

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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

MOTION RECORD OF THE PLAINTIFFS

(Motion for Discontinuances)

September 1, 2022

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Tab 1

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

CYGNUS ELECTRONICS CORPORATION and SEAN ALLOTT

Plaintiffs

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HOLYSTONE INTERNATIONAL; and HOLY STONE HOLDINGS CO., LTD.**

Defendants

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

**NOTICE OF MOTION
(Motion for Discontinuances)**

THE PLAINTIFF will make a motion to The Honourable Justice Raikes on September 7th, 2022 at 10:30am, at the Courthouse, 80 Dundas St., London, Ontario.

PROPOSED METHOD OF HEARING:

1. The Motion is to be heard orally, by videoconference via Zoom.

THE MOTION IS FOR:

1. An Order approving the discontinuance of the within proceeding, without prejudice and without costs, as against the defendants Samsung Electro-Mechanics and Samsung Electro-Mechanics America Inc. (collectively, “SEMCO”) and Samsung Electronics Canada, Inc. (“Samsung Canada”, and together with SEMCO, the “Standstill Defendants”), in accordance with the tolling and standstill agreements reached between the plaintiffs and the Standstill Defendants and pursuant to section 29 of the *Class Proceedings Act*, 1992, S.O. 1992, c.6 (“CPA”);
2. An Order that notice be posted to Class Counsel’s website and that no other notice under section 19 and/or 29 of the CPA is required;
3. An Order abridging the time period for delivery of motion materials, if necessary; and,
4. Such further and other relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. Plaintiffs’ counsel has conducted investigations and engaged in adversarial arm’s length dialogue and negotiations with counsel for the Standstill Defendants regarding the allegations in the Statement of Claim;
2. Through their counsel, the Standstill Defendants made certain assertions. For its part, SEMCO has asserted that:
 - a. They received a limited regulatory document request in Europe related to electrolytic capacitors (yielding no further regulatory investigation or action), and otherwise were subject to no other regulatory investigations;

- b. they did not participate in the alleged conspiracy;
 - c. they are not named in related American class action litigation; and,
 - d. they did not manufacture, sell, or distribute aluminum electrolytic capacitors during the class period, and did not manufacture, sell, or distribute a material amount of tantalum electrolytic capacitors during the class period.
3. Samsung Canada has asserted that:
- a. They have not been advised of being the target of any regulatory investigation relating to electrolytic capacitors, nor have they been contacted by any regulatory authority regarding the pricing of electrolytic capacitors;
 - b. they did not participate in the alleged conspiracy;
 - c. they are not named in related American class action litigation; and,
 - d. they did not manufacture, sell, or distribute aluminum or tantalum electrolytic capacitors during the class period.
4. The related British Columbia class action has been discontinued as against the Standstill Defendants, and the Standstill Defendants were never named in the related Quebec class action.
5. Through their own research, plaintiffs' counsel independently investigated the assertions of the Standstill Defendants, including, without prejudice, confidential evidentiary proffers from four settled defendants (the NEC Tokin, Panasonic, Elna and Holy Stone defendants) with direct knowledge of the alleged anti-competitive conduct in this matter;

6. The information received from the Standstill Defendants and other sources indicate to the plaintiffs that the Standstill Defendants were not implicated in the alleged electrolytic capacitors price fixing conspiracy, and as a result, the plaintiffs and the Standstill Defendants have reached tolling and standstill agreements (the "Agreements");
7. Among other things, the Agreements provide for the following:
 - a. the discontinuance of this action against the Standstill Defendants;
 - b. terms of limited cooperation from the Standstill Defendants;
 - c. the tolling of any and all limitation periods applicable to this action as of the date the action was filed naming the Standstill Defendants, but not a waiver, dismissal or release of any claim or defence as between the plaintiffs or the Standstill Defendants; and
 - d. the automatic termination provision of the Agreements six (6) months from the date the discontinuances are granted, which recognizes that the plaintiff is well informed through evidentiary proffers from four sets of settled defendants and does not require the end of the tolling period be contingent on further cooperation. The provision also ensures fairness to putative class members by providing sufficient time to take notice and act to preserve any claim they may have before the limitations clock starts to run again against the Standstill Defendants.
8. The discontinuance of this action against the Standstill Defendants will simplify the progress of this action by focusing the claim to the named parties;

9. The Agreements to discontinue against the Standstill Defendants are not and shall not be construed as a release of any causes of action that are or may be asserted in the Ontario Action;
10. The *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;
11. The *Class Proceedings Act*, 1992, S.O. 1992, c. 6 including but not limited to ss. 12, 19 and 29; and
12. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

1. The Affidavit of Anne Legate-Wolfe, sworn September 1st, 2022;
2. The Affidavit of Sam Wehbe, sworn August 31st, 2022;
3. The Affidavit of Sean Allott, sworn September 1st, 2022; and,
4. Such further and other evidence as counsel may advise and this Honourable Court may permit.

