.

~~76-70.~~ 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.



~~77-71.~~ 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**

~~78-72.~~ Commencing in or around 2014, regulatory authorities in a number of jurisdictions announced investigations into price-fixing of the Capacitors industry.

~~79-73.~~ The Brazilian antitrust authority, the Administrative Counsel for Economic Defense, stated in a press release in 2014 that it had established an administrative proceeding to investigate the alleged price-fixing of Capacitors.

~~80-74.~~ In or around April 2014, the Antitrust Division of the United States Department of Justice ("DOJ") confirmed to industry sources that the government has opened an investigation into price fixing in the Capacitors industry. The San Francisco division of the FBI is assisting with this investigation, which is ongoing. ~~price fixing in the capacitors industry, and sources report that this investigation is being conducted by the United States Attorney's Office for the Northern District of California.~~

~~81-75.~~ On or about July 2, 2014, the People's Republic of China's National Development and Reform Commission ("NDRC"), an agency who regulates price-related anticompetitive activity by the Chinese State Council, confirmed its investigation into the capacitors industry through a report published in the China Supervision and Antitrust Journal and written by Xu Kunlin, Director-General of the NDRC's Price Supervision and Antimonopoly Bureau. In this report, Xu revealed that one Japanese capacitor company self-reported its conspiracy activity in March, 2014, and that this company and other

Japanese capacitor manufacturers held regular conferences to exchange market information related to their products.

~~82-76.~~ On or about June 24, 2014, the Japanese Fair Trade Commission (“JFTC”) conducted raids of approximately eight capacitors manufacturers believed to be members of the conspiracy, including Panasonic, NEC Tokin, Hitachi Chemical, Nichicon, and Nippon Chemi-Con.

~~83-77.~~ Since the beginning of 2014, investigations into the capacitors industry have also been opened by the South Korean Fair Trade Commission, the Taiwanese Fair Trade Commission and the European Commission’s competition authority.

~~84-78.~~ On or about September 2, 2015, the Defendant NEC Tokin agreed to plead guilty to charges laid by the U.S. Justice Department that it conspired to fix the prices of Capacitors and to pay a fine of \$13,800,000 USD.

~~85-79.~~ In November 2015, the European Commission sent Statements of Objections to ten manufacturers of Capacitors alleging violations of EU antitrust laws. The European Commission stated that it had concerns that the price-fixing conspiracy had run from at least 1997 to 2014.

~~86-80.~~ On or about December 9, 2015, the Taiwanese Fair Trade Commission fined the following defendants for price-fixing Capacitors: Nippon Chemi-Con Corporation (\$57,645,798.64 USD), Rubycon Corporation (\$38,506,640.64 USD), Elna Co., Ltd. (\$2,363,468.49 USD), NEC Tokin Corporation (\$37,587,171.18 USD), Vishay Polytech Co., Ltd. (\$962,666.02 USD), and Matsuo Electric Co., Ltd. (\$749,768.72 USD). It also fined the related corporate entities: Hongkong Chemi-con Limited, Taiwan Chemi-Con Corporation, Sanyo Electric (Hong Kong) Ltd., and Nichicon (Hong Kong) Ltd.

~~87-81.~~ On or about March 29, 2016, the JFTC fined the following defendants for price-fixing Capacitors: Nippon Chemi-Con Corp. (\$12,972,930.95 USD), Nichicon Corp. (\$32,906,946.80 USD), Rubycon Corp. (\$9,655,115.16 USD), NEC Tokin Corp. (\$1,148,126.99 USD), and Matsuo Electric Co. Ltd. (\$3,869,278.36 USD). The Commission also issued a cease-and-desist orders to the Defendants, as well as Vishay Polytech Co., Ltd. Hitachi AIC has also been added to this list but no fines or orders have been made against it as of yet.

~~88-82.~~ On or about April 27, 2016, it was announced by the U.S. Department of Justice that the defendant Hitachi Chemical Co., Ltd. will plead guilty to charges laid in the U.S. for conspiring to fix prices of Capacitors sold to customers in the United States and elsewhere. The sentencing date has been set for June 8, 2016. The information filed by the Department of Justice indicates that the conspiracy under investigation began as early as 1997.

~~89. The defendant Taiyo Yuden has admitted to having been raided by the NDRC and has stated that it is cooperating with Chinese authorities.~~

~~90-83.~~ The defendant NEC Tokin has confirmed that it has been contacted or raided by American, Chinese and European authorities and has stated that it is cooperating with authorities.

~~91-84.~~ The defendant Toshin Kogyo has confirmed that it has been contacted by Japanese, Chinese and Taiwanese authorities.

## CAUSES OF ACTION

### *Breach of the Competition Act*

~~92-85.~~ The defendants 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*.

~~93-86.~~ Further, or in the alternative, the defendants Hitachi Canada, Samsung Electronics Canada Inc., and Panasonic Canada Inc. (the “Canadian Defendants”) are in breach of section 46(1) of the Part VI of the *Competition Act* and caused injury to the plaintiff and the other class members which renders the Canadian Defendants jointly and severally liable to pay damages and costs of investigation pursuant to section 36 of the *Competition Act*.

~~94-87.~~ The plaintiff and the 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 others.

~~95.~~ Further, the Canadian subsidiaries of the foreign defendants are liable to the plaintiff and the other class members pursuant to s. 36 of the *Competition Act* for acts in contravention of s. 45(1) of the *Competition Act*.

### ***Civil Conspiracy***

~~96-88.~~ 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 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.

~~97-89.~~ The plaintiff and other class members suffered damages as a result of the defendants' conspiracy.

### ***Unlawful Means Tort***

~~98-90.~~ 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.

~~99-91.~~ The Conspiracy Acts taken by the defendants were unlawful under the laws of the jurisdictions where the Conspiracy Acts took place and are actionable by third party OEMs of Capacitors located outside of Canada, or would be actionable by the OEMs located outside of Canada if they had suffered a loss. As such, the defendants are jointly and severally liable for the unlawful means tort.

~~100-92.~~ The plaintiff and the other class members suffered damages as a result of the defendants' unlawful means tort and each of the defendants is jointly and severally liable to pay the resulting damages.

### ***Unjust Enrichment***

~~101-93.~~ 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 such Overcharge.

~~102-94.~~ Since the Overcharge that was received by the defendants from the plaintiff and the 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 it.

### ***Waiver of Tort***

~~103-95.~~ Further, or alternatively, the plaintiff pleads and relies on the doctrine of waiver of tort and state that the defendants' conduct, including the alleged breaches of the *Competition Act* constitutes conduct which can be waived in favour of an election to receive restitutionary or other equitable remedies.

## **REMEDIES**

### ***Damages***

~~104-96.~~ As a result of the Conspiracy Acts:

- a. the prices of Capacitors and products containing Capacitors have been enhanced unreasonably and/or fixed at artificially high and non-competitive levels; and
- b. competition in the sale of Capacitors has been unduly restrained.

~~105-97.~~ During the Class Period, the plaintiff and the other class members purchased Capacitors and products containing Capacitors. 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 Capacitors and products containing Capacitors by paying more than they would have paid in the absence of the illegal conspiracy and, as a result, the plaintiff and the other class members have suffered damages.

~~106-98.~~ 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.

~~107-99.~~ All amounts payable to the class on account of damages and disgorgement should be calculated on an aggregate basis pursuant to s. 24 of the *CPA*, or otherwise.

### ***Punitive Damages***

~~108-100.~~ The plaintiff asserts that the defendants' conduct was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful, in contemptuous disregard of the plaintiff's rights and the rights of the class members, and as such renders the defendants liable to pay aggravated, exemplary and punitive damages.

### ***Plan of Distribution***

~~109-101.~~ 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***

~~110-102.~~ The plaintiff claims that the defendants be permanently enjoined from carrying on business in contravention of the applicable laws.

***Conspicuous Notice Plan***

~~111-103.~~ 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 the amounts owing to them by the defendants pursuant to Section 19 of the *CPA*.

**STATUTES RELIED UPON**

~~112-104.~~ The plaintiff pleads and relies upon the *Class Proceedings Act*, 1992, S.O. 1992, c.6 as amended, the *Competition Act*, R.S.C. 1985, c.34 as amended, and the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

**SERVICE OUTSIDE ONTARIO**

~~113-105.~~ 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));
- c. against a person outside of Ontario who is a necessary and proper party to this proceeding properly brought against another person served in Ontario (Rule 17.02(o)); and



- d. against a person carrying on business in Ontario (Rule 17.02 (p)).

**THE PLAINTIFF** proposes that this action be tried in the City of London, in the Province of Ontario.

August 6, 2014

**HARRISON PENZA <sup>LLP</sup>**  
Barristers & Solicitors  
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London, ON N6A 4K3

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**Lawyers for the Plaintiff**

CYGNUS ELECTRONICS CORPORATION

v. PANASONIC CORPORATION et al.

Court File No. 3795/14 CP

Plaintiff

Defendants

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the *Class Proceedings Act, 1992*

**AMENDED AMENDED STATEMENT OF CLAIM**

**HARRISON PENSEA** LLP  
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London, ON N6A 4K3

**Jonathan J. Foreman (LSUC #45087H)**  
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Lawyers for the Plaintiff

CYGNUS ELECTRONICS CORPORATION

v.

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Court File No. 3795/14 CP

Plaintiff

Defendants

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the *Class Proceedings Act, 1992*

**NOTICE OF MOTION  
(Discontinuances)**

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Lawyers for the Plaintiff

# Tab 2

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

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

**CYGNUS ELECTRONICS CORPORATION**

**Plaintiff**

**- and -**

PANASONIC CORPORATION; PANASONIC CORPORATION OF NORTH AMERICA;  
PANASONIC CANADA INC.; SANYO ELECTRIC CO., LTD.; SANYO NORTH AMERICA  
CORPORATION; TAIYO YUDEN CO., LTD.; TAIYO YUDEN (USA) INC.; TAIYO YUDEN  
(USA) INC. O/A TAIYO YUDEN CANADA; NEC TOKIN CORPORATION; NEC TOKIN  
AMERICA INC.; NEC CANADA 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.; VISHAY INTERTECHNOLOGY INC.; SAMSUNG ELECTRO-  
MECHANICS; SAMSUNG ELECTRO-MECHANICS AMERICA INC.; SAMSUNG  
ELECTRONICS CANADA INC.; ROHM CO., LTD.; ROHM SEMICONDUCTOR U.S.A., LLC.

**Defendants**

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

**AFFIDAVIT OF STEPHANIE LEGDON  
(sworn November 18, 2016)**

**I, STEPHANIE LEGDON, of the City of London, in the County of Middlesex, MAKE OATH**

**AND SAY:**

1. I am a lawyer in the class actions group at Harrison Pensa <sup>LLP</sup>, which is counsel for the plaintiff in *Cygnus Electronics Corporation v. Panasonic Corporation, et al.*, (Court File No. 3795/14 CP) (the "Action").
2. As such, I have personal knowledge of the matters to which I depose, except for the statements I have indicated are based on information or belief. To the extent that my knowledge is based on information and belief, I identify the source of such information and believe that information to be true.

### NATURE OF THE MOTION

3. I swear this affidavit in support of the plaintiff's motion for an order:
  - a. Approving the discontinuance of the Action, without prejudice and without costs, as against the following defendants in accordance with the tolling and standstill agreements reached between the plaintiff and each of the respective defendants:
    - i. NEC Canada Inc.;
    - ii. Vishay Intertechnology Inc.; and,
    - iii. Taiyo Yuden Co. Ltd., Taiyo Yuden (USA) Inc. and Taiyo Yuden (USA) Inc. o/a Taiyo Yuden Canada (collectively "Taiyo Yuden");(all together the "Standstill Defendants") pursuant to section 29 of the *Class Proceedings Act*, 1992, S.O. 1992, c. 6;
  - b. approving the discontinuance of the Action as against the defendant Sanyo North America Corporation;
  - c. granting leave to file an Amended Amended Statement of Claim to remove the Standstill Defendants and the defendant Sanyo North America Corporation as defendants to the Action; and,
  - d. directing that notice under sections 19 and 29 of the *Class Proceedings Act*, 1992, S.O. 1992, c. 6 is not required.

### PROCEDURAL HISTORY

4. The plaintiff Cygnus Electronics Corporation commenced the Action on August 6, 2014, by issuance of Statement of Claim (the "Statement of Claim"). The Statement of Claim alleges that the defendants to the Action conspired and/or agreed with each other to enhance unreasonably the price of aluminum and tantalum electrolytic capacitors ("Capacitors") and to lessen unduly competition in the production, manufacture, sale and/or supply of Capacitors in Canada.

5. The Statement of Claim was amended on June 1, 2016 to include updated facts regarding regulatory investigations of the defendants and the status of the U.S. proceedings against the defendants. The class period was adjusted on the basis of those facts. Attached hereto and marked as **Exhibit “A”** is a copy of the Amended Statement of Claim.
6. A second action, bearing Court File No. 1573/16 CP (the “Second Statement of Claim”), was issued on June 17, 2016 on behalf of Cygnus Electronic Corporation, Sean Allott, and the same putative class members defined in the Statement of Claim, as amended, as against certain other defendants. The Second Statement of Claim makes the same allegations involving the price-fixing of Capacitors. Attached hereto and marked as **Exhibit “B”** is a copy of the Second Statement of Claim.
7. This motion shall be heard immediately prior to a motion by the plaintiffs to consolidate the actions bearing Court File No. 3795/14 CP and Court File No. 1573/16 CP.
8. Since the Statement of Claim was issued, the plaintiff has participated in arm’s length and adversarial negotiations for a lengthy period of time concerning the tolling and standstill agreements. In the paragraphs that follow, I will provide further details respecting the considerations on the part of plaintiff’s counsel which justify the Tolling and Standstill Agreements with each of the Tolling and Standstill Defendants.

#### **THE TOLLING AND STANDSTILL AGREEMENTS**

9. The Plaintiff has entered into tolling and standstill agreements with:
  - a. NEC Canada Inc. dated February 17, 2016;
  - b. Vishay Intertechnology Inc. dated March 21, 2016; and,
  - c. Taiyo Yuden dated November 9, 2016;(collectively the “Tolling and Standstill Agreements”).

10. While the specifics of each Tolling and Standstill Agreement are discussed below, the following comments can be made about all three of the Tolling and Standstill Agreements:
- a. The Tolling and Standstill Agreements toll any and all limitation periods applicable to the claims as of August 6, 2014, the date the Statement of Claim was filed;
  - b. The discontinuances are without costs and without prejudice to any claim a proposed class member, including the plaintiff, may have as against the Standstill Defendants;
  - c. The discontinuance as against the Standstill Defendants will streamline the litigation by limiting the role of those parties without giving up any rights to bring them back into the Action should it become advisable or necessary in the future; and,
  - d. The agreement to discontinue against the Standstill Defendants is not and shall not be construed as a release of any causes of action that are or may be asserted in the Action.

