

**SUPERIOR COURT
(Class Actions)**

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No. : 500-06-000753-158

DATE : March 1st, 2021

**PRESIDED BY THE HONOURABLE DONALD BISSON, J.C.S.
(JB4644)**

OPTION CONSOMMATEURS

Applicant

and

KARINE ROBILLARD

Designated Member

v.

PANASONIC CORPORATION

Defendant

and

BELLEAU LAPOINTE, LLP

Counsel for the Applicant and the Designated Member

and

FONDS D'AIDE AUX ACTIONS COLLECTIVES

Impleaded Party

**RECTIFIED JUDGMENT ON: 1) APPLICATION FOR AUTHORIZATION TO AMEND
THE APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION; AND
2) APPLICATION FOR APPROVAL OF A TRANSACTION WITH PANASONIC
CORPORATION**

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SCHEDULE – Section 4 of the Transaction, Exhibit R-127

1. CONTEXT

[1] The Applicant is asking the Court to approve the transaction with Defendants Panasonic Corporation, Panasonic Corporation of North America and Panasonic Canada Inc. (collectively "Panasonic") (the "Transaction"¹). The Transaction provides, among other things, for the payment by Panasonic of \$2,350,000.00. The case concerns allegations that Panasonic and certain manufacturers of linear resistors (the "Resistors") and their affiliates conspired to fix the prices of Resistors in Canada. As the case currently stands, the class definition is as follows:

All Persons in Québec who purchased Linear Resistors or a product containing a Linear Resistor during the Class Period except Excluded Persons.

Class Period means July 9, 2003 to September 14, 2015.

¹ Exhibit R-1.

[2] Counsel for the Applicant are also asking the Court to approve reimbursement of their disbursements in the amount of \$2,274.35 plus applicable taxes, as well as the payment of fees in the amount of \$80,121.51 plus applicable taxes.

[3] The evidence submitted to this effect consists of the sworn declarations of Mr. Jean-Philippe Lincourt of February 8, 2021 and Ms. Sylve De Bellefeuille of Option consommateurs of February 8, 2021, accompanied by Exhibits R-1 to R-5.

[4] The Defendant consents to the approval of the Transaction and makes no representations with respect to the Application for Fee Approval. The Impleaded Party *Fonds d'aide aux actions collectives* does not object to the Transaction.

[5] The Applicant is also seeking the Court's permission to amend the *Application for authorization to bring a class action* to :

- Formally regularize the fact that the Applicant Option consommateurs is substituted for Ms. Karine Robillard as Applicant, and that Ms. Robillard is the designated member;
- Add the following ten new Defendants with new allegations of participation in the Resistors' price-fixing conspiracy in Canada :

- 1) Koa Corporation;
- 2) Koa Speer Electronics, inc.;
- 3) Rohm Co. Ltd.;
- 4) Rohm Semiconductor U.S.A., LLC;
- 5) Hokuriku Electric Industry Co.;
- 6) HDK America inc.;
- 7) Kamaya Electric Co., Ltd.;
- 8) Kamaya, inc.;
- 9) Susomo Co. Ltd.; et
- 10) Susomo International (U.S.A.) inc.

[6] The Defendant makes no representation to the Court with respect to the *Application for Authorization to Amend the Application for Authorization to Institute a Class Action*.

[7] The case, its status and the existence of other parallel cases must be presented before the applications submitted can be decided.

2. THIS CASE AND THE PARALLEL CASES

[8] Class actions have been commenced in Quebec, Ontario and British Columbia alleging that certain manufacturers of Resistors and their affiliates have conspired to fix the prices of Resistors in Canada.

[9] Thus, in addition to the present case, similar class actions have been commenced nationally against Panasonic in the following cases (collectively and together with the present case, the "Actions"):

- In Ontario: *Sean Allot v. Panasonic Corporation et al*, Ontario Superior Court of Justice, Court File 1899-2015 CP (the "Allot" case);
- In British Columbia: *Daniel Klein v. Panasonic Corporation et al*, Supreme Court of British Columbia, Vancouver Registry, Court File S-157585 (the "Klein" case).

[10] The Defendant is not the only defendant in the Actions².

[11] Applicant's counsel in the Actions work jointly with Camp Fiorante Matthews Mogerman LLP in British Columbia and Foreman & Company and Siskinds LLP in Ontario (collectively with Applicant's counsel, "Class Counsel").

[12] The Actions all allege that Panasonic and its co-conspirators conspired with each other to artificially fix the price of Resistors in Canada. The effect of the conspiracy is alleged to have been to unduly restrict competition and artificially inflate the price of Resistors and Resistor-equipped products (the "Cartel").

[13] A linear resistor is one of the basic components of almost every electrical circuit. The primary function of Resistors is to limit the current in an electrical circuit. They are found in a wide variety of electrical appliances used in the home, such as heaters and

² The Defendants in the Ontario case are the following: Panasonic Corporation ; Panasonic Corporation of North America ; Panasonic Canada Inc. ; KOA Corporation ; KOA Speer Electronics, Inc. ; Murata Manufacturing Co, Ltd ; Murata Electronics North America, Inc ; Rohm Co. Ltd ; Rohm Semiconductor U.S.A., LLC ; Vishay Intertechnology, Inc. ; Yageo Corporation ; Yageo America Corporation ; Hokuriku Electric Industry Co. ; HDK America Inc. ; Kamaya Electric Co., Ltd ; Kamaya, Inc ; Alps Electric Co., Ltd. ; Alps Electric (North America), Inc., Midori Precisions Co., Ltd. ; Midori America Corporation, Susumu Co., Ltd.; Susumu International (USA) Inc., Tokyo Cosmos Electric Co. et Tocos America, Inc.. The Defendants in the British Columbia case are the following: Panasonic Corporation ; Panasonic Corporation of North America ; Panasonic Canada Inc. ; KOA Corporation ; KOA Speer Electronics, Inc. ; Murata Manufacturing Co, Ltd ; Murata Electronics North America, Inc ; Rohm Co. Ltd ; Rohm Semiconductor U.S.A., LLC ; Vishay Intertechnology, Inc ; Yageo Corporation ; et Yageo America Corporation.

irons, as well as in a very large number of electronic devices, such as cell phones, hard drives, and televisions.

3. PROCEEDINGS

[14] On August 25, 2015, an *Application for authorization to institute a class action* against the defendant Panasonic Corporation was filed on the Court's record (the "Application for Authorization").

[15] On September 30, 2016, an *Amended Application for Authorization to Institute a Class Action* (the "Amended Application"), seeking, among other things, that Option consommateurs be substituted for the designated member, was filed in the Court record.

[16] On October 7, 2016, Panasonic Corporation filed a *Notice of Opposition* to certain amendments of the Amended Application.

[17] On October 12, 2016, by judgment rendered on minutes, Justice Suzanne Courchesne ordered a stay of proceedings in this case, in the interest of the class members and the proper administration of justice, in order to promote the efficient progress of the action. Indeed, the Allot case seeks certification of a national class including all persons covered by the Application for Authorization and the Amended Application in this file but excluding British Columbia.

[18] On October 12, 2016, considering the stay of proceedings, Justice Courchesne adjourned *sine die* the hearing on the *Notice of Opposition* of Panasonic Corporation dated October 7, 2016 and did not rule on the contested amendments of the Amended Application.

[19] The Actions are therefore still in their early stages, the certification record in the Allot case having been filed on June 4, 2020, as noted in paragraph 8 of the *Affidavit of Jean-Marc Metrailler (Motion for Settlement Approval)* (the "Metrailler-Transaction Affidavit")³.