September 1, 2022

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Defendant

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

Court File No. 3795/14 CP

10

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the *Class Proceedings Act, 1992*

**NOTICE OF MOTION
(Motion for Discontinuances)**

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Tab 2

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

CYGNUS ELECTRONICS CORPORATION and SEAN ALLOTT

Plaintiffs

- and -

**PANASONIC CORPORATION; PANASONIC CORPORATION OF NORTH AMERICA;
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Defendants

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

**AFFIDAVIT OF SAM WEHBE
(Motion for Discontinuances)**

I, SAM WEHBE, of the City of London, in the County of Middlesex, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am the president of Cygnus Electronics Corporation ("Cygnus"), which is as one of the proposed representative plaintiffs in this action. As such, I have personal knowledge of the matters to which I depose, except for the statements I have indicated are based on

information and belief. To the extent that my knowledge is based on information and belief, I identify the source of such information and believe the information to be true.

THE TOLLING AND STANDSTILL AGREEMENTS

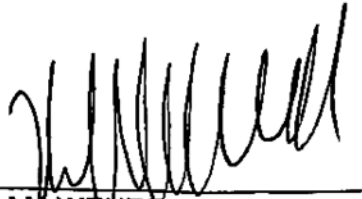
2. As the proposed representative plaintiff, I have entered into tolling and standstill agreements (the “Tolling and Standstill Agreements”) with the following defendants:
 - a. Samsung Electro-Mechanics and Samsung Electro-Mechanics America Inc. (collectively, “SEMCO”); and,
 - b. Samsung Electronics Canada, Inc. (“Samsung Canada”, and together with SEMCO, the “Standstill Defendants”).
3. The terms of the Tolling and Standstill Agreements have been explained to me by counsel, Mr. Jonathan Foreman of Foreman & Company. I have also been advised of the assertions made by the Standstill Defendants regarding the substantial allegations in the action, and of my counsel’s investigations relating thereto. I have instructed counsel to execute the Tolling and Standstill Agreements on my behalf.
4. I understand that this motion seeks to discontinue of the action as against the Standstill Defendants, on the basis of the Tolling and Standstill Agreements. I understand that the causes of action against the Standstill Defendants are not released and the proposed discontinuance is without prejudice to any claim I, or a proposed class member, may have as against the Standstill Defendant.
5. I am advised by Mr. Foreman and believe that collectively, the discontinuances sought will streamline the litigation as against the remaining defendants for the benefit of the putative class I seek to represent.

6. I make this affidavit in support of the plaintiff's motion for discontinuances and for no other or improper purpose.

SWORN BEFORE ME by video conference)
in the City of London, in the County of)
Middlesex, in the Province of Ontario, this)
31st day of August, 2022.)



Commissioner for Taking Affidavits



SAM WEHBE

CYGNUS ELECTRONICS
CORPORATION, et al.

Plaintiffs

v.

PANASONIC CORPORATION, et al.

Defendants

Court File No. 3795/14 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the *Class Proceedings Act, 1992*

**AFFIDAVIT OF SAM WEHBE
(Motion for Discontinuances)**

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Tab 3

**ONTARIO
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Plaintiffs

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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

**AFFIDAVIT OF SEAN ALLOTT
(Motion for Discontinuances)**

I, SEAN ALLOTT, of the City of London, in the County of Middlesex, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I one of the proposed representative plaintiffs in this action. As such, I have personal knowledge of the matters to which I depose, except for the statements I have indicated are based on information and belief. To the extent that my knowledge is based on

information and belief, I identify the source of such information and believe the information to be true.

THE TOLLING AND STANDSTILL AGREEMENTS

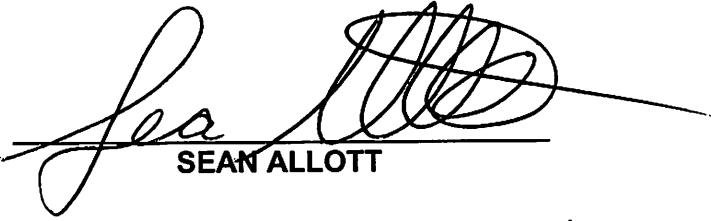
2. As one of the proposed representative plaintiffs, I have entered into tolling and standstill agreements (the “Tolling and Standstill Agreements”) with the following defendants:
 - a. Samsung Electro-Mechanics and Samsung Electro-Mechanics America Inc. (collectively, “SEMCO”); and,
 - b. Samsung Electronics Canada, Inc. (“Samsung Canada”, and together with SEMCO, the “Standstill Defendants”).
3. The terms of the Tolling and Standstill Agreements have been explained to me by counsel, Mr. Jonathan Foreman of Foreman & Company. I have also been advised of the assertions made by the Standstill Defendants regarding the substantial allegations in the action, and of my counsel’s investigations relating thereto. I have instructed counsel to execute the Tolling and Standstill Agreements on my behalf.
4. I understand that this motion seeks to discontinue of the action as against the Standstill Defendants, on the basis of the Tolling and Standstill Agreements. I understand that the causes of action against the Standstill Defendants are not released and the proposed discontinuance is without prejudice to any claim I, or a proposed class member, may have as against the Standstill Defendant.
5. I am advised by Mr. Foreman and believe that collectively, the discontinuances sought will streamline the litigation as against the remaining defendants for the benefit of the putative class I seek to represent.