***NEC Canada Inc.***

11. In the course of arm's length and adversarial negotiations with counsel for NEC Canada Inc., plaintiff's counsel was advised of the following facts:
- a. while NEC Canada Inc. did purchase and/or distribute products in Canada that contain Capacitors from NEC Tokin America Inc., NEC Tokin Corporation, and other Capacitors manufacturers during the class period, NEC Canada Inc. did not manufacture, sell or distribute Capacitors during the class period;
  - b. the defendants, NEC Tokin America, Inc. and NEC Tokin Corporation will remain named defendants to the Action;



- c. NEC Canada Inc. has not been advised by any regulatory authority that it is the subject of any investigation relating to the prices of Capacitors; and,
  - d. NEC Canada Inc. has agreed to a recital in its tolling and standstill agreement which states that, “NEC Canada Inc. has advised the Plaintiff that it is not aware of any facts or circumstances relating to the conduct of NEC Canada Inc. or its employees that could give rise to liability pursuant to Part VI of the *Competition Act*, RSC 195, c. C-34 in respect of Capacitors”.
12. Pursuant to its tolling and standstill agreement, NEC Canada Inc. is required to:
- a. provide the plaintiff with documentary information (e.g. invoices or other business records), within 60 days after receiving a written request from the plaintiff, confirming that it purchased products that contain Capacitors from NEC Tokin America, Inc., NEC Tokin Corporation and/or other Capacitors manufacturers during the proposed class period; and,
  - b. promptly inform the plaintiff if NEC Canada Inc. or any of its affiliates make public disclosure of being the subject of an investigation related to Capacitors by any government regulator including, but not limited to, the United States Department of Justice, the Canadian Competition Bureau, the European Commission, Brazil’s Council for Economic Defence, China’s National Development and Reform Commission or the Japan Fair Trade Commission.

***Vishay Intertechnology Inc.***

13. In the course of arm’s length and adversarial negotiations with counsel for Vishay Intertechnology, Inc., plaintiff’s counsel was advised of the following facts:
- a. On May 26, 2015, the United States District Court of the Northern District of California dismissed Vishay Intertechnology, Inc. from *In re: Capacitors Antitrust*

*Litigation*, Master File No: 3:14-cv-03264-JD (ND.Ca.) which raises allegations similar to those raised in the Action;

- b. Vishay Intertechnology, Inc. has not been advised by any regulatory authority that it is the subject of any investigation relating to the prices of Capacitors and denies any involvement in any conspiracy to fix prices of Capacitors as alleged in the Action; and,
  - c. Vishay Intertechnology, Inc. has agreed to a recital in its tolling and standstill agreement which states that, “Vishay Intertechnology has advised the Plaintiff that it is not aware of any facts or circumstances relating to the conduct of Vishay Intertechnology or its employees that could give rise to liability pursuant to Part VI of the *Competition Act*, RSC 195, c. C-34 in respect of Capacitors”.
14. Pursuant to its tolling and standstill agreement, Vishay Intertechnology, Inc. is required to:
- a. promptly inform the plaintiff if Vishay Intertechnology, Inc. or any of its affiliates make public disclosure of being the subject of an investigation related to Capacitors by any government regulator including the United States Department of Justice, the Canadian Competition Bureau, the European Commission, Brazil’s Council for Economic Defence, China’s National Development and Reform Commission or the Japan Fair Trade Commission.

***Taiyo Yuden***

15. In the course of arm’s length and adversarial negotiations with counsel for Taiyo Yuden, plaintiff’s counsel was advised of the following facts:
- a. Taiyo Yuden is not a defendant in any class action cases in the United States related to the pricing of Capacitors;
  - b. Taiyo Yuden has not been advised by any regulatory authority that it is the subject

of any investigation relating to the prices of Capacitors and denies any involvement in any conspiracy to fix prices of Capacitors as alleged in the Action;

- c. Taiyo Yuden did not manufacture, sell or distribute Capacitors during the class period, except for a single purchase and resale of a small amount of tantalum capacitors manufactured by another company; and,
- d. Taiyo Yuden has agreed to a recital in its tolling and standstill agreement which states that, “Taiyo Yuden has advised the Plaintiff that it is not aware of any facts or circumstances relating to the conduct of Taiyo Yuden or its employees that could give rise to liability pursuant to Part VI of the *Competition Act*, RSC 195, c. C-34 in respect of Capacitors”.

16. Pursuant to its tolling and standstill agreement, Taiyo Yuden is required to:

- a. promptly inform the plaintiff if Taiyo Yuden or any of its affiliates make public disclosure of being the subject of an investigation related to Capacitors by any government regulator including the United States Department of Justice, the Canadian Competition Bureau, the European Commission, Brazil’s Council for Economic Defence, the Japan Fair Trade Commission, the Taiwan Fair Trade Commission, the Competition Commission of Singapore, the Korea Fair Trade Commission; or China’s National Development and Reform Commission;
- b. provide the plaintiff with the details of its capacitors sales during the class period which are limited to a single purchase and resale of a small amount of tantalum capacitors manufactured by another company; and,
- c. provide the plaintiff with a copy of all documents and information provided to U.S. plaintiffs’ counsel pursuant to the tolling agreement dated November 13, 2015 in *In re: Capacitors Antitrust Litigation*, master file no. 14-cv-03264-JD (N.D. Ca).

***Sanyo North America Corporation***

17. The plaintiff moves for leave to discontinue as against the defendant Sanyo North America Corporation. On or around April 1, 2015, Sanyo North America Corporation merged with and into the defendant, Panasonic Corporation of North America. Sanyo North America Corporation was, until the time of the merger, a Delaware corporation and a wholly owned subsidiary of the defendant, Sanyo Electric Co., Ltd. with its principal place of business located at 2055 Sanyo Avenue, San Diego, California 92154. During the class period until the date of the merger, it is alleged that Sanyo North America Corporation sold and/or distributed Capacitors to customers throughout Canada.
18. As a result of the merger, Panasonic Corporation of North America retains all existing documents and personnel from Sanyo North America Corporation and is responsible for any proven liabilities of Sanyo North America Corporation. Attached hereto and marked as **Exhibit “C”** is a copy of a letter from counsel for Sanyo North America Corporation and Panasonic Corporation of North America confirming the details of the merger as set out above.
19. In the opinion of plaintiff’s counsel, the approval of the Tolling and Standstill Agreements, including the discontinuances of the Action as against the Standstill Defendants, as well as the discontinuance of the Action as against the defendant Sanyo North America Corporation, is prudent and in the best interest of the proposed class members at this time.
20. If the Court grants leave to discontinue as against the Standstill Defendants and the defendant Sanyo North America Corporation, the plaintiff seeks leave to amend the Amended Statement of Claim to remove references to the Standstill Defendants and the defendant Sanyo North America Corporation. Attached as **Exhibit “D”** is a copy of the proposed Amended Amended Statement of Claim.

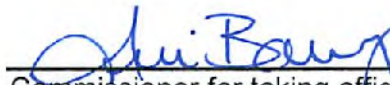
**NOTICE**

21. Given the nature of the discontinuances sought pursuant to the Tolling and Standstill Agreements and as against the defendant Sanyo North America Corporation whose proven liabilities remain the responsibility of Panasonic Corporation of North America, a named defendant, in the opinion of plaintiff's counsel notice under sections 19 and/or 29 of the *Class Proceedings Act* is not necessary at this time.

SWORN BEFORE ME at the City of  
London, in the County of Middlesex,  
in the Province of Ontario this 18<sup>th</sup>  
day of November, 2016.

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)  
)

  
STEPHANIE LEGDON

  
Commissioner for taking affidavits

Anni Marina Barry, a Commissioner, etc.,  
Province of Ontario, for Harrison Pensa LLP,  
Barristers and Solicitors.  
Expires April 11, 2019.

**This is EXHIBIT "A" referred to in the  
Affidavit of STEPHANIE LEGDON  
sworn before me, this 18<sup>th</sup> day of November, 2016**

  
A Commissioner, etc.

Anni Marina Barry, a Commissioner, etc.,  
Province of Ontario, for Harrison Pensa LLP,  
Barristers and Solicitors.  
Expires April 11, 2019.

MENTED THE 1 DAY OF June, 2016  
PURSUANT TO RULE 26.02(1)  
LOCAL REGISTRAR  
ONTARIO COURT (GEN. DIV.)  
MODIFIÉ CE 19  
CONFORMÉMENT À LA RÈGLE  
GREFFIER LOCAL  
COUR DE L'ONTARIO (DIV. GÉN.)

Court File No.: 3795/14

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:

CYGNUS ELECTRONICS CORPORATION

Plaintiff

- and -

PANASONIC CORPORATION; PANASONIC CORPORATION OF NORTH AMERICA;  
PANASONIC CANADA INC.; SANYO ELECTRIC CO., LTD.; SANYO NORTH  
AMERICA CORPORATION; TAIYO YUDEN CO., LTD.; TAIYO YUDEN (USA) INC.;  
TAIYO YUDEN (USA) INC. O/A TAIYO YUDEN CANADA; NEC TOKIN  
CORPORATION; NEC TOKIN AMERICA INC.; NEC CANADA 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.; VISHAY INTERTECHNOLOGY INC.; SAMSUNG ELECTRO-  
MECHANICS; SAMSUNG ELECTRO-MECHANICS AMERICA INC.; SAMSUNG  
ELECTRONICS CANADA INC.; ROHM CO., LTD.; ROHM SEMICONDUCTOR  
U.S.A., LLC.

Defendants

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

**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: August 6, 2014

Issued by: "D. SPARKMAN"  
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: SANYO ELECTRIC CO., LTD.**  
5-5, Keihan-Hondori, 2-Chome  
Moriguchi City, Osaka 570-8677  
Japan

**AND TO: SANYO NORTH AMERICA CORPORATION**  
2055 Sanyo Avenue  
San Diego, California 92154  
United States

**AND TO: TAIYO YUDEN CO., LTD.**  
6-16-20, Ueno, Taito-ku  
Tokyo 110-0005  
Japan

**AND TO: TAIYO YUDEN (USA) INC.**  
10 North Martingale Road, Suite 575  
Schaumburg, Illinois 60173  
United States

**AND TO: TAIYO YUDEN (USA) INC. O/A TAIYO YUDEN CANADA**  
55 Northfield Drive East, Suite 265  
Waterloo, Ontario, N2K 3T6  
Canada

**AND TO: NEC TOKIN CORPORATION**  
7-1, Kohriyama 6-chome, Taihaku-ku  
Sendai-shi, Miyagi 982-8510  
Japan

**AND TO: NEC TOKIN AMERICA INC.**  
2460 North First Street, Suite 220  
San Jose, California, 95131  
United States

**AND TO: NEC CANADA INC.**  
5995 Avebury Road  
Mississauga, Ontario, L5R 3P9  
Canada

**AND TO: KEMET CORPORATION**  
2835 Kemet Way  
Simpsonville, South Carolina 29681  
United States

**AND TO: KEMET ELECTRONICS CORPORATION**  
2835 Kemet Way  
Simpsonville, South Carolina 29681  
United States

**AND TO: NIPPON CHEMI-CON CORPORATION**

5-6-4, Osaki,  
Shinagawa-ku, Tokyo 141-8605  
Japan

**AND TO: UNITED CHEMI-CON CORPORATION**  
9801 West Higgins Road  
Rosemont, Illinois 60018  
United States

**AND TO: HITACHI CHEMICAL CO., LTD.**  
Grantokyo South Tower, 1-9-2  
Marunouchi Chiyoda-ku, Tokyo, 100-6606  
Japan

**AND TO: HITACHI CHEMICAL COMPANY AMERICA, LTD.**  
10080 North Wolfe Road, Suite SW3-200  
Cupertino, California 95014  
United States

**AND TO: HITACHI CANADA**  
5450 Explorer Drive, Suite 501  
Mississauga, Ontario, L4W 5M1  
Canada

**AND TO: NICHICON CORPORATION**  
Karasumadori Oike-agaru  
Nakagyo-ku, Kyoto, 604-0845  
Japan

**AND TO: NICHICON (AMERICA) CORPORATION**  
927 East State Parkway  
Schaumburg, Illinois 60173  
United States

**AND TO: AVX CORPORATION**  
One AVX Boulevard  
Fountain Inn, South Carolina 29644-9039  
United States

**AND TO: RUBYCON CORPORATION**  
1938-1, Nishi-Minowa  
Ina-City, Nagano Prefecture 399-4593  
Japan

**AND TO: RUBYCON AMERICA INC.**  
4293 Lee Avenue  
Gurnee, Illinois 60031  
United States

**AND TO: ELNA CO., LTD.**

3-8-11 Shin-Yokohama  
Kohoku-ku, Yokohama, Kanagawa Prefecture, 222-0033  
Japan

**AND TO: ELNA AMERICA INC.**  
879 West 190th Street, Suite 100  
Gardena, California 90248  
United States

**AND TO: MATSUO ELECTRIC CO., LTD.**  
3-5-3 Sennari-cho  
Toyonaka-shi, Osaka 561-8558  
Japan

**AND TO: TOSHIN KOGYO CO., LTD.**  
Tsukasa Bldg. 2-15-4  
Uchikanda Chiyoda-ku, Tokyo  
Japan

**AND TO: VISHAY INTERTECHNOLOGY, INC.**  
63 Lancaster Avenue  
Malvern, Pennsylvania 19355-2143  
United States

**AND TO: SAMSUNG ELECTRO-MECHANICS**  
Gyeonggi-Do Suwon-Si Youngtong-Gu Maeyoung-Ro 150  
(Maetan-Dong) 443-743  
South Korea

**AND TO: SAMSUNG ELECTRO-MECHANICS AMERICA, INC.**  
3333 Michelson Drive, Suite 600  
Irvine, California 92612  
United States

**AND TO: SAMSUNG ELECTRONICS CANADA INC.**  
2050 Derry Road West  
Mississauga, Ontario, L5N 0B9  
Canada

**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

## CLAIM

### 1. THE PLAINTIFF CLAIMS on behalf of itself and the class:

- a. an Order pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, CHAPTER 6, certifying this action as a class proceeding and appointing the plaintiff as the representative plaintiff for the Class;
- b. general damages calculated on an aggregate basis or otherwise for breach of the *Competition Act*, RSC 1985 c. C-34 (the "*Competition Act*"), conspiracy, unlawful means tort and unjust enrichment, in an amount sufficient to compensate the plaintiff and the 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, post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, Chapter C.43;
- e. an accounting, restitution, 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 Capacitors;

- h. an Order compelling the creation of a conspicuous notice program to 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 court deems just.