[20] On July 7, 2020, Class Counsel executed the Transaction.

[21] It is in this context that on November 9, 2020, the Applicant filed a *Motion for Preliminary Orders for Approval of a Transaction*, in which it sought, among other things, authorization of the class action for the sole purpose of approving the Transaction.

[22] On November 17, 2020, in *Option Consommateurs v. Panasonic Corporation*⁴, the Court granted the *Motion for Preliminary Orders for Approval of a Transaction* and issued a judgment to:

³ Exhibit R-2.

⁴ 2020 QCCS 3777.

a) authorize the institution of the class action against the Defendant Panasonic Corporation, for settlement purposes only;

b) grant the Applicant Option consommateurs the status of representative on behalf of the following class, for the purpose of bringing the class action against the Defendant Panasonic Corporation for settlement purposes only:

All Persons in Québec who purchased Linear Resistors or a product containing a Linear Resistor during the Class Period except Excluded Persons.

Class Period means July 9, 2003 to September 14, 2015.

c) identify the questions of fact and law to be dealt with collectively, for settlement purposes only, as follows:

Did the Settling Defendants conspire to fix, raise, maintain or stabilize the price of, or allocate markets and customers of, Linear Resistors directly or indirectly in Canada during the Class Period?

If so, what damages, if any, did Settlement Class Members suffer?

d) approve the form and substance of the notices to members and the plan of dissemination of such notices communicated in connection with this Application;

e) order that notices to members be published in accordance with the plan of dissemination approved by the Court;

f) fix the time limit and procedure for the presentation of any contentions the members may assert with respect to the Transaction, and fix the time limit and formalities to be followed in order to opt-out of the class action;

g) schedule the hearing of this Application; and

h) order that RicePoint Administration Inc. be appointed notice administrator in the context of the Transaction.

[23] The Ontario Superior Court of Justice and the Supreme Court of British Columbia also made similar orders on October 19, 2020 and November 25, 2020 respectively. These are Exhibits B and D of the Metrailler-Transaction Affidavit.

[24] Based on the foregoing, the approved notices were published in accordance with the approved Plan of Dissemination, as evidenced by the Metrailler-Transaction's Affidavit and the evidence of publication attached as Exhibits E to J in support of it.

[25] Similarly, the short form notice was delivered electronically to those who had registered with Applicant's Counsel to receive updates on the status of the class action⁵. This notice informed class members of their rights to object and to opt-out. Class members had until January 29, 2021 to object to the Transaction or opt-out from the class action.

[26] These notices were in English and French.

[27] The Court agrees with the Applicant that the dissemination of the notices properly notified all members of the Actions.

[28] As of the hearing on February 11, 2021, according to information obtained by Counsel for the Applicant, no member of the Actions has given notice of objection or opt-out.

[29] The hearing on the approval of the Transaction, fees and disbursements was held in the Allot case on February 2, 2021 and will be held in writing in the Klein case following the hearing in Allot, as outlined in paragraph 4 of the Metrailler-Transaction Affidavit.

4. SUMMARY OF THE TRANSACTION

[30] The Transaction occurs within the context of the three Actions and it benefits to all group members.

[31] The Transaction is dated July 7, 2020. It summarily provides for the payment by Panasonic of \$2,350,000 for the benefit of the class members in the Actions in exchange for a release, as well as terms of cooperation.

[32] Panasonic has agreed to cooperate with the Applicant in the prosecution of the Actions against the remaining defendants, who have not settled the dispute. Thus, section 4 of the Transaction sets out all of Panasonic's cooperation obligations. This article is reproduced in full as an appendix to this judgment and demonstrates the extent of cooperation in Canada and the United States.

[33] Moreover, although the Transaction has not yet been approved by the courts, Class Counsel have already benefited in part from the cooperation offered by Panasonic, particularly in that a meeting between Class Counsel and Panasonic's Counsel (*proffer*) took place in September 2020. This meeting provided valuable information that Class Counsel will be able to use in the prosecution of the Actions against the remaining defendants, as stated in paragraph 50 of the Metrailler-Transaction Affidavit.

[34] Since it is the Applicant's intention to amend its proceedings to add defendants for the purpose of continuing the litigation against them, it would not be appropriate to proceed immediately with the distribution of the amounts to be received from Panasonic

⁵ See proofs of emailing, Exhibit R-3 *en liasse*.

in connection with the Transaction, the Applicant indicates that it will later apply to the Court to submit a distribution protocol for approval, which will take into account the application of the *Loi sur le Fonds d'aide aux actions collectives*⁶ and the *Règlement sur le pourcentage prélevé par le Fonds d'aide aux actions collectives*⁷. In the meantime, the accumulated interest will benefit the class members. The Court agrees with this approach and adds that settling the distribution protocol at a later date may allow for economies of scale if there are other settlements, such as notice and administration fees, all to the benefit of the members.

[35] For the reasons that follow in section 5, the Court also agrees with the request for the proposed amendment. Let us address this issue.

5. THE APPLICATION FOR AUTHORIZATION TO AMEND THE APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION

5.1 Procedural Facts and the Application to Amend

[36] The relevant procedural elements are as follows. As mentioned above:

- On August 25, 2015, the Application for Authorization is filed against the Defendant;
- On September 30, 2016, the Amended Application, including the substitution of Option consommateurs for the designated member, is filed in the Court record;
- On October 7, 2016, Panasonic Corporation files a *Notice of Opposition* to certain amendments of the Amended Application;
- On October 12, 2016, by judgment rendered on minutes, Justice Suzanne Courchesne ordered a stay of proceedings in this matter;
- On October 12, 2016, considering the stay of proceedings, Justice Courchesne adjourned *sine die* the hearing on Panasonic Corporation's *Notice of Opposition* dated October 7, 2016 and did not rule on the contested amendments of the Amended Application.

[37] The *Notice of Opposition* was therefore never heard by the Court and it is in this procedural context that the Transaction with the Defendant took place on July 7, 2020.

[38] Subsequently, on November 9, 2020, the Applicant filed a *Motion for Preliminary Orders for Approval of a Transaction*, in which it sought, among other things, authorization of the class action for the sole purpose of approving the settlement with the Defendant. On November 27, 2020, the Court granted this request and issued certain pre-hearing

⁶ RLRQ, c. F-3.2.0.1.1.

⁷ RLRQ, c. F-3.2.0.1.1, r.2.

orders on the approval of the Transaction, including granting the Applicant Option consommateurs the status of class representative (the "Representative") to institute the class action against the Defendant for settlement purposes only.

[39] However, the status of Option consommateurs as Applicant for the remainder of the litigation has never been formally "regularized", if, in the Court's opinion, such a formality is indeed necessary.

[40] In addition, Ms. Karine Robillard would be the member designated by Option consommateurs for the purposes of article 571 of the Code of Civil Procedure ("CCP"), as appears from the Amended Application.

[41] The Applicant is now asking the Court's permission to amend the Application for authorization in order to:

- Formally regularize the fact that the Applicant Option consommateurs is substituted for Ms. Karine Robillard as applicant, and that Ms. Robillard is the designated member. The Applicant indicates that she is addressing the Court in order to avoid any problems of a strictly procedural nature;
- Add the following ten new defendants, with new allegations against them regarding their participation in the Resistors' price-fixing conspiracy in Canada:
 - 1) Koa Corporation;
 - 2) Koa Speer Electronics, inc.;
 - 3) Rohm Co. Ltd.;
 - 4) Rohm Semiconductor U.S.A., LLC;
 - 5) Hokuriku Electric Industry Co.;
 - 6) HDK America inc.;
 - 7) Kamaya Electric Co., Ltd.;
 - 8) Kamaya, inc.;
 - 9) Susomo Co. Ltd.; et
 - 10) Susomo International (U.S.A.) inc.

