

No. S-146293
Vancouver Registry

In the Supreme Court of British Columbia

SARA RAMSAY

Plaintiff

and

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, 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.; MATSUDO 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

Defendants

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, R.S.B.C. 1996, c. 50

**ORDER MADE AFTER APPLICATION
RE NICHICON SETTLEMENT APPROVAL**

BEFORE THE HONOURABLE JUSTICE
BRONGERS

)
) *OCTOBER 13, 2023*
)

ON THE APPLICATION of the Plaintiff coming on for hearing at the Courthouse, 800 Smithe Street, Vancouver, BC, on 13/Oct/2023 and on hearing Michelle Segal for the Plaintiff; Paul Martin for the defendants ROHM Co., Ltd. and ROHM Semiconductor U.S.A., LLC; Paul-Erik Veel for the defendants Fujitsu Ltd. and Fujitsu Canada, Inc.; Davit Akman and Jordanna Cytrynbaum for the defendants KEMET Corporation and KEMET Electronics Corporation; Joan Young; Neil Campbell and William Wu for the defendants Nichicon Corporation and Nichicon (America) Corporation; Michael Fenrick for the defendants Nippon Chemi-Con Corporation and United Chemi-Con, Inc.; Samuel Bogetti for the defendants Rubycon Corporation and Rubycon America Inc.; and Kelsey Sherriff for the defendant AVX Corporation;

AND ON Emma Irving for Shinyei Kaisha, Shinyei Technology Co., Ltd., Shinyei Capacitor Co., Ltd. and Shinyei Corporation of America; Yasmin D'Costa for Shizuki Electric Co. Ltd. and American Shizuki Corporation, defendants in *Ramsay v. Okaya Electric Industries Co., Ltd. et al*, SCBC Action No. S-156006, watching only

AND ON READING the materials filed, including the settlement agreement entered into with Nichicon Corporation and Nichicon (America) Corporation (the "**Settling Defendants**") dated March 31, 2023 (the "**Settlement Agreement**") attached as **Schedule "A"**:

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

AND ON BEING ADVISED that the Plaintiff and the Settling Defendants consent to this Order and that the Non-Settling Electrolytic Defendants take no position on this application.

THIS COURT ORDERS that:

1. 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. in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail;
3. the Settlement Agreement is fair, reasonable and in the best interests of the BC Electrolytic Settlement Class;
4. the Settlement Agreement is hereby approved pursuant to section 35 of the *Class Proceedings Act*, RSBC 1996, c. 50 and shall be implemented and enforced in accordance with its terms;
5. this Order, including the Settlement Agreement, is binding upon each member of the BC Electrolytic Settlement Class including those Persons who are minors or mentally incapable and the requirements of Rule 20-2 of the *Supreme Court Civil Rules* are dispensed with in respect of the BC Electrolytic Action;

6. upon the Effective Date, each member of the BC Electrolytic Settlement Class who has not validly opted-out of this action shall be deemed to have irrevocably consented to the dismissal of any Other Electrolytic Actions as against the Settling Defendants and the Releasees, without costs, with prejudice and without reservation;

7. upon the Effective Date, each Other Electrolytic Action commenced in British Columbia by any member of the BC Electrolytic Settlement Class 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, with prejudice and without reservation;

8. upon the Effective date, subject to paragraph 10, each Electrolytic Releasor who has not validly opted-out of this action has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Electrolytic Claims;

9. 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, intervene in, provide assistance for, 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 proceeding, 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 Electrolytic Defendants or unnamed co-conspirators that are not Releasees or, if the Proceedings are not certified, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Electrolytic Defendants or unnamed co-conspirator that is not a Releasee. For the purposes of this paragraph 9, Class Counsel includes anyone currently or hereafter employed by or a partner with Class Counsel. This paragraph 9 shall be inoperative as against any lawyer who is a member of the Law Society of British Columbia to the extent that it is inconsistent with obligations under section 3.2-10 of the Law Society of British Columbia's *Code of Professional Conduct for British Columbia*;

10. upon the Effective Date, each Electrolytic Releasor resident in British Columbia covenants not to sue and undertakes not to make any claim in any way nor 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. The use of the terms "Electrolytic Releasors" and "Released Electrolytic Claims" in this Order is a matter of form only for consistency with the Settlement Agreement and does not constitute a release of claims by them;

11. 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 any Other Electrolytic Actions, or otherwise, or could in the future be brought on the basis of the same events, actions and omissions

underlying the Electrolytic Proceedings or any Other Electrolytic Actions, 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 paragraph 11 (unless such claim is made in respect of a claim by a Person who has validly opted out of the Proceedings);

12. 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 BC Plaintiff and members of the BC Electrolytic Settlement Class 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 BC Plaintiff and members of the BC Electrolytic Settlement Class 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 BC Plaintiff and members of the BC Electrolytic Settlement Class, if any, and, for greater certainty, members of the 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
- (c) this Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the BC Electrolytic Action, whether or not the Settling Defendants remain in the 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 BC Electrolytic Action and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in the BC Electrolytic Action and shall not be binding on the Releasees in any other proceeding.

13. 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 BC Electrolytic Settlement Class in the BC Electrolytic Action or the rights of BC Plaintiff and members of the BC Electrolytic Settlement Class to oppose or resist any such arguments, except as provided for in this Order;

14. 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 BC 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 list(s) of documents from the Settling Defendant(s) in accordance with the *Supreme Court Civil Rules*;
- (b) oral discovery of a representative(s) of the Settling Defendants, the transcript(s) of which may be read in at trial;
- (c) leave to serve notice(s) to admit on the Settling Defendants in respect of factual matters; and/or
- (d) the production of representative(s) of the Settling Defendants to testify at trial, with such witness(es) to be subject to cross-examination by counsel for the Non-Settling Electrolytic Defendants.

15. the Settling Defendants retain all rights to oppose such application(s) brought under paragraph 14. 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 14. Notwithstanding any provision in this Order, on any motion brought pursuant to paragraph 14, this Court may make such orders as to costs and other terms as it considers appropriate;

16. a Non-Settling Electrolytic Defendant may serve the application(s) referred to in paragraph 14 above on the Settling Defendants by service on Counsel for the Settling Defendants in the BC Electrolytic Action;

17. 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;

18. except as provided herein, this Order does not affect any claims or causes of action that any Releasor has or may have against the Non-Settling Electrolytic Defendants or named or unnamed alleged co-conspirators who are not Releasees;

19. no Releasee shall have any responsibility for and no liability whatsoever relating to the administration of the Settlement Agreement or Distribution Protocol(s);

20. the Electrolytic Settlement Amount shall be held in the Trust Account by Ontario Counsel or its duly appointed agent for the benefit of members of the BC Electrolytic Settlement Class, pending further order of this Court on notice to the Defendants. This paragraph shall not be interpreted as affecting the rights of the Plaintiff 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;

21. upon the Effective Date, the BC Electrolytic Action is hereby dismissed as against the Settling Defendants, without costs and with prejudice;

22. the approval of the Settlement Agreement is contingent upon parallel orders for approval being made by the Ontario Court in the Ontario Electrolytic Action and Ontario Film Action and by the Québec Court in the Quebec Action, and the terms of this Order shall not be effective unless and until the Settlement Agreement is approved by the Ontario Court and the Québec Court, and the Ontario Electrolytic Action and the Ontario Film Action have 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 the Ontario Electrolytic Action, Ontario Film Action and Québec Action, this Order shall be null and void and without prejudice to the rights of the parties to proceed with the BC 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;

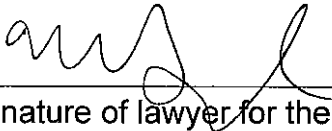
23. in the event that the Settlement Agreement is terminated in accordance with its terms, this Order shall be declared null and void without the need for further Order of this Court but with notice to the BC Electrolytic Settlement Class and the Non-Settling Electrolytic Defendants;

24. 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 11 – 16 of this Order, is without prejudice to the rights and defences of the Non-Settling

Defendants in connection with the ongoing BC 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 BC Electrolytic Action as against the Non-Settling Defendants; and

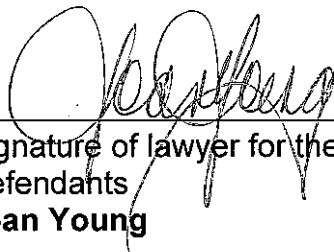
25. endorsement of this Order by counsel for the Non-Settling Electrolytic Defendants shall be dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:



Signature of lawyer for the Plaintiff

Michelle Segal



Signature of lawyer for the Settling Defendants
Joan Young

By the Court



Registrar

FORM
CHECKED
NR

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

Between:

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

(the "Plaintiffs")

and

NICHICON CORPORATION AND NICHICON (AMERICA) CORPORATION

(the "Settling Defendants")