## NATURE OF THE ACTION

- 2. This action arises from a conspiracy between the defendants to fix, raise, maintain, or stabilize prices of aluminum and tantalum electrolytic capacitors (“Capacitors”) in Canada during the Class Period.
- 3. The defendants and their unnamed co-conspirators manufactured, marketed, distributed and/or sold Capacitors in Canada and throughout the world. The defendants had market power in the market for Capacitors in Canada throughout the Class Period.
- 4. Capacitors are electronic components that serve as one of the fundamental building blocks of all types of electrical circuits. Virtually every electrical circuit contains one or

more capacitors. Generally, a capacitor is used in an electric circuit to store an electrical charge.

5. In its basic form, a capacitor consists of one or more pairs of conductors, separated by an insulator, with wires connected to the two conducting plates.
6. The defendants sold aluminum and/or tantalum capacitors to original equipment manufacturers ("OEMs") and others in Canada, Asia, Europe, the United States, and elsewhere.
7. During the period commencing September ~~January 1, 1997~~ 2005 and continuing up to the present (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 Capacitors.
8. The conduct of the defendants and their co-conspirators caused injury to the plaintiff and the class members, namely that they were compelled to pay, and did pay, artificially inflated prices, directly or indirectly for Capacitors (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. The plaintiff, Cygnus Electronics Corporation ("Cygnus") is an Ontario Corporation, carrying on business in the contract electronics manufacturing field. During the Class Period, Cygnus was a purchaser of aluminum and tantalum electrolytic capacitors manufactured by the Defendants.

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

All persons and entities in Canada who purchased electrolytic capacitors or products which contained electrolytic capacitors between September 1, 1997, and the present, other than (1) all persons and entities resident in British Columbia and, (2) all persons and entities other than legal persons established for a private interest, partnership or association, who had under its direction or control more than 50 persons bound to it by contract of employment who purchased said products in Quebec during that period.

~~All persons and entities in Canada who purchased Capacitors or products which contained Capacitors between January 1, 2005, and the present.~~

## DEFENDANTS

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

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. Until

October 1, 2008, Panasonic Corporation operated under the name of Matsushita Electric Industrial Co., Ltd. During the Class Period, Panasonic Corporation manufactured, marketed, sold and/or distributed Capacitors 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 sold and/or distributed Capacitors to customers throughout Canada.
17. The defendant Panasonic Canada Inc., a subsidiary of Panasonic Corporation of North American, is a Canadian corporation with its principle place of business located at 5770 Ambler Drive, Mississauga, Ontario L4W 2T3, Canada. During the Class Period, Panasonic Corporation Canada Inc. sold and/or distributed Capacitors to customers throughout Canada.
18. The defendant Sanyo Electric Co., Ltd., a Japanese corporation, is, as of December 2009, a wholly owned subsidiary of Panasonic Corporation, with its principal place of business located at 5-5, Keihan-Hondori, 2-Chome, Moriguchi City, Osaka 570-8677, Japan. During the Class Period, Sanyo Electric Group, Ltd., manufactured, marketed, sold and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
19. The defendant Sanyo North America Corporation, a Delaware corporation, is a wholly owned subsidiary of Sanyo Electric Group, Ltd., with its principal place of business located at 2055 Sanyo Avenue, San Diego, California 92154. During the Class Period,



Sanyo Electronic Device (U.S.A.) Corporation sold and/or distributed Capacitors to customers throughout Canada.

20. The defendants Panasonic Corporation, Panasonic Corporation of North America, Panasonic Canada Inc., Sanyo Electric Group, Ltd., and Sanyo Electronic Device (U.S.A.) Corporation are collectively referred to herein as "Panasonic." With regard to any allegations pertaining to Sanyo Electric Group, Ltd. and Sanyo Electric Device (U.S.A.) Corporation prior to their acquisition by Panasonic, they are referred to herein as "Sanyo."

***Taiyo Yuden***

21. The defendant Taiyo Yuden Co., Ltd., is a Japanese corporation with its principal place of business located at 6-16-20, Ueno, Taito-ku, Tokyo 110-0005, Japan. During the Class Period, Taiyo Yuden Co., Ltd., manufactured, marketed, sold and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
22. The defendant Taiyo Yuden (USA) Inc., an Illinois corporation, is a wholly owned subsidiary of Taiyo Yuden Co., Ltd., with its principal place of business located at 10 North Martingale Road, Suite 575, Schaumburg, Illinois 60173, United States. During the Class Period, Taiyo Yuden (USA) Inc. sold and/or distributed Capacitors to customers throughout Canada.
23. The defendant Taiyo Yuden (USA) Inc. o/a Taiyo Yuden Canada is a wholly owned subsidiary of Taiyo Yuden Co., Ltd., with its principal place of business located at 10 North Martingale Road, Suite 575, Schaumburg, Illinois 60173, United States, operating under the Canadian registered business name, Taiyo Yuden Canada. Taiyo Yuden

Canada is operating business at 55 Northfield Drive East, Suite 265, Waterloo, Ontario, N2K 3T6, Canada. During the Class Period, Taiyo Yuden Canada sold and/or distributed Capacitors to customers throughout Canada.

24. The defendants Taiyo Yuden Co., Ltd., Taiyo Yuden (USA) Inc. and Taiyo Yuden (USA) Inc. o/a Taiyo Yuden Canada are collectively referred to herein as “Taiyo Yuden.”

***NEC Tokin***

25. The defendant NEC Tokin Corporation, a subsidiary of NEC Corporation, is a Japanese company with its principal place of business located at 7-1, Kohriyama 6-chome, Taihaku-ku, Sendai-shi, Miyagi 982-8510, Japan. During the Class Period, NEC Tokin Corporation manufactured, marketed, sold, and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates throughout Canada.
26. The defendant NEC Tokin America, Inc., a California Corporation, is a wholly owned subsidiary of NEC Tokin Corporation with its principal place of business located at 2460 North First Street, Suite 220, San Jose, California 95131, United States. During the Class Period, NEC Tokin America, Inc., sold and/or distributed Capacitors throughout Canada.
27. The defendant NEC Canada Inc. is a subsidiary of NEC Corporation, with its principal place of business located at 5995 Avebury Road, Mississauga, Ontario, L5R 3P9, Canada. During the Class Period, NEC Canada Inc. sold and/or distributed Capacitors throughout Canada.
28. The defendants NEC Tokin Corporation, NEC Tokin America, Inc., and NEC Canada Inc., are together referred to herein as “NEC Corporation.”

**KEMET**

29. Defendant KEMET Corporation is a Delaware corporation with its principal place of business located at 2835 Kemet Way, Simpsonville, South Carolina 29681, United States. During the Class Period, KEMET Corporation manufactured, marketed, sold and/or distributed Capacitors directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
30. On March 12, 2012, KEMET Corporation announced that it agreed to form a capital and business alliance with NEC Tokin Corporation because of their respective professed interests in increasing its tantalum electrolytic capacitor sales, reducing costs in areas such as procurement and production, sharing their technological knowledge, and benefiting financially through the cross-selling of each other's products. As a result of this alliance, KEMET received 34% of the outstanding shares of NEC Tokin (the remainder being held by non-party NEC Corporation), which provided KEMET with 51% of the outstanding voting rights. KEMET currently holds the option to purchase NEC Corporation's shares in NEC Tokin, which would thereby effect an acquisition of NEC Tokin by KEMET.
31. The defendant KEMET Electronics Corporation, a Delaware corporation, is a wholly owned subsidiary of KEMET Corporation with its principal place of business located at 2835 Kemet Way, Simpsonville, South Carolina 29681, United States. During the Class Period, KEMET Electronics Corporation manufactured, marketed, sold and/or Capacitors directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
32. The defendants KEMET Corporation and KEMET Electronics Corporation are together referred to herein as "KEMET." The KEMET-NEC Tokin alliance shall be referred to herein as "KEMET-NEC Tokin."

***Nippon Chemi-Con***

33. The defendant Nippon Chemi-Con Corporation is a Japanese corporation with its principal place of business located at 5-6-4, Osaki, Shinagawa-ku, Tokyo 141-8605, Japan. During the Class Period, Nippon Chemi-Con Corporation manufactured, marketed, sold, and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
34. The defendant United Chemi-Con Corporation, an Illinois Corporation, is a wholly owned subsidiary of Nippon Chemi-Con Corporation with its principal place of business located at 9801 West Higgins Road, Rosemont, Illinois 60018, United States. During the Class Period, United Chemi-Con manufactured, marketed, sold and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
35. The defendants Nippon Chemi-Con Corporation and United Chemi-Con Corporation are together referred to herein as "Nippon Chemi-Con."

***Hitachi Chemical***

36. The defendant Hitachi Chemical Co., Ltd., is a Japanese corporation with its principal place of business located at Grantokyo South Tower, 1-9-2, Marunouchi, Chiyoda-ku, Tokyo, 100-6606, Japan. During the Class Period, Hitachi Chemical Co., Ltd., manufactured, marketed, sold, and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
37. The defendant Hitachi Chemical Company America, Ltd., a New York corporation, is a wholly owned subsidiary of Hitachi Chemical Co., Ltd. with its principal place of business located at 10080 North Wolfe Road, Suite SW3-200, Cupertino, California 95014, United

States. During the Class Period, Hitachi Chemical Co. America sold and/or distributed Capacitors to customers throughout Canada.

38. The defendant Hitachi Canada, a subsidiary of Hitachi America Ltd. is a Canadian Corporation with its principle place of business located at 5450 Explorer Drive, Suite 501, Mississauga Ontario, L4W 5M1, Canada. During the Class Period, Hitachi Canada sold and/or distributed Capacitors to customers throughout Canada.
39. The defendants Hitachi Chemical Co., Ltd., Hitachi Chemical Company America, Ltd., and Hitachi Canada are all part of the Hitachi Group, and are together referred to herein as "Hitachi."

***Nichicon***

40. The defendant Nichicon Corporation is a Japanese corporation with its principal place of business located at Karasumadori Oike-agaru, Nakagyo-ku, Kyoto, 604-0845 Japan. During the Class Period and until the company's sale of its tantalum capacitor production operations to AVX Corporation in February 2013, Nichicon Corporation manufactured, marketed, sold, and distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers Canada. During the entire Class Period, Nichicon Corporation manufactured, marketed, sold and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
41. The defendant Nichicon (America) Corporation, an Illinois corporation, is a wholly owned subsidiary of Nichicon Corporation with its principal place of business located at 927 East State Parkway, Schaumburg, Illinois 60173, United States. During the Class Period and until Nichicon Corporation's sale of its tantalum capacitor production operations to AVX Corporation in February 2013, Nichicon(America) Corporation sold, and/or

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

42. The defendants Nichicon Corporation and Nichicon (America) Corporation are together referred to herein as "Nichicon."

### **AVX**

43. The defendant AVX Corporation is a Delaware Corporation with its principal place of business located at One AVX Boulevard, Fountain Inn, South Carolina 29644-9039,

United States. It is a subsidiary of Kyocera Corporation, a Japanese corporation that owns approximately 72% of the outstanding common stock in AVX Corporation. In or about February 2013, AVX acquired Nichicon's tantalum capacitor production facilities in Japan and China, thereby expanding their global tantalum capacitor manufacturing operations. During the Class Period, AVX Corporation manufactured, marketed, sold and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

44. The defendant AVX Corporation is referred to herein as "AVX."

### **Rubycon**

45. The defendant Rubycon Corporation is a Japanese corporation with its principal place of business located at 1938-1, Nishi-Minowa, Ina-City, Nagano Prefecture 399-4593, Japan. During the Class Period, Rubycon Corporation manufactured, marketed, sold, and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

46. The defendant Rubycon America Inc., an Illinois corporation, is a wholly owned subsidiary of Rubycon Corporation with its principal place of business located at 4293 Lee Avenue, Gurnee, Illinois 60031, United States. During the Class Period, Rubycon America Inc. sold and/or distributed Capacitors to customers throughout Canada.
47. The defendants Rubycon Corporation and Rubycon America Inc. are together referred to herein as "Rubycon."

### ***Elna***

48. The defendant Elna Co., Ltd., is a Japanese corporation with its principal place of business located at 3-8-11 Shin-Yokohama, Kohoku-ku, Yokohama, Kanagawa Prefecture, 222-0033, Japan. During the Class Period, Elna Co., Ltd., manufactured, marketed, sold, and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
49. The defendant Elna America Inc., a California corporation, is a wholly owned subsidiary of Elna Co., Ltd., with its principal place of business located at 879 West 190th Street, Suite 100, Gardena, California 90248, United States. During the Class Period, Elna America Inc. sold and/or distributed Capacitors to customers throughout the Canada.
50. The defendants Elna Co., Ltd., and Elna America Inc. are together referred to herein as "Elna."

### ***Matsuo***

51. The defendant Matsuo Electric Co., Ltd., is a Japanese corporation with its principal place of business located at 3-5-3 Sennari-cho, Toyonaka-shi, Osaka 561-8558, Japan. During the Class Period, Matsuo Electric Co., Ltd., manufactured, marketed, sold and/or

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

52. Matsuo Electric Co., Ltd., is referred to herein as "Matsuo."

***Toshin Kogyo***

53. The defendant Toshin Kogyo Co., Ltd., is a Japanese corporation with its principal place of business at Tsukasa Bldg. 2-15-4, Uchikanda Chiyoda-ku, Tokyo, Japan. During the Class Period, Toshin Kogyo Co., Ltd., manufactured, marketed, sold, and/or distributed Capacitors products either directly or through its subsidiaries or affiliates throughout Canada.

54. Toshin Kogyo Co., Ltd., is referred to herein as "Toshin Kogyo."

***Vishay***

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

***SEMCO***

56. The defendant Samsung Electro-Mechanics is a South Korean corporation with its principal place of business located at Gyeonggi-Do Suwon-Si Youngtong-Gu Maeyoung-Ro 150 (Maetan-Dong) 443-743, South Korea. It is a wholly-owned subsidiary of Samsung Group, a South Korean *chaebol* (a business conglomerate). During the Class



Period, Samsung Electro-Mechanics manufactured, marketed, sold, and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

57. The defendant Samsung Electro-Mechanics America, Inc., a California corporation, is a subsidiary of Samsung Electro-Mechanics with its principal place of business located at 3333 Michelson Drive, Suite 600, Irvine, California 92612, United States. During the Class Period, Samsung Electro-Mechanics America, Inc., sold and/or distributed Capacitors to customers throughout Canada.
58. The defendant Samsung Electronics Canada Inc., a subsidiary of Samsung Electronics, an affiliate of Samsung Electro-Mechanics, is a Canadian corporation, with its principle place of business located at 2050 Derry Road West, Mississauga, Ontario L5N, 0B9, Canada. During the Class Period, Samsung Electronics Canada Inc. sold and/or distributed Capacitors to customers throughout Canada.
59. The defendants Samsung Electro-Mechanics, Samsung Electro-Mechanics America, Inc., and Samsung Electronics Canada Inc. are together referred to herein as "SEMCO."