[42] The Applicant files, as Schedule 1 to its *Application for authorization to amend the Application for Authorization to Institute a Class Action, a Reamended Application for Authorization to Institute a Class Action* dated February 8, 2021.

[43] The Court notes that the Applicant's request to add defendants against whom the dispute will continue has already been declared to the Court by the Applicant in representations made before Justice Courchesne on October 12, 2016.

[44] The Defendant made no representation to the Court on the *Application for authorization to amend the Application for authorization to Institute a Class Action*.

5.2 Applicable Law

[45] An Application for authorization to amend an Application for Authorization to Institute a Class Action must be granted leave of the court under s. 585 CCP and meet the requirements of ss. 206 and 207 CCP. Despite the disappearance of pre-1996 section 1010.1 of the former CCP⁸, an application to amend that occurs before a judgment on the authorization of the class action must be authorized by the Court⁹.

[46] In addition to being subject to ss. 206 and 207 CCP, the application to amend must be relevant to the analysis of the criteria of s. 575 CCP¹⁰. In other words, it must contain allegations and elements that must be relevant to the analysis of the criteria of s.575 CCP.

[47] The case law has long recognized that the right to amend is the rule, not the exception.

[48] Sections 206 and 207 CCP provide that the parties may, before judgment on authorization, amend a pleading to "replace, correct or complete statements or conclusions ... to allege new facts or assert a right accrued since the notification of the judicial application". However, the right to amend is not without limits, which are set out in s. 206 CCP and must be interpreted restrictively¹¹; it must not result in an entirely new application having no connection with the original one, it must not be contrary to the interests of justice or delay the proceedings. In its analysis, the court must take into account the principles of proportionality, sound case management and proper administration of justice provided for in ss. 18 and ff. of the CCP.

5.3 The Decision

[49] According to the Court, the amendments proposed in the *Reamended Application for Authorization to Institute a Class Action* dated February 8, 2021 meet all of the criteria set out in section 5.2. Indeed, the amendments relating to the new defendants and the new allegations are made in the interests of members and justice and are directly related to the Application for authorization. They relate to the same subject matter as, and are a continuation of, the original Application. Moreover, it would have been disproportionate

⁸ L.R.Q., c. C-25.

⁹ *Attar v. Red Bull Canada ltée*, 2017 QCCS 322, par. 17-21.

¹⁰ *Mazzonna v. DaimlerChrysler Financial Services Canada Inc./Services financiers DaimlerChrysler inc.*, 2010 QCCS 5225, par. 13.

¹¹ *6608604 Canada inc. v. Gatineau (Ville de)*, 2009 QCCS 3282, par. 39.

to require the Applicant to file a new *Application for Authorization to Institute a Class Action* against the new defendants as part of a new court file with a new number. Finally, the proposed amendments and the addition of new defendants draw a parallel with the Klein and Allot cases.

[50] With respect to the designation of the Applicant, the proposed amendments regularize a potential procedural imbroglio.

[51] The Court therefore authorizes the proposed amendment. To do so, the Court will temporarily lift the stay ordered by Justice Courchesne in order to proceed with the amendment, and then reinstate the stay. For the remainder of the case, the Court will order the parties to inform it in writing, at six-month intervals from the date of this judgment, of the progress of the Allot and Klein cases, or before that deadline, in the event of any significant development in either of these cases.

[52] As requested, no court costs will be awarded.

6. IS THE TRANSACTION FAIR, REASONABLE AND EQUITABLE?

[53] Under s. 590 CCP, the Court must approve the Transaction if it is fair, reasonable and equitable, and if it is in the best interests, not only of the representative, but of all class members who will be bound by the agreement¹².

[54] The criteria that should guide the court in exercising its discretion in assessing an agreement between the parties are as follows¹³ :

- The probabilities of success of the action;
- The anticipated cost and probable duration of the litigation;
- The importance and nature of the evidence adduced;
- The terms and conditions of the transaction;
- The representative's consent;
- The nature and number of objections to the transaction;
- The number of opt-out;
- The recommendation of counsel and their experience;

¹² *Bouchard v. Abitibi Consolidated inc.*, J.E. 2004-1503 (C.S.), par. 16.

¹³ *Pellemans v. Lacroix*, 2011 QCCS 1345, par. 20; *Gillich v. Mercedes-Benz West Island*, 2020 QCCS 1602, par. 10.

- The good faith of the parties and the absence of collusion; and
- The recommendation of a neutral third party.

[55] The Applicant is a consumer association with long experience in representing their interests. It takes an active interest in the protection of consumers' rights by providing direct support and, when necessary, by intervening before governmental and judicial bodies. The Applicant is not related to Panasonic and participated freely and at arm's length in the negotiations leading to the Transaction.

[56] The Transaction occurs at an early stage in the Actions, so that at the time it was executed, Class Counsel did not have access to all of the information normally available on the eve of a trial. The evidence¹⁴ shows that, despite this, in order to satisfy themselves as to the reasonableness of the Transaction, Class Counsel still had access to a great deal of useful information, including the following:

- information on the linear resistor industry and the Canadian market in particular;
- evidence made public in the U.S. class action lawsuits.

[57] Further, (...) in addition to the publicly available information to which Class Counsel had access, Panasonic provided them, during the negotiations, certain transactional data, information relating to its Canadian sales as well as the identity of its Canadian clients¹⁵.

[58] On the other hand, a comparison with the transactions in the U.S. class action proceedings provides additional comfort as to the fairness, reasonableness and equity of the Transaction.

[59] Indeed¹⁶, in the U.S. class action brought on behalf of the indirect purchasers, Panasonic reached a settlement agreement of US\$10,000,000, while in the class action brought on behalf of the direct purchasers it paid US\$12,000,000. In these class actions, Panasonic was among the third and fifth class of defendants to settle, respectively, unlike in this case where it is the first.

[60] In addition, the amount recovered in the Transaction represents 10.6% of the combined recoveries in the U.S. litigation. This is a strong relative recovery, given that Panasonic has settled earlier in Canada (relative to the other defendants added by the amendment authorized by section 5.3) than in the U.S. and is providing significant cooperation in this litigation for the prosecution of the Actions against the other defendants who have not settled¹⁷.

¹⁴ See paragraphs 21 to 44 of the Metrailler-Transaction Affidavit, Exhibit R-2.

¹⁵ (...).

¹⁶ See paragraph 41 of the Metrailler-Transaction Affidavit, Exhibit R-2.

¹⁷ See paragraphs 43 and 44 of the Metrailler-Transaction Affidavit, Exhibit R-2.

[61] The Court accepts the Applicant's position that it is certain that it could have been successful on the merits against Panasonic, but is mindful of the risks, difficulties and costs inherent in any lawsuit and in this case in particular.

