

**ELECTROLYTIC AND FILM CAPACITOR CLASS ACTIONS
NATIONAL SETTLEMENT AGREEMENT**

Between:

**CYGNUS ELECTRONICS CORPORATION, SEAN ALLOTT, SARA RAMSAY
and OPTION CONSOMMATEURS**

(the "Plaintiffs")

and

**PANASONIC CORPORATION, PANASONIC CORPORATION OF NORTH AMERICA,
PANASONIC CANADA INC. and SANYO ELECTRIC CO., LTD.**

(the "Settling Defendants")

Executed October 12, 2020

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RECITALS

- A. WHEREAS the Electrolytic Proceedings were commenced by the Ontario Plaintiffs in London, Ontario, the BC Plaintiff in Vancouver, British Columbia and the Québec Plaintiff in Montreal, Québec;
- B. WHEREAS the Ontario Film Action and BC Film Action were respectively commenced in Ontario by the Ontario Plaintiff in London, Ontario, and the BC Plaintiff in Vancouver, British Columbia;
- C. WHEREAS the Settling Defendants are named in both the Ontario Electrolytic and Film Actions, but are not named in the BC Film Action;
- D. WHEREAS for the purposes of implementing this Settlement Agreement only, the Settling Defendants consent to being added as defendants to the BC Film Action, and the Settling Defendants agree that service of the amended pleading in the BC Film Action may be made by delivery to Counsel for the Settling Defendants;
- E. WHEREAS the Settling Defendants are named in the Québec Action, but only in respect of Electrolytic Capacitors;
- F. WHEREAS the Québec Plaintiff will bring a motion for authorization to amend the authorized class definition in the Québec Action as against the Settling Defendants to include purchasers, during the Film Class Period, of Film Capacitors and products containing Film Capacitors, for settlement purposes only;
- G. WHEREAS the Plaintiffs respectively allege in the Electrolytic Proceedings and the Film Proceedings that certain companies, including the Settling Defendants, participated in an unlawful conspiracy to fix, raise, maintain or stabilize the price of Electrolytic and Film Capacitors in Canada, contrary to Part VI of the *Competition Act* and the common law and/or civil law;
- H. WHEREAS the Settling Defendants do not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct alleged in the Electrolytic Proceedings, the Film Proceedings, or otherwise;

- I. WHEREAS the Electrolytic Settlement Amount is to be paid in respect of the Electrolytic Proceedings for the benefit of the Electrolytic Settlement Class, and the Film Settlement Amount is to be paid in respect of the Film Proceedings for the benefit of the Film Settlement Class;
- J. WHEREAS the Plaintiffs, Class Counsel and the Settling Defendants agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the Settling Defendants or evidence of the truth of any of the Plaintiffs' allegations against the Settling Defendants, which allegations are expressly denied by the Settling Defendants;
- K. WHEREAS the Settling Defendants are entering into this Settlement Agreement in order to achieve a final and nationwide resolution of all Released Claims asserted or which could have been asserted against the Releasees by the Plaintiffs and the Settlement Classes in the respective Proceedings, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;
- L. WHEREAS the Settling Defendants have agreed to provide meaningful early cooperation to the Plaintiffs in addition to the Settlement Amount, which cooperation is a material factor to the Plaintiffs in the formulation of the terms of this Settlement Agreement;
- M. WHEREAS the Settling Defendants do not hereby attorn to the jurisdiction of the Courts or any other court or tribunal in respect of any civil, criminal or administrative process except to the extent they have previously done so in the respective Proceedings or as expressly provided in this Settlement Agreement with respect to the Proceedings;
- N. WHEREAS Counsel for the Settling Defendants and Class Counsel have engaged in extensive arm's-length settlement discussions and negotiations, lasting several months, resulting in this Settlement Agreement relating to Canada;
- O. WHEREAS as a result of these settlement discussions and negotiations, the Settling Defendants and the Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Settling Defendants and the Plaintiffs, both individually and on behalf of the Settlement Classes they represent or seek to represent, subject to approval of the Courts;

- P. WHEREAS Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, having regard to the burdens and expense in prosecuting the Proceedings, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the Settlement Classes they represent or seek to represent;
- Q. WHEREAS the Parties therefore wish to and hereby finally resolve on a national basis, without admission of liability, the Proceedings as against the Settling Defendants;
- R. WHEREAS the Québec Action has already been authorized, by judgment of the Québec Court, on March 22, 2019;
- S. WHEREAS for the purposes of settlement only, the Parties now consent to certification or authorization of the Proceedings as class proceedings and to the Settlement Classes and the Common Issues in respect of each of the Proceedings solely for the purposes of implementing this Settlement Agreement in a coordinated and consistent manner across Canada and contingent on approvals by the Courts as provided for in this Settlement Agreement, on the express understanding that such certification or authorization shall not derogate from the respective rights of the Parties in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason;
- T. WHEREAS a notice program and opt-out process had already been provided to the Settlement Classes, in respect of the Electrolytic Proceedings and the Film Proceedings, on a national basis; and
- U. WHEREAS the Plaintiffs assert that they are adequate class representatives for the Settlement Classes they represent or seek to represent and are or will seek to be appointed representative plaintiffs in their respective Proceedings;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, it is agreed by the Parties that the Ontario Electrolytic Action, BC Electrolytic Action, and the Ontario Film Action and BC Film Action be settled and dismissed with prejudice as to the Settling Defendants who are named as Defendants only, without costs as to the Parties, or the Releasees,

and that the Québec Action shall be settled out of court without costs as to the Settling Defendants who are named as Defendants, subject to the approval of the Courts, on the following terms and conditions:

SECTION 1 - DEFINITIONS

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

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

- (12) **Class Counsel Disbursements** include the disbursements and applicable taxes incurred by Class Counsel in the prosecution of the Proceedings, as well as any adverse costs awards issued against the Plaintiffs in the Proceedings.
- (13) **Class Counsel Fees** include the fees of Class Counsel, GST or HST (as the case may be) and other applicable taxes or charges thereon, including any amounts payable by Class Counsel or the Settlement Class Members to any other body or Person, including the Fonds d'aide aux actions collectives in Québec, as a result of the Settlement Agreement.
- (14) **Class Period** means all dates inclusive of the Electrolytic Class Period and the Film Class Period.
- (15) **Common Electrolytic Issue** means: Did the Settling Defendants conspire to fix, raise, maintain or stabilize the price of, or allocate markets and customers of, Electrolytic Capacitors directly or indirectly in Canada during the Electrolytic Class Period? If so, what damages, if any, did Settlement Class Members suffer?
- (16) **Common Film Issue** means: Did the Settling Defendants conspire to fix, raise, maintain or stabilize the price of, or allocate markets and customers of, Film Capacitors directly or indirectly in Canada during the Film Class Period? If so, what damages, if any, did Settlement Class Members suffer?
- (17) **Common Issues** means the Common Electrolytic Issue and the Common Film Issue.
- (18) **Counsel for the Settling Defendants** means Bennett Jones ^{LLP}.
- (19) **Courts** means the Ontario Court, the BC Court and the Québec Court.
- (20) **COVID-19 Pandemic** means the novel coronavirus and the limitations imposed by governments on the conduct of their citizens, including limitations to international travel and meeting size.
- (21) **Defendants** means the Electrolytic Defendants and the Film Defendants.
- (22) **Distribution Protocol(s)** means the plan(s) to be developed by Class Counsel for distributing the Settlement Amount, plus accrued interest and less approved

Administration Expenses and Class Counsel Fees, to Settlement Class Members, as approved by the Courts.