Executed March 31, 2023

TABLE OF CONTENTS

	<u>Page</u>
SECTION 1 DEFINITIONS	4
SECTION 2 SETTLEMENT APPROVAL	12
2.1 Best Efforts	12
2.2 Motions Seeking Approval of Notice and Certification or Authorization	13
2.3 Motions Seeking Approval of the Settlement.....	14
2.4 Pre-Motion Confidentiality	14
SECTION 3 SETTLEMENT BENEFITS	15
3.1 Payment of Settlement Amount.....	15
3.2 Taxes and Interest	15
SECTION 4 COOPERATION	16
4.1 Extent of Cooperation	16
4.2 Limits on Use of Documents and Other Information	20
SECTION 5 DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST	23
5.1 Distribution Protocol(s).....	23
SECTION 6 OPTING-OUT	23
6.1 The Opt-Out Deadline has Expired	23
SECTION 7 RELEASES AND DISMISSALS	24
7.1 Release of Releasees	24
7.2 Covenant Not to Sue.....	24
7.3 No Further Claims.....	24
7.4 Dismissal of the Proceedings.....	25
7.5 Dismissal of Other Actions	25
7.6 Obligation of Class Counsel Regarding Released Claims and Other Actions.....	26
SECTION 8 BAR ORDER AND WAIVER OF SOLIDARITY	26
8.1 Ontario and British Columbia Bar Order.....	26
8.2 Québec Waiver or Renunciation of Solidarity Order	30
8.3 Claims Against Other Entities Reserved	31
SECTION 9 EFFECT OF SETTLEMENT	31
9.1 No Admission of Liability	31
9.2 Agreement Not Evidence	31
SECTION 10 CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY	32
10.1 Effect of Certification or Authorization for Settlement Purposes	32
10.2 Common Issues	32
SECTION 11 NOTICE TO SETTLEMENT CLASSES	32
11.1 Notices Required	32
11.2 Form and Distribution of Notices	33

SECTION 12 ADMINISTRATION AND IMPLEMENTATION	33
12.1 Mechanics of Administration	33
SECTION 13 CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES	33
13.1 No Liability of Settling Defendants	33
13.2 Payments from Trust Account	33
SECTION 14 NON-APPROVAL OR TERMINATION OF SETTLEMENT AGREEMENT	34
14.1 Right of Termination.....	34
14.2 Effect of Non-Approval or Termination of Settlement Agreement	35
14.3 Allocation of Settlement Amount Following Termination.....	36
14.4 Survival of Provisions After Termination.....	36
SECTION 15 MISCELLANEOUS	36
15.1 Motions for Directions	36
15.2 Releasees Have No Liability for Administration.....	37
15.3 Headings, etc.....	37
15.4 Computation of Time.....	37
15.5 Ongoing Jurisdiction	37
15.6 Governing Law.....	38
15.7 Entire Agreement.....	38
15.8 Amendments.....	38
15.9 No Waiver	38
15.10 Binding Effect.....	39
15.11 Counterparts.....	39
15.12 Negotiated Agreement	39
15.13 Language.....	39
15.14 Transaction	40
15.15 Recitals	40
15.16 Schedules.....	40
15.17 Acknowledgements.....	40
15.18 Authorized Signatures.....	40
15.19 Notice	41
15.20 Date of Execution.....	42
SCHEDULE "A"	A - 1
SCHEDULE "B"	B - 1
SCHEDULE "C"	C - 1
SCHEDULE "D"	D - 1
SCHEDULE "E"	E - 1

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

RECITALS

- A. WHEREAS the Electrolytic Proceedings were commenced by the Ontario Electrolytic Plaintiffs in London, Ontario, the BC Plaintiff in Vancouver, British Columbia and the Québec Plaintiff in Montreal, Québec;
- B. WHEREAS the Ontario Film Action was commenced by the Ontario Film Plaintiff in London, Ontario, and the BC Film Action was commenced by the BC Plaintiff in Vancouver, British Columbia;
- C. WHEREAS the Settling Defendants are named in the Ontario Electrolytic Action, the BC Electrolytic Action, and the Ontario Film Action, but are not named in the BC Film Action;
- D. WHEREAS Nichicon Corporation but not Nichicon (America) Corporation is named in the Québec Action only in respect of Electrolytic Capacitors;
- E. WHEREAS the Québec Action has already been authorized, by judgment of the Québec Court, on March 22, 2019;
- F. WHEREAS the certification motion for the Ontario Electrolytic Action was heard by the Ontario Court on September 28-29 and October 6-7, 2022, which judgment remains pending;
- G. WHEREAS a motion to add Nichicon (America) Corporation as a defendant and to modify the authorized class of the Québec Action so as to reflect the Québec Settlement Class for settlement purposes only will be brought against the Settling Defendants in the Québec Action in respect of Electrolytic Capacitors, as described in Section 2.2(2);
- H. WHEREAS motions for certification for settlement purposes only will be brought against the Settling Defendants in the BC Electrolytic Action, the Ontario Electrolytic Action, and the Ontario Film Action, pursuant to the settlement classes defined in Schedule "A" and as described in Section 2.2(1);
- I. WHEREAS unless otherwise agreed between the Parties, no motions will be brought in the BC Film Action, or in respect of Film Capacitors in the Québec Action. The BC Film Action shall be fully and finally settled as against the Settling Defendants through the settlement of the Ontario Film Action, which will be certified for settlement purposes for a national class of Film Capacitor purchasers;

- J. WHEREAS the Ontario Electrolytic Action and the BC Electrolytic Action name FPCAP Electronics (Suzhou) Co., Ltd. ("FPCAP"), a wholly owned subsidiary of Nichicon Corporation after its acquisition in or about April 2009 until its dissolution in or around May 2016, which was not served in the Ontario Electrolytic Action or the BC Electrolytic Action and had not attorned to the jurisdiction of the Ontario Court or the BC Court prior to its dissolution. The Parties have agreed that the Ontario Electrolytic Action and the BC Electrolytic Action shall be resolved as against FPCAP by way of a with prejudice dismissal and discontinuance;
- K. WHEREAS the Plaintiffs respectively allege in the Electrolytic Proceedings and the Ontario Film Action that certain companies, including the Settling Defendants, participated in an unlawful conspiracy to fix, raise, maintain or stabilize the prices of Electrolytic Capacitors and Film Capacitors in Canada, contrary to Part VI of the *Competition Act* and the common law and/or civil law during the Electrolytic Class Period and Film Class Period respectively;
- L. 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 Ontario Film Action for the benefit of the Ontario Film Settlement Class, which includes the members of the putative class in the BC Film Action;
- M. WHEREAS the Settling Defendants do not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct alleged in the Proceedings, or otherwise;
- N. 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;
- O. 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;

- P. WHEREAS the Settling Defendants have agreed to provide meaningful cooperation to the Plaintiffs, relating to the Electrolytic Proceedings and the Film Proceedings, 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;
- Q. WHEREAS Counsel for the Settling Defendants and Class Counsel have engaged in extensive arm's-length settlement discussions and negotiations resulting in this Settlement Agreement relating to Canada;
- R. 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;
- S. WHEREAS the Plaintiffs and 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;
- T. WHEREAS the Parties therefore wish to and hereby finally resolve the Proceedings on a national basis consistent with the scope of the prior settlements reached in the Electrolytic Proceedings and the Film Proceedings, without admission of liability, as against the Settling Defendants;
- U. 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;

- V. WHEREAS a Canada-wide notice program and opt-out process has already been provided to the Settlement Classes, in respect of the Electrolytic Proceedings and the Film Proceedings, on a national basis; and
- W. 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 BC Electrolytic Action, the Ontario Electrolytic Action, and the Ontario Film Action be settled and dismissed with prejudice as to the Settling Defendants, without costs as to the Plaintiffs, the classes they represent or seek to represent or the Releasees, and that the Québec Action shall be settled out of court as to the Settling Defendants without costs, 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 Counsel** means Camp Fiorante Matthews Mogerman ^{LLP}.
- (4) **BC Court** means the Supreme Court of British Columbia.
- (5) **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.
- (6) **BC Electrolytic Settlement Class** means the settlement class in respect of the BC Action that is defined in Schedule "A" to this Settlement Agreement.
- (7) **BC Film Action** means *Ramsay v. Okaya Electric Industries Co., Ltd., et al.*, commenced before the BC Court, bearing File No. S-156006.

- (8) **BC Plaintiff** means Sara Ramsay.
- (9) **Capacitors** means Electrolytic Capacitors and Film Capacitors.
- (10) **Claims** has the meaning set out in Section 1(69) below.
- (11) **Class Counsel** means Ontario Counsel, Québec Counsel and BC Counsel.
- (12) **Class Counsel Disbursements** includes 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** includes 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 Electrolytic 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 Ontario Film Settlement Class Members suffer?
- (17) **Common Issues** means the Common Electrolytic Issue and the Common Film Issue.
- (18) **Counsel for the Settling Defendants** means McMillan ^{LLP}.
- (19) **Courts** means the Ontario Court, the BC Court and the Québec Court.
- (20) **Defendants** means the Electrolytic Defendants and the Ontario Film Defendants.
- (21) **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, Class Counsel Fees and Class Counsel Disbursements, to Settlement Class Members, as approved by the Courts.

- (22) **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.
- (23) **Effective Date** means the date when the Final Orders have been received from all Courts approving this Settlement Agreement.
- (24) **Electrolytic Capacitors** means aluminum and tantalum electrolytic capacitors.
- (25) **Electrolytic Class Period** means September 1, 1997 to December 31, 2014.
- (26) **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.
- (27) **Electrolytic Plaintiffs** means the Ontario Electrolytic Plaintiffs, the BC Plaintiff and the Québec Plaintiff.
- (28) **Electrolytic Proceedings** means the Ontario Electrolytic Action, the Québec Action, and the BC Electrolytic Action as defined in Schedule "A" to this Settlement Agreement.
- (29) **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.
- (30) **Electrolytic Settlement Amount** means the sum of CAD \$14,150,000.00.
- (31) **Electrolytic Settlement Class(es)** means all Persons included in the Ontario Electrolytic Settlement Class, the Québec Settlement Class and the BC Electrolytic Settlement Class.
- (32) **Electrolytic Settlement Class Member(s)** means a member of an Electrolytic Settlement Class.
- (33) **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.