#### **ROHM**

60. The defendant ROHM Co., Ltd., is a Japanese corporation with its principal place of business located at 21 Saiin Mizosaki-cho, Ukyo-ku, Kyoto 615-8585 Japan. During the Class Period, ROHM Co., Ltd. manufactured, marketed, sold, and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
61. The defendant ROHM Semiconductor U.S.A., LLC, a Delaware limited liability corporation, is a subsidiary of ROHM Co., Ltd. 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, sold and/or distributed Capacitors to customers throughout Canada.

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

63. Collectively, the Defendants named in paragraphs 16 to 63 are referred to herein as "Defendants."

## **FACTUAL BACKGROUND**

### ***The Capacitors Industry***

64. The structure and the characteristics of the market for Capacitors in Canada are conducive to the conspiracy alleged herein.

65. There are substantial barriers that preclude, reduce, or make more difficult entry into the Capacitors market. New fabrication operations are required to meet the market demand and to adjust to technological changes. The industry also requires the establishment of a necessary supply chain for all raw materials. The defendant manufacturers have developed longstanding relationships and their own processing capabilities for these raw materials.

66. There are no close substitutes for Capacitors in Canada. Capacitors are one of the fundamental components found in electrical circuits and all electronic devices that are used today. There is no alternative to Capacitors in Canada.

67. Capacitors are a commodity product that is interchangeable among the defendants. Capacitors of like technical and operational specification are mutually interchangeable. A

specific Capacitor manufactured by one of the defendants can be exchanged for a product of another defendant with the same technical and operational specifications.

68. The price of Capacitors provided to OEMs and their subsidiaries is reflected, in whole or in part, in the price of electronics purchased in Canada.
69. The defendants dominate the global Capacitors market, including the sale of Capacitors in Canada.

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

70. The acts alleged under this heading are, collectively, the “Conspiracy Acts”.
71. During the Class Period, the defendants and unnamed co-conspirators conspired and/or agreed with each other to fix, maintain, increase, or control the price for the supply of Capacitors and/or to enhance unreasonably the prices of Capacitors and/or to lessen unduly competition in the sale of Capacitors in Canada.
72. 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 unnamed co-conspirators unlawfully conspired and/or agreed to:
  - a. unreasonably enhance the prices of Capacitors in Canada;
  - b. fix, maintain, increase, or control the prices of Capacitors in Canada;
  - c. monitor and enforce adherence to an agreed-upon pricing scheme;

- d. restrain trade in the sale of Capacitors in Canada; and
- e. lessen unduly competition in the sale of Capacitors in Canada.

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

74. During the Class Period and continuing to the present, the defendants and/or their servants and agents, took active steps to, and did, conceal the unlawful conspiracy from the class members.

75. The defendants were motivated to conspire and their predominant purposes and predominant concerns were to harm the plaintiff and the class members who purchased Capacitors by requiring them to pay unlawfully high prices for Capacitors.
76. 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.
77. 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

78. Commencing in or around 2014, regulatory authorities in a number of jurisdictions announced investigations into price-fixing of the Capacitors industry.
79. The Brazilian antitrust authority, the Administrative Counsel for Economic Defense, stated in a press release in 2014 that it had established an administrative proceeding to investigate the alleged price-fixing of Capacitors.
80. In or around April 2014, the Antitrust Division of the United States Department of Justice ("DOJ") confirmed to industry sources that the government has opened an investigation into price fixing in the Capacitors industry. The San Francisco division of the FBI is assisting with this investigation, which is ongoing. ~~price fixing in the capacitors industry, and sources report that this investigation is being conducted by the United States Attorney's Office for the Northern District of California.~~

81. On or about July 2, 2014, the People's Republic of China's National Development and Reform Commission ("NDRC"), an agency who regulates price-related anticompetitive activity by the Chinese State Council, confirmed its investigation into the capacitors industry through a report published in the China Supervision and Antitrust Journal and written by Xu Kunlin, Director-General of the NDRC's Price Supervision and Antimonopoly Bureau. In this report, Xu revealed that one Japanese capacitor company self-reported its conspiracy activity in March, 2014, and that this company and other Japanese capacitor manufacturers held regular conferences to exchange market information related to their products.
82. On or about June 24, 2014, the Japanese Fair Trade Commission ("JFTC") conducted raids of approximately eight capacitors manufacturers believed to be members of the conspiracy, including Panasonic, NEC Tokin, Hitachi Chemical, Nichicon, and Nippon Chemi-Con.
83. Since the beginning of 2014, investigations into the capacitors industry have also been opened by the South Korean Fair Trade Commission, the Taiwanese Fair Trade Commission and the European Commission's competition authority.
84. On or about September 2, 2015, the Defendant NEC Tokin agreed to plead guilty to charges laid by the U.S. Justice Department that it conspired to fix the prices of Capacitors and to pay a fine of \$13,800,000 USD.
85. In November 2015, the European Commission sent Statements of Objections to ten manufacturers of Capacitors alleging violations of EU antitrust laws. The European Commission stated that it had concerns that the price-fixing conspiracy had run from at least 1997 to 2014.

86. On or about December 9, 2015, the Taiwanese Fair Trade Commission fined the following defendants for price-fixing Capacitors: Nippon Chemi-Con Corporation (\$57,645,798.64 USD), Rubycon Corporation (\$38,506,640.64 USD), Elna Co., Ltd. (\$2,363,468.49 USD), NEC Tokin Corporation (\$37,587,171.18 USD), Vishay Polytech Co., Ltd. (\$962,666.02 USD), and Matsuo Electric Co., Ltd. (\$749,768.72 USD). It also fined the related corporate entities: Hongkong Chemi-con Limited, Taiwan Chemi-Con Corporation, Sanyo Electric (Hong Kong) Ltd., and Nichicon (Hong Kong) Ltd.
87. On or about March 29, 2016, the JFTC fined the following defendants for price-fixing Capacitors: Nippon Chemi-Con Corp. (\$12,972,930.95 USD), Nichicon Corp. (\$32,906,946.80 USD), Rubycon Corp. (\$9,655,115.16 USD), NEC Tokin Corp. (\$1,148,126.99 USD), and Matsuo Electric Co. Ltd. (\$3,869,278.36 USD). The Commission also issued a cease-and-desist orders to the Defendants, as well as Vishay Polytech Co., Ltd. Hitachi AIC has also been added to this list but no fines or orders have been made against it as of yet.
88. On or about April 27, 2016, it was announced by the U.S. Department of Justice that the defendant Hitachi Chemical Co., Ltd. will plead guilty to charges laid in the U.S. for conspiring to fix prices of Capacitors sold to customers in the United States and elsewhere. The sentencing date has been set for June 8, 2016. The information filed by the Department of Justice indicates that the conspiracy under investigation began as early as 1997.
89. The defendant Taiyo Yuden has admitted to having been raided by the NDRC and has stated that it is cooperating with Chinese authorities.

90. The defendant NEC Tokin has confirmed that it has been contacted or raided by American, Chinese and European authorities and has stated that it is cooperating with authorities.
91. The defendant Toshin Kogyo has confirmed that it has been contacted by Japanese, Chinese and Taiwanese authorities.

## CAUSES OF ACTION

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

92. The defendants 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*.
93. Further, or in the alternative, the defendants Hitachi Canada, Samsung Electronics Canada Inc., and Panasonic Canada Inc. (the "Canadian Defendants") are in breach of section 46(1) of the Part VI of the *Competition Act* and caused injury to the plaintiff and the other class members which renders the Canadian Defendants jointly and severally liable to pay damages and costs of investigation pursuant to section 36 of the *Competition Act*.
94. The plaintiff and the 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 others.



95. ~~Further, the Canadian subsidiaries of the foreign defendants are liable to the plaintiff and the other class members pursuant to s. 36 of the *Competition Act* for acts in contravention of s. 45(1) of the *Competition Act*.~~

### ***Civil Conspiracy***

96. 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 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.
97. The plaintiff and other class members suffered damages as a result of the defendants' conspiracy.

### ***Unlawful Means Tort***

98. 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.
99. The Conspiracy Acts taken by the defendants were unlawful under the laws of the jurisdictions where the Conspiracy Acts took place and are actionable by third party OEMs of Capacitors located outside of Canada, or would be actionable by the OEMs located outside of Canada if they had suffered a loss. As such, the defendants are jointly and severally liable for the unlawful means tort.

100. The plaintiff and the other class members suffered damages as a result of the defendants' unlawful means tort and each of the defendants is jointly and severally liable to pay the resulting damages.

### ***Unjust Enrichment***

101. 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 such Overcharge.
102. Since the Overcharge that was received by the defendants from the plaintiff and the 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 it.

### ***Waiver of Tort***

103. Further, or alternatively, the plaintiff pleads and relies on the doctrine of waiver of tort and state that the defendants' conduct, including the alleged breaches of the *Competition Act* constitutes conduct which can be waived in favour of an election to receive restitutionary or other equitable remedies.

## **REMEDIES**

### ***Damages***

104. As a result of the Conspiracy Acts:
- a. the prices of Capacitors and products containing Capacitors have been enhanced unreasonably and/or fixed at artificially high and non-competitive levels; and

b. competition in the sale of Capacitors has been unduly restrained.

105. During the Class Period, the plaintiff and the other class members purchased Capacitors and products containing Capacitors. 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 Capacitors and products containing Capacitors by paying more than they would have paid in the absence of the illegal conspiracy and, as a result, the plaintiff and the other class members have suffered damages.

106. 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.

107. All amounts payable to the class on account of damages and disgorgement should be calculated on an aggregate basis pursuant to s. 24 of the *CPA*, or otherwise.

### ***Punitive Damages***

108. The plaintiff asserts that the defendants' conduct was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful, in contumelious disregard of the plaintiff's rights and the rights of the class members, and as such renders the defendants liable to pay aggravated, exemplary and punitive damages.

### ***Plan of Distribution***

109. 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***

110. The plaintiff claims that the defendants be permanently enjoined from carrying on business in contravention of the applicable laws.

### ***Conspicuous Notice Plan***

111. 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 the amounts owing to them by the defendants pursuant to Section 19 of the *CPA*.

### **STATUTES RELIED UPON**

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

### **SERVICE OUTSIDE ONTARIO**

113. 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));
  - c. against a person outside of Ontario who is a necessary and proper party to this proceeding properly brought against another person served in Ontario (Rule 17.02(o)); and

- d. against a person carrying on business in Ontario (Rule 17.02 (p)).

**THE PLAINTIFF** proposes that this action be tried in the City of London, in the Province of Ontario.

August 6, 2014

**HARRISON PENSEA <sup>LLP</sup>**  
Barristers & Solicitors  
450 Talbot Street  
London, ON N6A 4K3

**Jonathan J. Foreman (LSUC #45087H)**  
Tel: (519) 679-9660  
Fax: (519) 667-3362

**Lawyers for the Plaintiff**

CYGNUS ELECTRONICS CORPORATION

v.

PANASONIC CORPORATION et al.

Court File No. 3795/14

Plaintiff

Defendants

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**PROCEEDINGS COMMENCED AT LONDON**

*Proceeding Under the Class Proceedings Act, 1992*

**AMENDED STATEMENT OF CLAIM**

**HARRISON PENSEA LLP**  
450 Talbot Street  
London, ON N6A 4K3

**Jonathan J. Foreman (LSUC #45087H)**  
Tel: (519) 679-9660  
Fax: (519) 667-3362

Lawyers for the Plaintiff

**This is EXHIBIT "B" referred to in the**  
**Affidavit of STEPHANIE LEGDON**  
**sworn before me, this 18<sup>th</sup> day of November, 2016**

  
\_\_\_\_\_  
*A Commissioner, etc.*

Anni Marina Barry, a Commissioner, etc.,  
Province of Ontario, for Harrison Pensa LLP,  
Barristers and Solicitors.  
Expires April 11, 2019.



Court File No.: 1573-16CP

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:

CYGNUS ELECTRONICS CORPORATION and SEAN ALLOTT

Plaintiffs

- and -

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.; and MILESTONE GLOBAL  
TECHNOLOGY, INC. d/b/a HOLYSTONE INTERNATIONAL

Defendants

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

## STATEMENT OF CLAIM

### TO THE DEFENDANTS

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the plaintiffs. 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 plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, 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.

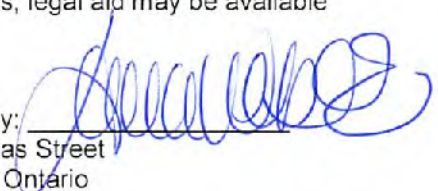
Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.



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: JUN 17 2016

Issued by:   
80 Dundas Street  
London, Ontario  
N6A 6K1

TO: HITACHI AIC INC.  
1065, Kugeta  
Moka-shi, Tochigi 321-4521  
Japan

AND TO: HITACHI CHEMICAL ELECTRONICS CO., LTD.  
1500, Ogawa  
Chikusei-shi, Ibaraki 308-8521  
Japan

AND TO: FPCAP ELECTRONICS (SUZHOU) CO., LTD.  
112 Sutong Road  
Suzhou Industrial Park, Jiangsu 215021  
China

AND TO: FUJITSU LTD.  
Shiodome City Center  
1-5-2 Higashi-Shimbashi  
Minato-ku, Tokyo 105-7123  
Japan

AND TO: FUJITSU CANADA, INC.  
155 University Avenue, Suite 1600  
Toronto, Ontario  
M5H 3B7  
Canada

AND TO: HOLYSTONE ENTERPRISE CO., LTD.  
62, Sec.2. Huang Shan R.  
Nei HU Sist., Taipei  
Taiwan

AND TO: VISHAY POLYTECH CO., LTD. f/k/a HOLYSTONE POLYTECH CO., LTD.  
16 Ohdaira Kumagami Miharu-machi  
Fukushima 963-7704  
Japan

- 3 -

**AND TO:     MILESTONE   GLOBAL   TECHNOLOGY,   INC.   d/b/a/   HOLYSTONE**  
**INTERNATIONAL**  
**41700 Ivy St. #D**  
**Murrieta, California 92562**  
**United States**

## CLAIM

1. **THE PLAINTIFFS CLAIM** on behalf of themselves 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 plaintiffs as the representative plaintiffs for the Class;
  - b. general damages calculated on an aggregate basis or otherwise for breach of the *Competition Act*, RSC 1985 c. C-34 (the "*Competition Act*"), conspiracy, unlawful means tort and unjust enrichment, in an amount sufficient to compensate the plaintiffs and the 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 plaintiffs and the other class members and, further, or in the alternative, post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, Chapter 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 Capacitors;

- h. an Order compelling the creation of a conspicuous notice program to 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 court deems just.