- (23) **Documents** means all papers, computer or electronic records, or other materials within the scope of Rule 1.03(1) and Rule 30.01(1) of the Ontario *Rules of Civil Procedure* and any copies, reproductions or summaries of the foregoing, including microfilm copies and computer images.
- (24) **Effective Date** means the date when the Final Orders have been received from all Courts approving this Settlement Agreement in both the Film Proceedings and the Electrolytic Proceedings.
- (25) **Electrolytic Capacitors** means aluminum and tantalum electrolytic capacitors.
- (26) **Electrolytic Class Period** means September 1, 1997 to December 31, 2014.
- (27) **Electrolytic Defendants** means the entities named as defendants in any of the Electrolytic Proceedings as set out in Schedule "A" to this Settlement Agreement, and any Persons added as defendants in the Electrolytic Proceedings in the future. For greater certainty, Electrolytic Defendants includes, without limitation, the Settling Defendants.
- (28) **Electrolytic Plaintiffs** means the Ontario Plaintiffs, the BC Plaintiff and the Québec Plaintiff, in the context of the Electrolytic Proceedings.
- (29) **Electrolytic Proceedings** means the Ontario Electrolytic Action, the BC Electrolytic Action and the Québec Action as defined in Schedule "A" to this Settlement Agreement as it applies to purchasers of Electrolytic Capacitors and products containing Electrolytic Capacitors in the Québec Settlement Class.
- (30) **Electrolytic Releasors** means, jointly and severally, individually and collectively, the Electrolytic Plaintiffs and the Electrolytic Settlement Class Members, on behalf of themselves and any Person or entity claiming by or through them as a present or former, direct or indirect, parent, subsidiary, affiliate, division or department, predecessor, successor, shareholder, partner, director, owner of any kind, agent, principal, employee, contractor, attorney, heir, executor, administrator, insurer, devisee, assignee, trustee, servant, contractor or representative of any kind.

- (31) **Electrolytic Settlement Amount** means the sum of five million and nine hundred and fifty thousand Canadian Dollars (CAD \$5,950,000.00).
- (32) **Electrolytic Settlement Class(es)** means all Persons included in the Ontario Electrolytic Settlement Class, the BC Electrolytic Settlement Class, and purchasers of Electrolytic Capacitors and products containing Electrolytic Capacitors in the Québec Settlement Class.
- (33) **Electrolytic Settlement Class Member(s)** means a member of an Electrolytic Settlement Class.
- (34) **Excluded Person** means each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing, and those Persons who opted-out of the Proceedings in accordance with the orders of the applicable Courts.
- (35) **Execution Date** means the date on the cover page, as of which the Parties have executed this Settlement Agreement.
- (36) **Film Capacitors** means capacitors which use insulating plastic film and one of two conductive materials, propylene and/or polyester. Film Capacitors include, but are not limited to, the following four generations: (1) film and aluminum foil capacitors, (2) film and other metal capacitors, (3) layered capacitors, and (4) surface-mount capacitors (*i.e.*, capacitors without leaves).
- (37) **Film Class Period** means January 1, 2002 to December 31, 2014.
- (38) **Film Defendants** means the entities named as defendants in any of the Film Proceedings as set out in Schedule "B" to this Settlement Agreement, and any Persons added as defendants in the Film Proceedings in the future. For greater certainty, the Film Defendants includes, without limitation, the Settling Defendants.
- (39) **Film Plaintiffs** means the Ontario Plaintiff, the BC Plaintiff and the Québec Plaintiff in the context of the Film Proceedings.

- (40) **Film Proceedings** means the Ontario Film Action, the BC Film Action, and the Québec Action as defined in Schedule “A” to this Settlement Agreement as it applies to purchasers of Film Capacitors and products containing Film Capacitors in the Québec Settlement Class. The Québec Plaintiff will seek authorization to amend the class definition for settlement purposes.
- (41) **Film Releasors** means, jointly and severally, individually and collectively, the Film Plaintiffs and the Film Settlement Class Members, on behalf of themselves and any Person or entity claiming by or through them as a present or former, direct or indirect, parent, subsidiary, affiliate, division or department, predecessor, successor, shareholder, partner, director, owner of any kind, agent, principal, employee, contractor, attorney, heir, executor, administrator, insurer, devisee, assignee, trustee, servant, contractor or representative of any kind.
- (42) **Film Settlement Amount** means the sum of one million and three hundred and fifty thousand Canadian Dollars (CAD \$1,350,000.00).
- (43) **Film Settlement Class(es)** means all Persons included in the Ontario Film Settlement Class, the BC Film Settlement Class, and purchasers of Film Capacitors and products containing Film Capacitors in the Québec Settlement Class.
- (44) **Film Settlement Class Member(s)** means a member of the Film Settlement Class.
- (45) **Final Order(s)** means a final judgment entered by a Court approving this Settlement Agreement in accordance with its terms, once the time to appeal such judgment has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the approval of this Settlement Agreement in accordance with its terms, upon a final disposition of all appeals.
- (46) **Non-Settling Electrolytic Defendant(s)** means any Electrolytic Defendant that is not: (i) a Settling Defendant; (ii) a Settled Electrolytic Defendant; or (iii) an Electrolytic Defendant against whom the Electrolytic Proceedings have been dismissed or discontinued and is not a Releasee, either before or after the Execution Date.
- (47) **Non-Settling Film Defendant(s)** means any Film Defendant that is not: (i) a Settling Defendant; (ii) a Settled Film Defendant; or (iii) a Film Defendant against whom the Film

Proceedings have been dismissed or discontinued and is not a Releasee, either before or after the Execution Date.

- (48) **Non-Settling Defendants** means the Non-Settling Electrolytic Defendants and the Non-Settling Film Defendants.
- (49) **Notice of Certification and of Approval Hearings** means the form or forms of notice, agreed to by the Plaintiffs and the Settling Defendants, or such other form or forms of notice as may be approved by the Courts, which informs the Settlement Classes of: (i) the certification or authorization of the Proceedings as class proceedings for settlement purposes; (ii) the right to opt-out of the certified or authorized Proceedings has expired; (iii) the dates and locations of the Approval Hearings; and, (iv) the process by which a Settlement Class Member may object to the settlement.
- (50) **Ontario Electrolytic Action** means the proceeding commenced by the Ontario Plaintiffs before the Ontario Court as identified in Schedule "A" to this Settlement Agreement.
- (51) **Ontario Film Action** means the proceeding commenced by the Ontario Plaintiff before the Ontario Court as identified in Schedule "B" to this Settlement Agreement.
- (52) **Ontario Counsel** means Foreman & Company Professional Corporation.
- (53) **Ontario Court** means the Ontario Superior Court of Justice.
- (54) **Ontario Plaintiff(s)** means Cygnus Electronics Corporation and Sean Allott as it applies to the Ontario Electrolytic Action and means Sean Allott as it applies to the Ontario Film Action.
- (55) **Ontario Electrolytic Settlement Class** means the settlement class in respect of the Ontario Electrolytic Action that is defined in Schedule "A" to this Settlement Agreement.
- (56) **Ontario Film Settlement Class** means the settlement class in respect of the Ontario Film Action that is defined in Schedule "B" to this Settlement Agreement.
- (57) **Other Actions** means Other Electrolytic Actions and Other Film Actions.
- (58) **Other Electrolytic Actions** means any other actions or proceedings, including *McPherson v. Panasonic Corp., et. al.*, commenced in the Court of Queen's Bench for

Manitoba, bearing court file number C1-14-01-92235; *Fraser v. Panasonic Corp., et. al.* commenced in Court of Queen's Bench for Saskatchewan bearing court file number Q.B.G. 2150-2014, excluding the Electrolytic Proceedings, relating to Released Electrolytic Claims commenced by an Electrolytic Settlement Class Member either before or after the Effective Date.

- (59) **Other Film Actions** means any other actions or proceedings, excluding the Film Proceedings, relating to Released Film Claims commenced by a Film Settlement Class Member either before or after the Effective Date.
- (60) **Party and Parties** means the Settling Defendants, the Plaintiffs, and, where necessary, the Settlement Class Members.
- (61) **Person(s)** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.
- (62) **Plaintiffs** means the Electrolytic Plaintiffs and the Film Plaintiffs.
- (63) **Proceedings** means the Electrolytic Proceedings and the Film Proceedings.
- (64) **Proportionate Liability** means the proportion of any judgment that, had the Settling Defendants not settled, the Ontario or the BC Court, as applicable, would have apportioned to the Settling Defendants and the other Releasees in respect of the Released Electrolytic Claims or Released Film Claims, as applicable.
- (65) **Québec Action** means the proceeding commenced by the Québec Plaintiff before the Québec Court as identified in Schedule "A" to this Settlement Agreement.
- (66) **Québec Counsel** means Belleau Lapointe s.e.n.c.r.l.
- (67) **Québec Court** means the Superior Court of Québec.
- (68) **Québec Plaintiff** means Option Consommateurs.