6. I make this affidavit in support of the plaintiff's motion for discontinuances and for no other or improper purpose.

SWORN BEFORE ME by *video conference*)
in the City of London, in the County of)
Middlesex, in the Province of Ontario, this)
1st day of September, 2022.)



Commissioner for Taking Affidavits



SEAN ALLOTT

CYGNUS ELECTRONICS CORPORATION, et al.
Plaintiffs

v.

PANASONIC CORPORATION, et al.
Defendants

Court File No. 3795/14 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the *Class Proceedings Act, 1992*

**AFFIDAVIT OF SEAN ALLOTT
(Motion for Discontinuances)**

**FOREMAN & COMPANY
PROFESSIONAL CORPORATION**

4 Covent Market Place
London, ON N6A 1E2

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E-mail: foreman@foremancompany.com

imetrailler@foremancompany.com

Tab 4

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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

**AFFIDAVIT OF ANNE LEGATE-WOLFE
(Motion for Discontinuances)**

I, **ANNE LEGATE-WOLFE**, of the City of London, in the County of Middlesex, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a lawyer with Foreman & Company Professional Corporation (“Foreman & Company”). Foreman & Company are plaintiffs’ counsel in the within action (the “Ontario Electrolytic Action”). As such, I have personal knowledge to the matters to which I depose,

except for the statements I have indicated are based on information and belief. To the extent that my knowledge is based on information and belief, I identify the source of such information and believe the information to be true.

NATURE OF THE MOTION

2. I make this affidavit in support of the plaintiffs' motion for an order:
 - a. approving the discontinuance of the Ontario Electrolytic Action, without prejudice and without costs, as against Samsung Electro-Mechanics and Samsung Electro-Mechanics America Inc. (collectively, "SEMCO"), and Samsung Electronics Canada Inc. ("Samsung Canada", together with SEMCO, "Samsung" or the "Standstill Defendants"), in accordance with the tolling and standstill agreements reached on December 8, 2021 between the plaintiffs and SEMCO and Samsung Canada, respectively (the "Tolling and Standstill Agreements"), and pursuant to section 29 of the *Class Proceedings Act*, 1992, S.O. 1992, c. 6 ("CPA"); and,
 - b. directing that notice be posted to Class Counsel's website and that no other notice under sections 19 and/or 29 of the CPA is required.

BACKGROUND

3. The Standstill Defendants were first named in the Ontario Electrolytic Action in the Statement of Claim issued on August 6, 2014.
4. The plaintiffs have since participated in arm's length and adversarial negotiations with counsel for the Standstill Defendants concerning their role in the litigation. The Tolling and Standstill Agreements involved lengthy negotiations, the exchange of multiple drafts between the parties, and required bargaining of the terms of each agreement.

5. Further, plaintiffs' counsel investigated and confirmed the assertions of the Standstill Defendants in relation to the allegations contained in the Ontario Electrolytic Action, which, without making any waiver of privilege, included but was not limited to the following:
 - a. reviewing the materials filed in the corresponding United States antitrust litigation concerning the same alleged Electrolytic Capacitors price fixing conspiracy (the "US Litigation");
 - b. researching data on the sales, market position, and overall involvement of the Standstill Defendants in the Electrolytic Capacitors industry;
 - c. posing questions during confidential attorney proffers with four (4) settled defendants concerning the role of the Standstill Defendants in the alleged conspiracy; and
 - d. posing questions to counsel or representatives of the Standstill Defendants, as applicable, regarding the involvement of the Standstill Defendants in regulatory investigations and in the US Litigation, and receiving and reviewing the Standstill Defendants' answers and assertions in response to those questions.
6. The proposed representative plaintiffs instructed plaintiffs' counsel to enter into the Tolling and Standstill Agreements and to discontinue the Ontario Electrolytic Action as against the Standstill Defendants. The two Tolling Agreements with SEMCO and Samsung Canada respectively are attached hereto as **Exhibit "A"**.