[62] The Court notes that, before executing the Transaction, the Applicant considered, among other things, the following elements:

- a) the complexity of the case;
- b) the time and costs involved in pursuing the litigation;
- c) the risks associated with the class action procedure and the particulars of this case, including the risk that the action will not be authorized or authorized on behalf of a narrower group;
- d) the nature and extent of Panasonic's alleged liability, including the risk that, even if the Actions are authorized, a violation of the Competition Act¹⁸ may not be found or may be found in respect of a shorter period of time. On this point, it is important to note that the U.S. Department of Justice ultimately did not pursue any criminal charges in respect of its Resistors investigation (see paragraph 45(b) of the Metrailler-Transaction Affidavit, Exhibit R-2);
- e) the nature of the information available regarding the Defendant's direct and indirect sales in Canada;
- f) the factual and legal issues relating to the extent of the overcharge caused by the alleged Cartel and the identity of the persons who may claim its reimbursement;
- g) the risk that at trial, it will not be possible to determine the aggregate value of the damages;
- h) the risk that members may not be able to demonstrate that they have assumed, in whole or in part, the overcharge caused by the alleged Cartel;
- i) the risk that any Cartel did not affect class members or did not affect certain classes of products or purchasers, which could result in a reduced assessment of damages;
- j) the risk that the alleged overbilling did not occur or did occur at a lower rate than estimated. Most Resistors are sold internationally and incorporated into a product prior to the sale of the product in Canada;

¹⁸ L.R.C. 1985, c. C-34.

- k) the risk that, even if the existence of the Cartel was proven, the court would find that it was ineffective or had little or no effect on prices;
- l) the risks associated with the complexity of the damages analysis and the challenges that may arise between the parties in each segment of that analysis;
- m) the risks that punitive damages and/or investigative costs will not be awarded; and
- n) the possibilities of appeals.

[63] The Court agrees with the Applicant on these elements.

[64] Finally, according to the Court, as noted above, the fact that Panasonic is cooperating in a major way in the prosecution of the class action against the other defendants who have not settled the litigation and that it is the first to do so are positive developments for class members.

[65] Considering all of the foregoing, the lack of opposition from class members and the representations made at the hearing of this Application, the Court is of the view that the Transaction is in the interest of the members as being fair, equitable and reasonable. The criteria mentioned above at the beginning of section 6 are therefore satisfied.

[66] At the hearing, the Impleaded Party *Fonds d'aide aux actions collectives* indicated that it was suggesting that the Court add a conclusion with respect to the closing judgment. The Court agreed. Indeed¹⁹, the Court is of the opinion that s. 590 CCP grants it not only the power but also the duty to remain seized of the execution of any transaction already approved in a class action, which goes up to the closing judgment finalizing the execution of the Transaction. The Court has a duty to protect members until the out-of-court settlement process is complete. The corollary is that counsel have an obligation to monitor and report to the Court on the execution of the Transaction.

[67] Finally, the Applicant and the Defendant state that, in order not to deviate from the text of the Transaction, the conclusions in the *Application for Approval of a Transaction* that relate to the approval of the Transaction have been drafted in English and suggest that the Court draft the conclusions for approval of the Transaction in English. According to the Court, this is not problematic since all past and future notices surrounding the Transaction are drafted in both languages. This is sufficient²⁰, as the members read more of the notices.

[68] Let us turn to Class Counsel' fees and disbursements.

¹⁹ See in this regard : *Corica v. Ford Motor Company of Canada Limited*, 2020 QCCS 3285, para. 45; *Poulin v. Marriott International inc.*, 2020 QCCS 4439, par. 16.

²⁰ This is also constitutional, in accordance with section 133 of the Constitution Act, 1867.

7. THE APPLICANT'S LEGAL FEES AND DISBURSEMENTS

[69] Pursuant to s. 593 CCP and the case law²¹, and in accordance with s. 32 of the *Loi sur le fonds d'aide aux actions collectives*, the Court must approve the fees and disbursements to which Applicant's Counsel are entitled.

7.1 Fees

[70] The fee agreement is presumed to be valid. It will be set aside only if it is shown that it is not fair and reasonable to the members or that it is contrary to the provisions of the Civil Code of Québec.

[71] The court must determine whether the proposed fees are just and reasonable in the circumstances. The court must be flexible in its review and favour the expression of the will of the parties unless it is disproportionate or unreasonable²². The court must consider the proportionality of the fees in light of s. 18 CCP and the factors listed in the *Code de déontologie des avocats*²³.

[72] Class Counsel have each signed a fee agreement (collectively, the "Agreements") with the representatives in each jurisdiction²⁴.

[73] Applicant's Counsel Agreement sets counsel's fees at 25% of any monies received for the benefit of the members in the present case, as opposed to the 30% set out in the Allot and Klein Agreements.

[74] Applicants' Counsel in the Allot and Klein cases have made or will make applications similar to this Application.

[75] Notwithstanding what the Agreements provide for certain of the Actions, Class Counsel are collectively seeking a fee of 25% of the Transaction amounts, which totals \$587,500 (25% x \$2,350,000).

[76] Class Counsel have agreed among themselves on a method of allocating the fees charged on a national basis. Under this agreement, Applicant's Counsel are entitled to \$80,121.51. It is this amount of \$80,121.51 that Applicant's Counsel is asking the Court to approve in this Application.

²¹ Dupuis v. Polyone Canada Inc, 2016 QCCS 2561, par. 37.

²² Association de protection des épargnants et investisseurs du Québec (APEIQ) v. Nortel Networks Corporation, 2009 QCCS 2407, paras. 135 and 149 (appeal dismissed: Skarstedt v. Nortel Networks Corporation, 2011 QCCA 767).

²³ RLRQ, c. B-1, r. 3.1.

²⁴ See Conventions, Exhibit R-4 *en liasse*.

[77] Applicant's Counsel has indicated that it has agreed to assume the full financial risk of this class action in exchange for the assurance that it will be compensated out of a portion of the profits earned by the members in the event of success.

[78] Thus, since the Agreements provide that Class Counsel are paid only if they are successful, to date they have not received any fees.

[79] To date, no financial assistance has been received from the Impleaded Party Fonds d'aide aux actions collectives. This is confirmed by a letter dated February 10, 2021²⁵.

[80] For the following reasons, the Tribunal is of the opinion that the fees requested should be approved.

[81] In accordance with their *Code de déontologie*, Applicant's Counsel must charge and accept fair and reasonable fees. S.102 of that Code reads as follows:

102. Fees are fair and reasonable if they are justified by the circumstances and proportionate to the professional services rendered. The following factors, among others, shall be taken into account in determining the lawyer's fees:

1. experience;
2. the time and effort required and devoted to the matter;
3. the difficulty of the matter;
4. the importance of the matter to the client;
5. the responsibility assumed;
6. the performance of unusual professional services or professional services requiring special skills or exceptional speed;
7. the result obtained;
8. the fees prescribed by statute or regulation; and
9. the disbursements, fees, commissions, rebates, costs or other benefits that are or will be paid by a third party with respect to the mandate the client gave him.

[82] Only paragraphs 1 to 7 of this article are relevant here. Let us examine them.

²⁵ Exhibit R-6.

7.1.1 Applicant's Counsel's Experience

[83] According to the Court, the fees requested are justified and proportionate in light of the experience of Applicant's Counsel.

[84] The law firm Belleau Lapointe, LLP was founded in January 2001. It is a boutique law firm devoted exclusively to civil and commercial litigation. The practice of Belleau Lapointe, LLP generally focuses on two main areas: class actions and civil and commercial litigation.

[85] Belleau Lapointe, L.L.P. is currently the counsel in 20 class action files in Quebec. Since its founding, Belleau Lapointe, LLP has undertaken 34 class actions, including several in competition law, such as the present action.

[86] Over the years, Belleau Lapointe, LLP. has been involved in some of the most important class action cases in Quebec and Canada. For example, the firm represented Option consommateurs in a landmark Supreme Court of Canada decision that now sets out the conditions for class actions in Quebec and recognizes for the first time in civil law the possibility for consumers to take legal action against members of an international cartel. This decision is also of particular importance in private international law. It is *Infineon Technologies AG v. Option consommateurs*²⁶.