- (69) **Québec Settlement Class** means the settlement class in respect of the Québec Action that is defined in Schedule “A”, which includes both the class authorized by the Québec Court on March 22, 2019 and the amendments to the class definition in the Québec Action as against the Settling Defendants to be sought for settlement purposes to reflect the Electrolytic Class Period and to include purchasers during the Film Class Period of Film Capacitors and products containing Film Capacitors.
- (70) **Recitals** means the recitals to this Settlement Agreement.
- (71) **Released Claims** means Released Electrolytic Claims and Released Film Claims.
- (72) **Released Electrolytic Claims** means any and all manner of claims, demands, actions, suits, declaratory relief, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers’ fees (including Class Counsel Fees and Class Counsel Disbursements), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, in this or any other Canadian or foreign jurisdiction (all of the foregoing, collectively, “Claims” or, individually, a “Claim”), that the Electrolytic Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall or may have, relating in any way to any conduct that is alleged or that could have been alleged in the Electrolytic Proceedings or that is arising from their factual predicate, during the Electrolytic Class Period, including, without limitation, any Claims, whether in Canada or elsewhere, as a result of or in connection with an alleged conspiracy or other unlawful agreement or any other horizontal or vertical, or unilateral or coordinated, anti-competitive conduct (whether that conduct occurred in Canada or elsewhere) in connection with the purchase, sale, pricing, discounting, marketing or distributing of Electrolytic Capacitors in Canada during the Electrolytic Class Period, including, without limitation, any claims for consequential, subsequent or follow on harm that arise after the Electrolytic Class Period in respect of any agreement or conduct arising from the factual predicate of the Electrolytic Proceedings, or any amended complaint or pleading therein, that occurred during the Electrolytic Class Period. For greater certainty, nothing herein shall be construed to release any Claims arising from breach of contract, for negligence, bailment, failure to deliver, lost goods, delayed, or damaged goods or any

similar claim between the Releasees and Electrolytic Releasors relating to Electrolytic Capacitors.

- (73) **Released Film Claims** means any and all manner of claims, demands, actions, suits, declaratory relief, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees and Class Counsel Disbursements), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, in this or any other Canadian or foreign jurisdiction (all of the foregoing, collectively, "Claims" or, individually, a "Claim"), that the Film Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall or may have, relating in any way to any conduct that is alleged or that could have been alleged in the Film Proceedings or that is arising from their factual predicate, during the Film Class Period, including, without limitation, any Claims, whether in Canada or elsewhere, as a result of or in connection with an alleged conspiracy or other unlawful agreement or any other horizontal or vertical, or unilateral or coordinated, anti-competitive conduct (whether that conduct occurred in Canada or elsewhere) in connection with the purchase, sale, pricing, discounting, marketing or distributing of Film Capacitors in Canada during the Film Class Period, including, without limitation, any claims for consequential, subsequent or follow on harm that arise after the Film Class Period in respect of any agreement or conduct arising from the factual predicate of the Film Proceedings, or any amended complaint or pleading therein, that occurred during the Film Class Period. For greater certainty, nothing herein shall be construed to release any Claims arising from breach of contract, for negligence, bailment, failure to deliver, lost goods, delayed, or damaged goods or any similar claim between the Releasees and Film Releasors relating to Film Capacitors.
- (74) **Releasee(s)** means, jointly and severally, individually and collectively, the Settling Defendants and all of their present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated and all of their past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives, and the predecessors, successors, purchasers, heirs,

executors, administrators and assigns of each of the foregoing. No other Defendants are Releasees.

- (75) **Releasors** means the Electrolytic Releasors and the Film Releasors.
- (76) **Schedules** means the schedules to this Settlement Agreement.
- (77) **Settled Electrolytic Defendant(s)** means any Electrolytic Defendant (excluding the Settling Defendants) that executes its own settlement agreement in the Proceedings and whose settlement agreement becomes effective in accordance with its terms, whether or not such settlement agreement is in existence at the Execution Date.
- (78) **Settled Film Defendant(s)** means any Film Defendant (excluding the Settling Defendants) that executes its own settlement agreement in the Proceedings and whose settlement agreement becomes effective in accordance with its terms, whether or not such settlement agreement is in existence at the Execution Date.
- (79) **Settlement Agreement** means this agreement, including the Recitals and Schedules.
- (80) **Settlement Amount** means the sum of seven million three hundred thousand Canadian Dollars (CAD \$7,300,000.00), which is the sum of the Electrolytic Settlement Amount and the Film Settlement Amount.
- (81) **Settlement Class(es)** means all Persons included in the Electrolytic Settlement Classes and the Film Settlement Classes.
- (82) **Settlement Class Member(s)** means a member of a Settlement Class.
- (83) **Settling Defendants** means Panasonic Corporation, Panasonic Corporation of North America, Panasonic Canada Inc., and Sanyo Electric Co., Ltd. (incorrectly named as Sanyo Electric Group Ltd. in the Québec Action).
- (84) **Trust Account** means a guaranteed investment vehicle, liquid money market account or equivalent security offered by a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, SC 1991, c 46) or a Provincially Registered Credit Union (listed under the *Credit Unions and Caisses Populaires Act*, 1994, S.O. 1994, c. 11) held at a Canadian financial institution under the control of Ontario Counsel for the benefit of the Settlement Class Members or the Settling Defendants, as provided for in this Settlement Agreement.

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

SECTION 2 - SETTLEMENT APPROVAL

2.1 Best Efforts

- (1) The Parties shall use their best efforts to implement this Settlement Agreement and to secure the prompt, complete and final dismissal with prejudice of the Proceedings as against the Settling Defendants who are named as Defendants in the Ontario Electrolytic Action, Ontario Film Action, BC Electrolytic Action and BC Film Action, and a prompt, complete declaration of settlement out of court of the Québec Action as against the Settling Defendants named as Defendants in the Québec Action. It is agreed that the Plaintiffs may seek permission from the courts to conduct the approval process of this settlement on a national basis through a coordinated joint hearing before the Courts.

2.2 Motions Seeking Approval of Notice and Certification or Authorization for Settlement Purposes

- (1) Subject to subsection 2.2(3), the Ontario Plaintiffs and BC Plaintiff shall bring motions before the Ontario Court and BC Court respectively, as soon as practicable after the Execution Date, for orders approving the Notice of Certification and of Approval Hearings and certifying each of the Proceedings commenced in their respective jurisdictions as a class proceeding as against the Settling Defendants (for settlement purposes only). At the BC hearing, the BC Plaintiff shall apply for an order adding the Settling Defendants as Defendants to the BC Film Action for settlement purposes only. The Settling Defendants agree that the amended BC pleading may be served by delivery to Counsel for the Settling Defendants.
- (2) Subject to subsection 2.2(3), the Québec Plaintiff shall bring a motion for authorization to amend the authorized class definition in the Québec Action as against the Settling Defendants to reflect the Electrolytic Class Period and to include purchasers in Québec of Film Capacitors and products containing Film Capacitors, as reflected in the Québec

Settlement Class described in Schedule "A", and for approval of the Notice of Approval Hearings, before the Québec Court, as soon as practicable after the Execution Date.

- (3) The Ontario order approving the Notice of Certification and of Approval Hearings and certifying the Ontario Electrolytic Action for settlement purposes shall be proposed to the Ontario Court substantially in the form attached as Schedule "C". The Ontario Plaintiff shall seek an order in the Ontario Film Action substantially in the same form, but with necessary modification for applicability to the Ontario Film Action. The form and content of the BC order approving the Notice of Certification and of Approval Hearings and certifying the BC Electrolytic Action and BC Film Action shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the Ontario order attached as Schedule "C", as may be modified by the Ontario Court.

2.3 Motions Seeking Approval of the Settlement

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

2.4 Pre-Motion Confidentiality

- (1) Until the first of the motions required by subsection 2.2 is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior consent of Counsel for the Settling Defendants and Class Counsel, as

the case may be, except to legal counsel or as required for the purposes of financial reporting, annual reports or the preparation of financial records (including tax returns and financial statements), as necessary to give effect to the terms of this Settlement Agreement, or as otherwise required by law.

SECTION 3 - SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

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

3.2 Taxes and Interest

- (1) Except as hereinafter provided, all interest earned on the Settlement Amount shall accrue to the benefit of the respective Settlement Classes and shall become and remain part of the Trust Account.
- (2) Subject to subsection 3.2(3), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account shall be the responsibility of the respective

Settlement Classes. Ontario Counsel or its duly appointed agent shall be solely responsible to fulfill all tax reporting and payment requirements arising from the monies in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned on the monies in the Trust Account shall be paid from the Trust Account.