OVERVIEW OF THE TOLLING AND STANDSTILL AGREEMENTS

7. The Tolling and Standstill Agreements were negotiated with Robert Kwinter, counsel for SEMCO and Samsung Canada. As related entities (Samsung Electronics Canada, Inc. and Samsung Electro-Mechanics America, Inc. both being direct subsidiaries of Samsung Electronics Co. Ltd., a public company whose shares trade on the Korea Exchange), there

were overlapping considerations which were negotiated for by both sides in the Tolling and Standstill Agreements. These considerations include the following:

- a. The tolling of any and all limitation periods applicable at the date the Statement of Claim was filed naming the Standstill Defendants, being August 6, 2014;
- b. That the discontinuances be without costs and without prejudice to any claim a proposed class member, including the plaintiffs, may have as against the Standstill Defendants;
- c. Termination provisions, including that the Tolling and Standstill Agreements can at any time be terminated at the option of either party, and on termination, the plaintiffs reserve their right to apply for leave to add the Standstill Defendants back into the Ontario Electrolytic Action;
- d. The automatic termination of the Tolling and Standstill Agreements six (6) months from the date the discontinuances are granted, which recognizes that the plaintiffs are already well-informed (through evidentiary proffers from four sets of settled defendants) and do not require the end of the tolling period be contingent on further cooperation. The provision also ensures fairness to putative class members by providing sufficient time to take notice and act to preserve any claim they may have before the limitations clock starts to run again against the Standstill Defendants;¹
- e. That the agreements to discontinue against the Standstill Defendants are not and shall not be construed as a release of any causes of action that are or may be asserted in the Ontario Electrolytic Action; and,
- f. That nothing in the Tolling and Standstill Agreements shall prevent the plaintiffs

¹ Class Counsel is aware of no parties who would seek to preserve such rights as against the Standstill Defendants, but have nonetheless accounted for the theoretical possibility.

from seeking production from the Standstill Defendants, as a non-party, in accordance with the Ontario *Rules of Civil Procedure*.

8. The discontinuances as against the Standstill Defendants will simplify the progress of this action by focusing the claim to the named parties.
9. The Tolling and Standstill Agreements were executed after bargaining on an adversarial basis. In the course of arm's length and adversarial negotiations with counsel for Samsung Canada and SEMCO, Mr. Robert Kwinter, plaintiffs' counsel was advised of the following facts:
 - a. to the best of their knowledge, Samsung Canada and SEMCO have not been the subject of any investigation relating to the prices of Electrolytic Capacitors, and they deny any involvement in any conspiracy to fix prices of Electrolytic Capacitors as alleged in the Ontario Electrolytic Action;
 - i. While SEMCO received a limited regulatory document request in Europe related to a local trade association and electrolytic capacitors, that request yielded no further regulatory investigation or action, and it constituted the totality of the Standstill Defendants' relevant contact with regulators;
 - b. SEMCO was named as a defendant in certain early class action complaints in the United States, but was not included in the US Litigation following its consolidation, which formed the basis of the US class actions related to the pricing of capacitors;
 - c. SEMCO is not in possession of any documents directly related to the alleged anti-competitive conduct in the Ontario Electrolytic Action;
 - d. Samsung Canada is not in possession of any documents relating to sales of Electrolytic Capacitors that it would be obligated to produce if it remained a defendant in the Ontario Electrolytic Action;

- e. SEMCO did not manufacture, sell, or distribute aluminum Electrolytic Capacitors during the class period, and did not manufacture, sell, or distribute a material amount of tantalum Electrolytic Capacitors during the class period.²
 - f. Samsung Canada did not manufacture, sell, or distribute aluminum or tantalum Electrolytic Capacitors during the class period;
 - g. Both SEMCO and Samsung Canada are not aware of any facts or circumstances relating to the conduct of SEMCO or Samsung Canada or their employees, respectively, that could give rise to liability pursuant to Part VI of the *Competition Act*, R.S.C. 1985, C-34, in respect of Electrolytic Capacitors. Both SEMCO and Samsung Canada deny any involvement in the alleged conspiracy.
10. The Standstill Defendants are not named the related Electrolytic Capacitors class actions in Canada being prosecuted by the national plaintiff team. Samsung was not named in the related Québec action, and the related BC electrolytic action was discontinued as against SEMCO pursuant to a tolling agreement with the British Columbia plaintiff dated February 17, 2016, and as against Samsung Canada pursuant to a tolling agreement with the British Columbia plaintiff dated April 27, 2016 (collectively, the “BC Tolling Agreements”). I am advised by Mr. Kwinter and understand that the BC Tolling Agreements automatically terminated upon receipt of an evidentiary proffer from a settling defendant (NEC Tokin) in 2018, and that there has been no attempt to add Samsung back as defendant to the BC electrolytic action.