[87] The lawyers of Belleau Lapointe, LLP were also involved in the two most important settlements in the history of Canadian securities class actions (international settlements valued at more than \$2 billion in *Association de protection des épargnants et investisseurs du Québec (APEIQ) v. Corporation Nortel Networks*, C.S. 500-06-000126-017 and *Skarstedt v. Corporation Nortel Networks*, C.S. 500-06-000277-059²⁷).

[88] The lawyers of Belleau Lapointe, LLP also represented Option consommateurs in the largest consumer law financial settlement in Canada (a Canadian settlement estimated at more than \$1.664 billion in *Option Consommateurs v. Volkswagen Group Canada Inc.* C.S. 500-06-000761-151).

[89] Several of the firm's lawyers are recognized by specialized publications²⁸.

[90] Finally, the lawyers of Belleau Lapointe, LLP are regularly invited as speakers in class actions at conferences organized by the *Formation permanente du Barreau du Québec*, among others. Some of them also sit on the *Comité sur l'action collective du Barreau du Québec* and/or have participated in the work of various subcommittees. They have also been and still are members of the *Groupe de travail national de l'Association*

²⁶ 2013 CSC 59.

²⁷ See references to relevant decisions in note 22.

²⁸ Chambers & Partners, Canadian Legal Lexpert® Directory, The Best Lawyers in Canada, and Benchmark Canada: The Definitive Guide to Canada's Leading Litigation Firms & Attorneys.

du Barreau canadien sur les actions collectives, which is at the origin of the judicial protocol on class actions.

[91] In conclusion, the lawyers at Belleau Lapointe, LLP have repeatedly demonstrated their ability to successfully complete the most complex and demanding cases. The Court concludes this section by indicating that they recommend approval of the Transaction.

7.1.2 The Time and Effort Devoted to the Case

[92] According to the Court, the fees requested are justified and proportionate in light of the time spent by Applicant's Counsel on the case.

[93] The law firm retained by the Applicant has 11 lawyers, all of whom practice litigation. Some of them have over 30 years experience, while others have been sworn in only recently. This structure allows the firm to assign appropriate resources to the task at hand. The same is true of Camp Fiorente Matthews Mogerma LLP, Foreman & Company and Siskinds LLP.

[94] Since the beginning of this file and until December 31, 2020, Class Counsel have collectively devoted more than 1500 hours of work for the benefit of all members, representing a total investment of \$753,187.90 at the hourly rates in effect at the relevant times²⁹.

[95] In addition, for the same period, Applicant's Counsel spent over 292 hours of work for the benefit of the class members, representing a total investment of \$102,728.40 at hourly rates in effect at the relevant times.

[96] In the end, the fees charged to date effectively represent approximately 77.99% of the total investment by Applicant's Counsel (\$80,121.51 out of \$102,728.40).

7.1.3 The Difficulty of the Problem Submitted, the Importance of the Case and the Responsibility Assumed by Applicant's Counsel

[97] Class action is an affirmative action designed to provide access to justice for plaintiffs who do not have the resources to bring individual actions or for whom the personal stake is too small to justify the cost of bringing proceedings.

[98] As the courts have repeatedly emphasized, one of the purposes of class actions is to change the behaviour of defendants. In practice, class actions are here the only tool available to Canadian consumers to sanction the alleged cartel.

²⁹ See the *Affidavit of Jean-Marc Metrailler (Approval of Class Counsel Fees and Disbursements – Panasonic Settlement)*, Exhibit R-5.

[99] The stakes in class actions are often very high financially because of the number of potential claims. As a result, defendants are routinely represented by leading lawyers with significant resources.

[100] Such a procedural vehicle cannot exist unless the a's lawyers agree to assume a significant portion, if not all, of the costs of the action and to be paid only if the action is successful, as Applicant's Counsel are doing in this case.

[101] To ensure the viability of the class action as a procedural vehicle, it is essential that competent counsel be willing to take such risks. Without compensation for success that recognizes the risk assumed, no lawyer has an incentive to accept such risks.

[102] For Applicant's Counsel, this includes the prospect of investing thousands of hours and hundreds of thousands of dollars without any guarantee of payment, whether because of a failure to establish the elements of liability of Panasonic and the other defendants who have not settled the litigation, or because of the inability of the defendants to pay the amount of a potential award.

[103] The difficulty of the problem presented, the importance of the case and the responsibility assumed by Applicant's Counsel therefore favoured approval of the fees sought, according to the Court.

7.1.4 The Performance of Unusual Professional Services or Professional Services Requiring Special Skills

[104] Class action litigation is practised by a small number of lawyers who often make it a specialty.

[105] The fairness and reasonableness of the fees must be considered in light of, among other things, the difficulties associated with the practice of class actions. Such a practice involves reinvesting a substantial portion of the fees obtained in order to ensure the future operating expenses of the firm. Although many defendants may feel that this model is sometimes unfair to them, the fact remains that it reflects an inescapable reality whose main beneficiaries are the past, present and future members of class actions.

[106] Counsel frequently take an active role in the promotion and conduct of such actions because the stakes for plaintiffs are often small relative to the effort required to bring the litigation to a successful conclusion.

[107] The magnitude and stakes involved in class actions require a high level of expertise and professionalism on the part of the lawyers who practice them.

[108] Class actions create or extinguish rights for all members of the affected groups. Applicant's Counsel, in conjunction with the Court, are responsible for ensuring that members are informed of the availability of remedies and the actions necessary to protect their rights, as well as for ensuring the dissemination of judgments.

[109] Class actions are often mediated in such a way that counsel must also act as communicators to ensure the dissemination of relevant information.

[110] These elements, therefore, favour the approval of the fees charged, according to the Court.

7.1.5 The Result Obtained

[111] For the reasons already stated, Applicant's Counsel are of the view that the result obtained for the benefit of the members is important and very satisfactory. The Court shares this view.

[112] In fact, in addition to the substantial payment of \$2,350,000 provided for in the Transaction, it is important to consider the benefit obtained through Panasonic's undertaking to cooperate, which is more fully described above and the details of which appear in the appendix to this judgment. This cooperation will help Class Counsel build an even stronger case against the other defendants who did not settle the dispute, all for the benefit of the members.

7.1.6 Conclusion on Fees

[113] The Applicant states that it consents to the Application for its counsel's fees and considers them to be fair and reasonable.

[114] The Applicant states that it has been able to see the time and energy invested by its counsel and, more generally, by Class Counsel and to appreciate their competence.

[115] The Court concludes that the present application for fees is consistent with the Agreements. These take into account the very high level of risk associated with the undertaking of these files in return for a payment of fees conditional on the result obtained, the scope and duration of the proceedings, as well as the complexity of the issues in dispute.

[116] It is important that the fee agreements agreed upon between a sophisticated representative such as the Applicant and its counsel be respected in order to provide a form of predictability to the parties and thus promote access to justice.

[117] The Court therefore approves the fees requested.

[118] Finally, we turn to the issue of disbursements.

7.2 Disbursements

[119] The Court must determine whether the disbursements claimed are just and reasonable in the circumstances.

[120] As of December 31, 2020, Counsel for the Applicant collectively incurred disbursements totalling \$2,274.35 before taxes for the benefit of the members, broken down as follows:

Category of disbursements	Total cost
Agents' fees (Court messengers and commissioners for oaths outside of Quebec)	\$25.25
Photocopies	\$530.25
Messengers	\$89.25
Court stamps	\$125.00
Telephone charges	\$5.11
Meals/Travel expenses	\$1,496.07
Research fees (WestLaw, Soquij, Pacer, etc.)	\$3.42
TOTAL	\$2,274.35

[121] At this stage, Applicant's Counsel chose to seek full reimbursement of their disbursements, i.e. \$2,274.35 plus applicable taxes.