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

SECTION 4 - COOPERATION

4.1 Extent of Cooperation

- (1) Within 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 electrolytic and film conspiracies were formed, implemented and enforced, including specific examples of methods employed by the Defendants in furtherance of the alleged conspiracy;
- (ii) any information regarding the scope of the alleged conspiracies;

- (iii) any information regarding the duration of the alleged conspiracies;
 - (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 conspiracies, including Defendants tolled in the Proceedings;
 - (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 conspiracies;
 - (vi) the identification and description of "key" documents relevant to the alleged conspiracies 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; and
 - (vii) to the extent not included in the above, the Settling Defendants shall provide to Class Counsel all equivalent assistance that was provided by way of proffer to plaintiffs' counsel in the U.S. Litigation.
- (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. The oral evidentiary proffer may last up to one full business day. 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 or unless there is an agreement between the Plaintiffs and the Settling Defendants to make such disclosure. 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, any other governmental antitrust authority,

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) any answers to interrogatories provided by the Settling Defendants in the U.S. Litigation and any pre-existing translations of the foregoing;
- (e) 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;
- (f) disclosure of any finished Capacitor product dataset and Capacitor product demand forecast dataset procured and maintained by the Defendant Sanyo Electric Co., Ltd. including any such data compiled by any third party vendors for use by it and/or the alleged cartel participants during the Class Period;
- (g) 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;
- (h) to the extent not included in the above, any relevant Documents that are specific to the Settling Defendants' sales and conduct regarding Electrolytic and Film Capacitors in Canada during the Class Period; and

- (i) to the extent not included in the above, the Settling Defendants shall provide to Class Counsel all equivalent assistance and disclosure that was provided to plaintiffs' counsel in the U.S. Litigation.
- (4) Within thirty (30) days after the Effective Date, or at a time mutually agreed upon by the Parties acting reasonably, the Settling Defendants shall provide to Class Counsel reasonable ongoing access to a member of the Settling Defendants' external legal counsel team to answer Class Counsel's reasonable questions relating to the Proceedings. Class Counsel's access to external counsel as a knowledgeable representative of the Settling Defendants shall be equivalent in nature and scope to the access provided by the Settling Defendants in the U.S. Litigation. For greater certainty, the Settling Defendant's obligation to provide the access begins no later than thirty (30) days after the Effective Date and shall continue on an ongoing basis until the Settling Defendants' cooperation obligations cease per section 4.1(12).
- (5) Within ninety (90) days of a request from Class Counsel, which shall not be made until the earlier of (i) a finalized discovery plan in the Ontario Electrolytic or Film Actions, as applicable, or (ii) a finalized litigation protocol that provides for the production of documents in the Québec Action, unless it is otherwise agreed by the Parties that the request may be made on other reasonable grounds at an earlier time, the Settling Defendants agree to make reasonable efforts to provide:
 - (a) to the extent it is not produced under s. 4.1(3) and is reasonably available in electronic form, production of data pertaining to the Settling Defendants' global sales of Electrolytic Capacitors and/or Film Capacitors, including information regarding the Settling Defendants' sales of Electrolytic Capacitors and/or Film Capacitors in North America, specifically including all customer and sales data regarding sales of Electrolytic and Film Capacitors to Canadian customers, for the full duration of the Class Period plus two years before and after it and cost information associated with those sales;
 - (b) disclosure to Class Counsel of the identities and any known general particulars of the major global original equipment manufacturers reasonably known to the Settling Defendants that purchased Electrolytic Capacitors and/or Film Capacitors which were incorporated into products sold in Canada within the Class Period; and

- (c) a reasonable amount of explanation, documentation and information possessed by and available to the Settling Defendants that reveal the details of the incorporation of Electrolytic Capacitors and/or Film Capacitors throughout the Settling Defendants' vertically integrated chain of production into finished products sold in Canada by the Settling Defendants or any affiliated company during the Class Period. This information shall include reasonable and relevant documentation and information regarding a selection of some specific products or product categories sold by the Settling Defendants or their subsidiaries or related companies in Canada during the Class Period, including, but not limited to, product lists, costing and sales data. The Settling Defendants shall make available reasonable information to assist with the selection. The parties shall agree upon the selection acting reasonably.
- (6) Within ninety (90) days after the Effective Date, or at a time mutually agreed upon by the Parties acting reasonably, the Settling Defendants agree to the conduct of a witness interview by the Plaintiffs with one (1) current employee of the Settling Defendants with knowledge of the alleged conspiracy. The interview may last up to two (2) full business days and will occur by videoconference using a virtual meeting platform unless applicable COVID-19 related restrictions have been lifted and in such case the interview may occur in person in Japan, unless Panasonic consents to an in-person interview outside of Japan. For greater certainty, the witness interview will mirror the process taken in the U.S. Litigation. The interview shall not be under oath. 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.
- (7) The Settling Defendants agree to use reasonable efforts to authenticate any of their Documents or data produced in accordance with subsections 4.1(1), (3) and (5) 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.
- (8) The Settling Defendants agree to make available two (2) current employees of the Settling Defendants with relevant knowledge of the alleged conspiracy to provide affidavit or live testimonial evidence on the certification motion, summary judgment and/or at the trial or in such other circumstances in the litigation as the Parties may otherwise agree (in the Electrolytic Proceedings and the Film Proceedings), to the extent that such evidence is

required by the Plaintiffs, at a location to be mutually agreed upon as the circumstances require, and provided that such witness's travel to and from the location of the certification motion, summary judgment and/or at the trial or in such other circumstances in the litigation as the Parties may otherwise agree is safe and permitted by applicable national, regional, and local laws, rules, and regulations regarding travel, and provided that the witness's participation is subject to such witness's right to refuse to travel to the certification motion, summary judgment and/or at the trial or in such other circumstances in the litigation as the Parties may otherwise agree for legitimate, health-related concerns. If the witness refuses to or is unable to travel for reasons described in this paragraph, the Parties shall agree on another satisfactory means of obtaining the witness's evidence. The parties agree to collaborate to minimize 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 Electrolytic Capacitors and/or Film Capacitors which are 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 sections 4.1(1), (3), (5) and (6).
- (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) The cooperation obligations outlined herein are essential and material terms of the Settlement Agreement. 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 Plaintiffs and/or Class Counsel to produce the relevant information or Documents, and all applicable appeal periods have expired, the Documents or information will remain with external counsel and will only be disclosed to independent expert(s) retained by a Party for the purposes of the relevant Proceeding, as well as secretarial,

clerical or other support personnel of such expert(s) to whom disclosure is reasonably necessary. An independent expert may not be an employee of a Plaintiff or Defendant in the relevant Proceeding, or a competitor of the Settling Defendants.

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.

SECTION 5 - DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST

5.1 Distribution Protocol(s)

- (1) After the Effective Date, at a time wholly within the discretion of Class Counsel, but on notice to the Settling Defendants, Class Counsel will make an application seeking orders from the Courts approving the Distribution Protocol(s).

SECTION 6 - OPTING-OUT

6.1 The Opt-Out Deadline has Expired

- (1) The Opt-Out Deadline expired on October 24, 2018, pursuant to Orders of the Ontario, BC and Québec Courts.

SECTION 7 - RELEASES AND DISMISSALS

7.1 Release of Releasees

- (1) Upon the Effective Date, subject to subsection 7.2, in consideration of payment of the Electrolytic and Film Settlement Amounts, as applicable, whether or not any individual Electrolytic and/or Film Releaser collects such payment, and for other valuable

consideration set forth in this Settlement Agreement, the Electrolytic and Film Releasors forever and absolutely respectively release and forever discharge the Releasees from the Released Electrolytic Claims and the Released Film Claims.