- (34) **Execution Date** means the date on the cover page, effective as of which the Parties have executed this Settlement Agreement.
- (35) **Film Capacitors** means capacitors which use insulating plastic film, including polyester film, metallized film, polypropylene film, polytetrafluoroethylene film, and/or polystyrene film. 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).
- (36) **Film Class Period** means January 1, 2002 to December 31, 2014.
- (37) **Film Proceedings** means the Ontario Film Action and the BC Film Action.
- (38) **Film Releasers** means, jointly and severally, individually and collectively, the Ontario Film Plaintiff and the Ontario 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.
- (39) **Film Settlement Amount** means the sum of CAD \$350,000.00.
- (40) **Final Order(s)** means the later of 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.
- (41) **Non-Settling Electrolytic Defendant** 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 and includes any Electrolytic Defendant that terminates its own settlement agreement in accordance with its terms or whose settlement otherwise fails to take effect for any reason, whether or not such settlement agreement is in existence at the Execution Date.

- (42) **Non-Settling Film Defendant** means any Ontario 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 and includes any Ontario Film Defendant that terminates its own settlement agreement in accordance with its terms or whose settlement otherwise fails to take effect for any reason, whether or not such settlement agreement is in existence at the Execution Date.
- (43) **Non-Settling Defendants** means the Non-Settling Electrolytic Defendants and the Non-Settling Film Defendants.
- (44) **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: (i) of the certification or authorization of the Proceedings as class proceedings for settlement purposes; (ii) that the right to opt out of the certified or authorized Proceedings has expired; (iii) of the dates and locations of the Approval Hearings; and, (iv) about the process by which a Settlement Class Member may object to the settlement.
- (45) **Ontario Counsel** means Foreman & Company Professional Corporation.
- (46) **Ontario Court** means the Ontario Superior Court of Justice.
- (47) **Ontario Electrolytic Action** means the proceeding commenced by the Ontario Electrolytic Plaintiffs before the Ontario Court as identified in Schedule "A" to this Settlement Agreement.
- (48) **Ontario Electrolytic Plaintiffs** means Cygnus Electronics Corporation and Sean Allott.
- (49) **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.
- (50) **Ontario Film Action** means the proceeding commenced by the Ontario Film Plaintiff before the Ontario Court as identified in Schedule "A" to this Settlement Agreement.
- (51) **Ontario Film Defendants** means the entities named as defendants in the Ontario Film Action as set out in Schedule "A" to this Settlement Agreement, and any Persons added as defendants in the Ontario Film Action in the future. For greater certainty, Ontario Film Defendants includes, without limitation, the Settling Defendants.
- (52) **Ontario Film Plaintiff** means Sean Allott.

- (53) **Ontario Film Settlement Class** means the settlement class in respect of the Ontario Film Action that is defined in Schedule "A" to this Settlement Agreement.
- (54) **Ontario Film Settlement Class Member(s)** means a member of the Ontario Film Settlement Class.
- (55) **Other Electrolytic Actions** means any other actions or proceedings, excluding the Electrolytic Proceedings, relating to Released Electrolytic Claims commenced by an Electrolytic Settlement Class Member either before or after the Effective Date.
- (56) **Other Film Actions** means any other actions or proceedings, excluding the Ontario Film Action, relating to Released Film Claims commenced by an Ontario Film Settlement Class Member either before or after the Effective Date.
- (57) **Party and Parties** means the Settling Defendants, the Plaintiffs, and, where necessary, the Settlement Class Members.
- (58) **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.
- (59) **Plaintiffs** means the Electrolytic Plaintiffs and the Ontario Film Plaintiff.
- (60) **Proceedings** means the Ontario Electrolytic Action, the Ontario Film Action, the Québec Action, and the BC Electrolytic Action, as defined in Schedule "A" to this Settlement Agreement.
- (61) **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.
- (62) **Québec Action** means the proceeding commenced by the Québec Plaintiff before the Québec Court identified in Schedule "A" to this Settlement Agreement.
- (63) **Québec Counsel** means Belleau Lapointe s.e.n.c.r.l.
- (64) **Québec Court** means the Superior Court of Québec.
- (65) **Québec Plaintiff** means Option consommateurs.

- (66) **Québec Settlement Class** means the settlement class in respect of the Québec Action that is defined in Schedule "A" to this Settlement Agreement.
- (67) **Recitals** means the recitals to this Settlement Agreement.
- (68) **Released Claims** means the Released Electrolytic Claims and the Released Film Claims.
- (69) **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, damages of any kind including compensatory, punitive or other damages, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees and Class Counsel Disbursements), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, in this or any other Canadian or foreign jurisdiction (all of the foregoing, collectively, "**Claims**" or, individually, a "**Claim**"), that the Electrolytic Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall or may have, relating in any way to any conduct occurring anywhere that is alleged or that could have been alleged in the Electrolytic Proceedings or that is arising from their factual predicate, up to the end of 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 whether sold directly, or indirectly as part of products containing 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, 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.

- (70) **Released Film Claims** means Claims, as defined in the preceding paragraph, 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 occurring anywhere that is alleged or that could have been alleged in the Film Proceedings or that is arising from their factual predicate, up to the end of 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, whether sold directly, or indirectly as part of products containing 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, 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.
- (71) **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, which shall include FPCAP. No Non-Settling Defendants are Releasees.
- (72) **Releasors** means the Electrolytic Releasors and the Film Releasors.
- (73) **Schedules** means the schedules to this Settlement Agreement.
- (74) **Settled Electrolytic Defendant(s)** means any Electrolytic Defendant (excluding the Settling Defendants) that has executed or executes its own settlement agreement in the Proceedings and whose settlement agreement has become or becomes effective in accordance with its terms, whether or not such settlement agreement is in existence at the Execution Date.

- (75) **Settled Film Defendant(s)** means any Film Defendant (excluding the Settling Defendants) that has executed or executes its own settlement agreement in the Proceedings and whose settlement agreement has become or becomes effective in accordance with its terms, whether or not such settlement agreement is in existence at the Execution Date.
- (76) **Settlement Agreement** means this agreement, including the Recitals, and Schedules.
- (77) **Settlement Amount** means the sum of fourteen million, five hundred thousand Canadian dollars (CAD \$14,500,000.00), to be paid by the Settling Defendants, which is the sum of the Electrolytic Settlement Amount and the Film Settlement Amount.
- (78) **Settlement Class(es)** means all Persons included in the Electrolytic Settlement Classes and the Ontario Film Settlement Class.
- (79) **Settlement Class Member(s)** means a member of a Settlement Class.
- (80) **Settling Defendants** means Nichicon Corporation and Nichicon (America) Corporation.
- (81) **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.
- (82) **U.S. Litigation** means the direct and indirect purchaser class proceedings in the United States which pertained to film, aluminum and tantalum electrolytic capacitors which have been consolidated and are proceeding as class actions litigation under the general style of cause, for both direct and indirect purchaser class proceedings, In re: *Capacitors Antitrust Litigation*, case number 3:14-cv-03264-JD, U.S. District Court for the Northern District of California.

SECTION 2 SETTLEMENT APPROVAL

2.1 Best Efforts

- (1) The Parties shall use their best efforts to implement this Settlement Agreement and to secure the prompt, complete and final dismissal with prejudice of the Proceedings as against the Settling Defendants in the Ontario Electrolytic Action, Ontario Film Action, and

BC Electrolytic Action, and to promptly file a notice of settlement out of court in the Québec Action as against the Settling Defendants. 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

- (1) Subject to Sections 2.2(3) to 2.2(6), the Ontario Electrolytic Plaintiffs, Ontario Film Plaintiff and BC Plaintiff shall bring motions before the Ontario Court and the BC Court, respectively, as soon as practicable after the Execution Date for orders approving the Notice of Certification and of Approval Hearings and certifying the Ontario Electrolytic Action, the Ontario Film Action and the BC Electrolytic Action as commenced in their respective jurisdictions as class proceedings as against the Settling Defendants (for settlement purposes only).
- (2) Subject to Sections 2.2(3) to 2.2(6), the Québec Plaintiff shall bring a motion before the Québec Court for an order to add Nichicon (America) Corporation as a defendant and to modify the authorized class definition of the Québec Action as against the Settling Defendants (for settlement purposes only) to reflect the Québec Settlement Class and approving the Notice of Authorization and of Approval Hearings as soon as practicable after the Execution Date. Counsel for the Settling Defendants confirms that it will accept service of all proceedings necessary to give effect to this Settlement Agreement on behalf of Nichicon (America) Corporation, it being understood that such acceptance is strictly limited to this purpose.
- (3) The Ontario order approving the Notice of Certification and of Approval Hearings and certifying the Ontario Electrolytic Action for settlement purposes described in Section 2.2(1) shall be proposed to the Ontario Court substantially in the form attached as Schedule "B".
- (4) The form and content of the BC and Québec orders approving the Notice of Certification and of Approval Hearings and certifying or authorizing the BC Electrolytic Action and the Québec Action for settlement purposes described in Sections 2.2(1) and 2.2(2) shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the Ontario order attached as Schedule "B", as may be modified by the Ontario Court or as agreed by the Parties.

- (5) The Ontario order approving the Notice of Certification and Approval Hearings and certifying the Ontario Film Action for settlement purposes described in Section 2.2(1) shall be proposed to the Ontario Court substantially in the form attached as Schedule "C".
- (6) If the Ontario Court declines to certify for settlement purposes the Ontario Film Action with a class including all Film Settlement Class Members, the Plaintiffs will seek separate orders from each of the Courts in respect of the Film Proceedings and the Québec Action on terms, agreed with the Settling Defendants, which facilitate a binding nationwide settlement and release of all Released Film Claims by all Film Settlement Class Members.