² In response to follow-up questions from plaintiffs’ counsel, counsel for the Standstill Defendants advised that not “material” meant that at no point did SEMCO’s tantalum capacitors make up more than 2% of global supply. Plaintiffs’ counsel verified the Standstill Defendants’ representations about capacitor sales by searching industry sources including Paumanok publications, wherein SEMCO’s market share for tantalum Electrolytic Capacitors was small enough that it was not reported, where SEMCO was described as an “other smaller supplier” of tantalum Electrolytic Capacitors, and where SEMCO was not listed as a supplier of Aluminum Electrolytic Capacitors.

11. I have reviewed court documents filed on Public Access to Court Electronic Records (“PACER”) regarding the parallel US Litigation. According to the documents I have reviewed, while SEMCO was named in certain very early US class action complaints, none of the Standstill Defendants were included in the US Litigation following its consolidation, which formed the basis of the US class actions related to the pricing of capacitors. Further, the US Litigation is now fully resolved pursuant to settlements reached by other parties in that litigation. There has been no implication that any of the Standstill Defendants were involved in the alleged conspiracy in the course of the resolution of that case.
12. Pursuant to their Tolling and Standstill Agreements, SEMCO and Samsung Canada are required to promptly inform the plaintiffs if they, or any of their affiliates, make public disclosure of being the subject of an investigation related to Electrolytic Capacitors by any government regulator including to the Canadian Competition Bureau, or the United States Department of Justice, the European Commission, Brazil’s Council for Economic Defence, the Japan Fair Trade Commission, the Taiwan Fair Trade Commission, the Competition Commission of Singapore, the Korea Fair Trade Commission, or the Chinese National Development and Reform Commission (the “International Competition Commissions”).
13. The Standstill Defendants have also agreed to provide the plaintiffs with individual cooperation, as set out below.

SEMCO

14. SEMCO has also agreed to provide the plaintiffs with cooperation in the form of any documents that Samsung has produced, or will produce in the future, to the Canadian Competition Bureau or any of the enumerated antitrust regulators relating to the prices of Electrolytic Capacitors or other conduct relating to the Electrolytic Capacitors market.
15. Further, SEMCO has agreed to provide the plaintiffs, within thirty (30) days of the

discontinuance having been granted:

- a. the names and locations for their direct purchasers of tantalum capacitors in Canada, if any; and
- b. answers to the plaintiffs' questions regarding the pricing of tantalum capacitors, provided that such information is reasonably available.

Samsung Canada

16. Samsung Canada has also agreed to provide the plaintiffs, within 120 days of their production of an affidavit of documents following contested certification of the Ontario Electrolytic Action, with data regarding Samsung Canada's sales of electronic equipment for business purposes, consumer electronics and household electronic equipment including but not limited to televisions, laptop computers, washing machines, cellphones, smartphones, MP3 players and tablets sold during the class period.
17. Samsung Canada's cooperation survives the termination of their Tolling and Standstill Agreement, provided that Samsung Canada is not at that time a party to the Ontario Electrolytic Action.

CONCLUSION ON THE STANDSTILL AND TOLLING AGREEMENT

18. The Tolling and Standstill Agreement was negotiated following lengthy without prejudice discussions with representatives of the Standstill Defendants and represent the investigations of plaintiffs' counsel concerning the allegations contained in the Ontario Electrolytic Action, which includes the receipt of evidentiary proffers from four (4) settling defendants (the NEC Tokin, Panasonic, Elna, and Holy Stone defendants). These investigations and without prejudice discussions indicate to the plaintiffs that the Standstill Defendants were not implicated in the alleged Electrolytic Capacitors price fixing conspiracy.

19. The negotiations reflect an organized and diligent bargaining process. Within that process, each side advocated for their client's interest. Issues and problems were considered and resolved through compromise. Class Counsel carefully considered alternatives to the Tolling and Standstill Agreements and the risks involved with the continued litigation against the Standstill Defendants. Further, Class Counsel bargained for and obtained terms of individualized cooperation, which is responsive to the needs of the plaintiffs and the putative class members in the context of the litigation as a whole.
20. The proposed discontinuances serve to streamline the litigation as against the remaining defendants in the Ontario Electrolytic Action. The plaintiffs have reserved their right to seek leave to add the Standstill Defendants back into the Ontario Electrolytic Action on termination of the tolling period, if necessary. And most importantly, the six (6) month tolling period following the granting of the discontinuances ensures that any affected party will have time to act to preserve any claims against the Standstill Defendants, before the limitations clock begins running against them again. There is therefore no prejudice, and the discontinuances will otherwise benefit the continued litigation of the Ontario Electrolytic Action.
21. Therefore, in the opinion of Class Counsel, the discontinuances provide no prejudice to the putative class and ought to be approved.