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

- 2. This action arises from a conspiracy between the defendants to fix, raise, maintain, or stabilize prices of aluminum and tantalum electrolytic capacitors ("Capacitors") in Canada during the Class Period.
- 3. The defendants, the defendants in Court File No. 3795/14 CP, and their unnamed co-conspirators manufactured, marketed, distributed, and/or sold Capacitors in Canada and throughout the world. The defendants had market power in the market for Capacitors in Canada throughout the Class Period.
- 4. Capacitors are electronic components that serve as one of the fundamental building blocks of all types of electrical circuits. Virtually every electrical circuit contains one or more capacitors. Generally, a capacitor is used in an electric circuit to store an electrical charge.

5. In its basic form, a capacitor consists of one or more pairs of conductors, separated by an insulator, with wires connected to the two conducting plates.
6. The defendants, the defendants in Court File No. 3795/14 CP, and their unnamed co-conspirators, sold aluminum and/or tantalum capacitors to original equipment manufacturers ("OEMs") and others in Canada, Asia, Europe, the United States, and elsewhere.
7. During the period commencing September 1, 1997 and continuing up to the present (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 Capacitors with the defendants named in Court File No. 3795/14 CP and unnamed co-conspirators.
8. The conduct of the defendants, the defendants named in Court File No. 3795/14 CP, and their co-conspirators caused injury to the plaintiffs and the class members, namely that they were compelled to pay, and did pay, artificially inflated prices, directly or indirectly for Capacitors (the "Overcharge").
9. Damages and equitable remedies are claimed. The application of the doctrine of waiver of tort is also sought.

#### **THE PLAINTIFFS AND THE CLASS**

10. The plaintiff Cygnus Electronics Corporation ("Cygnus") is an Ontario Corporation, carrying on business in the contract electronics manufacturing field. During the Class Period, Cygnus was a purchaser of aluminum and tantalum electrolytic Capacitors manufactured by the Defendants.

11. The plaintiff Sean Allott is an individual resident of the City of London, in the Province of Ontario. Sean Allott is an information technology professional and a significant personal consumer of electronic products. During the Class Period, Sean Allott was a purchaser of products containing aluminum and tantalum electrolytic Capacitors manufactured by the Defendants.
12. The plaintiffs seek to represent a class consisting of:

All persons and entities in Canada who purchased electrolytic capacitors or products which contained electrolytic capacitors between September 1, 1997, and the present, other than (1) all persons and entities resident in British Columbia and, (2) all persons and entities other than legal persons established for a private interest, partnership or association, who had under its direction or control more than 50 persons bound to it by contract of employment who purchased said products in Quebec during that period.

#### **DEFENDANTS**

13. The defendants are jointly and severally liable for the actions of and damages allocable to the co-conspirators, including unnamed co-conspirators and the defendants named in Court File No. 3795/14 CP.
14. 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.
15. 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.

16. The defendant Hitachi AIC Inc. is a Japanese corporation with its principal place of business located at 1065 Kugeta, Moka-shi, Tochigi, 321-4521 Japan. It is affiliated with and controlled by Hitachi Chemical Co., Ltd. During the Class Period, Hitachi AIC Inc. manufactured, marketed, sold, and/or distributed Capacitors, either directly or indirectly, to customers throughout Canada. Hitachi AIC Inc. sold its Capacitors division to Holy Stone Enterprise Co., Ltd. in or around December 2009. The acquisition was completed in or around April 2010 and the newly acquired division was renamed Holy Stone Polytech Co., Ltd.
17. The defendant Hitachi Chemical Electronics Co., Ltd. is a Japanese corporation with its principal place of business located at 1500 Ogawa, Chikusei-shi, Ibaraki 308-8521 Japan. It is affiliated with and controlled by Hitachi Chemical Co., Ltd. During the Class Period, Hitachi Chemical Electronics Co., Ltd. manufactured, marketed, sold, and/or distributed Capacitors, either directly or indirectly, to customers throughout Canada.
18. The defendants Hitachi AIC Inc. and Hitachi Chemical Electronics Co., Ltd. are together referred to herein as "Hitachi".
19. FPCAP Electronics (Suzhou) Co., Ltd. is a wholly owned subsidiary of Nichicon Corporation with its principal place of business located at 112 Sutong Road, Suzhou Industrial Park, Jiangsu 215021, China. Nichicon Corporation acquired Fujitsu Media Devices, Ltd.'s Capacitor business division in or about April 2009 which was thereafter renamed FPCAP Electronics (Suzhou) Co., Ltd. From in or about April 2009 to present, the defendant FPCAP Electronics (Suzhou) Co., Ltd. manufactured, marketed, sold, and/or distributed Capacitors, either directly or indirectly, for sale throughout Canada.

20. The defendant Fujitsu Ltd. is a Japanese corporation with its principal place of business located at Shiodome City Center, 1-5-2 Higashi-Shimbashi, Minato-ku, Tokyo 105-7123, Japan. During the Class Period, Fujitsu Ltd. manufactured, marketed, sold, and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
21. The defendant, Fujitsu Canada, Inc. is a Canadian corporation with its principal place of business at 155 University Avenue, Suite 1600, Toronto, Ontario M5H 3B7, Canada. It is affiliated with and controlled by Fujitsu Ltd. During the Class Period, Fujitsu Canada, Inc. manufactured, marketed, sold, and/or distributed Capacitors, either directly or indirectly, to customers throughout Canada.
22. The defendants Fujitsu Ltd. and Fujitsu Canada, Inc. are together referred to herein as "Fujitsu".
23. The defendant Holy Stone Enterprise Co., Ltd. is a Taiwanese corporation with its principal place of business located at 62, Sec.2. Huang Shan R., Nei HU Sist., Taipei, Taiwan. During the Class Period, Holy Stone Enterprise Co., Ltd. manufactured, marketed, sold, and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
24. In or about December 2009, Holy Stone Enterprise Co., Ltd. acquired Hitachi AIC Inc.'s Capacitors division and renamed it HolyStone Polytech Co., Ltd., which was a Japanese corporation and wholly owned subsidiary of Holy Stone Enterprise Co., Ltd. with its principal place of business in Fukushima, Japan. Until in or about June 2014, HolyStone Polytech Co., Ltd. manufactured, marketed, sold, and/or distributed Capacitors, either directly or indirectly, to customers throughout Canada.



25. On or about June 11, 2014, Vishay Intertechnology, Inc. acquired HolyStone Polytech Co., Ltd. and renamed it Vishay Polytech Co., Ltd. The defendant Vishay Polytech Co., Ltd. f/k/a HolyStone Polytech Co., Ltd. is a Japanese corporation with its principal place of business located at 16 Ohdaira Kumagami Miharu- machi, Fukushima 963-7704, Japan. During the Class Period, Vishay Polytech Co., Ltd. manufactured, marketed, sold, and/or distributed Capacitors, either directly or indirectly, to customers throughout Canada.
26. The defendant Milestone Global Technology, Inc. d/b/a HolyStone International is a California corporation with its principal place of business located at 41700 Ivy St. #D, Murrieta, California 92562, United States. Milestone Global Technology, Inc. is a subsidiary of the defendant Holy Stone Enterprise Co., Ltd. and the direct sales office for North America. During the Class Period, Milestone Global Technology, Inc. manufactured, marketed, sold, and/or distributed Capacitors, either directly or indirectly, to customers throughout Canada.
27. The defendants Holy Stone Enterprise Co., Ltd., Vishay Polytech Co., Ltd. f/k/a HolyStone Polytech Co., Ltd. and Milestone Global Technology, Inc. d/b/a Holystone International, are together referred to herein as "Holy Stone".
28. Collectively, the defendants named in paragraphs 17 to 26 are referred to herein as the "Defendants".

## **FACTUAL BACKGROUND**

### ***The Capacitors Industry***

29. The structure and the characteristics of the market for Capacitors in Canada are conducive to the conspiracy alleged herein.

30. There are substantial barriers that preclude, reduce, or make more difficult entry into the Capacitors market. New fabrication operations are required to meet the market demand and to adjust to technological changes. The industry also requires the establishment of a necessary supply chain for all raw materials. The Defendant manufacturers have developed longstanding relationships and their own processing capabilities for these raw materials.
31. There are no close substitutes for Capacitors in Canada. Capacitors are one of the fundamental components found in electrical circuits and all electronic devices that are used today. There is no alternative to Capacitors in Canada.
32. Capacitors are a commodity product that is interchangeable among the Defendants and the defendants named in Court File No. 3795/14 CP. Capacitors of like technical and operational specification are mutually interchangeable. A specific Capacitor manufactured by one of the Defendants can be exchanged for a product of another Defendant so long as it has the same technical and operational specifications.
33. The price of Capacitors provided to OEMs and their subsidiaries is reflected, in whole or in part, in the price of electronics purchased in Canada.
34. The Defendants and the defendants named in Court File No. 3795/14 CP dominate the global Capacitors market, including the sale of Capacitors in Canada.

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

35. The acts alleged under this heading are, collectively, the "Conspiracy Acts."
36. During the Class Period, the Defendants, the defendants named in Court File No. 3795/14 CP, and unnamed co-conspirators conspired and/or agreed with each other to fix,

maintain, increase, or control the price for the supply of Capacitors and/or to enhance unreasonably the prices of Capacitors and/or to lessen unduly competition in the sale of Capacitors in Canada.

37. 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 plaintiffs. As a result of the communications and meetings the Defendants, the defendants named in Court File No. 3795/14 CP, and unnamed co-conspirators unlawfully conspired and/or agreed to:
- a. unreasonably enhance the prices of Capacitors in Canada;
  - b. fix, maintain, increase, or control the prices of Capacitors in Canada;
  - c. monitor and enforce adherence to an agreed-upon pricing scheme;
  - d. restrain trade in the sale of Capacitors in Canada; and
  - e. lessen unduly competition in the sale of Capacitors in Canada.
38. 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 Capacitors in Canada;
  - b. communicated secretly, in person and by telephone, to discuss and fix prices of Capacitors;
  - c. made formal agreements with respect to the prices of Capacitors;
  - d. exchanged information regarding the prices of Capacitors for the purposes of monitoring and enforcing adherence to the agreed-upon prices;

- e. rigged bids for the sale of Capacitors to OEMs and their subsidiaries;
  - f. allocated sales, territories, customers or markets for supply of Capacitors;
  - g. fixed, maintained, controlled, prevented or lessened the production and/or supply of Capacitors; and
  - h. disciplined any conspirator which failed to comply with the conspiracy.
39. During the Class Period and continuing to the present, the Defendants and/or their servants and agents, took active steps to, and did, conceal the unlawful conspiracy from the class members.
40. The Defendants were motivated to conspire and their predominant purposes and predominant concerns were to harm the plaintiffs and the class members who purchased Capacitors by requiring them to pay unlawfully high prices for Capacitors.
41. 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.
42. 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**

43. Commencing in or around 2014, regulatory authorities in a number of jurisdictions announced investigations into price-fixing of the capacitors industry.

44. The Brazilian antitrust authority, the Administrative Counsel for Economic Defense, stated in a press release in 2014 that it had established an administrative proceeding to investigate the alleged price-fixing of Capacitors.
45. In or around April 2014, the Antitrust Division of the United States Department of Justice ("DOJ") confirmed to industry sources that the government has opened an investigation into price fixing in the Capacitors industry. The San Francisco division of the FBI is assisting with this investigation, which is ongoing.
46. On or about July 2, 2014, the People's Republic of China's National Development and Reform Commission ("NDRC"), an agency which regulates price-related anticompetitive activity by the Chinese State Council, confirmed its investigation into the capacitors industry through a report published in the China Supervision and Antitrust Journal and written by Xu Kunlin, Director-General of the NDRC's Price Supervision and Antimonopoly Bureau. In this report, Xu revealed that one Japanese capacitor company self-reported its conspiracy activity in March, 2014, and that this company and other Japanese capacitor manufacturers held regular conferences to exchange market information related to their products.
47. On or about June 24, 2014, the Japanese Fair Trade Commission ("JFTC") conducted raids of approximately eight capacitors manufacturers believed to be members of the conspiracy, including Panasonic, NEC Tokin, Hitachi Chemical, Nichicon, and Nippon Chemi-Con.
48. Since the beginning of 2014, investigations into the capacitors industry have also been opened by the South Korean Fair Trade Commission, the Taiwanese Fair Trade Commission and the European Commission's competition authority.

49. On or about September 2, 2015, NEC Tokin agreed to plead guilty to charges laid by the U.S. Justice Department that it conspired to fix the prices of electrolytic Capacitors and to pay a fine of \$13,800,000 USD.
50. In November 2015, the European Commission sent Statements of Objections to ten manufacturers of Capacitors alleging violations of EU antitrust laws. The European Commission stated that it had concerns that the price-fixing conspiracy had run from at least 1997 to 2014.
51. On or about December 9, 2015, the Taiwanese Fair Trade Commission fined the following defendants (in this action and in Court File No. 3795/14 CP) for price-fixing electrolytic capacitors: Nippon Chemi-Con Corporation (\$57,645,798.64 USD), Rubycon Corporation (\$38,506,640.64 USD), Elna Co., Ltd. (\$2,363,468.49 USD), NEC Tokin Corporation (\$37,587,171.18 USD), Vishay Polytech Co., Ltd. (\$962,666.02 USD), and Matsuo Electric Co., Ltd. (\$749,768.72 USD). It also fined the related corporate entities: Hongkong Chemi-con Limited, Taiwan Chemi-Con Corporation, Sanyo Electric (Hong Kong) Ltd., and Nichicon (Hong Kong) Ltd.
52. On or about March 29, 2016, the Japanese Fair Trade Commission fined the following defendants in Court File No. 3795/14 CP for price-fixing electrolytic capacitors: Nippon Chemi-Con Corp. (\$12,972,930.95 USD), Nichicon Corp. (\$32,906,946.80 USD), Rubycon Corp. (\$9,655,115.16 USD), NEC Tokin Corp. (\$1,148,126.99 USD), and Matsuo Electric Co. Ltd. (\$3,869,278.36 USD). The Commission also issued a cease-and-desist orders to the Defendants, as well as Vishay Polytech Co., Ltd. Hitachi AIC has also been added to this list but no fines or orders have been made against it as of yet.
53. On or about April 27, 2016, it was announced by the U.S. Department of Justice that the defendant Hitachi Chemical Co., Ltd. will plead guilty to charges laid in the U.S. for

conspiring to fix prices of electrolytic Capacitors sold to customers in the United States and elsewhere. A plea has agreement has been entered and the proposed fine is \$3.8 million. The information filed by the Department of Justice indicates that the conspiracy under investigation began as early as 1997.