[122] The Applicant consents to the application for reimbursement of its counsel's disbursements and considers it fair and reasonable. The Court agrees: this amount of \$2,274.35 plus applicable taxes is very minimal in proportion to the issues at stake and the complexity and duration of the case.

[123] The Court therefore approves the disbursements requested.

[124] The Court therefore approves the Application for Approval of a Transaction and the fees and disbursements of the Applicant's Counsel in its entirety.

[125] As requested, no legal fees will be awarded.

FOR THESE REASONS, THE COURT:

[126] **GRANTS** the Application for Approval of a Transaction and of the Applicant's Counsel Fees and Disbursements;

As to the Application for Approval of the Transaction :

[127] **DECLARES** that the definitions set forth in the Settlement Agreement, Exhibit R-1, apply to and are incorporated into the Judgment to be rendered and shall form an integral part thereof, being understood that the definitions are binding on the Parties to the Settlement Agreement;

[128] **DECLARES** that in the event of a conflict between the Judgment to be rendered and the Settlement Agreement, the Judgment shall prevail;

[129] **ORDERS AND DECLARES** that the Judgment to be rendered, including the Settlement Agreement, shall be binding on every Québec Settlement Class Member who has not validly opted-out of the action;

[130] **APPROVES** the Settlement Agreement pursuant to Article 590 of the *Code of Civil Procedure* and **DECLARES** that, subject to all of the other provisions of the Judgment to be rendered, the Settlement Agreement is valid, fair, reasonable and in the best interest of the Québec Settlement Class Members, and constitutes a transaction within the meaning of Article 2631 of the *Civil Code of Québec*, binding all Parties and all members described therein;

[131] **DECLARES** that the Settlement Agreement shall be implemented in accordance with its terms, but subject to the terms of the Judgment to be rendered;

[132] **DECLARES** that, subject to the other provisions of the Judgment to be rendered, the Settlement Agreement, in its entirety (including the preamble, the definitions, schedules and addendum), is attached to the Judgment to be rendered as **Schedule A** and shall form an integral part of that Judgment;

[133] **ORDERS** that, upon the Effective Date, each Releasor who has not validly opted-out of this action, as well as Class Counsel, shall not now or hereafter institute, continue, provide assistance for or maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claim, except for the continuation of the Proceedings against the Non-Settling Defendants or unnamed co-conspirators that are not Releasees or, if the Proceedings are not certified or authorized, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any non-settling defendants or unnamed co-conspirator that is not a Releasee;

[134] **ORDERS AND DECLARES** that upon the Effective Date, subject to paragraph [13], and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in the Settlement Agreement, each Releasor shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims;

[135] **ORDERS AND DECLARES** that upon the Effective Date, the Québec Action shall be settled, without costs as against the Panasonic Corporation, and the Parties shall sign and file a declaration of settlement out of court in the Québec Court in respect with the Québec Action;

[136] **DECLARES** that the Québec Plaintiff and the Québec Settlement Class expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts, deeds or other conduct of the Releasees relating to the Released Claims;

[137] **DECLARES** that the Québec Plaintiff and Québec Settlement Class shall henceforth only be able to claim and recover damages, including punitive damages, interests and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) attributable to the conduct of the Non-Settling Defendants, the sales by the Non-Settling Defendants, and/or other applicable measure of proportionate liability of the Non-Settling Defendants;

[138] **DECLARES** that any claims in warranty or any other claim or joinder of parties to obtain any contribution or indemnity from the Releasees relating to the Released Claims shall be inadmissible and void in the context of the Québec Action;

[139] **DECLARES** that the ability of Non-Settling Defendants to seek discovery from the Settling Defendants shall be determined according to the provisions of the *Code of Civil Procedure*, and the Settling Defendants shall retain and reserve all of their rights to oppose such discovery under any applicable law;

[140] **ORDERS** that for purposes of implementation, administration, interpretation and enforcement of the Settlement Agreement and the Judgment to be rendered, this Court will retain an ongoing supervisory role and the Settling Defendants acknowledge and attorn to the jurisdiction of this Court solely for the purpose of implementing, administering, interpreting and enforcing the Settlement Agreement and the Judgment to be rendered, and subject to the terms and conditions set out in the Settlement Agreement and the Judgment to be rendered;

[141] **ORDERS** that, except as provided herein, the Judgment to be rendered does not affect any claims or causes of action that any members of the Québec Settlement Class has or may have against Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees;

[142] **ORDERS** that no Releasee shall have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement or Distribution Protocol;

[143] **ORDERS** the parties to diligently render account of the execution of the judgment, and **INDICATES** that the Court will stay seized of the execution of the Settlement Agreement until it has rendered a “Jugement de clôture”;

[144] **THE WHOLE**, without judicial costs;

As for the application for approval of fees and disbursements :

[145] **APPROUVES AND FIXES** the fees of the Representative's Counsel in the amount of \$80,121.51 plus applicable taxes;

[146] **APPROUVES AND FIXES** the disbursements of the Representative Counsel in the amount of \$2,274.35 plus applicable taxes;

[147] **AUTORIZES** that the fees and disbursements be paid out of the funds obtained under the Transaction, Exhibit R-1, in this file;

[148] **THE WHOLE**, without judicial costs;

As for the Application for authorization to amend the Application for Authorization to Institute a Class Action:

[149] **GRANTS** the *Application for authorization to amend the Application for Authorization to Institute a Class Action*;

[150] **AUTHORIZES** the Plaintiff to file the *Reamended Application for Authorization to Institute a Class Action* dated February 8, 2021, within 30 days of this judgment;

[151] **ORDERS** that the stay of proceedings be lifted for the sole purpose of allowing the filing of the *Reamended Application for Authorization to Institute a Class Action* dated February 8, 2021;

[152] **ORDERS** the resumption of the stay of proceedings in this file;

[153] **ORDERS** the parties to inform the Court in writing, at six-month intervals from the date of this judgment, of the progress of *Sean Allot v. Panasonic Corporation et al*, Ontario Superior Court of Justice, Court File 1899-2015 CP, and *Daniel Klein v. Panasonic Corporation et al*, Supreme Court of British Columbia, Vancouver Registry, Court File S-157585, or before that time, in the event of any significant development in either of those cases;

[154] **THE WHOLE**, without judicial costs.

DONALD BISSON, J.C.S.

Me Maxime Nasr (absent), Me Jean-Philippe Lincourt and Me Mélissa Bazin
Belleau Lapointe, LLP
Counsel for the Applicant and the designated member

Me Vincent de l'Étoile
Langlois Lawyers, LLP
Counsel for the Defendant

Me Frikia Belogbi (absent) and Me Lory Beauregard
Counsel for third party Fonds d'aide aux actions collectives

Hearing date : February 11, 2021

SCHEDULE – SECTION 4 OF THE TRANSACTION, EXHIBIT R-1

SECTION 4 – COOPERATION

4.1 Extent of Cooperation

(1) Within thirty (30) days after the Execution Date or at a time mutually agreed upon by the Parties acting reasonably, but prior to the settlement approval motions contemplated in subsection 2.3, the Settling Defendants shall provide to Class Counsel:

(a) an oral evidentiary proffer, through a meeting between Class Counsel and Counsel for the Settling Defendants, including their U.S. Litigation counsel, which will set out the Settling Defendants' relevant and non-privileged information derived from their investigation and factual inquiries in respect of the matters at issue in the Proceedings, including information derived from business records, testimonial transcripts and employee or witness interviews (if applicable), including, without limitation:

(i) any information regarding how the alleged conspiracy was formed, implemented and enforced, including specific examples of methods employed by the Defendants in furtherance of the alleged conspiracy;

(ii) any information regarding the duration of the alleged conspiracy;

(iii) any information regarding products involved in the alleged conspiracy and the source of that information, and, to the extent in the Settling Defendants' possession, the provision of copies of those source documents to Class Counsel;

(iv) answers to Class Counsel's questions and identification of the conduct, involvement, and role of each Defendant, to the extent known, in the alleged conspiracy;

(v) disclose to Class Counsel the identities and any known particulars (if permitted by law) of the key former officers, directors, and employees who witnessed and/or participated in the alleged conspiracy; and,

(vi) the identification of "key" documents relevant to the alleged conspiracy in Canada and to the conduct of specific Defendants as requested and to the extent known, and, to the extent in the Settling Defendants' possession, the provision of copies of those documents to Class Counsel.