2.3 Motions Seeking Approval of the Settlement

- (1) As soon as practicable after the orders referred to in Sections 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 orders approving this Settlement Agreement in the Ontario Electrolytic Action and the Ontario Film Action shall be proposed to the Ontario Court substantially in the forms respectively attached as Schedules "D" and "E". The Québec and BC orders approving this Settlement Agreement shall be agreed upon by the Parties, and shall mirror the substance and, where possible, the form of the Ontario order attached as Schedule "D", as may be modified by the Ontario Court or as agreed by the Parties.
- (3) Concurrent with the motions contemplated in Section 2.3(1) or as otherwise agreed between the Parties, the Ontario Electrolytic Plaintiff and the BC Plaintiff shall seek an order for a with prejudice dismissal of the Ontario Electrolytic Action and a discontinuance of the BC Electrolytic Action as against FPCAP. The Ontario dismissal orders shall be in a form agreed to between the Parties and the BC discontinuance shall be in the standard form, subject to any modification by the Courts.
- (4) 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 Section 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 for the Parties or their affiliates, 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.

- (2) Notwithstanding Section 2.4(1), at any time after the Date of Execution Date, Class Counsel may provide a copy of this Settlement Agreement to the Courts and to the Non-Settling Defendants and shall notify the Settling Defendants that it is doing so.

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 sixty (60) days of the Execution Date, the Settling Defendants shall pay the Settlement Amount for deposit into the Trust Account.
- (2) The Settlement Amount shall be inclusive of all amounts, including interest and costs. The Settlement Amount and other consideration to be provided in accordance with the terms of this Settlement Agreement shall be provided in full satisfaction of the Released Claims against the Settling Defendants and other Releasees.
- (3) The Settling Defendants and other Releasees shall have no obligation to pay any amount in addition to the Settlement Amount in respect to the Released Claims, for any reason, pursuant to or in furtherance of this Settlement Agreement or the Proceedings.
- (4) Ontario Counsel or its duly appointed agent shall maintain the Trust Account as provided for in this Settlement Agreement.
- (5) Ontario Counsel or its duly appointed agent shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Courts obtained after notice to the Parties.

3.2 Taxes and Interest

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

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 sixty (60) days of the Effective Date, or at a time mutually agreed upon by the Parties acting reasonably (which may, if and only if the Parties agree, take place before the Effective Date), the Settling Defendants shall provide to Class Counsel an oral evidentiary proffer:
- (a) The oral evidentiary proffer shall be conducted through a meeting between Class Counsel and Counsel for the Settling Defendants, including at the discretion of the Settling Defendants their U.S. Litigation counsel, during which Counsel for the Settling Defendants will set out the Settling Defendants' relevant and non-attorney-client privileged information derived from their pre-existing investigation and factual inquiries in respect of the matters at issue in the Proceedings, including information derived from pre-existing business records, testimonial transcripts and employee or witness interviews (if applicable).
 - (b) The oral evidentiary proffer shall focus on the subject of the Settling Defendants' specific knowledge and information concerning their knowledge of how the alleged conspiracy was formed, implemented and enforced, the conduct of the Non-Settling Defendants, including in particular the identification and production to

Class Counsel of "key" documents and testimony given in the U.S. Litigation in respect of the conduct of the Non-Settling Defendants. During the proffer, Counsel for the Settling Defendants shall also answer Class Counsel's reasonable questions concerning the conduct and involvement of specific Non-Settling Defendants, to the extent known, in the alleged conspiracy.

- (c) The oral evidentiary proffer shall be conducted virtually through a secure virtual meeting platform. The oral evidentiary proffer may last up to six (6) hours, and may be subdivided into two or more separate sessions.
- (d) 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 shall comply with the applicable protective orders in the U.S. Litigation.
- (e) In the event that the evidentiary proffer described in this Section 4.1(1) or any follow-up questions and responses described in Section 4.1(3) takes place before the Effective Date, which shall only occur pursuant to a subsequent agreement of the Parties, the following additional terms shall apply:
 - (i) any Documents or information provided in the course of that evidentiary proffer or follow-up questions and responses shall be subject to the terms and protections of this Settlement Agreement; and
 - (ii) 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 and any follow-up questions and responses 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 promptly 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 or follow-up questions and responses and to provide written confirmation to the Settling Defendants after having done so.

- (2) Within sixty (60) 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, to the extent permitted by relevant protective order in the U.S. Litigation:
 - (a) copies of all Documents produced by the Settling Defendants to the United States Department of Justice, including all pre-existing translations, all to be provided in electronic form;
 - (b) copies of all Documents produced by the Settling Defendants in the U.S. Litigation, including transaction data and all pre-existing translations, all to be provided in electronic form. U.S. Litigation Documents will, to the extent possible, be produced with the same document numbers utilized in the U.S. Litigation;
 - (c) electronic copies of all deposition transcripts, exhibits and responses to written interrogatories given by current or former employees, officers and directors of the Releasees in the U.S. Litigation; and
 - (d) copies of any available Canadian transaction data, including customer information, of the Settling Defendants.
- (3) Counsel for the Settling Defendants shall make themselves available for reasonable follow-up questions from Class Counsel regarding the oral evidentiary proffer given pursuant to Section 4.1(1) or the documents produced pursuant to Section 4.1(2). Class Counsel may request a meeting with Counsel for the Settling Defendants, of up to two (2) hours, for the purpose of discussing Class Counsel's consolidated reasonable follow-up questions.
- (4) The Settling Defendants agree to provide affidavit evidence to assist the Plaintiffs in authenticating any of the Documents produced in accordance with this Settlement Agreement 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, including at trial. If required by the Courts, or if required by a defendant to the Québec Action pursuant to article 292 of the Québec Code of Civil Procedure, the Settling Defendants also agree to provide such authentication by live testimony. The failure of a specific officer, director or employee to agree to make him or herself available,

or to otherwise cooperate with the Plaintiffs, shall not constitute a violation of this Settlement Agreement. The Parties agree to collaborate to minimize the costs incurred by, and the expenses of, the Settling Defendants in relation to such evidence, including any cost for travel and a translator where necessary, and agree that Class Counsel shall assume these costs.

- (5) Nothing in this Settlement Agreement shall require, or shall be construed to require, the Settling Defendants, or any representative or employee of the Settling Defendants, to disclose or produce any Documents or information that is subject to any attorney-client privilege or other legal privileges, or to disclose or produce any Documents or information in breach of any order (including the protective order in the U.S. Litigation), non-disclosure or confidentiality obligation, regulatory directive, rule or law of this or any jurisdiction, it being understood and agreed that no order, non-disclosure or confidentiality obligation applies or shall apply to prevent the productions of the Settling Defendants' own documents.
- (6) If any of the Documents or information produced by the Settling Defendants pursuant to Sections 4.1(1), 4.1(2) and 4.1(3) are accidentally or inadvertently disclosed or produced, the Settling Defendants shall so notify Class Counsel and (i) such Documents shall be promptly returned to the Settling Defendants, (ii) 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, (iii) 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, and (iv) the Plaintiffs shall not assert that any such waiver has occurred.
- (7) The obligations of Settling Defendants to cooperate as particularized in this 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.
- (8) If the Settling Defendants materially breach this Section 4.1, the Plaintiffs may move before the Courts to enforce the terms of this Settlement Agreement and may exercise any rights they have to seek or obtain testimony, discovery, information or Documents from the Settling Defendants. The Settling Defendants may oppose any such motion. Before making a motion under this Section 4.1(8), the Plaintiffs will provide the Settling

Defendants with thirty (30) days written notice of the alleged material breach in order to provide the Settling Defendants an opportunity to cure such alleged material breach.

- (9) Subject to Section 4.1(8), the provisions set forth in this Section 4.1 are the exclusive means by which the Plaintiffs and Class Counsel may obtain discovery, information or Documents from the Settling Defendants and other Releasees, 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 or other Releasees, whether in Canada or elsewhere and whether under the rules or laws of any Canadian or foreign jurisdiction.
- (10) For greater clarity, the Plaintiffs through this Settlement Agreement do not waive any rights they may have to seek or obtain cooperation 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 or other Releasees.
- (11) A material factor influencing the Settling Defendants' decision to execute this Settlement Agreement is their desire to limit the burden and expense of this litigation. Accordingly, the Plaintiffs and Class Counsel agree to exercise good faith in seeking cooperation from the Settling Defendants, agree not to seek information that is unnecessary, or duplicative and agree otherwise to avoid imposing undue or unreasonable burdens or expense on the Settling Defendants and other Releasees.
- (12) The Settling Defendants shall make their best efforts to ensure the completeness of any of the Documents or information to be provided in accordance with this Section 4.1, but do not represent that they can or will produce a complete set of any of the Documents or information described in this Section.

4.2 Limits on Use of Documents and Other Information

- (1) It is understood and agreed that all information made available or provided by the Settling Defendants to the Plaintiffs through the oral evidentiary proffer and any follow-up questions and responses are privileged, will be kept strictly confidential, and may not be directly or indirectly disclosed to any other Person, except to the extent that the Documents or information are or become publicly available without any breach of this Settlement Agreement by the Plaintiffs or Class Counsel, 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 or follow-up questions and responses to the Settling Defendants and/or Counsel for the Settling Defendants. Notwithstanding the foregoing, Class Counsel may: (i) use information obtained from the proffer and follow-up questions and responses in the prosecution of the Proceedings, including for the purpose of developing the Distribution Protocol(s) 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 or a response to a follow-up question into the record or subpoena any Counsel for the Settling Defendants related to a proffer or follow-up questions and responses.