## **CAUSES OF ACTION**

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

54. The Defendants are in breach of section 45 of Part VI of the Competition Act and caused injury to the plaintiffs and the other class members which renders the Defendants jointly and severally liable to pay damages and costs of investigation pursuant to section 36 of the Competition Act.
55. Further, or in the alternative, the defendant Fujitsu Canada Inc. is in breach of section 46(1) of the Part VI of the Competition Act and caused injury to the plaintiff and the other class members which renders the Fujitsu Canada Inc. jointly and severally liable to pay damages and costs of investigation pursuant to section 36 of the Competition Act.
56. The plaintiffs 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, the defendants named in Court File No. 3795/14 CP, and their unnamed co-conspirators actively, intentionally and purposively concealed the existence of the combination and conspiracy from the plaintiffs and others.

### ***Civil Conspiracy***

57. Further, or in the alternative, the Conspiracy Acts were unlawful acts under the Competition Act and/or in restraint of trade directed towards the plaintiffs and the other

class members. The Defendants, the defendants named in Court File No. 3795/14 CP, and their unnamed co-conspirators knew that the unlawful acts alleged herein would likely cause injury to the plaintiffs 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 plaintiffs and other class members, and the Defendants are jointly and severally liable for the tort of conspiracy to injure.

58. The plaintiffs and other class members suffered damages as a result of the Defendants' conspiracy.

***Unlawful Means Tort***

59. Further, or in the alternative, the Conspiracy Acts were unlawful acts intended to cause the plaintiffs and the other class members economic loss, as an end in itself or as a necessary means of enriching the Defendants.
60. The Conspiracy Acts taken by the Defendants were unlawful under the laws of the jurisdictions where the Conspiracy Acts took place and are actionable by third party OEMs of Capacitors located outside of Canada, or would be actionable by the OEMs located outside of Canada if they had suffered a loss. As such, the Defendants are jointly and severally liable for the unlawful means tort.
61. The plaintiffs and the other class members suffered damages as a result of the Defendants' unlawful means tort and each of the Defendants is jointly and severally liable to pay the resulting damages.



***Unjust Enrichment***

62. The Defendants have each been unjustly enriched by the receipt of the Overcharge. The plaintiffs and the other class members have suffered a corresponding deprivation in the amount of such Overcharge.
63. Since the Overcharge that was received by the Defendants from the plaintiffs and the 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 it.

***Waiver of Tort***

64. Further, or in the alternative, the plaintiffs plead and rely on the doctrine of waiver of tort and state that the Defendants' conduct, including the alleged breaches of the Competition Act constitutes conduct which can be waived in favour of an election to receive restitutionary or other equitable remedies.

**REMEDIES**

***Damages***

65. As a result of the Conspiracy Acts:
- a. the prices of Capacitors and products containing Capacitors have been enhanced unreasonably and/or fixed at artificially high and non-competitive levels; and
  - b. competition in the sale of Capacitors has been unduly restrained.
66. During the Class Period, the plaintiffs and the other class members purchased Capacitors and products containing Capacitors. By reason of the alleged violations of the Competition

Act and the common law, the plaintiffs and the other class members have been overcharged for those Capacitors and products containing Capacitors by paying more than they would have paid in the absence of the illegal conspiracy and, as a result, the plaintiffs and the other class members have suffered damages.

67. The plaintiffs assert 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.
68. All amounts payable to the class on account of damages and disgorgement should be calculated on an aggregate basis pursuant to s. 24 of the *CPA*, or otherwise.

***Punitive Damages***

69. The plaintiffs assert that the Defendants' conduct was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful, and in contumelious disregard of the plaintiffs' rights and the rights of the class members, and as such renders the Defendants liable to pay aggravated, exemplary, and punitive damages.

***Plan of Distribution***

70. 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***

71. The plaintiffs claim for the Defendants to be permanently enjoined from carrying on business in contravention of the applicable laws.

***Conspicuous Notice Plan***

72. The plaintiffs request 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 the amounts owing to them by the Defendants pursuant to section 19 of the *CPA*.

**STATUTES RELIED UPON**

73. The plaintiffs plead and relies upon the *Class Proceedings Act*, 1992, S.O. 1992, c.6 as amended, the *Competition Act*, R.S.C. 1985, c.34 as amended, and the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

**SERVICE OUTSIDE ONTARIO**

74. 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));
  - c. against a person outside of Ontario who is a necessary and proper party to this proceeding properly brought against another person served in Ontario (Rule 17.02(o)); and
  - d. against a person carrying on business in Ontario (Rule 17.02 (p)).

**THE PLAINTIFFS** propose that this action be tried in the City of London, in the Province of Ontario.

June 17, 2016

**HARRISON PENZA LLP**  
Barristers & Solicitors  
450 Talbot Street  
London, ON N6A 4K3

**Jonathan J. Foreman (LSUC #45087H)**  
Tel: (519) 679-9660  
Fax: (519) 667-3362

**Lawyers for the Plaintiff**

CYGNUS ELECTRONICS CORPORATION et al.

v.

HITACHI AIC INC. et al.

Court File No. 1573-16CP

Plaintiff

Defendants

ONTARIO  
SUPERIOR COURT OF JUSTICE

PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the *Class Proceedings Act*, 1992

STATEMENT OF CLAIM

HARRISON PENSEA LLP  
450 Talbot Street  
London, ON N6A 4K3

Jonathan J. Foreman (LSUC #45087H)  
Tel: (519) 679-9660  
Fax: (519) 867-3362

Lawyers for the Plaintiff

**This is EXHIBIT "C" referred to in the  
Affidavit of STEPHANIE LEGDON  
sworn before me, this 18<sup>th</sup> day of November, 2016**

  
A Commissioner, etc.

Anni Marina Barry, a Commissioner, etc.,  
Province of Ontario, for Harrison Pensa LLP,  
Barristers and Solicitors.  
Expires April 11, 2019.

**Emrys Davis**  
Direct Line: 416.777.6242  
e-mail: [davise@bennettjones.com](mailto:davise@bennettjones.com)  
Our File No.: 61412-30

October 20, 2015

**BY EMAIL [sbowden@harrisonpensa.com](mailto:sbowden@harrisonpensa.com)**

Sarah Bowden  
Harrison Pensa LLP  
450 Talbot Street  
P.O. Box 3237  
London, ON N6A 4K3

Dear Ms. Bowden:

**Re: Panasonic and Sanyo et al. ats Cygnus Electronics Corporation  
London Court File No. 3795/14**

As you know, we act for the Panasonic/Sanyo defendants. Further to our call, I can confirm that as of April 1, 2015, SANYO North America Corporation ("SNA") ceased to exist due to its merger with and into the defendant Panasonic Corporation of North America ("PNA"). We are advised that PNA retains all existing documents and personnel from SNA and is responsible for any proven liabilities of SNA. PNA denies any liability in this matter, whether on its own account or that of SNA.

I confirm that you will discontinue against SNA given the above.

Regards,

**BENNETT JONES LLP**



Emrys Davis

ECD\*nb

c. Melanie Aitken, *Bennett Jones (US) LLP*  
John F. Rook, *Bennett Jones LLP*

**This is EXHIBIT "D" referred to in the**  
**Affidavit of STEPHANIE LEGDON**  
**sworn before me, this 18<sup>th</sup> day of November, 2016**

  
\_\_\_\_\_  
*A Commissioner, etc.*

Anni Marina Barry, a Commissioner, etc.,  
Province of Ontario, for Harrison Pensa LLP,  
Barristers and Solicitors.  
Expires April 11, 2019.



**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

CYGNUS ELECTRONICS CORPORATION

Plaintiff

- and -

PANASONIC CORPORATION; PANASONIC CORPORATION OF NORTH AMERICA;  
PANASONIC CANADA INC.; SANYO ELECTRIC CO., LTD.; ~~SANYO NORTH  
AMERICA CORPORATION; TAIYO YUDEN CO., LTD.; TAIYO YUDEN (USA) INC.;~~  
~~TAIYO YUDEN (USA) INC. O/A TAIYO YUDEN CANADA;~~ NEC TOKIN  
CORPORATION; NEC TOKIN AMERICA INC.; ~~NEC CANADA 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.; ~~VISHAY INTERTECHNOLOGY INC.;~~ SAMSUNG ELECTRO-  
MECHANICS; SAMSUNG ELECTRO-MECHANICS AMERICA INC.; SAMSUNG  
ELECTRONICS CANADA INC.; ROHM CO., LTD.; and ROHM SEMICONDUCTOR  
U.S.A., LLC.

Defendants

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

**AMENDED 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: August 6, 2014

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: SANYO ELECTRIC CO., LTD.**  
 5-5, Keihan-Hondori, 2-Chome  
 Moriguchi City, Osaka 570-8677  
 Japan

**AND TO: ~~SANYO NORTH AMERICA CORPORATION~~**  
~~2055 Sanyo Avenue~~  
~~San Diego, California 92154~~  
~~United States~~

**AND TO: ~~TAIYO YUDEN CO., LTD.~~**  
~~6-16-20, Ueno, Taite-ku~~  
~~Tokyo 110-0005~~  
~~Japan~~

**AND TO: ~~TAIYO YUDEN (USA) INC.~~**  
~~10 North Martingale Road, Suite 575~~  
~~Schaumburg, Illinois 60173~~  
~~United States~~

**AND TO: ~~TAIYO YUDEN (USA) INC. O/A TAIYO YUDEN CANADA~~**  
~~55 Northfield Drive East, Suite 265~~  
~~Waterloo, Ontario, N2K 3T6~~  
~~Canada~~

**AND TO: NEC TOKIN CORPORATION**  
 7-1, Kohriyama 6-chome, Taihaku-ku  
 Sendai-shi, Miyagi 982-8510  
 Japan

**AND TO: NEC TOKIN AMERICA INC.**  
 2460 North First Street, Suite 220  
 San Jose, California, 95131  
 United States

**AND TO: ~~NEC CANADA INC.~~**  
~~5995 Avebury Road~~  
~~Mississauga, Ontario, L5R 3P9~~  
~~Canada~~

**AND TO: KEMET CORPORATION**  
 2835 Kemet Way  
 Simpsonville, South Carolina 29681  
 United States

**AND TO: KEMET ELECTRONICS CORPORATION**  
 2835 Kemet Way  
 Simpsonville, South Carolina 29681  
 United States

- AND TO: NIPPON CHEMI-CON CORPORATION**  
5-6-4, Osaki,  
Shinagawa-ku, Tokyo 141-8605  
Japan
- AND TO: UNITED CHEMI-CON CORPORATION**  
9801 West Higgins Road  
Rosemont, Illinois 60018  
United States
- AND TO: HITACHI CHEMICAL CO., LTD.**  
Grantokyo South Tower, 1-9-2  
Marunouchi Chiyoda-ku, Tokyo, 100-6606  
Japan
- AND TO: HITACHI CHEMICAL COMPANY AMERICA, LTD.**  
10080 North Wolfe Road, Suite SW3-200  
Cupertino, California 95014  
United States
- AND TO: HITACHI CANADA**  
5450 Explorer Drive, Suite 501  
Mississauga, Ontario, L4W 5M1  
Canada
- AND TO: NICHICON CORPORATION**  
Karasumadori Oike-agaru  
Nakagyo-ku, Kyoto, 604-0845  
Japan
- AND TO: NICHICON (AMERICA) CORPORATION**  
927 East State Parkway  
Schaumburg, Illinois 60173  
United States
- AND TO: AVX CORPORATION**  
One AVX Boulevard  
Fountain Inn, South Carolina 29644-9039  
United States
- AND TO: RUBYCON CORPORATION**  
1938-1, Nishi-Minowa  
Ina-City, Nagano Prefecture 399-4593  
Japan
- AND TO: RUBYCON AMERICA INC.**  
4293 Lee Avenue  
Gurnee, Illinois 60031  
United States

**AND TO: ELNA CO., LTD.**  
 3-8-11 Shin-Yokohama  
 Kohoku-ku, Yokohama, Kanagawa Prefecture, 222-0033  
 Japan

**AND TO: ELNA AMERICA INC.**  
 879 West 190th Street, Suite 100  
 Gardena, California 90248  
 United States

**AND TO: MATSUO ELECTRIC CO., LTD.**  
 3-5-3 Sennari-cho  
 Toyonaka-shi, Osaka 561-8558  
 Japan

**AND TO: TOSHIN KOGYO CO., LTD.**  
 Tsukasa Bldg. 2-15-4  
 Uchikanda Chiyoda-ku, Tokyo  
 Japan

~~**AND TO: VISHAY INTERTECHNOLOGY, INC.**~~  
~~63 Lancaster Avenue~~  
~~Malvern, Pennsylvania 19355-2143~~  
~~United States~~

**AND TO: SAMSUNG ELECTRO-MECHANICS**  
 Gyeonggi-Do Suwon-Si Youngtong-Gu Maeyoung-Ro 150  
 (Maetan-Dong) 443-743  
 South Korea

**AND TO: SAMSUNG ELECTRO-MECHANICS AMERICA, INC.**  
 3333 Michelson Drive, Suite 600  
 Irvine, California 92612  
 United States

**AND TO: SAMSUNG ELECTRONICS CANADA INC.**  
 2050 Derry Road West  
 Mississauga, Ontario, L5N 0B9  
 Canada

**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

## CLAIM

1. **THE PLAINTIFF CLAIMS** on behalf of itself and the class:
  - a. an Order pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, CHAPTER 6, certifying this action as a class proceeding and appointing the plaintiff as the representative plaintiff for the Class;
  - b. general damages calculated on an aggregate basis or otherwise for breach of the *Competition Act*, RSC 1985 c. C-34 (the "*Competition Act*"), conspiracy, unlawful means tort and unjust enrichment, in an amount sufficient to compensate the plaintiff and the 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, post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, Chapter C.43;
  - e. an accounting, restitution, 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 Capacitors;

- h. an Order compelling the creation of a conspicuous notice program to 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 court deems just.

## **NATURE OF THE ACTION**

- 2. This action arises from a conspiracy between the defendants to fix, raise, maintain, or stabilize prices of aluminum and tantalum electrolytic capacitors (“Capacitors”) in Canada during the Class Period.
- 3. The defendants and their unnamed co-conspirators manufactured, marketed, distributed and/or sold Capacitors in Canada and throughout the world. The defendants had market power in the market for Capacitors in Canada throughout the Class Period.
- 4. Capacitors are electronic components that serve as one of the fundamental building blocks of all types of electrical circuits. Virtually every electrical circuit contains one or

more capacitors. Generally, a capacitor is used in an electric circuit to store an electrical charge.