NOTICE

22. Given the nature of the discontinuances sought pursuant to the Tolling and Standstill Agreements, in the opinion of plaintiffs' counsel, notice pursuant to sections 19 and/or 29 of the *CPA* is not required.

23. Notwithstanding, should the relief sought in this motion be granted, plaintiffs' counsel will post a copy of the issued Order and their motion record to their dedicated capacitors webpage.
24. I make this affidavit in support of the plaintiffs' motion for discontinuances and for no other or improper purpose.

SWORN BEFORE ME *by videoconference*)
in the City of London, in the County of)
Middlesex, in the Province of Ontario, this)
1st day of September, 2022.)



Commissioner for Taking Affidavits



ANNE LEGATE-WOLFE

**This is EXHIBIT “A” referred to in the
Affidavit of ANNE LEGATE-WOLFE
sworn before me, this 1st day of September, 2022**

A handwritten signature in black ink, appearing to read "John M. Wolf", is written above a horizontal line.

A Commissioner, etc.

TOLLING AND STANDSTILL AGREEMENT

This Tolling and Standstill Agreement (the “Agreement”), dated as of December 8, 2021, is made and entered into by and among Cygnus Electronics Corporation and Sean Allott (the “Plaintiffs”) and Samsung Electro-Mechanics and Samsung Electro-Mechanics America Inc., (collectively “Samsung”);

WHEREAS, the Plaintiffs have named Samsung as a defendant in *Cygnus Electronics Corporation v. Panasonic Corporation et al.*, Court File No. 3795/14, in the Ontario Superior Court of Justice (the “Action”);

WHEREAS, Samsung is not named in any other class action cases in the United States related to the pricing of aluminum and tantalum capacitors (“Capacitors”);

WHEREAS, Samsung is not named in any other active class action cases in Canada. A related British Columbia action bearing court file no. S-246193 (the “BC Action”) was discontinued as against Samsung pursuant to a tolling agreement with the British Columbia plaintiff dated February 17, 2016 (the “BC Tolling Agreement”). The BC Tolling Agreement automatically terminated upon receipt of an evidentiary proffer from a settling defendant (NEC Tokin) in 2018, and there has been no attempt to add Samsung back as defendant to the BC Action. Samsung was never named in the related Québec action bearing court file no. 500-06-000704-144;

WHEREAS, Samsung has advised the Plaintiffs that it has not been advised by any regulatory authority that it is the target of any investigation relating to the prices of Capacitors and that it denies any involvement in any conspiracy to fix prices of Capacitors as alleged in the Action;

WHEREAS, Samsung has advised the Plaintiffs that it provided a small number of documents to the European Commission in response to a voluntary information request related to a local European trade association, but that the European Commission did not pursue the matter against Samsung, and did not issue a Statement of Objection against Samsung;

WHEREAS, Samsung has advised the Plaintiffs that it has not otherwise been contacted by any regulatory authority in relation to the pricing of Capacitors;

WHEREAS, Samsung warrants that it is not in possession of any documents directly related to the alleged anti-competitive conduct in the Action;

WHEREAS, Samsung has informed the Plaintiffs that it did not manufacture, sell or distribute aluminum capacitors during the class period, being September 1, 1997 to December 31, 2014 (the "Class Period"), nor did it manufacture, sell or distribute a material amount of tantalum capacitors during the Class Period and asserts that, as a large company that discards business documents in the ordinary course, it would be unduly onerous to locate, identify, and preserve for the duration of the Tolling Period any documents related to such sales;

WHEREAS, Samsung has informed the Plaintiffs that it is not aware of any facts or circumstances relating to the conduct of Samsung or its employees that could give rise to liability pursuant to Part VI of the *Competition Act*, RSC 1985, c C-34, in respect of Capacitors;

WHEREAS, Samsung Electro-Mechanics America Inc. is a direct subsidiary of Samsung Electro-Mechanics, a public company whose shares trade on the Korea Exchange;

WHEREAS, the Plaintiffs have agreed to discontinue the Action against Samsung without prejudice and without costs subject to certain conditions set forth below;

WHEREAS, the Plaintiffs and Samsung have agreed that any applicable statutes of limitation or limitation periods be tolled while the Plaintiffs prosecute the Action; and

WHEREAS, the Plaintiffs and Samsung desire to discontinue, without prejudice, the Action against Samsung in accordance with the terms set out below;

NOW, THEREFORE, the Plaintiffs and Samsung agree:

1. The Plaintiffs will discontinue the Action against Samsung without prejudice and without costs as soon as possible after the date of this Agreement.
2. Any statute of limitation, statute of repose, or other time-related defence based on federal, provincial or other law, or the common law, whether at law, at equity, or otherwise (including, but not limited to, defences based on the doctrines of waiver, laches, acquiescence, or estoppel) (any "time-related defence") that may be applicable to any claim for relief arising from or relating to the facts, events and circumstances alleged in the Action by the Plaintiffs on behalf of putative class members ("Proposed Class") as defined in the Statement of Claim in the Action are hereby tolled for the duration of, and shall not run at any time during, the period beginning August 6, 2014, the date the Statement of Claim naming Samsung was filed, and ending on the date of the termination of this Agreement, as set forth in paragraphs 3 and 4 (the "Tolling Period"). Samsung agrees not to assert directly or indirectly, plead, raise by defence or avoidance, or otherwise rely on any

passage of time during the Tolling Period in asserting any time-related defence with respect to any claim for relief relating to capacitors that arises from or relates to the facts, events and circumstances in the claims filed in the Action.