- (2) The Plaintiffs and Class Counsel agree they will not disclose the Documents provided by the Settling Defendants and any information contained therein 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 as contemplated by Section 4.2(3); (ii) as evidence in the Proceedings; (iii) to counsel for Non-Settling Defendants for the purposes of settlement negotiations, only to be shared on a highly confidential and without-prejudice basis, and with advance notice to Counsel for the Settling Defendants; 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 without any breach of this Settlement Agreement by the Plaintiffs or Class Counsel.
- (3) 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, 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 make a motion 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 oppose the position taken by the Settling Defendants and shall not disclose the confidential Documents or information until the Settling Defendants' motion has been decided and all applicable appeal periods have expired.

- (4) Notwithstanding Section 4.2(3), so as not to delay prosecution of the Proceedings, Class Counsel may:
 - (a) 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
 - (b) 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.
- (5) 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 oppose the position taken by the Settling Defendants and 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 and any applicable appeal periods have expired, except: (i) to the extent such information or Documents are or become otherwise publicly available without any breach of this Settlement Agreement by the Plaintiffs or Class Counsel; (ii) as ordered to do so by a Court; or (iii) in accordance with Section 4.2(4)(a).

- (6) The Plaintiffs shall in good faith consult with the Settling Defendants before the Plaintiffs agree to the terms of any confidentiality agreement or confidentiality order which would govern the confidentiality of Documents or information originating from the Settling Defendants in the Proceedings, and shall make best efforts to accommodate the Settling Defendants' reasonable requests in respect of the same.

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 applications seeking orders from the Courts approving the Distribution Protocol(s).
- (2) The Distribution Protocol shall require Settlement Class Members seeking compensation to give credit for any compensation received through other proceedings or in out-of-class settlements, unless by such proceedings or out-of-class settlements the Settlement Class Member's claim was released in its entirety, in which case the Settlement Class Member shall be deemed ineligible for any further compensation.

SECTION 6 OPTING-OUT

6.1 The Opt-Out Deadline has Expired

- (1) The orders to be proposed to the Courts referenced in Section 2 will reflect that the deadline to opt-out of the Proceedings expired on October 24, 2018, pursuant to previous 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 Section 7.2, in consideration of payment of the Electrolytic Settlement Amount, whether or not any individual Electrolytic Releasor collects such payment, and for other valuable consideration set forth in this Settlement Agreement, the Electrolytic Releasors forever and absolutely release and forever discharge the Settling Defendants and other Releasees from the Released Electrolytic Claims.
- (2) Upon the Effective Date, subject to Section 7.2, in consideration of payment of the Film Settlement Amount, whether or not any individual Film Releasor collects such payment, and for other valuable consideration set forth in this Settlement Agreement, the Film Releasors forever and absolutely release and forever discharge the Settling Defendants and other Releasees from the Released Film Claims.

7.2 Covenant Not to Sue

- (1) Notwithstanding Section 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 Electrolytic Releasors and Film Releasors do not release the Settling Defendants and other 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 Settling Defendants and other Releasees in respect of or in relation to the Released Electrolytic Claims or the Released Film Claims, as the case may be.

7.3 No Further Claims

- (1) Upon the Effective Date, the Electrolytic Releasors, Film 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 the case may be, except for the continuation of the Proceedings against the Non-Settling Defendants or unnamed alleged 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 alleged co-conspirators that are not Releasees. For the purposes of this Section 7.3(1), Class Counsel includes anyone on the Execution Date or thereafter employed by or a partner with Class Counsel.

- (2) Subsection 7.3(1) shall be inoperative only 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, the Ontario Film Action and the BC Electrolytic Action shall be dismissed, with prejudice and without costs, as against the Settling Defendants.
- (2) Upon the Effective Date, the Québec Action shall be settled, without costs as against the Settling Defendants, and the Parties shall sign and file a notice of settlement out of court in the Québec Court.

7.5 Dismissal of Other Actions

- (1) Upon the Effective Date, each member of the Ontario Electrolytic Settlement Class and BC Electrolytic Settlement Class shall be deemed to irrevocably consent to the dismissal, without costs and with prejudice, of his, her or its Other Electrolytic Actions against the Settling Defendants and other Releasees.
- (2) Upon the Effective Date, each member of the Ontario Film Settlement Class shall be deemed to irrevocably consent to the dismissal, without costs and with prejudice, of his, her or its Other Film Actions against the Settling Defendants and other Releasees.
- (3) Upon the Effective Date, all Other Electrolytic Actions commenced in British Columbia or Ontario by any Electrolytic Settlement Class Member shall be dismissed against the Settling Defendants and other Releasees, without costs and with prejudice.
- (4) Upon the Effective Date, all Other Film Actions commenced in Ontario by any Ontario Film Settlement Class Member shall be dismissed against the Settling Defendants and other Releasees, without costs and with prejudice.

- (5) Each 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 deemed to irrevocably consent to the dismissal, without costs and without reservation, of his, her or its Other Actions against the Settling Defendants and other Releasees.
- (6) 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 Settling Defendants and other Releasees, without costs and without reservation.

7.6 Obligation of Class Counsel Regarding Released Claims and Other Actions

- (1) If, at any time after the Execution Date, Class Counsel becomes aware of any steps being taken in any Other Actions to advance, prosecute or litigate Released Claims against one or more of the Releasees, Class Counsel shall, on notice to the Settling Defendants, seek prompt and appropriate case management steps in order to uphold this Settlement Agreement and to otherwise prevent interference with the progress of the Proceedings.
- (2) If requested by the Settling Defendants, Class Counsel shall support any application by the Settling Defendants to seek recognition and enforcement of the Settlement Agreement and the orders of the Courts in any province or territory.

SECTION 8 BAR ORDER AND WAIVER OF SOLIDARITY

8.1 Ontario and British Columbia Bar Order

- (1) The Ontario Electrolytic Plaintiffs, the BC Plaintiffs and the Settling Defendants agree that the orders in the Ontario Electrolytic Action and the BC Electrolytic Action approving this Settlement Agreement must contain 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 or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Electrolytic Defendants or any named or unnamed alleged co-conspirator that is not a Releasee, are barred, prohibited and enjoined in accordance with the terms of this section (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 Electrolytic 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 relating to the Released Electrolytic Claims proven at trial or otherwise;
 - (ii) the Ontario Electrolytic Plaintiffs or BC Plaintiff, as applicable, and the Ontario Electrolytic Settlement Class or BC Electrolytic Settlement Class, 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 Electrolytic 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 relating to the Released Electrolytic Claims 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 relating to the Released Electrolytic Claims 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 the Ontario Electrolytic Plaintiffs and Ontario

Electrolytic Settlement Class or the BC Plaintiff and the BC Electrolytic Settlement Class, 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 twenty (20) days' notice to Counsel for the Settling Defendants, and not to be brought until the Ontario Electrolytic Action or BC Electrolytic Action, as applicable, has been certified as a class proceeding against the Non-Settling Electrolytic Defendants (but not including any certification for settlement purposes), seek Orders for the following:
 - (i) documentary discovery and an affidavit or list of documents from the Settling Defendants in accordance with the relevant rules of civil procedure;
 - (ii) oral discovery of a representative of the Settling Defendants, the transcript of which may be read in at trial;
 - (iii) leave to serve a request or notice to admit 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 the provision referenced in Section 8.1(1)(d). Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of confidential, competitively sensitive and/or proprietary information in respect of Documents to be produced and/or for information obtained from discovery in accordance with the provision referenced in Section 8.1(1)(d). Notwithstanding any provision in the Ontario and British Columbia orders approving this Settlement Agreement, on any motion brought pursuant to the provision referenced in Section 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 Electrolytic Defendant may serve the motion(s) referred to in Section 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 the provision referenced in Section 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 any Non-Settling Electrolytic Defendant.
- (3) The Film Plaintiffs and the Settling Defendants agree that the orders in the Ontario Film Action approving this Settlement Agreement must contain a bar order in respect of the Ontario Film Action in the same form contemplated by Sections 8.1(1) and 8.1(2), with necessary modification.

8.2 Québec Waiver or Renunciation of Solidarity Order

- (1) The Electrolytic Plaintiffs and the Settling Defendants agree that the Québec order approving this Settlement Agreement must contain 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 Electrolytic Defendants with respect to the facts, deeds or other conduct of the Settling Defendants and other Releasees relating to the Released Claims;
 - (b) the Québec Plaintiff and the Québec Settlement Class shall henceforth only be able to claim and recover damages, including punitive damages, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) attributable to the conduct of the Non-Settling Electrolytic Defendants, the sales by the Non-Settling Electrolytic Defendants, and/or other applicable measure of proportionate liability of the Non-Settling Electrolytic Defendants.
 - (c) any claims in warranty or any other claim or joinder of parties to obtain any contribution or indemnity from the Settling Defendants and other Releasees relating to the Released Claims shall be inadmissible and void in the context of the Québec Action; and
 - (d) the ability of Non-Settling Electrolytic 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 the Code of Civil Procedure.

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 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 and expressly is not an admission of any violation of any statute or law, or of any wrongdoing or liability by any of the Settling Defendants or other 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 claims precluded by the bar orders referenced in Section 8.1 or the Quebec waiver or renunciation of solidarity order referenced in Section 8.2, or as otherwise required by law or as provided in this Settlement Agreement.

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

10.1 Effect of Certification or Authorization for Settlement Purposes

- (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 Settling Defendants for any other purpose or in any other proceeding.
- (2) 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.