7.2 Covenant Not to Sue

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

7.3 No Further Claims

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

7.4 Dismissal of the Proceedings

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

7.5 Dismissal of Other Actions

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

SECTION 8 - BAR ORDER AND WAIVER OF SOLIDARITY

8.1 Ontario and British Columbia Bar Order

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

claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;

- (ii) the Ontario Plaintiffs or BC Plaintiff, as applicable, and the Ontario Electrolytic Settlement Classes or BC Settlement Classes, as applicable, shall limit their claims against the Non-Settling Electrolytic Defendants and/or, named or unnamed alleged co-conspirators and/or, any other Person or party that is not a Releasee, to include, and shall be entitled to recover from the Non-Settling Electrolytic Defendants and/or, named or unnamed alleged co-conspirators and/or, any other Person or party that is not a Releasee, only such claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigation costs claimed pursuant to section 36 of the *Competition Act*) attributable to the aggregate of the several liability of the Non-Settling Electrolytic Defendants and/or, named or unnamed alleged co-conspirators and/or, any other Person or party that is not a Releasee, to the Ontario Plaintiffs or BC Plaintiff, as applicable, and the Ontario Electrolytic Settlement Class or BC Electrolytic Settlement Class, as applicable, if any, and, for greater certainty, the Ontario Electrolytic Settlement Class or BC Electrolytic Settlement Class shall be entitled to seek to recover such damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigation costs claimed pursuant to section 36 of the *Competition Act*) on a joint and several basis as between the Non-Settling Electrolytic Defendants and/or, named or unnamed alleged co-conspirators and/or, any other Person or party that is not a Releasee, if permitted by law; and
- (iii) the Ontario Court and the BC Court, as applicable, shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Ontario Electrolytic Action or BC Electrolytic Action, as applicable, whether or not the Settling Defendants remain in the Ontario Electrolytic Action or BC Electrolytic Action, or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Ontario Electrolytic Action or BC Electrolytic Action, as applicable, and any determination by the

Court in respect of the Proportionate Liability of the Releasees shall only apply in the Ontario Electrolytic Action or BC Electrolytic Action, as applicable, and shall not be binding on the Releasees in any other proceeding.

- (c) A provision that nothing in the Ontario and British Columbia orders approving this Settlement Agreement, as applicable, shall limit, restrict or affect any arguments which the Non-Settling Electrolytic Defendants may make regarding the reduction of any assessment of damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigation costs claimed pursuant to section 36 of the *Competition Act*), or judgment against them in favour of members of the Ontario Electrolytic Settlement Class or BC Electrolytic Settlement Class, as applicable, in the Ontario Electrolytic Action or BC Electrolytic Action, as applicable, or the rights of Ontario Plaintiffs and Ontario Electrolytic Settlement Class Members or BC Plaintiff and BC Electrolytic Settlement Class Members, as applicable, to oppose or resist any such arguments, except as provided for in this section 8.1;
- (d) A provision that a Non-Settling Electrolytic Defendant may, on motion to the Ontario Court or BC Court, as applicable, and on at least ten (10) days' notice to Counsel for the Settling Defendants, and not to be brought until the Ontario Electrolytic Action or BC Electrolytic Action, as applicable, against the Non-Settling Electrolytic Defendants has been certified as a class proceeding (but not including any certification for settlement purposes), seek Orders for the following, which order shall be determined as if the Settling Defendants remained a party to the Ontario Electrolytic Action or BC Electrolytic Action, as applicable:
 - (i) documentary discovery and an affidavit of documents (list of documents in British Columbia) from the Settling Defendants in accordance with the relevant rules of civil procedure;
 - (ii) oral discovery of a representative of the Settling Defendants, the transcript of which may be read at trial;
 - (iii) leave to serve a request to admit (notice to admit in British Columbia) on the Settling Defendants in respect of factual matters; and/or

- (iv) the production of a representative of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Electrolytic Defendants.
 - (e) A provision that the Settling Defendants retain all rights to oppose such motion(s) brought pursuant to subsection 8.1(1)(d). Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of Documents to be produced and/or for information obtained from discovery in accordance with subsection 8.1(1)(d). Notwithstanding any provision in the Ontario and British Columbia orders approving this Settlement Agreement, on any motion brought pursuant to subsection 8.1(1)(d), the Ontario Court or BC Court, as applicable, may make such orders as to costs and other terms as it considers appropriate.
 - (f) A provision that a Non-Settling Defendant may serve the motion(s) referred to in subsection 8.1(1)(d) on the Settling Defendants by service on Counsel for the Settling Defendants in the relevant Proceeding.
- (2) To the extent that such an order is granted pursuant to subsection 8.1(1)(d) and discovery is provided to the Non-Settling Electrolytic Defendants, a copy of all discovery provided, whether oral or documentary in nature, shall be provided by the Settling Defendants to the Plaintiffs and Class Counsel within ten (10) days of such discovery being provided to a Non-Settling Defendant(s).
 - (3) The Plaintiffs and the Settling Defendants agree that the orders in the Ontario Film Action and BC Film Action approving this Settlement Agreement must include a bar order in respect of the Ontario Film Action and BC Film Action in the same form contemplated by 8.1 (1) and (2), with necessary modification.

8.2 Québec Waiver or Renunciation of Solidarity Order

- (1) The Plaintiffs and the Settling Defendants agree that the Québec order approving this Settlement Agreement must include a waiver or renunciation of solidarity in respect of the Québec Action which includes the following:
 - (a) the Québec Plaintiff and the Québec Settlement Class expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect

to the facts, deeds or other conduct of the Releasees relating to the Released Electrolytic Claims and the Released Film Claims, as applicable;

- (b) the Québec Plaintiff and the Québec Settlement Class shall henceforth only be able to claim and recover damages, including punitive damages, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) attributable to the conduct of the Non-Settling Defendants, the sales by the Non-Settling Defendants, and/or other applicable measure of proportionate liability of the Non-Settling Defendants;
- (c) any claims in warranty or any other claim or joinder of parties to obtain any contribution or indemnity from the Releasees relating to the Released Electrolytic Claims or Released Film Claims, as applicable, shall be inadmissible and void in the context of the Québec Action; and
- (d) the ability of Non-Settling Defendants to seek discovery from the Settling Defendants shall be determined according to the provisions of the *Code of Civil Procedure*, and the Settling Defendants shall retain and reserve all of their rights to oppose such discovery under any applicable law.

8.3 Claims Against Other Entities Reserved

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

SECTION 9 - EFFECT OF SETTLEMENT

9.1 No Admission of Liability

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

Releasees, or of the truth of any of the claims or allegations contained in the Proceedings, or any other pleading filed by the Plaintiffs or any other Settlement Class Member.

9.2 Agreement Not Evidence

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

SECTION 10 - CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY

- (1) The Parties agree that the Proceedings shall be certified or authorized as class proceedings as against the Settling Defendants solely for purposes of settlement of the Proceedings and the approval of this Settlement Agreement by the Courts, and such certification or authorization shall not be used or relied on as against the Defendants for any other purpose or in any other proceeding.
- (2) The Plaintiffs agree that, in the motions for certification or authorization of the Proceedings as class proceedings for settlement purposes and for the approval of this Settlement Agreement, the only common issues that they will seek to define are the Common Issues and the only classes that they will assert are the Ontario Settlement Classes, the BC Settlement Classes and the Québec Settlement Class.
- (3) The Parties agree that the certification or authorization of the Proceedings as against the Settling Defendants for the purpose of implementing this Settlement Agreement, shall not derogate in any way from the rights of the Plaintiffs as against the Non-Settling Defendants, except as expressly set out in this Settlement Agreement.

SECTION 11 - NOTICE TO SETTLEMENT CLASS

11.1 Notices Required

- (1) The proposed Settlement Class shall be given the following notice: (i) Notice of Certification and of Approval Hearings (in English and in French as necessary); and (ii) notice of termination (if the Settlement Agreement is terminated or otherwise fails to take effect).
- (2) The Settling Defendants shall provide Class Counsel with a customer list with last known contact information for each customer in Canada who purchased Electrolytic Capacitors and Film Capacitors directly from the Settling Defendants during the Class Period for the purpose of facilitating direct notice to the Settling Defendants' customers.

11.2 Form and Distribution of Notices

- (1) The form of the notices referred to in subsection 11.1 and how and where they are published and distributed shall be as agreed to by the Plaintiffs and the Settling Defendants and, failing agreement, as ordered by the Courts.
- (2) The Plaintiffs shall bring and seek to schedule motions before the Courts seeking orders from the Courts approving the notices described in subsection 11.1. The Plaintiffs may determine the time of these motions in their full and complete discretion, after consultation with the Settling Defendants, and subject to subsection 2.2.