(b) The method and meeting place of the oral evidentiary proffer shall be agreed upon between the Parties due to the COVID-19 Pandemic and may be conducted virtually through a secure virtual meeting platform. Counsel for the Settling Defendants shall make themselves available for reasonable follow-up questions by Class Counsel.

(c) Notwithstanding any other provision of this Settlement Agreement, and for greater certainty, it is agreed that all statements made and information provided by Counsel for the Settling Defendants as part of the oral evidentiary proffer are privileged, will be kept strictly confidential, and may not be directly or indirectly disclosed to any other Person, unless disclosure is ordered by a Court. Further, absent a Court order, Class Counsel will not attribute any factual information obtained from the proffer to the Settling Defendants and/or Counsel for the Settling Defendants. Notwithstanding the foregoing, Class Counsel may: (i) use information obtained from the proffer in the prosecution of the Proceedings, including for the purpose of developing the Distribution Protocol or any other allocation plan relating to any settlement or judgment proceeds, except the prosecution of any claims against Releasees; and (ii) rely on such information to certify that, to the best of Class Counsel's knowledge, information and belief, such information has evidentiary support or will likely have evidentiary support after reasonable opportunity for further investigation or discovery, but, absent a court order, the Plaintiffs shall not introduce any information from a proffer into the record or subpoena any Counsel for the Settling Defendants related to a proffer.

(2) It is understood that the evidentiary proffer described in Section 4.1(1) might take place before the Effective Date. In such event:

(a) any Documents or information provided in the course of that evidentiary proffer shall be subject to the terms and protections of this Settlement Agreement; and

(b) in the event that this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, the Documents and information provided during the evidentiary proffer shall not be used by the Plaintiffs or Class Counsel, whether directly or indirectly, in any way for any reason, including, without limitation, against the Settling Defendants as an admission or evidence of any violation of any statute or law, or of any liability or wrongdoing by the Settling Defendants or of the truth of any claims or allegations in the Proceedings, and such information shall not be discoverable by any Person or treated as evidence of any kind, unless otherwise ordered by a Court. In order to give effect to this agreement, Class Counsel agrees to make reasonable efforts to return all copies of any Documents received during, and destroy all copies of any notes taken during (or subsequent reports provided about), the evidentiary proffer and to provide written confirmation to the Settling Defendants of having done so.

(3) Within thirty (30) days after the Effective Date, or at a time mutually agreed upon by the Parties acting reasonably, the Settling Defendants shall make reasonable efforts to provide to Class Counsel:

(a) copies of all Documents, together with any pre-existing translations of those Documents, produced by the Settling Defendants to the Canadian Competition Bureau, the U.S. Department of Justice and/or in the U.S. Litigation, all to be provided in electronic form if available. The U.S. Litigation Documents will, to the extent possible, be produced with the same document numbers utilized in the U.S. Litigation and shall include any pre-existing and non-privileged electronic coding or metadata produced in the U.S. Litigation;

(b) any deposition transcripts for depositions of current or former employees, officers or directors of the Releasees in the U.S. Litigation (including exhibits thereto), including deposition transcripts of any future depositions given by the Settling Defendants in the U.S. Litigation, all to be provided in electronic form if available and any pre-existing translations of the foregoing;

(c) electronic copies of any declarations or affidavits of current or former employees, officers or directors of the Releasees, including all exhibits thereto, taken in the U.S. Litigation, and any pre-existing translations; electronic copies of any responses to written interrogatories by the Releasees, including all schedules thereto, taken in the U.S. Litigation, and any pre-existing translations into English;

(d) electronic copies of any responses to requests to admit provided by the Releasees in the U.S. Litigation and any pre-existing translations into English;

(e) disclosure of all customer and sales data produced in the US Litigation. The Settling Defendants agree to provide reasonable assistance to Class Counsel and to answer reasonable questions in respect of the sales and customer data that is produced; and

(f) disclosure to Class Counsel the identities and any known particulars of the major global original equipment manufacturers reasonably known to the Settling Defendants that purchased Linear Resistors that were incorporated into products sold to customers in Canada within the Class Period.

(4) Within ninety (90) days of a request from Class Counsel, not to be made until the Proceedings are certified or authorized on a contested basis against the Non-Settling Defendants, the Settling Defendants agree to make reasonable efforts to provide:

(a) documentation available to the Settling Defendants that outlines and/or details finished products containing Linear Resistors sold in Canada during the Class Period including such products sold by the Settling Defendants or their subsidiaries or related companies in Canada during the Class Period, including, but not limited to, product bids and actual sales data; and

(b) to the extent not already provided under Section 4.1(3)(e), additional sales information regarding the Settling Defendants' sales of Linear Resistors in North America for the full duration of the Class Period plus two years before and after it and cost information associated with those sales.

(5) Within thirty (30) days of a request from Class Counsel, not to be made until Class Counsel proposes to distribute funds to Settlement Class Members through the Distribution Protocol, the Settling Defendants agree to use reasonable efforts to provide a list of finished products containing Linear Resistors sold by the Settling Defendants in Canada during the Class Period, the names and contact information for the purchasers of those finished products, and the total units sold and revenues associated with the sale of those finished products.

(6) The Documents to be delivered pursuant to Section 4.1(3)(b)-(3)(f) shall be delivered as a separate production from the Documents to be delivered pursuant to Section 4.1(3)(a) or identified by Bates number as part of the production of Documents to be delivered pursuant to Section 4.1(3)(a).

(7) If requested by Class Counsel, the Settling Defendants agree to provide a voluntary video or telephone interview with Counsel for the Settling Defendants and one current employee of the Settling Defendants with knowledge of the alleged conspiracy within sixty (60) days after the Proceedings have been certified on a contested basis. The voluntary interview shall not be under oath but may be recorded by electronic means, provided the Plaintiffs so elect, and provided reasonable advanced notice of no less than thirty (30) days is given to the Settling Defendants. Costs incurred by, and the expenses of, the employee(s) of the Settling Defendants in relation to such interview, including any cost for a translator, shall be the responsibility of the Settling Defendants. The interview time shall be on a date mutually agreed upon by the Parties acting reasonably.

(8) The Settling Defendants agree to use reasonable efforts to:

(a) authenticate any of their Documents or data produced in accordance with subsection 4.1(3) to the extent the Settling Defendants can establish their authenticity and that the Plaintiffs require their authentication for their admission and use at any point in the Proceedings; and

(b) make available one current employee, officer or director of the Settling Defendants with relevant knowledge of the alleged conspiracy to provide affidavit or testimonial evidence on the certification motion, summary judgment or at the trial or as the Parties may otherwise agree, to the extent that such evidence is required by the Plaintiffs, at a location to be mutually agreed upon as the circumstances require.