10.2 Common Issues

- (1) 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 Electrolytic Issue and the Common Film Issue, and the only classes that they will assert are the Ontario Electrolytic Settlement Class, the Ontario Film Settlement Class, the Québec Settlement Class and the BC Electrolytic Settlement Class.

**SECTION 11
NOTICE TO SETTLEMENT CLASSES**

11.1 Notices Required

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

or the Film Class Period, as applicable, 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 Section 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 Section 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 Section 2.2.
- (3) Class Counsel shall send a copy of the notices by direct mail or email to any Persons who have commenced any Other Action and/or their counsel of record.

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 Section 2.3.

SECTION 13 CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES

13.1 No Liability of Settling Defendants

- (1) The Settling Defendants and other 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.

13.2 Payments from Trust Account

- (1) Class Counsel shall pay the costs of the notices required by Section 11.1 and any costs of translation required by Section 15.13 from the Trust Account, as they become due.

- (2) Class Counsel may seek the Courts' approval to pay Class Counsel Fees and Class Counsel Disbursements contemporaneously with seeking approval of this Settlement Agreement. Class Counsel's court-approved fees shall be paid after the Effective Date.
- (3) Except as provided herein, Administration Expenses may only be paid out of the Trust Account after the Effective Date.

SECTION 14
NON-APPROVAL OR TERMINATION OF SETTLEMENT AGREEMENT

14.1 Right of Termination

- (1) In the event that:
 - (a) any Court declines to certify or authorize the Settlement Class, for settlement purposes only, as contemplated by this Settlement Agreement;
 - (b) the Ontario Court or the BC Court declines to dismiss the Proceedings against the Settling Defendants or the Québec Action is not fully settled out of court as against the Settling Defendants;
 - (c) any Court declines to approve this Settlement Agreement or any material term thereof (and for greater certainty, 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 Schedules "D" and "E"; or
 - (f) any order approving this Settlement Agreement made by a Court does not become a Final Order;

the Settling Defendants and the Plaintiffs shall have the right to terminate this Settlement Agreement by delivering a written notice pursuant to Section 15.19, within thirty (30) days following the event described above.

- (2) Except as provided for in Section 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.

- (3) In addition, if the Settlement Amount is not paid in accordance with Section 3.1(2), the Plaintiffs shall have the right to terminate this Settlement Agreement by delivering a written notice pursuant to Section 15.19 or move before the Courts to enforce the terms of this Settlement Agreement
- (4) Any order, ruling or determination made by any Court with respect to Class Counsel Fees, Class Counsel Disbursement 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 by a Court, 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 destroy or return 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. 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, Class Counsel shall recover and destroy or return such Documents or material. Class Counsel shall provide Counsel for the Settling Defendants with a written certification by Class Counsel of such destruction or return within ten (10) days of termination.

14.3 Allocation of Settlement Amount Following Termination

- (1) If the Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, 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 Section 11.1, and any costs of translation required by Section 15.13.

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 Sections 3.2(3), 4.1(1)(e), 9.1, 9.2, 14.1, 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 Sections 3.2(3), 4.1(1)(e), 9.1, 9.2, 14.1, 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 or the Québec Action shall be determined by the Ontario Court.
- (2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

15.2 Releasees Have No Liability for Administration

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

15.3 Headings, etc.

- (1) In this Settlement Agreement:
 - (a) the division of the Settlement Agreement into Sections 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 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.

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 Sections 15.5(1) and 15.5(2) the Ontario Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement and the Parties attorn to the jurisdiction of the Ontario Court for such purposes. Issues related to the administration of this Settlement Agreement, the Trust Account, and other matters not specifically related to the claim of a Québec Settlement Class member or a BC Electrolytic Settlement Class member shall be determined by the Ontario Court.

15.6 Governing Law

- (1) 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 or the Québec Action, the BC Court or the Québec Court, as applicable, shall apply the law of its own jurisdiction and the laws of Canada applicable therein.

15.7 Entire Agreement

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

15.8 Amendments

- (1) This Settlement Agreement may not be modified or amended except in writing and on written consent executed by 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 No Waiver

- (1) Any failure by either Party to demand adherence to, or seek enforcement of, a deadline applicable to any obligation herein shall in no way constitute a waiver of said obligation or deadline.

15.10 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.

15.11 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.

15.12 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.

15.13 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.
- (2) 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.

15.14 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.

15.15 Recitals

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

15.16 Schedules

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

15.17 Acknowledgements

- (1) Each of the undersigned 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.

15.18 Authorized Signatures

- (1) Each of the undersigned Parties 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.

15.19 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
c/o Jonathan Foreman
4 Covent Market Place
London, Ontario 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
4th Floor, Randall Bldg
555 West Georgia St.
Vancouver, BC V6B 1Z6

Tel.: (604) 331-9530
Fax: (604) 689-7554

E-mail: djones@cfmlawyers.ca

Belleau Lapointe s.e.n.c.r.l.
c/o Maxime Nasr
300 Place d'Youville, Office B-10
Montreal, Québec H2Y 2B6

Tel: (514) 987-6700
Fax: (514) 987-6886

E-mail: mnasr@belleaulapointe.com

FOR THE SETTLING DEFENDANTS:

McMillan ^{LLP}
c/o Dr. A. Neil Campbell and William Wu
Suite 4400, Brookfield Place
181 Bay Street
Toronto, ON M5J 2T3

Tel: (416) 865-7000
Fax: (416) 865-7048

E-mail: neil.campbell@mcmillan.ca and
william.wu@mcmillan.ca

15.20 Date of Execution

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

Cygnus Electronics and Sean Allott, by their counsel

Name of Authorized Signatory: Jonathan Foreman




Signature of Authorized Signatory: _____

Foreman & Company
Ontario Counsel

Sara Ramsay, by her counsel

Name of Authorized Signatory: Jonathan Foreman, per CFM



Signature of Authorized Signatory: _____

Camp Fiorante Matthews Mogerma^{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

Nichicon Corporation and Nichicon (America) Corporation

Name of Authorized Signatory: _____

Signature of Authorized Signatory: _____

(I have authority to bind Nichicon Corporation & Nichicon (America) Corporation)

McMillan^{LLP}
Counsel for the Settling Defendants

15.20 Date of Execution

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

Cygnus Electronics and Sean Allott, by their counsel

Name of Authorized Signatory: _____


Signature of Authorized Signatory: _____
Foreman & Company
Ontario Counsel

Sara Ramsay, by her counsel

Name of Authorized Signatory: _____

Signature of Authorized Signatory: _____
Camp Fiorante Matthews Mogerma^{LLP}
BC Counsel

Option consommateurs, by its counsel

Name of Authorized Signatory: _____


Signature of Authorized Signatory: _____
Maxime Nasr
Belleau Lapointe s.e.n.c.r.l
Québec Counsel

Nichicon Corporation and Nichicon (America) Corporation

Name of Authorized Signatory: _____

Signature of Authorized Signatory: _____
(I have authority to bind Nichicon Corporation & Nichicon (America) Corporation)
McMillan^{LLP}
Counsel for the Settling Defendants

15.20 Date of Execution

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

Cygnus Electronics and Sean Allott, by their counsel

Name of Authorized Signatory: _____

Signature of Authorized Signatory: _____
Foreman & Company
Ontario Counsel

Sara Ramsay, by her counsel

Name of Authorized Signatory: _____

Signature of Authorized Signatory: _____
Camp Fiorante Matthews Mogerman ^{LLP}
BC Counsel

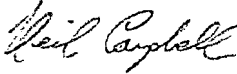
Option consommateurs, by its counsel

Name of Authorized Signatory: _____

Signature of Authorized Signatory: _____
Belleau Lapointe s.e.n.c.r.l
Québec Counsel

Nichicon Corporation and Nichicon (America) Corporation

Name of Authorized Signatory: Neil Campbell

Signature of Authorized Signatory: 
(I have authority to bind Nichicon Corporation & Nichicon (America) Corporation) **McMillan ^{LLP}**
Counsel for the Settling Defendants

SCHEDULE "A"
PROCEEDINGS

Proceeding	Plaintiff(s)	Defendants	Settlement Class
Ontario Superior Court of Justice Court File No. 3795/14 CP (the "Ontario Electrolytic Action")	Cygnus Electronics Corporation and Sean Allott	Panasonic Corporation; Panasonic Corporation of North America; Panasonic Canada Inc.; Sanyo Electric Co., Ltd.; NEC Tokin Corporation; NEC Tokin American Inc.; KEMET Corporation; KEMET Electronics Corporation; Nippon Chem-Con Corporation; United Chemi-Con Corporation; Hitachi Chemical Co., Ltd.; Hitachi Chemical Company America, Ltd.; Hitachi Chemical Co., 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; Holy Stone Holdings Co., Ltd.	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.
Québec Superior Court (District of Montreal), File No. 500-06-000704-14 4 (the "Québec Action")	Option consommateurs	Panasonic Corporation; Sanyo Electric Group Ltd.; NEC Tokin Corporation; Nippon Chemi-Con Corporation; Hitachi Chemical Co. Ltd.; Nichicon Corporation; Hitachi AIC Inc.; Elna Co. Ltd.; Holy Stone Enterprise Co., Ltd.; Holy Stone Holdings Co., Ltd.; Matsuo Electric Co., Ltd.; Rohm Co., Ltd.; Rubycon Corporation; Toshin Kogyo Co., Ltd.	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 except Excluded Persons.