3. Unless this Agreement is extended by written agreement of the Plaintiffs and Samsung or terminated in accordance with paragraph 5, this Agreement shall remain in effect until six (6) months after the discontinuance of the Action is granted, at which time this Agreement shall automatically terminate.

4. Either Party may elect to terminate this Agreement at any time. If one of the Parties hereto elects to terminate this Agreement, and the Plaintiffs wish to assert claims against Samsung, then such claims shall be subject to any defences which are presently or in the future available to Samsung. Should either Party wish to elect to terminate this Agreement, it shall notify counsel for the other Party of its desire to terminate this Agreement, and after such notice has been given Counsel shall meet and confer by telephone. After meeting and conferring by telephone either Party may terminate this Agreement by providing notice to the other Party. Following delivery of notice of termination of this Agreement, the Plaintiffs may apply, on notice to Samsung served on its counsel of record at the address specified in paragraph 16, to the Court for leave to add Samsung as a defendant in the Action. Subject to the terms of this Agreement, Samsung reserves all rights to oppose the motion. If the Court grants leave to add Samsung as a defendant in the Action, service of such claim can be affected by serving a copy of the claim on Samsung counsel at the address specified in paragraph 16.

5. By entering this Agreement, neither the Plaintiffs nor Samsung waive, dismiss, release or otherwise lose any available claims or defences.

6. Samsung will promptly inform the Plaintiffs if it or any of its affiliates make public disclosure of being the subject of an investigation related to Capacitors by any government regulator including the United States Department of Justice, the Canadian Competition Bureau, the European Commission, Brazil's Council for Economic Defence, the Japan Fair Trade Commission, the Taiwan Fair Trade Commission, the Competition Commission of Singapore, the Korea Fair Trade Commission, or the Chinese National Development and Reform Commission.

7. Samsung agrees to produce to the Plaintiffs any documents that Samsung has produced or will produce in the future to the United States Department of Justice, the Canadian Competition Bureau, the European Commission, Brazil's Council for Economic Defence, the Japan Fair Trade Commission, the Taiwan Fair Trade Commission, the Competition Commission of Singapore, the

Korea Fair Trade Commission, or the Chinese National Development and Reform Commission relating to the prices of Capacitors or other conduct relating to the Capacitors market. Samsung also agrees to produce the names and locations for their direct purchasers of tantalum capacitors in Canada, if any. Samsung agrees to answer the Plaintiffs' questions regarding the pricing of tantalum capacitors, provided that such information is reasonably available. Except for the obligation relating to documents not yet produced to regulators, which is an ongoing obligation, the information required to be produced under this paragraph will be provided within thirty (30) days of the discontinuance having been granted (or such time as agreed between the Plaintiffs and Samsung).

8. The Plaintiffs may seek production from Samsung, as a non-party, in accordance with the Ontario *Rules of Civil Procedure* and Samsung may resist such production.

9. Neither the execution of this Agreement nor anything contained herein is intended to be, nor shall be deemed to be, an admission of any liability to anyone, or an admission of the existence of facts upon which liability could be based or an indication of the merits or lack thereof of any claims belonging to the Plaintiffs or the Proposed Class, or any defences which could be asserted by Samsung, and this Agreement shall not be offered or received into evidence in any proceeding, except as necessary to approve or enforce the terms of this Agreement.

10. Nothing in this Agreement shall revive any claim or cause of action against Samsung that was barred as of the date of this Agreement by any limitation period or other time-related defence.

11. The Parties hereto agree that they have reviewed this Agreement and have been provided with a sufficient opportunity to revise it. The Parties hereto also agree that they have had an opportunity to discuss this Agreement with their counsel and fully understand and appreciate the meaning and significance of the words and terms employed herein. Accordingly, the normal rule of construction, to the effect that any ambiguities are to be resolved against the drafting party, shall not be applied in the interpretation of this Agreement or any amendment or modification thereto.

12. Each of the undersigned represents that he or she has the authority to execute this Agreement on behalf of the Plaintiffs or Samsung he or she represents as indicated in the signature lines below.

13. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument.