5. In its basic form, a capacitor consists of one or more pairs of conductors, separated by an insulator, with wires connected to the two conducting plates.
6. The defendants sold aluminum and/or tantalum capacitors to original equipment manufacturers (“OEMs”) and others in Canada, Asia, Europe, the United States, and elsewhere.
7. During the period commencing September ~~January~~ 1, ~~1997~~2005 and continuing up to the present (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 Capacitors.
8. The conduct of the defendants and their co-conspirators caused injury to the plaintiff and the class members, namely that they were compelled to pay, and did pay, artificially inflated prices, directly or indirectly for Capacitors (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. The plaintiff, Cygnus Electronics Corporation (“Cygnus”) is an Ontario Corporation, carrying on business in the contract electronics manufacturing field. During the Class Period, Cygnus was a purchaser of aluminum and tantalum electrolytic capacitors manufactured by the Defendants.



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

All persons and entities in Canada who purchased electrolytic capacitors or products which contained electrolytic capacitors between September 1, 1997, and the present, other than (1) all persons and entities resident in British Columbia and, (2) all persons and entities other than legal persons established for a private interest, partnership or association, who had under its direction or control more than 50 persons bound to it by contract of employment who purchased said products in Quebec during that period.

~~All persons and entities in Canada who purchased Capacitors or products which contained Capacitors between January 1, 2005, and the present.~~

## DEFENDANTS

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

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. Until

October 1, 2008, Panasonic Corporation operated under the name of Matsushita Electric Industrial Co., Ltd. During the Class Period, Panasonic Corporation manufactured, marketed, sold and/or distributed Capacitors 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 sold and/or distributed Capacitors to customers throughout Canada.
17. On or around April 1, 2015, Panasonic Corporation of North America merged with Sanyo North America Corporation. Sanyo North America Corporation, was until the time of its merger with Panasonic Corporation of North America, a Delaware corporation and a wholly owned subsidiary of the defendant, Sanyo Electric Co., Ltd., with its principal place of business located at 2055 Sanyo Avenue, San Diego, California 92154. During the Class Period until the date of the merger, Sanyo North America Corporation sold and/or distributed Capacitors to customers throughout Canada. As a result of the merger, the defendant, Panasonic Corporation of North America is responsible for any proven liabilities of Sanyo North America Corporation.
- ~~47-18.~~ 18. The defendant Panasonic Canada Inc., a subsidiary of Panasonic Corporation of North America, is a Canadian corporation with its principle place of business located at 5770 Ambler Drive, Mississauga, Ontario L4W 2T3, Canada. During the Class Period, Panasonic Corporation Canada Inc. sold and/or distributed Capacitors to customers throughout Canada.

~~18-19.~~ The defendant Sanyo Electric Co., Ltd., a Japanese corporation, is, as of December 2009, a wholly owned subsidiary of Panasonic Corporation, with its principal place of business located at 5-5, Keihan-Hondori, 2-Chome, Moriguchi City, Osaka 570-8677, Japan. During the Class Period, Sanyo Electric Co. Group, Ltd., manufactured, marketed, sold and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~19.~~ ~~The defendant Sanyo North America Corporation, a Delaware corporation, is a wholly owned subsidiary of Sanyo Electric Group, Ltd., with its principal place of business located at 2055 Sanyo Avenue, San Diego, California 92154. During the Class Period, Sanyo Electronic Device (U.S.A.) Corporation sold and/or distributed Capacitors to customers throughout Canada.~~

20. The defendants Panasonic Corporation, Panasonic Corporation of North America, Panasonic Canada Inc., ~~Panasonic Canada Inc., and~~ Sanyo Electric Co. Group, Ltd., ~~and Sanyo Electronic Device (U.S.A.) Corporation~~ are collectively referred to herein as “Panasonic.” With regard to any allegations pertaining to Sanyo Electric Co. Group, Ltd. ~~and Sanyo Electronic Device (U.S.A.) Corporation~~ prior to ~~its~~their acquisition by Panasonic, ~~it is they are~~ referred to herein as “Sanyo.”

### **~~Taiyo Yuden~~**

~~21.~~ ~~The defendant Taiyo Yuden Co., Ltd., is a Japanese corporation with its principal place of business located at 6-16-20, Ueno, Taito-ku, Tokyo 110-0005, Japan. During the Class Period, Taiyo Yuden Co., Ltd., manufactured, marketed, sold and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.~~

~~22. The defendant Taiyo Yuden (USA) Inc., an Illinois corporation, is a wholly owned subsidiary of Taiyo Yuden Co., Ltd., with its principal place of business located at 10 North Martingale Road, Suite 575, Schaumburg, Illinois 60173, United States. During the Class Period, Taiyo Yuden (USA) Inc. sold and/or distributed Capacitors to customers throughout Canada.~~

~~23. The defendant Taiyo Yuden (USA) Inc. o/a Taiyo Yuden Canada is a wholly owned subsidiary of Taiyo Yuden Co., Ltd., with its principal place of business located at 10 North Martingale Road, Suite 575, Schaumburg, Illinois 60173, United States, operating under the Canadian registered business name, Taiyo Yuden Canada. Taiyo Yuden Canada is operating business at 55 Northfield Drive East, Suite 265, Waterloo, Ontario, N2K 3T6, Canada. During the Class Period, Taiyo Yuden Canada sold and/or distributed Capacitors to customers throughout Canada.~~

~~24. The defendants Taiyo Yuden Co., Ltd., Taiyo Yuden (USA) Inc. and Taiyo Yuden (USA) Inc. o/a Taiyo Yuden Canada are collectively referred to herein as "Taiyo Yuden."~~

### **NEC Tokin**

~~25.~~21. The defendant NEC Tokin Corporation, a subsidiary of NEC Corporation, is a Japanese company with its principal place of business located at 7-1, Kohriyama 6-chome, Taihaku-ku, Sendai-shi, Miyagi 982-8510, Japan. During the Class Period, NEC Tokin Corporation manufactured, marketed, sold, and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates throughout Canada.

~~26.~~22. The defendant NEC Tokin America, Inc., a California Corporation, is a wholly owned subsidiary of NEC Tokin Corporation with its principal place of business located at 2460 North First Street, Suite 220, San Jose, California 95131, United States. During the

Class Period, NEC Tokin America, Inc., sold and/or distributed Capacitors throughout Canada.

~~27. The defendant NEC Canada Inc. is a subsidiary of NEC Corporation, with its principal place of business located at 5995 Avebury Road, Mississauga, Ontario, L5R 3P9, Canada. During the Class Period, NEC Canada Inc. sold and/or distributed Capacitors throughout Canada.~~

~~28.~~ 23. The defendants NEC Tokin Corporation, and NEC Tokin America, Inc., and ~~NEC Canada Inc.~~, are together referred to herein as “NEC Tokin Corporation.”

### **KEMET**

~~29.~~ 24. Defendant KEMET Corporation is a Delaware corporation with its principal place of business located at 2835 Kemet Way, Simpsonville, South Carolina 29681, United States. During the Class Period, KEMET Corporation manufactured, marketed, sold and/or distributed Capacitors directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~30.~~ 25. On March 12, 2012, KEMET Corporation announced that it agreed to form a capital and business alliance with NEC Tokin Corporation because of their respective professed interests in increasing its tantalum electrolytic capacitor sales, reducing costs in areas such as procurement and production, sharing their technological knowledge, and benefiting financially through the cross-selling of each other’s products. As a result of this alliance, KEMET received 34% of the outstanding shares of NEC Tokin (the remainder being held by non-party NEC Corporation), which provided KEMET with 51% of the outstanding voting rights. KEMET currently holds the option to purchase NEC

Corporation's shares in NEC Tokin, which would thereby effect an acquisition of NEC Tokin by KEMET.

~~31.~~ 26. The defendant KEMET Electronics Corporation, a Delaware corporation, is a wholly owned subsidiary of KEMET Corporation with its principal place of business located at 2835 Kemet Way, Simpsonville, South Carolina 29681, United States. During the Class Period, KEMET Electronics Corporation manufactured, marketed, sold and/or Capacitors directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~32.~~ 27. The defendants KEMET Corporation and KEMET Electronics Corporation are together referred to herein as "KEMET." The KEMET-NEC Tokin alliance shall be referred to herein as "KEMET-NEC Tokin."

***Nippon Chemi-Con***

~~33.~~ 28. The defendant Nippon Chemi-Con Corporation is a Japanese corporation with its principal place of business located at 5-6-4, Osaki, Shinagawa-ku, Tokyo 141-8605, Japan. During the Class Period, Nippon Chemi-Con Corporation manufactured, marketed, sold, and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~34.~~ 29. The defendant United Chemi-Con Corporation, an Illinois Corporation, is a wholly owned subsidiary of Nippon Chemi-Con Corporation with its principal place of business located at 9801 West Higgins Road, Rosemont, Illinois 60018, United States. During the Class Period, United Chemi-Con manufactured, marketed, sold and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~35.~~ 30. The defendants Nippon Chemi-Con Corporation and United Chemi-Con Corporation are together referred to herein as “Nippon Chemi-Con.”

### **Hitachi Chemical**

~~36.~~ 31. The defendant Hitachi Chemical Co., Ltd., is a Japanese corporation with its principal place of business located at Grantokyo South Tower, 1-9-2, Marunouchi, Chiyoda-ku, Tokyo, 100-6606, Japan. During the Class Period, Hitachi Chemical Co., Ltd., manufactured, marketed, sold, and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~37.~~ 32. The defendant Hitachi Chemical Company America, Ltd., a New York corporation, is a wholly owned subsidiary of Hitachi Chemical Co., Ltd. with its principal place of business located at 10080 North Wolfe Road, Suite SW3-200, Cupertino, California 95014, United States. During the Class Period, Hitachi Chemical Co. America sold and/or distributed Capacitors to customers throughout Canada.

~~38.~~ 33. The defendant Hitachi Canada, a subsidiary of Hitachi America Ltd. is a Canadian Corporation with its principle place of business located at 5450 Explorer Drive, Suite 501, Mississauga Ontario, L4W 5M1, Canada. During the Class Period, Hitachi Canada sold and/or distributed Capacitors to customers throughout Canada.

~~39.~~ 34. The defendants Hitachi Chemical Co., Ltd., Hitachi Chemical Company America, Ltd., and Hitachi Canada are all part of the Hitachi Group, and are together referred to herein as “Hitachi.”

**Nichicon**

~~40-35.~~ The defendant Nichicon Corporation is a Japanese corporation with its principal place of business located at Karasumadori Oike-agaru, Nakagyo-ku, Kyoto, 604-0845 Japan. During the Class Period and until the company's sale of its tantalum capacitor production operations to AVX Corporation in February 2013, Nichicon Corporation manufactured, marketed, sold, and distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers Canada. During the entire Class Period, Nichicon Corporation manufactured, marketed, sold and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~41-36.~~ The defendant Nichicon (America) Corporation, an Illinois corporation, is a wholly owned subsidiary of Nichicon Corporation with its principal place of business located at 927 East State Parkway, Schaumburg, Illinois 60173, United States. During the Class Period and until Nichicon Corporation's sale of its tantalum capacitor production operations to AVX Corporation in February 2013, Nichicon(America) Corporation sold, and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~42-37.~~ The defendants Nichicon Corporation and Nichicon (America) Corporation are together referred to herein as "Nichicon."

**AVX**

~~43-38.~~ The defendant AVX Corporation is a Delaware Corporation with its principal place of business located at One AVX Boulevard, Fountain Inn, South Carolina 29644-9039, United States. It is a subsidiary of Kyocera Corporation, a Japanese corporation that owns approximately 72% of the outstanding common stock in AVX Corporation. In or



about February 2013, AVX acquired Nichicon's tantalum capacitor production facilities in Japan and China, thereby expanding their global tantalum capacitor manufacturing operations. During the Class Period, AVX Corporation manufactured, marketed, sold and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~44-39.~~ The defendant AVX Corporation is referred to herein as "AVX."

### ***Rubycon***

~~45-40.~~ The defendant Rubycon Corporation is a Japanese corporation with its principal place of business located at 1938-1, Nishi-Minowa, Ina-City, Nagano Prefecture 399-4593, Japan. During the Class Period, Rubycon Corporation manufactured, marketed, sold, and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~46-41.~~ The defendant Rubycon America Inc., an Illinois corporation, is a wholly owned subsidiary of Rubycon Corporation with its principal place of business located at 4293 Lee Avenue, Gurnee, Illinois 60031, United States. During the Class Period, Rubycon America Inc. sold and/or distributed Capacitors to customers throughout Canada.

~~47-42.~~ The defendants Rubycon Corporation and Rubycon America Inc. are together referred to herein as "Rubycon."

### ***Elna***

~~48-43.~~ The defendant Elna Co., Ltd., is a Japanese corporation with its principal place of business located at 3-8-11 Shin-Yokohama, Kohoku-ku, Yokohama, Kanagawa Prefecture, 222-0033, Japan. During the Class Period, Elna Co., Ltd., manufactured,

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

~~49-44.~~ The defendant Elna America Inc., a California corporation, is a wholly owned subsidiary of Elna Co., Ltd., with its principal place of business located at 879 West 190th Street, Suite 100, Gardena, California 90248, United States. During the Class Period, Elna America Inc. sold and/or distributed Capacitors to customers throughout the Canada.

~~50-45.~~ The defendants Elna Co., Ltd., and Elna America Inc. are together referred to herein as “Elna.”

### ***Matsuo***

~~51-46.~~ The defendant Matsuo Electric Co., Ltd., is a Japanese corporation with its principal place of business located at 3-5-3 Sennari-cho, Toyonaka-shi, Osaka 561-8558, Japan. During the Class Period, Matsuo Electric Co., Ltd., manufactured, marketed, sold and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~52-47.~~ Matsuo Electric Co., Ltd., is referred to herein as “Matsuo.”

### ***Toshin Kogyo***

~~53-48.~~ The defendant Toshin Kogyo Co., Ltd., is a Japanese corporation with its principal place of business at Tsukasa Bldg. 2-15-4, Uchikanda Chiyoda-ku, Tokyo, Japan. During the Class Period, Toshin Kogyo Co., Ltd., manufactured, marketed, sold, and/or distributed Capacitors products either directly or through its subsidiaries or affiliates throughout Canada.

~~54-49.~~ Toshin Kogyo Co., Ltd., is referred to herein as “Toshin Kogyo.”