Proceeding	Plaintiff(s)	Defendants	Settlement Class
British Columbia Supreme Court (Vancouver Registry) Court File No. S-146293 (the " BC Electrolytic Action ")	Sara Ramsay	Panasonic Corporation f/k/a/ Matsushita Electric Industrial Co., Ltd.; Panasonic Corporation of North America; Panasonic Canada Inc.; Sanyo Electric Co., Ltd.; Sanyo Electronic Device (U.S.A.) Corp.; Sanyo North America Corporation; Taiyo Yuden Co., Ltd.; Taiyo Yuden (USA) Inc.; NEC Tokin Corporation; NEC Tokin America, Inc.; KEMET Electronics Corporation; Nippon Chemi-Con Corporation; United Chemi-Con, Inc.; Hitachi Chemical Co., Ltd.; Hitachi AIC Inc.; Hitachi Chemical Co. America, Ltd.; Hitachi Canada; Fujitsu Ltd.; Fujitsu Canada, Inc.; Nichicon Corporation; FPCAP Electronics (Suzhou) Co., Ltd.; Nichicon (America) Corporation; AVX Corporation; Rubycon Corporation; Rubycon America Inc.; Elna Co., Ltd.; Elna America Inc.; Matsuo Electric Co., Ltd.; Toshin Kogyo Co., Ltd.; Holy Stone Enterprise Co., Ltd.; Milestone Global Technology, Inc. d.b.a Holystone International; Vishay Intertechnology, Inc.; Vishay Polytech Co., Ltd. f/k/a/ Holy Stone Polytech Co., Ltd.; Samsung Electro-Mechanics; Samsung Electra-Mechanics America Inc.; Samsung Electronics Canada Inc.; ROHM Co., Ltd. and ROHM Semiconductor U.S.A., LLC	All Persons in British Columbia who purchased Electrolytic Capacitors or a product containing an Electrolytic Capacitor during the Electrolytic Class Period except Excluded Persons.
Ontario Superior Court of Justice Court File No. 1272/16 CP (the " Ontario Film Action ")	Sean Allott	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 Enterprise Co., Ltd.; Milestone Global Technology, Inc. D/B/A Holystone International; and Vishay Polytech Co., Ltd. F/K/A Holystone Polytech Co., Ltd.	All Persons in Canada who purchased Film Capacitors or a product containing a Film Capacitor during the Film Class Period except Excluded Persons.

SCHEDULE "B"

Court File No. 3795/14 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
MR. JUSTICE R. RAIKES) OF , THE DAY
 , 2023

BETWEEN:

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

**(Electrolytic Capacitors - Certification and Notice Approval for Settlement Purposes -
Nichicon Settlement)**

THIS MOTION made by the Plaintiffs for an Order certifying this proceeding as a class proceeding for settlement purposes as against Nichicon Corporation and Nichicon (America) Corporation, respectively (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 ●, 2023 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 Electrolytic Defendants in the Ontario Electrolytic Action;

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

AND ON BEING ADVISED that the Plaintiffs and the Settling Defendants consent to this Order and that the Non-Settling Electrolytic 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 Electrolytic Settlement Class Members (2) all Québec Settlement Class Members and (3) Excluded Persons.

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

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

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, and that the opt-out period expired on October 24, 2018.
8. **THIS COURT ORDERS** that the notices of certification and settlement approval hearing (the “Notices”) are hereby approved substantially in the form attached hereto as **Schedules “B” – “E”**.
9. **THIS COURT ORDERS** that the plan of dissemination of the Notices (the “Plan of Dissemination”) is hereby approved in the form attached hereto as **Schedule “F”** and that the Notices shall be disseminated in accordance with the Plan of Dissemination.
10. **THIS COURT ORDERS** that a copy of the notices shall be sent by direct mail or email to any Persons who have commenced any Other Action and/or their counsel of record.
11. **THIS COURT ORDERS** that • is appointed to disseminate the Notices in accordance with the terms of this Order.
12. **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.
13. **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, including certification for settlement purposes, shall be deemed to have been set aside and declared null and void and of no force or effect, without the need for any further Order of this Court. In those circumstances, a case

management conference shall be convened to seek directions, including in respect of the need for and form and content of additional notice to Ontario Electrolytic Settlement Class Members.

Date: _____

The Honourable Mr. Justice R. Raikes

Plaintiffs

Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**
PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the *Class Proceedings Act*, 1992

ORDER
(Certification and Notice Approval - Nichicon)

**FOREMAN & COMPANY
PROFESSIONAL CORPORATION**
4 Covent Market Place
London, ON N6A 1E2

Jonathan J. Foreman (LSO# 45087H)
Sarah Bowden (LSO# 56385D)
Tel: (519) 914-1175
Fax: (226) 884-5340
E-mail: foreman@foremancompany.com
sbowden@foremancompany.com

Lawyers for the Plaintiffs

SCHEDULE "C"

Court File No. 3795/14 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
MR. JUSTICE R. RAIKES) OF , THE DAY
 , 2023

BETWEEN:

SEAN ALLOTT

Plaintiff

- and -

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.; SANYO ELECTRIC CO., LTD.; SANYO ELECTRONIC DEVICE (U.S.A.) CORP.; SANYO NORTH AMERICA CORPORATION; 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.; TAITSU CORPORATION; TAITSU AMERICA, INC.; TOSHIN KOGYO CO., LTD.; HOLY STONE ENTERPRISE CO., LTD.; MILESTONE GLOBAL TECHNOLOGY, INC. d/b/a HOLYSTONE INTERNATIONAL; ~~VISHAY INTERTECHNOLOGY, INC.~~; and VISHAY POLYTECH CO., LTD. f/k/a HOLYSTONE POLYTECH CO., LTD.

Defendants

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

ORDER

**(Film Capacitors - Certification and Notice Approval for Settlement Purposes -
Nichicon Settlement)**

THIS MOTION made by the Plaintiff for an Order certifying this proceeding as a class proceeding for settlement purposes as against Nichicon Corporation and Nichicon (America) Corporation, respectively (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 ●, 2023 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 Film Defendants in the Ontario Film 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 Ontario Film Action comprises a national class, and that the Settling Defendants have settled the Released Film Claims on a national basis in the Ontario Film Action;

AND ON BEING ADVISED that the Plaintiffs and the Settling Defendants consent to this Order and that the Non-Settling Film 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 Film Action is certified as a class proceeding as against the Settling Defendants for settlement purposes only.
3. **THIS COURT ORDERS** that the "Ontario Film Settlement Class" is certified as follows:

All Persons in Canada who purchased Film Capacitors or a product containing a Film Capacitor during the Film Class Period, other than Excluded Persons;

Film Capacitor means: capacitors which use insulating plastic film, including polyester film, metallized film, polypropylene film, polytetrafluoroethylene film, and/or polystyrene film. 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).

Film Class Period means: January 1, 2002 to December 31, 2014.

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

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 the Ontario Film Settlement Class Members suffer?

5. **THIS COURT ORDERS** that the plaintiff, Sean Allott, is appointed as the representative plaintiff for the Ontario Film 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 Film Settlement Class, Film Class Period and Common Film 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 Film Defendants in connection with the Film Proceedings or Québec 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 Film Proceedings or Québec Action, as against the Non-Settling Film Defendants.
7. **THIS COURT ORDERS** that the national opt-out period provided in the Film Proceedings and Québec Action pursuant to the orders of this Court, the BC Court and the Québec Court, made on June 28, 2018, July 12, 2018 and July 25, 2018, respectively, satisfy the requirement of section 9 of the *Class Proceedings Act*, 1992, S.O. 1992, c. 6 for the purposes of this action, that no further opt-out period is necessary, and that the opt-out period expired on October 24, 2018.
8. **THIS COURT ORDERS** that the notices of certification and settlement approval hearing (the “Notices”) are hereby approved substantially in the form attached hereto as **Schedules “B”-“E”**.
9. **THIS COURT ORDERS** that the plan of dissemination of the Notices (the “Plan of Dissemination”) is hereby approved in the form attached hereto as **Schedule “F”** and that the Notices shall be disseminated in accordance with the Plan of Dissemination.
10. **THIS COURT ORDERS** that a copy of the notices shall be sent by direct mail or email to any Persons who have commenced any Other Action and/or their counsel of record.
11. **THIS COURT ORDERS** that ● is appointed to disseminate the Notices in accordance with the terms of this Order.
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, including certification for settlement purposes, shall be deemed to have been set aside and declared null and void and of no force or effect, without the need for any further Order of this Court. In those circumstances, a case

management conference shall be convened to seek directions, including in respect of the need for and form and content of additional notice to Ontario Film Settlement Class Members.

13. **THIS COURT ORDERS** that this order is contingent upon parallel notice approval and certification/authorization orders being made by this Court in the Ontario Electrolytic Action, the BC Court in the BC Electrolytic Action, and the Québec Court in the Québec Action, and the terms of this Order shall not be effective unless and until such orders are made in the Ontario Electrolytic Action, the BC Electrolytic Action and the Québec Action.