The parties agree to collaborate in respect of the costs incurred by, and the expenses of, the employee of the Settling Defendants in relation to such testimony,

including any cost for a translator, and agree that Class Counsel shall assume these costs.

(9) The obligation to produce and authenticate Documents produced pursuant to subsection 4.1(3) shall be a continuing one to the extent that additional Documents are provided by the Settling Defendants to the Canadian Competition Bureau, the U.S. Department of Justice or in the context of the U.S. Litigation regarding Linear Resistors which is at issue in the Proceedings. Class Counsel and the Plaintiffs shall, in reference to this continuing obligation, consult with Counsel for the Settling Defendants and seek to utilize the least burdensome, costly and intrusive means for the Settling Defendants to discharge their obligation under this provision.

(10) Nothing in this Settlement Agreement shall require, or shall be construed to require, the Settling Defendants, or any representative or employee of the Settling Defendants, to disclose or produce any Documents or information that is legally privileged or to disclose or produce any Documents or information in breach of any order, non-disclosure, privacy or confidentiality obligation, regulatory directive, rule or law of this or any jurisdiction, it being understood and agreed that no non-disclosure or confidentiality obligation applies or shall apply to prevent the productions contemplated by section 4.1(1), (3) and (4).

(11) If any of the Documents referenced in 4.1(10) are accidentally or inadvertently disclosed or produced, such Documents shall be promptly returned to the Settling Defendants and the Documents and the information contained therein shall not be disclosed or used, directly or indirectly, except with the express written permission of the Settling Defendants, and the production of such Documents shall in no way be construed to have waived in any manner any privilege, doctrine, law, or protection attached to such Documents.

(12) The obligations of the Settling Defendants to cooperate as particularized in Section 4.1 shall not be affected by the release provisions contained in Section 7 of this Settlement Agreement. The obligations of the Settling Defendants to cooperate shall cease at the date of final judgment in the Proceedings as against all Defendants. For greater certainty, the Plaintiffs' failure to strictly enforce any of the deadlines for the Settling Defendants to provide cooperation pursuant to this Section 4.1 is not a waiver of the cooperation rights granted by Section 4.1.

(13) If the Settling Defendants materially breach this Section 4.1, the Plaintiffs may move before the Courts to enforce the terms of this Settlement Agreement or set aside the approval of the Settlement Agreement or a part thereof, and may exercise any rights they have to seek or obtain testimony, discovery, information or Documents from current officers, directors and/or employees of the Settling Defendants.

(14) Subject to subsection 4.1(13), the provisions set forth in this subsection 4.1 are the exclusive means by which the Plaintiffs and Class Counsel may obtain discovery, information or Documents from the Settling Defendants and other Releasees, including

the officers, directors or employees of the Settling Defendants and other Releasees as at the Effective Date, and the Plaintiffs and Class Counsel agree that they shall not pursue any other means of discovery against, or seek to compel the evidence of, the Settling Defendants and the other Releasees or their current officers, directors, employees, agents, or counsel, whether in Canada or elsewhere and whether under the rules or laws of any Canadian or foreign jurisdiction.

(15) For greater clarity, the Plaintiffs do not in any case waive any rights they have to seek or obtain testimony, discovery, information or Documents from those officers, directors and/or employees of the Settling Defendants and other Releasees who, as at the Effective Date, are former officers, directors and/or employees of the Settling Defendants and other Releasees.

4.2 Limits on Use of Documents

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

(2) If the Plaintiffs intend to produce for discovery or file in the Proceedings any Documents or other information provided by the Settling Defendants as cooperation under the Settlement Agreement (and there is not already a confidentiality order that applies), the Plaintiffs shall provide the Settling Defendants with an advance description of the Documents or other information sought to be produced or filed at least thirty (30) days in advance of the proposed production or filing, in order that the Settling Defendants may move to obtain a sealing or confidentiality order or similar relief. If, within the thirty (30) day period, the Settling Defendants do not so move, the Plaintiffs and Class Counsel can produce or file the information or Documents in the ordinary course. If, within that thirty (30) day period, the Settling Defendants so move, the Plaintiffs and Class Counsel shall not disclose the confidential Documents or information until the Settling Defendants' motion has been decided and all applicable appeal periods have expired, except, so as not to delay prosecution of the Proceedings, Class Counsel may: (i) provide, on an interim

basis, Documents or information to counsel for the Non-Settling Defendants provided that counsel for the Non-Settling Defendants agree that, until the Settling Defendants' motion has been decided and all applicable appeal periods have expired, they will keep the Documents or information on an external counsel only basis and will only disclose such Documents or information to independent expert(s) retained by a Party for the purposes of the Proceedings, as well as secretarial, clerical or other support personnel of such expert(s) to whom disclosure is reasonably necessary. An independent expert may not be an employee of a Plaintiff or Defendant in the Proceedings, or a competitor of the Settling Defendants; and (ii) file such Documents or information with the relevant Court in sealed envelopes or other appropriate containers, segregated from the public record, endorsed with the title of the Proceeding and the following statement: "This envelope/box/container containing documents which are filed by [name of Party] and subject to a pending confidentiality motion is not to be opened nor the contents thereof to be displayed or revealed to any non-Court personnel except by order of the Court" and such records shall not form part of the public record in the relevant Proceeding except upon order of the relevant Court or by agreement of all Parties and/or the Settling Defendants whose confidential information is contained therein.

(3) In the event that a Person applies for an order requiring the Plaintiffs to disclose or produce any Documents or information provided by the Settling Defendants as cooperation under this Settlement Agreement, the Plaintiffs shall notify the Settling Defendants of such application promptly upon becoming aware of it and no later than ten (10) days after disclosure or production is sought, in order that the Settling Defendants may move to oppose such disclosure or production. In no circumstances shall the Plaintiffs or Class Counsel apply for or consent to such an application for disclosure or production. The Plaintiffs and Class Counsel shall not disclose the confidential information or Documents until the Settling Defendants' motion has been decided and a final order has been issued requiring the Plaintiffs and/or Class Counsel to produce the relevant information or Documents, except: (i) to the extent such information or Documents are or become otherwise publicly available; (ii) as ordered to do so by a Court; or (iii) in the event that the Person making the request is a Non-Settling Defendant, so as not to delay prosecution of the relevant Proceeding(s), Class Counsel may provide, on an interim basis, Documents or information to counsel for the Non-Settling Defendants provided that counsel for the Non-Settling Defendants agree and give assurances that, until a final order has been issued requiring the Plaintiff and/or Class Counsel to produce the relevant information or Documents, and all applicable appeal periods have expired, the Documents or information will remain with external counsel and will only be disclosed to independent expert(s) retained by a Party for the purposes of the relevant Proceeding, as well as secretarial, clerical or other support personnel of such expert(s) to whom disclosure is reasonably necessary. An independent expert may not be an employee of a Plaintiff or Defendant in the relevant Proceeding, or a competitor of the Settling Defendants.

4.3 Intervention in the U.S. Litigation

(1) The Settling Defendants and other Releasees shall not oppose any application that may be brought by or on behalf of the Plaintiffs to: (i) intervene in the U.S. Litigation (if such intervention is possible) in order to gain access to discovery, depositions, documents and other Documents and information subject to a protective order that are relevant to the Proceedings; or (ii) compel a U.S. resident to “give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal” pursuant to Title 28 of the United States Code §1782 for the prosecution of the Proceedings, provided such application is not otherwise inconsistent with the terms of this Settlement Agreement, including subsection 4.1(14). However, it is understood and agreed that neither the Settling Defendants nor the other Releasees have any obligation to bring or otherwise participate in such an application.