***Vishay***

~~55. The defendant Vishay Intertechnology, Inc., is a Delaware corporation with its principal place of business located at 63 Lancaster Avenue, Malvern, Pennsylvania 19355-2143, United States. During the Class Period, Vishay Intertechnology, Inc., manufactured, marketed, sold, and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.~~

***SEMCO***

~~56.~~50. The defendant Samsung Electro-Mechanics is a South Korean corporation with its principal place of business located at Gyeonggi-Do Suwon-Si Youngtong-Gu Maeyoung-Ro 150 (Maetan-Dong) 443-743, South Korea. It is a wholly-owned subsidiary of Samsung Group, a South Korean *chaebol* (a business conglomerate). During the Class Period, Samsung Electro-Mechanics manufactured, marketed, sold, and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~57.~~51. The defendant Samsung Electro-Mechanics America, Inc., a California corporation, is a subsidiary of Samsung Electro-Mechanics with its principal place of business located at 3333 Michelson Drive, Suite 600, Irvine, California 92612, United States. During the Class Period, Samsung Electro-Mechanics America, Inc., sold and/or distributed Capacitors to customers throughout Canada.

~~58.~~52. The defendant Samsung Electronics Canada Inc., a subsidiary of Samsung Electronics, an affiliate of Samsung Electro-Mechanics, is a Canadian corporation, with its principle place of business located at 2050 Derry Road West, Mississauga, Ontario L5N, 0B9,

Canada. During the Class Period, Samsung Electronics Canada Inc. sold and/or distributed Capacitors to customers throughout Canada.

~~59-53.~~ The defendants Samsung Electro-Mechanics, Samsung Electro-Mechanics America, Inc., and Samsung Electronics Canada Inc. are together referred to herein as “SEMCO.”

### ***ROHM***

~~60-54.~~ The defendant ROHM Co., Ltd., is a Japanese corporation with its principal place of business located at 21 Saiin Mizosaki-cho, Ukyo-ku, Kyoto 615-8585 Japan. During the Class Period, ROHM Co., Ltd. manufactured, marketed, sold, and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~61-55.~~ The defendant ROHM Semiconductor U.S.A., LLC, a Delaware limited liability corporation, is a subsidiary of ROHM Co., Ltd. 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, sold and/or distributed Capacitors to customers throughout Canada.

~~62-56.~~ The defendants ROHM Co., Ltd., and ROHM Semiconductor U.S.A., LLC, are together referred to herein as “ROHM.”

~~63-57.~~ Collectively, the Defendants named in paragraphs ~~165~~ to ~~6357~~ are referred to herein as “Defendants.”

## FACTUAL BACKGROUND

### *The Capacitors Industry*

~~64-58.~~ The structure and the characteristics of the market for Capacitors in Canada are conducive to the conspiracy alleged herein.

~~65-59.~~ There are substantial barriers that preclude, reduce, or make more difficult entry into the Capacitors market. New fabrication operations are required to meet the market demand and to adjust to technological changes. The industry also requires the establishment of a necessary supply chain for all raw materials. The defendant manufacturers have developed longstanding relationships and their own processing capabilities for these raw materials.

~~66-60.~~ There are no close substitutes for Capacitors in Canada. Capacitors are one of the fundamental components found in electrical circuits and all electronic devices that are used today. There is no alternative to Capacitors in Canada.

~~67-61.~~ Capacitors are a commodity product that is interchangeable among the defendants. Capacitors of like technical and operational specification are mutually interchangeable. A specific Capacitor manufactured by one of the defendants can be exchanged for a product of another defendant with the same technical and operational specifications.

~~68-62.~~ The price of Capacitors provided to OEMs and their subsidiaries is reflected, in whole or in part, in the price of electronics purchased in Canada.

~~69-63.~~ The defendants dominate the global Capacitors market, including the sale of Capacitors in Canada.

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

~~70-64.~~ The acts alleged under this heading are, collectively, the “Conspiracy Acts”.

~~71-65.~~ During the Class Period, the defendants and unnamed co-conspirators conspired and/or agreed with each other to fix, maintain, increase, or control the price for the supply of Capacitors and/or to enhance unreasonably the prices of Capacitors and/or to lessen unduly competition in the sale of Capacitors in Canada.

~~72-66.~~ 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 unnamed co-conspirators unlawfully conspired and/or agreed to:

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

~~73-67.~~ 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 Capacitors in Canada;

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

~~74-68.~~ During the Class Period and continuing to the present, the defendants and/or their servants and agents, took active steps to, and did, conceal the unlawful conspiracy from the class members.

~~75-69.~~ The defendants were motivated to conspire and their predominant purposes and predominant concerns were to harm the plaintiff and the class members who purchased Capacitors by requiring them to pay unlawfully high prices for Capacitors.

~~76-70.~~ 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.

~~77-71.~~ 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**

~~78-72.~~ Commencing in or around 2014, regulatory authorities in a number of jurisdictions announced investigations into price-fixing of the Capacitors industry.

~~79-73.~~ The Brazilian antitrust authority, the Administrative Counsel for Economic Defense, stated in a press release in 2014 that it had established an administrative proceeding to investigate the alleged price-fixing of Capacitors.

~~80-74.~~ In or around April 2014, the Antitrust Division of the United States Department of Justice ("DOJ") confirmed to industry sources that the government has opened an investigation into price fixing in the Capacitors industry. The San Francisco division of the FBI is assisting with this investigation, which is ongoing. ~~price fixing in the capacitors industry, and sources report that this investigation is being conducted by the United States Attorney's Office for the Northern District of California.~~

~~81-75.~~ On or about July 2, 2014, the People's Republic of China's National Development and Reform Commission ("NDRC"), an agency who regulates price-related anticompetitive activity by the Chinese State Council, confirmed its investigation into the capacitors industry through a report published in the China Supervision and Antitrust Journal and written by Xu Kunlin, Director-General of the NDRC's Price Supervision and Antimonopoly Bureau. In this report, Xu revealed that one Japanese capacitor company self-reported its conspiracy activity in March, 2014, and that this company and other



Japanese capacitor manufacturers held regular conferences to exchange market information related to their products.

~~82-76.~~ On or about June 24, 2014, the Japanese Fair Trade Commission (“JFTC”) conducted raids of approximately eight capacitors manufacturers believed to be members of the conspiracy, including Panasonic, NEC Tokin, Hitachi Chemical, Nichicon, and Nippon Chemi-Con.

~~83-77.~~ Since the beginning of 2014, investigations into the capacitors industry have also been opened by the South Korean Fair Trade Commission, the Taiwanese Fair Trade Commission and the European Commission’s competition authority.

~~84-78.~~ On or about September 2, 2015, the Defendant NEC Tokin agreed to plead guilty to charges laid by the U.S. Justice Department that it conspired to fix the prices of Capacitors and to pay a fine of \$13,800,000 USD.

~~85-79.~~ In November 2015, the European Commission sent Statements of Objections to ten manufacturers of Capacitors alleging violations of EU antitrust laws. The European Commission stated that it had concerns that the price-fixing conspiracy had run from at least 1997 to 2014.

~~86-80.~~ On or about December 9, 2015, the Taiwanese Fair Trade Commission fined the following defendants for price-fixing Capacitors: Nippon Chemi-Con Corporation (\$57,645,798.64 USD), Rubycon Corporation (\$38,506,640.64 USD), Elna Co., Ltd. (\$2,363,468.49 USD), NEC Tokin Corporation (\$37,587,171.18 USD), Vishay Polytech Co., Ltd. (\$962,666.02 USD), and Matsuo Electric Co., Ltd. (\$749,768.72 USD). It also fined the related corporate entities: Hongkong Chemi-con Limited, Taiwan Chemi-Con Corporation, Sanyo Electric (Hong Kong) Ltd., and Nichicon (Hong Kong) Ltd.

~~87-81.~~ On or about March 29, 2016, the JFTC fined the following defendants for price-fixing Capacitors: Nippon Chemi-Con Corp. (\$12,972,930.95 USD), Nichicon Corp. (\$32,906,946.80 USD), Rubycon Corp. (\$9,655,115.16 USD), NEC Tokin Corp. (\$1,148,126.99 USD), and Matsuo Electric Co. Ltd. (\$3,869,278.36 USD). The Commission also issued a cease-and-desist orders to the Defendants, as well as Vishay Polytech Co., Ltd. Hitachi AIC has also been added to this list but no fines or orders have been made against it as of yet.

~~88-82.~~ On or about April 27, 2016, it was announced by the U.S. Department of Justice that the defendant Hitachi Chemical Co., Ltd. will plead guilty to charges laid in the U.S. for conspiring to fix prices of Capacitors sold to customers in the United States and elsewhere. The sentencing date has been set for June 8, 2016. The information filed by the Department of Justice indicates that the conspiracy under investigation began as early as 1997.

~~89. The defendant Taiyo Yuden has admitted to having been raided by the NDRC and has stated that it is cooperating with Chinese authorities.~~

~~90-83.~~ The defendant NEC Tokin has confirmed that it has been contacted or raided by American, Chinese and European authorities and has stated that it is cooperating with authorities.

~~91-84.~~ The defendant Toshin Kogyo has confirmed that it has been contacted by Japanese, Chinese and Taiwanese authorities.

## CAUSES OF ACTION

### *Breach of the Competition Act*

~~92-85.~~ The defendants 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*.

~~93-86.~~ Further, or in the alternative, the defendants Hitachi Canada, Samsung Electronics Canada Inc., and Panasonic Canada Inc. (the “Canadian Defendants”) are in breach of section 46(1) of the Part VI of the *Competition Act* and caused injury to the plaintiff and the other class members which renders the Canadian Defendants jointly and severally liable to pay damages and costs of investigation pursuant to section 36 of the *Competition Act*.

~~94-87.~~ The plaintiff and the 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 others.

~~95.~~ Further, the Canadian subsidiaries of the foreign defendants are liable to the plaintiff and the other class members pursuant to s. 36 of the *Competition Act* for acts in contravention of s. 45(1) of the *Competition Act*.

### ***Civil Conspiracy***

~~96-88.~~ 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 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.

~~97-89.~~ The plaintiff and other class members suffered damages as a result of the defendants' conspiracy.

### ***Unlawful Means Tort***

~~98-90.~~ 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.

~~99-91.~~ The Conspiracy Acts taken by the defendants were unlawful under the laws of the jurisdictions where the Conspiracy Acts took place and are actionable by third party OEMs of Capacitors located outside of Canada, or would be actionable by the OEMs located outside of Canada if they had suffered a loss. As such, the defendants are jointly and severally liable for the unlawful means tort.

~~100-92.~~ The plaintiff and the other class members suffered damages as a result of the defendants' unlawful means tort and each of the defendants is jointly and severally liable to pay the resulting damages.

### ***Unjust Enrichment***

~~101-93.~~ 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 such Overcharge.

~~102-94.~~ Since the Overcharge that was received by the defendants from the plaintiff and the 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 it.

### ***Waiver of Tort***

~~103-95.~~ Further, or alternatively, the plaintiff pleads and relies on the doctrine of waiver of tort and state that the defendants' conduct, including the alleged breaches of the *Competition Act* constitutes conduct which can be waived in favour of an election to receive restitutionary or other equitable remedies.

## **REMEDIES**

### ***Damages***

~~104-96.~~ As a result of the Conspiracy Acts:

- a. the prices of Capacitors and products containing Capacitors have been enhanced unreasonably and/or fixed at artificially high and non-competitive levels; and
- b. competition in the sale of Capacitors has been unduly restrained.

~~105-97.~~ During the Class Period, the plaintiff and the other class members purchased Capacitors and products containing Capacitors. 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 Capacitors and products containing Capacitors by paying more than they would have paid in the absence of the illegal conspiracy and, as a result, the plaintiff and the other class members have suffered damages.

~~106-98.~~ 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.

~~107-99.~~ All amounts payable to the class on account of damages and disgorgement should be calculated on an aggregate basis pursuant to s. 24 of the *CPA*, or otherwise.

### ***Punitive Damages***

~~108-100.~~ The plaintiff asserts that the defendants' conduct was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful, in contemptuous disregard of the plaintiff's rights and the rights of the class members, and as such renders the defendants liable to pay aggravated, exemplary and punitive damages.

### ***Plan of Distribution***

~~109-101.~~ 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***

~~110-102.~~ The plaintiff claims that the defendants be permanently enjoined from carrying on business in contravention of the applicable laws.

***Conspicuous Notice Plan***

~~111-103.~~ 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 the amounts owing to them by the defendants pursuant to Section 19 of the *CPA*.

**STATUTES RELIED UPON**

~~112-104.~~ The plaintiff pleads and relies upon the *Class Proceedings Act*, 1992, S.O. 1992, c.6 as amended, the *Competition Act*, R.S.C. 1985, c.34 as amended, and the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

**SERVICE OUTSIDE ONTARIO**

~~113-105.~~ 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));
- c. against a person outside of Ontario who is a necessary and proper party to this proceeding properly brought against another person served in Ontario (Rule 17.02(o)); and

- d. against a person carrying on business in Ontario (Rule 17.02 (p)).

**THE PLAINTIFF** proposes that this action be tried in the City of London, in the Province of Ontario.

August 6, 2014

**HARRISON PENZA** <sup>LLP</sup>  
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**Lawyers for the Plaintiff**



CYGNUS ELECTRONICS CORPORATION

v. PANASONIC CORPORATION et al.

Court File No. 3795/14 CP

Plaintiff

Defendants

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the *Class Proceedings Act, 1992*

**AMENDED AMENDED STATEMENT OF CLAIM**

**HARRISON PENSEA** LLP  
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Lawyers for the Plaintiff

CYGNUS ELECTRONICS CORPORATION

v.

PANASONIC CORPORATION et al.

Court File No. 3795/14 CP

Plaintiff

Defendants

	<div><div><b>ONTARIO</b> <b>SUPERIOR COURT OF JUSTICE</b>  PROCEEDINGS COMMENCED AT LONDON  Proceeding Under the <i>Class Proceedings Act, 1992</i></div><div><b>AFFIDAVIT OF STEPHANIE LEGDON</b> (Discontinuances)</div><div><b>HARRISON PENZA LLP</b> 450 Talbot Street London, ON N6A 4K3  <b>Jonathan J. Foreman (LSUC #45087H)</b> <b>Sarah A. Bowden (LSUC #56385D)</b> Tel: (519) 679-9660 Fax: (519) 667-3362 E-mail: <a href="mailto:jforeman@harrisonpensa.com">jforeman@harrisonpensa.com</a> <a href="mailto:sbowden@harrisonpensa.com">sbowden@harrisonpensa.com</a>  Lawyers for the Plaintiff</div></div>
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CYGNUS ELECTRONICS CORPORATION

v. PANASONIC CORPORATION et al.

Court File No. 3795/14 CP

Plaintiff

Defendants

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the *Class Proceedings Act, 1992*

**PLAINTIFF'S MOTION RECORD  
(Motion for Discontinuances)**

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