Date: _____

The Honourable Mr. Justice R. Raikes

SEAN ALLOTT
Plaintiff

v. AVX CORPORATION, et al.
Defendants

Court File No. 1272/16 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON
Proceeding Under the *Class Proceedings Act, 1992*

**ORDER
(Certification and Notice Approval - Nichicon)**

**FOREMAN & COMPANY
PROFESSIONAL CORPORATION**
4 Covent Market Place
London, ON N6A 1E2

**Jonathan J. Foreman (LSO# 45087H)
Sarah Bowden (LSO# 56385D)**
Tel: 519.914.1175
Fax: 226.884.5340
E-mail: jforeman@foremancompany.com
sbowden@foremancompany.com

Lawyers for the Plaintiff

SCHEDULE "D"

Court File No. 3795/14 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
MR. JUSTICE R. RAIKES

)
)

, THE DAY

OF , 2023

B E T W E E N :

CYGNUS ELECTRONICS CORPORATION and SEAN ALLOTT

Plaintiffs

- and -

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

Defendants

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

ORDER

(Electrolytic Capacitors - Settlement Approval – Nichicon Settlement)

THIS MOTION made by the Plaintiffs for an Order approving the settlement agreement entered into with Nichicon Corporation and Nichicon (America) Corporation (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 ●, 2023 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 Electrolytic 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 Electrolytic 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 upon the Effective Date, each Ontario Electrolytic Settlement Class Member who has not validly opted-out of this action shall be deemed to have irrevocably consented to the dismissal of any Other Actions as against the Settling Defendants and the Releasees, without costs, with prejudice and without reservation.
7. **THIS COURT ORDERS** that upon the Effective Date, each Other 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, with prejudice and without reservation.
8. **THIS COURT ORDERS** that, upon the Effective Date, subject to paragraphs 10 and 11, each Electrolytic Releasor who has not validly opted-out of this action 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, intervene in, provide assistance for, 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 proceeding, 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 Electrolytic Defendants or unnamed co-conspirators that are not Releasees or, if the Proceedings are not certified, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Electrolytic Defendants or unnamed co-conspirators that are not Releasees. For the purposes of this paragraph 9, Class Counsel includes anyone on the Execution Date or thereafter employed by or a partner with Class Counsel.
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 Electrolytic Proceedings or any Other Actions, or otherwise, or could in the future be brought on the basis of the same events, actions and omissions underlying the Electrolytic Proceedings or any Other Actions, by any Non-Settling Electrolytic Defendant, 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 Defendant, 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 (unless such claim is made in respect of a claim by a Person who has validly opted-out of the Proceedings);

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

- a. the Ontario Electrolytic Plaintiffs and Ontario 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 Electrolytic 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 Electrolytic 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 Electrolytic 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, subject always to the direction of the trial judge, a Non-Settling Electrolytic Defendant may, on motion to this Court determined as if the Settling Defendants remained parties to this action, brought on at least twenty (20) 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 retain 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 Releasor 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. 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 without need for further notice of this Court but with notice to the Ontario Electrolytic Settlement Class.
25. **THIS COURT ORDERS** that this Order, including but not limited to the approval of the Settlement Agreement and any reasons given by the Court in relation thereto, except as to paragraphs 12 to 17 of the Order, is without prejudice to the rights and defences of the Non-Settling 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.

Date:

The Honourable Mr. Justice R. Raikes

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

Court File No. 3795/14 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the *Class Proceedings Act, 1992*

**ORDER
(Settlement Approval – Nichicon)**

**FOREMAN & COMPANY
PROFESSIONAL CORPORATION**
4 Covent Market Place
London, ON N6A 1E2

**Jonathan J. Foreman (LSO# 45087H)
Sarah Bowden (LSO# 56385D)**
Tel: (519) 914-1175
Fax: (226) 884-5340
E-mail: jforeman@foremancompany.com
sbowden@foremancompany.com

Lawyers for the Plaintiffs

SCHEDULE "E"

Court File No. 1272/16 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
MR. JUSTICE R. RAIKES

)
)

, THE DAY
OF , 2023

BETWEEN:

SEAN ALLOTT

Plaintiff

- and -

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.; SANYO ELECTRIC CO., LTD.; SANYO ELECTRONIC DEVICE (U.S.A.) CORP.; SANYO NORTH AMERICA CORPORATION; 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.; TAITSU CORPORATION; TAITSU AMERICA, INC.; TOSHIN KOGYO CO., LTD.; HOLY STONE ENTERPRISE CO., LTD.; MILESTONE GLOBAL TECHNOLOGY, INC. d/b/a HOLYSTONE INTERNATIONAL; VISHAY INTERTECHNOLOGY, INC.; and VISHAY POLYTECH CO., LTD. f/k/a HOLYSTONE POLYTECH CO., LTD.

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

ORDER

(Film Capacitors - Settlement Approval – Nichicon Settlement)

THIS MOTION made by the Plaintiff for an Order approving the settlement agreement entered into with Nichicon Corporation and Nichicon (America) Corporation (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 ●, 2023 attached to this Order as **Schedule "A"** (the "**Settlement Agreement**"), and on hearing the

submissions of counsel for the Plaintiff, Counsel for the Settling Defendants and counsel for the Non-Settling Film Defendants;

AND ON BEING ADVISED that the Settling Defendants were named in the Ontario Film Action, but are not named in the BC Film Action or in respect of Film Capacitors in the Québec 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 Plaintiff and the Settling Defendants consent to this Order and that the Non-Settling Film 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 Film 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 Film 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 Film Action.
6. **THIS COURT ORDERS** that upon the Effective Date, each Ontario Film Settlement Class Member who has not validly opted-out shall be deemed to have irrevocably consented to the dismissal of any Other Actions as against the Settling Defendants and the Releasees, without costs, with prejudice and without reservation.
7. **THIS COURT ORDERS** that upon the Effective Date, each Other Action commenced by any Ontario Film Settlement Class Member who has not validly opted-out shall be and is hereby dismissed in respect of Released Film Claims against the Settling Defendants and the Releasees, without costs, with prejudice and without reservation.

8. **THIS COURT ORDERS** that, upon the Effective Date, subject to paragraphs 10 and 11, each Film Releasor who has not validly opted-out has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Film Claims.
9. **THIS COURT ORDERS** that, upon the Effective Date, each Film Releasor who has not validly opted-out as well as Class Counsel, shall not now or hereafter institute, continue, intervene in, provide assistance for, 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 proceeding, 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 Film Claims, except for the continuation of the Proceedings against the Non-Settling Film Defendants or unnamed co-conspirators that are not Releasees or, if the Proceedings are not certified, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Film Defendants or unnamed co-conspirators that are not Releasees. For the purposes of this paragraph 9, Class Counsel includes anyone on the Execution Date or thereafter employed by or a partner with Class Counsel.
10. **THIS COURT ORDERS** that the use of the terms "Film Releasors" and "Released Film Claims" in this Order does not constitute a release of claims by those members of the Ontario Film 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 Film 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 Film 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 Film Claims, which were or could have been brought in the Film Proceedings, Québec Action or any Other Actions, or otherwise, or could in the future be brought on the basis of the same events, actions and omissions underlying the Film Proceedings, Québec Action or any Other Actions, by any Non-Settling Film Defendant, any named or unnamed alleged co-conspirator that is not a Releasee,

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

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 Film Plaintiff and Ontario Film Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Film 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 Film Plaintiff and Ontario Film Settlement Class Members shall limit their claims against the Non-Settling Film 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 Film 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 Film Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee; to the Ontario Film Plaintiff and Ontario Film Settlement Class Members, if any, and, for greater certainty, the Ontario Film 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 Film

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 Film Action, whether or not the Settling Defendants remain in the Ontario Film 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 Film Action and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in the Ontario Film 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 Film 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 Film Settlement Class in the Ontario Film Action or the rights of the Ontario Film Plaintiff and Ontario Film 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 Film Defendant may, subject always to the direction of the trial judge, on motion to this Court determined as if the Settling Defendants remained parties to the Ontario Film Action, brought on at least twenty (20) days' notice to Counsel for the Settling Defendants and not to be brought until the Ontario Film Action against the Non-Settling Film Defendants has been certified as a class proceeding (but not including any certification for settlement purposes), seek orders for the following:

- a. documentary discovery and an affidavit of documents from the Settling Defendants in accordance with the *Rules of Civil Procedure*;
- b. oral discovery of a representative of the Settling Defendants, the transcript of which may be read in at trial;
- c. leave to serve a request to admit on the Settling Defendants in respect of factual matters; and/or

- d. the production of a representative of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Film Defendants.
16. **THIS COURT ORDERS** that the Settling Defendants retain 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 Film 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 Film 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 Releasor has or may have against the Non-Settling Film 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 Film Settlement Amount shall be held in the Trust Account by Ontario Counsel or its duly appointed agent for the benefit of Ontario Film Settlement Class Members, pending further order of this Court on notice to the Defendants. This paragraph shall not be interpreted as affecting the rights of the Film Plaintiff or the Ontario Film 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 Film Action is hereby dismissed as against the Settling Defendants, without costs and with prejudice.
23. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms, this Order shall be declared null and void without need for further notice of this Court but with notice to the Ontario Film Settlement Class.
24. **THIS COURT ORDERS** that this Order, including but not limited to the approval of the Settlement Agreement and any reasons given by the Court in relation thereto, except as to paragraphs 12 to 17 of the Order, is without prejudice to the rights and defences of the Non-Settling Film Defendants in connection with the Ontario Film 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 by the Ontario Film Settlement Class as against the Non-Settling Film Defendants.

Date: _____

The Honourable Mr. Justice R. Raikes

SEAN ALLOTT
Plaintiff

v. AVX CORPORATION, et al.
Defendants

Court File No. 1272/16 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the *Class Proceedings Act, 1992*

**ORDER
(Settlement Approval - Nichicon)**

**FOREMAN & COMPANY
PROFESSIONAL CORPORATION**
4 Covent Market Place
London, ON N6A 1E2

**Jonathan J. Foreman (LSO# 45087H)
Sarah Bowden (LSO# 56385D)**
Tel: 519.914.1175
Fax: 226.884.5340
E-mail: foreman@foremancompany.com
sbowden@foremancompany.com

Lawyers for the Plaintiff