SECTION 12 - ADMINISTRATION AND IMPLEMENTATION

12.1 Mechanics of Administration

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

SECTION 13 - CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES

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

SECTION 14 - NON-APPROVAL OR TERMINATION OF SETTLEMENT AGREEMENT

14.1 Right of Termination

- (1) In the event that:
 - (a) any Court declines to certify or authorize the Settlement Class, including declining to amend the authorized class in the Québec Action to include purchasers of Film Capacitors and products containing Film Capacitors, for settlement purposes only;
 - (b) the Ontario Court or the BC Court declines to dismiss the Proceedings against the Settling Defendants who are named as Defendants or the Québec Action is not fully settled out of court as against the Settling Defendants who are named as Defendants;
 - (c) any Court declines to approve this Settlement Agreement or any material term thereof, and the Parties agree that the cooperation, releases, bar orders, waiver or renunciation of solidarity and covenants not to sue contemplated by this Settlement Agreement are all material terms;
 - (d) any Court approves this Settlement Agreement in a materially modified form;

- (e) any Court issues an order approving this Settlement Agreement in a form that is materially inconsistent with the terms of this Settlement Agreement or not substantially in the form attached to this Settlement Agreement as Schedule "D";
or
- (f) any order approving this Settlement Agreement made by the Courts do not become Final Orders;

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

- (2) In addition, if the Settlement Amount is not paid in accordance with Section 3.1(1), the Plaintiffs shall have the right to terminate this Settlement Agreement by delivering a written notice pursuant to subsection 15.18 or move before the Courts to enforce the terms of this Settlement Agreement.
- (3) Any order, ruling or determination made by any Court with respect to Class Counsel Fees and Disbursements or the Distribution Protocol shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

14.2 Effect of Non-Approval or Termination of Settlement Agreement

- (1) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason:
 - (a) no motion to certify or authorize any of the Proceedings as a class proceeding on the basis of this Settlement Agreement, or to approve this Settlement Agreement, which has not been decided, shall proceed;
 - (b) the Parties will cooperate in seeking to have any issued orders certifying or authorizing a Proceeding as a class proceeding on the basis of the Settlement Agreement or approving this Settlement Agreement set aside and declared null

and void and of no force or effect, and any Person shall be estopped from asserting otherwise;

- (c) any prior certification or authorization of a Proceeding as a class proceeding on the basis of this Settlement Agreement, including the definitions of the Settlement Classes and the Common Issues pursuant to this Settlement Agreement, shall be without prejudice to any position that any of the Parties may later take on any issue in the Proceedings or any other litigation; and
- (d) within ten (10) days of such termination having occurred, Class Counsel shall make reasonable efforts to destroy all Documents or other materials provided by the Settling Defendants under this Settlement Agreement or containing or reflecting information derived from such Documents or other materials received from the Settling Defendants, including any notes or work product of Class Counsel, and, to the extent Class Counsel has disclosed any Documents or information provided by the Settling Defendants or related notes or work product of Class Counsel to any other Person, shall recover and destroy such Documents or material. Class Counsel shall provide Counsel for the Settling Defendants with a written certification by Class Counsel of such destruction within ten (10) days of termination.

14.3 Allocation of Settlement Amount Following Termination

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

14.4 Survival of Provisions After Termination

- (1) If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, the provisions of subsections 3.2(3), 9.1, 9.2, 11.1, 11.2, 14.2, 14.3, 14.4 15.5 and 15.6 and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of subsections 3.2(3), 9.1, 9.2, 11.1, 11.2, 14.2, 14.3,

14.4, 15.5 and 15.6 within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

SECTION 15 - MISCELLANEOUS

15.1 Motions for Directions

- (1) Class Counsel or the Settling Defendants may apply to the Courts as may be required for directions in respect of the interpretation, implementation and administration of this Settlement Agreement. Unless the Courts order otherwise, motions for directions that do not relate specifically to matters affecting the BC Electrolytic Action, BC Film Action, or Québec Action shall be determined by the Ontario Court.
- (2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties except for those motions concerned solely with the implementation and administration of the Distribution Protocol.

15.2 Releasees Have No Liability for Administration

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

15.3 Headings, etc.

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

15.4 Computation of Time

- (1) In the computation of time in this Settlement Agreement, except where a contrary intention appears,

- (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
 - (b) only in the case where the time for doing an act expires on a holiday as “holiday” is defined in the Ontario *Rules of Civil Procedure*, RRO 1990, Reg 194, the act may be done on the next day that is not a holiday.
- (2) Any failure by the Plaintiffs to demand adherence to, or seek enforcement of, a deadline applicable to any obligation of the Settling Defendants herein shall in no way constitute a waiver of said obligation or deadline.

15.5 Ongoing Jurisdiction

- (1) Each of the Courts shall retain exclusive jurisdiction over the actions commenced in its jurisdiction and the Parties thereto.
- (2) The Parties agree that no Court shall make any order or give any direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a complementary order or direction being made or given by the other Court(s) with which it shares jurisdiction over that matter.
- (3) Notwithstanding subsections 15.5(1) and 15.5(2) the Ontario Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement and the Parties attorn to the jurisdiction of the Ontario Court for such purposes. Issues related to the administration of this Settlement Agreement, the Trust Account, and other matters not specifically related to the claim of a BC Electrolytic Settlement Class member, BC Film Settlement Class member, Québec Electrolytic Class member or a Québec Film Settlement Class member shall be determined by the Ontario Court.

15.6 Governing Law

- (1) Subject to section 15.6(2), this Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

- (2) Notwithstanding section 15.6(1), for matters relating specifically to the BC Electrolytic Action, BC Film Action, or Québec Action, the BC Court or Québec Court, as applicable, shall apply the law of its own jurisdiction and the laws of Canada applicable therein.

15.7 Entire Agreement

- (1) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

15.8 Amendments

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

15.9 Binding Effect

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

15.10 Counterparts

- (1) This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or electronic signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

15.11 Negotiated Agreement

- (1) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might

cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

15.12 Language

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

15.13 Transaction

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

15.14 Recitals

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

15.15 Schedules

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

15.16 Acknowledgements

- (1) Each of the Parties hereby affirms and acknowledges that:
 - (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood this Settlement Agreement;

- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
- (c) he, she or the Party's representative fully understands each term of this Settlement Agreement and its effect; and
- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of this Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

15.17 Authorized Signatures

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

15.18 Notice

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

FOR THE PLAINTIFFS AND CLASS COUNSEL:

**Foreman & Company
Professional Corporation**

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

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

Camp Fiorante Matthews Mogerman^{LLP}

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

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

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

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

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

FOR THE SETTLING DEFENDANTS:

Bennett Jones ^{LLP}

c/o John Rook and Emrys Davis
3400 One First Canadian Place
P.O. Box 130
Toronto, ON M5X 1A4

Tel : (416) 863-1200
Fax : (416) 863-1716
Email : rookj@bennettjones.com
Email : davise@bennettjones.com

15.19 Date of Execution

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

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

Name of Authorized Signatory: Jonathan J. Foreman

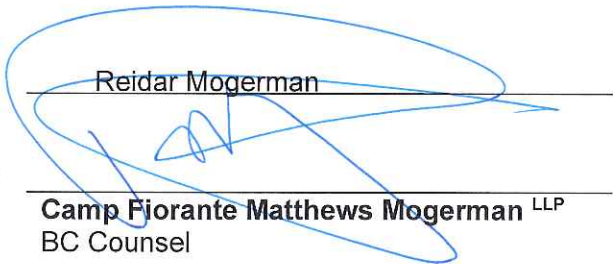


Signature of Authorized Signatory:

**Foreman & Company Professional
Corporation**
Ontario Counsel

Sara Ramsay, by her counsel

Name of Authorized Signatory: Reidar Mogerman

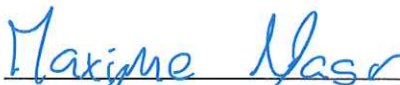


Signature of Authorized Signatory:

Camp Fiorante Matthews Mogerman ^{LLP}
BC Counsel

Option Consommateurs, by
its counsel

Name of Authorized Signatory:



Signature of Authorized Signatory:




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

Panasonic Corporation, Panasonic Corporation of North America, Panasonic Canada Inc., and Sanyo Electric Co., Ltd., by its counsel

Name of Authorized Signatory Emrys Davis

Signature of Authorized Signatory:
(I have authority to bind Panasonic Corporation, Panasonic Corporation of North America, Panasonic Canada Inc. and Sanyo Electric Co., Ltd.)


Bennett Jones ^{LLP}
Counsel for the Settling Defendants

**SCHEDULE “A”
ONTARIO AND BC ELECTROLYTIC PROCEEDINGS AND QUÉBEC ACTION**

| Proceeding | Plaintiff(s) | Defendants | Settlement Class |
|---|---|---|--|
| <p>Ontario Superior Court of Justice Court File No. 3795/14 CP (the “Ontario Electrolytic Action”)</p> | <p>Cygnus Electronics Corporation and Sean Allott</p> | <p>Panasonic Corporation; Panasonic Corporation of North America; Panasonic Canada Inc.; Sanyo Electric Co., Ltd.; NEC Tokin Corporation; NEC Tokin America Inc.; KEMET Corporation; KEMET Electronics Corporation; Nippon Chemi-Con Corporation; United Chemi-Con Corporation; Hitachi Chemical Co., Ltd.; Hitachi Chemical Company America, Ltd.; Hitachi Canada; Nichicon Corporation; Nichicon (America) Corporation; AVX Corporation; Rubycon Corporation; Rubycon America Inc.; Elna Co., Ltd.; Elna America Inc.; Matsuo Electric Co., Ltd.; Toshin Kogyo Co., Ltd.; Samsung Electro-Mechanics; Samsung Electro-Mechanics America Inc.; Samsung Electronics Canada Inc.; ROHM Co., Ltd.; ROHM Semiconductor U.S.A., LLC; Hitachi AIC Inc.; Hitachi Chemical Electronics Co., Ltd.; FPCAP Electronics (Suzhou) Co., Ltd.; Fujitsu Ltd.; Fujitsu Canada, Inc.; Holy Stone Enterprise Co., Ltd.; Vishay Polytech Co., Ltd. f/k/a Holystone Polytech Co., Ltd.; Milestone Global Technology, Inc. d/b/a Holystone International; and Holy Stone Holdings Co., Ltd.</p> | <p>All Persons in Canada who purchased Electrolytic Capacitors or a product containing an Electrolytic Capacitor during the Electrolytic Class Period other than (1) all BC Settlement Class members (2) all Québec Settlement Class members and (3) Excluded Persons.</p> |
| <p>British Columbia Supreme Court (Vancouver Registry) Court File No. S-146293 (the “BC Electrolytic Action”)</p> | <p>Sara Ramsay</p> | <p>Panasonic Corporation f/k/a/ Matsushita Electric Industrial Co., Ltd.; Panasonic Corporation of North America; Panasonic Canada Inc.; Sanyo Electric Co., Ltd.; Sanyo Electronic Device (U.S.A.) Corp.; Sanyo North America Corporation; Taiyo Yuden Co., Ltd.; Taiyo Yuden (USA) Inc.; NEC Tokin Corporation; NEC Tokin America, Inc.; KEMET Corporation; KEMET Electronics Corporation; Nippon Chemi-Con Corporation; United Chemi-Con,</p> | <p>All Persons in British Columbia who purchased Electrolytic Capacitors or a product containing an Electrolytic Capacitor during the Electrolytic Class Period except Excluded Persons.</p> |

| Proceeding | Plaintiff(s) | Defendants | Settlement Class |
|--|----------------------|---|---|
| | | Inc.; Hitachi Chemical Co., Ltd.; Hitachi AIC Inc.; Hitachi Chemical Co. America, Ltd.; Hitachi Canada; Fujitsu Ltd.; Fujitsu Canada, Inc.; Nichicon Corporation; FPCAP Electronics (Suzhou) Co., Ltd.; Nichicon (America) Corporation; AVX Corporation; Rubycon Corporation; Rubycon America Inc.; Elna Co., Ltd.; Elna America Inc.; Matsuo Electric Co., Ltd.; Toshin Kogyo Co., Ltd.; Holy Stone Enterprise Co., Ltd.; Milestone Global Technology, Inc. d/b/a Holystone International; Vishay Intertechnology, Inc.; Vishay Polytech Co., Ltd. f/k/a/ Holy Stone Polytech Co., Ltd.; Samsung Electro-Mechanics; Samsung Electro-Mechanics America Inc.; Samsung Electronics Canada Inc.; ROHM Co., Ltd. and ROHM Semiconductor U.S.A., LLC | |
| Québec Superior Court (District of Montreal), File No. 500-06-000704-144 (the "Québec Action") | Option Consommateurs | Panasonic Corporation; Sanyo Electric Group Ltd.; KEMET Corporation; NEC Tokin Corporation; Taiyo Yuden Co., Ltd.; Nippon Chemi-Con Corporation; Hitachi Chemical Co. Ltd.; Nichicon Corporation; Hitachi AIC Inc.; Elna Co. Ltd.; Holy Stone Enterprise Co., Ltd.; Matsuo Electric Co., Ltd.; Rohm Co., Ltd.; Rubycon Corporation; and Toshin Kogyo Co., Ltd. | All Persons who purchased in Québec at least one Electrolytic Capacitor or a product containing at least one Electrolytic Capacitor during the Electrolytic Class Period, and all Persons who purchased in Québec at least one Film Capacitor or a product containing at least one Film Capacitor during the Film Class Period, except Excluded Persons |

**SCHEDULE "B"
FILM PROCEEDINGS**

| Proceeding | Plaintiff(s) | Defendants | Settlement Class |
|---|--------------------|---|--|
| <p>Ontario Superior Court of Justice (London) Court File No. 1272/16 CP (the “Ontario Film Action”)</p> | <p>Sean Allott</p> | <p>AVX Corporation; Elna Co., Ltd.; Elna America Inc.; Hitachi Chemical Co., Ltd.; Hitachi Chemical Company America, Ltd.; Hitachi Canada; Hitachi AIC Inc.; KEMET Corporation; KEMET Electronics Corporation; Matsuo Electric Co., Ltd.; Nichicon Corporation; Nichicon (America) Corporation; Nippon Chemi-Con Corporation; United Chemi-Con Corporation; Nissei Electric Co. Ltd.; Nitsuko Electronics Corporation; Okaya Electric Industries Co. Ltd.; Okaya Electric America, Inc.; Panasonic Corporation; Panasonic Corporation of North America; Panasonic Canada Inc.; ROHM Co., Ltd.; ROHM Semiconductor U.S.A., LLC f/k/a/ ROHM Electronics U.S.A., LLC; Rubycon Corporation; Rubycon America Inc.; Shinyei Kaisha; Shinyei Technology Co., Ltd.; Shinyei Capacitor Co., Ltd.; Shinyei Corporation of America; Shizuki Electric Co., Ltd.; American Shizuki Corporation; Soshin Electric Co., Ltd.; Soshin Electronics of America Inc.; Taitso Corporation; Taitso America, Inc.; Toshin Kogyo Co., Ltd.; Holy Stone Enterprises Co., Ltd.; Milestone Global Technology Inc. d/b/a Holystone International; and Vishay Polytech Co., Ltd. f/k/a/ Holystone Polytech Co., Ltd.</p> | <p>All Persons in Canada who purchased Film Capacitors or a product containing a Film Capacitor during the Film Class Period other than (1) all BC Settlement Class members and (2) all Québec Settlement Class members.</p> |
| <p>British Columbia Supreme Court (Vancouver Registry) Court File No. S-156006 (the “BC Film Action”)</p> | <p>Sara Ramsay</p> | <p>Okaya Electric Industries Co., Ltd.; Okaya Electric America Inc.; Taitso Corporation; Taitso America, Inc.; Shinyei Kaisha; Shinyei Technology Co., Ltd.; Shinyei Capacitor Co., Ltd.; Shinyei Corporation of America, Inc.; Nitsuko Electronics Corporation; Nissei Electric Co. Ltd.; Soshin Electric Co., Ltd.; Soshin Electronics of America Inc.; Shizuki Electric Co., Ltd.; American Shizuki Corporation; and Toshin Kogyo Co., Ltd.</p> | <p>All Persons in British Columbia who purchased Film Capacitors or a product containing a Film Capacitor during the Film Class Period.</p> |

SCHEDULE "C"

Court File No. 3795/14 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE _____) , THE DAY
) OF , 2020

B E T W E E N :

CYGNUS ELECTRONICS CORPORATION and SEAN ALLOTT

Plaintiffs

- and -

PANASONIC CORPORATION; PANASONIC CORPORATION OF NORTH AMERICA;
PANASONIC CANADA INC.; SANYO ELECTRIC CO., LTD.; NEC TOKIN CORPORATION;
NEC TOKIN AMERICA INC.; KEMET CORPORATION; KEMET ELECTRONICS
CORPORATION; NIPPON CHEMI-CON CORPORATION; UNITED CHEMI-CON
CORPORATION; HITACHI CHEMICAL CO., LTD.; HITACHI CHEMICAL COMPANY
AMERICA, LTD.; HITACHI CANADA; NICHICON CORPORATION; NICHICON (AMERICA)
CORPORATION; AVX CORPORATION; RUBYCON CORPORATION; RUBYCON AMERICA
INC.; ELNA CO., LTD.; ELNA AMERICA INC.; MATSUO ELECTRIC CO., LTD.; TOSHIN
KOGYO CO., LTD.; SAMSUNG ELECTRO-MECHANICS; SAMSUNG ELECTRO-MECHANICS
AMERICA INC.; SAMSUNG ELECTRONICS CANADA INC.; ROHM CO., LTD.; ROHM
SEMICONDUCTOR U.S.A., LLC.; HITACHI AIC INC.; HITACHI CHEMICAL ELECTRONICS
CO., LTD.; FPCAP ELECTRONICS (SUZHOU) CO., LTD.; FUJITSU LTD.; FUJITSU CANADA,
INC.; HOLY STONE ENTERPRISE CO., LTD.; VISHAY POLYTECH CO., LTD. f/k/a
HOLYSTONE POLYTECH CO., LTD.; MILESTONE GLOBAL TECHNOLOGY, INC. d/b/a
HOLYSTONE INTERNATIONAL; and HOLY STONE HOLDINGS CO., LTD.

Defendants

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

**ORDER
(Certification and Notice Approval for Settlement Purposes)**

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

ON READING the materials filed, including the settlement agreement dated ●, 2020 attached to this Order as Schedule "A" (the "Settlement Agreement"), and on hearing the

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

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

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

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

All Persons in Canada who purchased Electrolytic Capacitors or a product containing an Electrolytic Capacitor during the Electrolytic Class Period other than (1) all BC Settlement Class members and (2) all Québec Settlement Class members and (3) Excluded Persons.

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

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

5. **THIS COURT ORDERS** that the plaintiffs, Cygnus Electronics Corporation and Sean Allott, are appointed as the representative plaintiffs for the Ontario Electrolytic Settlement Class.
6. **THIS COURT ORDERS** that this Order, including but not limited to the certification of this action against the Settling Defendants for settlement purposes and the definitions of the Ontario Electrolytic Settlement Class, Electrolytic Class Period and Common Electrolytic Issue, and any reasons given by the Court in connection with this Order, is without prejudice to the rights and defences of the Non-Settling Electrolytic Defendants in

connection with the ongoing Ontario Electrolytic Action and, without restricting the generality of the foregoing, may not be relied on by any Person to establish jurisdiction, the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the Ontario Electrolytic Action, as against the Non-Settling Electrolytic Defendants.

7. **THIS COURT ORDERS** that the opt-out period provided pursuant to the order of this Court made on June 28, 2018 satisfies the requirement of section 9 of the *Class Proceedings Act*, 1992, S.O. 1992, c. 6 for the purposes of this action, that no further opt-out period is necessary for the Ontario Electrolytic Action and that the opt-out period expired on October 24, 2018.
8. **THIS COURT ORDERS** that the notice of certification and settlement approval hearing (the “Notice”) is hereby approved substantially in the form attached hereto as Schedule “B”.
9. **THIS COURT ORDERS** that the plan of dissemination of the Notice (the “Plan of Dissemination”) is hereby approved in the form attached hereto as Schedule “C” and that the Notice shall be disseminated in accordance with the Plan of Dissemination.
10. **THIS COURT ORDERS** that ● is appointed to disseminate the Notice in accordance with the terms of this Order.
11. **THIS COURT ORDERS** that this Order is contingent upon parallel orders being made by the BC Court and the Québec Court, and the terms of this Order shall not be effective unless and until such orders are made by the BC Court and the Québec Court.
12. **THIS COURT ORDERS** that if the Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, paragraphs 1 to 6 and 8 to 11 of this Order shall be deemed to have been set aside and declared null and void and of no force or effect, without the need for any further Order of this Court.

Date:

The Honourable _____

CYGNUS ELECTRONICS CORPORATION, et al.
Plaintiffs

v.

PANASONIC CORPORATION, et al.
Defendants

Court File No. 3795/14 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the *Class Proceedings Act, 1992*

**ORDER
(Certification and Notice Approval for Settlement
Purposes)**

**Foreman & Company
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London, ON N6A 1E2

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Lawyers for the Plaintiffs

SCHEDULE "D"

Court File No. 3795/14 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE _____) , THE DAY
) OF , 2020

B E T W E E N :

CYGNUS ELECTRONICS CORPORATION and SEAN ALLOTT

Plaintiffs

- and -

PANASONIC CORPORATION; PANASONIC CORPORATION OF NORTH AMERICA;
PANASONIC CANADA INC.; SANYO ELECTRIC CO., LTD.; NEC TOKIN CORPORATION;
NEC TOKIN AMERICA INC.; KEMET CORPORATION; KEMET ELECTRONICS
CORPORATION; NIPPON CHEMI-CON CORPORATION; UNITED CHEMI-CON
CORPORATION; HITACHI CHEMICAL CO., LTD.; HITACHI CHEMICAL COMPANY
AMERICA, LTD.; HITACHI CANADA; NICHICON CORPORATION; NICHICON (AMERICA)
CORPORATION; AVX CORPORATION; RUBYCON CORPORATION; RUBYCON AMERICA
INC.; ELNA CO., LTD.; ELNA AMERICA INC.; MATSUO ELECTRIC CO., LTD.; TOSHIN
KOGYO CO., LTD.; SAMSUNG ELECTRO-MECHANICS; SAMSUNG ELECTRO-MECHANICS
AMERICA INC.; SAMSUNG ELECTRONICS CANADA INC.; ROHM CO., LTD.; ROHM
SEMICONDUCTOR U.S.A., LLC.; HITACHI AIC INC.; HITACHI CHEMICAL ELECTRONICS
CO., LTD.; FPCAP ELECTRONICS (SUZHOU) CO., LTD.; FUJITSU LTD.; FUJITSU CANADA,
INC.; HOLY STONE ENTERPRISE CO., LTD.; VISHAY POLYTECH CO., LTD. f/k/a
HOLYSTONE POLYTECH CO., LTD.; MILESTONE GLOBAL TECHNOLOGY, INC. d/b/a
HOLYSTONE INTERNATIONAL; and HOLY STONE HOLDINGS CO., LTD.

Defendants

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

**ORDER
(Settlement Approval)**

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

AND ON READING the materials filed, including the settlement agreement dated ●, 2020 attached to this Order as Schedule "A" (the "Settlement Agreement"), and on hearing the

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

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

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

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

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

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

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

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

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

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

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

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

22. **THIS COURT ORDERS** that, upon the Effective Date, the Ontario Electrolytic Action is hereby dismissed as against the Settling Defendants, without costs and with prejudice.
23. **THIS COURT ORDERS** that the approval of the Settlement Agreement is contingent upon parallel orders for approval being made by the BC Court and the Québec Court, and the terms of this Order shall not be effective unless and until the Settlement Agreement is approved by the BC Court and the Québec Court, and the BC Electrolytic Action has been dismissed with prejudice and without costs and the Québec Action has been declared settled out of court without costs and without reservation as against the Settling Defendants in the relevant proceeding by the Courts. If such orders are not secured in British Columbia and Québec, this Order shall be null and void and without prejudice to the rights of the parties to proceed with the Ontario Electrolytic Action and any agreement between the parties incorporated in this Order shall be deemed in any subsequent proceedings to have been made without prejudice.
24. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms, this Order shall be declared null and void on subsequent motion made on notice.
25. **THIS COURT ORDERS** that this Order, including but not limited to the approval of the Settlement Agreement and any reasons given by the Court in relation thereto, except as to paragraphs 10 to 14 of the Order, is without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Ontario Electrolytic Action.

Date:

The Honourable _____

CYGNUS ELECTRONICS CORPORATION, et al.
Plaintiffs

v.

PANASONIC CORPORATION, et al.
Defendants

Court File No. 3795/14 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the *Class Proceedings Act, 1992*

**ORDER
(Settlement Approval)**

**Foreman & Company
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