This Agreement constitutes the entire and integrated agreement of the parties hereto regarding the subject matter hereof and is binding on the undersigned parties and on their representatives, successors, heirs and assigns.

14. This Agreement may be modified only in writing by the parties to this Agreement, except that any party can change the address for notice set forth in paragraph 16.

15. This Agreement is governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

16. Any and all notices, requests, directives, or communications required by the Agreement shall be in writing and shall, unless otherwise expressly provided herein, be given personally, by express courier, by postage prepaid mail, by facsimile transmission, or by email PDF files, and shall be addressed as follows:

For the Defendants Samsung Electro-Mechanics and Samsung Electro-Mechanics America Inc.

Robert E. Kwinter
Blake, Cassels & Graydon ^{LLP}
199 Bay Street
Toronto, Ontario M5L 1A9

Email: rob.kwinter@blakes.com

For the Plaintiffs Cygnus Electronics Corporation and Sean Allott

Jonathan J. Foreman
4 Covent Market Place
London, Ontario N6A 1E2

Email: jforeman@foremancompany.com



Robert E. Kwinter



Jonathan J. Foreman

TOLLING AND STANDSTILL AGREEMENT

This Tolling and Standstill Agreement (the “Agreement”), dated as of December 8, 2021, is made and entered into by and among Cygnus Electronics Corporation and Sean Allott (the “Plaintiffs”) and Samsung Electronics Canada Inc. (“Samsung Canada”);

WHEREAS, the Plaintiffs have named Samsung Canada as a defendant in *Cygnus Electronics Corporation v. Panasonic Corporation et al.*, Court File No. 3795/14, in the Ontario Superior Court of Justice (the “Action”);

WHEREAS, Samsung Canada is not named in any other class action cases in the United States related to the pricing of aluminum and tantalum capacitors (“Capacitors”);

WHEREAS, Samsung Canada is not named in any other active class action cases in Canada. A related British Columbia action bearing court file no. S-246193 (the “BC Action”) was discontinued as against Samsung Canada pursuant to a tolling agreement with the British Columbia plaintiff dated April 27, 2016 (the “BC Tolling Agreement”). The BC Tolling Agreement automatically terminated upon receipt of an evidentiary proffer from a settling defendant (NEC Tokin) in 2018, and there has been no attempt to add Samsung Canada back as defendant to the BC Action. Samsung Canada was never named in the related Québec action bearing court file no. 500-06-000704-144;

WHEREAS, Samsung Canada has advised the Plaintiffs that it has not been advised by any regulatory authority that it is the target of any investigation relating to the prices of Capacitors and that it denies any involvement in any conspiracy to fix prices of Capacitors as alleged in the Action;

WHEREAS, Samsung Canada has advised the Plaintiffs that it has not been contacted by any regulatory authority in relation to the pricing of Capacitors;

WHEREAS, Samsung Canada has informed the Plaintiffs that it did not manufacture, sell or distribute aluminum or tantalum capacitors during the class period, being September 1, 1997 to December 31, 2014 (the “Class Period”);

WHEREAS, Samsung Canada warrants that it is not in possession of any documents relating to sales of Capacitors that it would be obligated to produce if it remained a defendant in the Action;

WHEREAS, Samsung Canada has informed the Plaintiffs that it is not aware of any facts or circumstances relating to the conduct of Samsung Canada or its employees that could give rise to liability pursuant to Part VI of the Competition Act, RSC 1985, c C-34, in respect of Capacitors;

WHEREAS, Samsung Canada is a direct subsidiary of Samsung Electronics Co. Ltd., a public company whose shares trade on the Korea Exchange;

WHEREAS, the Plaintiffs have agreed to discontinue the Action against Samsung Canada without prejudice and without costs subject to certain conditions set forth below;

WHEREAS, the Plaintiffs and Samsung Canada have agreed that any applicable statutes of limitation or limitation periods be tolled while the Plaintiffs prosecute the Action; and

WHEREAS, the Plaintiffs and Samsung Canada desire to discontinue, without prejudice, the Action against Samsung Canada in accordance with the terms set out below;

NOW, THEREFORE, the Plaintiffs and Samsung Canada agree:

1. The Plaintiffs will discontinue the Action against Samsung Canada without prejudice and without costs as soon as possible after the date of this Agreement.
2. Any statute of limitation, statute of repose, or other time-related defence based on federal, provincial or other law, or the common law, whether at law, at equity, or otherwise (including, but not limited to, defences based on the doctrines of waiver, laches, acquiescence, or estoppel) (any "time-related defence") that may be applicable to any claim for relief arising from or relating to the facts, events and circumstances alleged in the Action by the Plaintiffs on behalf of putative class members ("Proposed Class") as defined in the Statement of Claim in the Action are hereby tolled for the duration of, and shall not run at any time during, the period beginning August 6, 2014, the date the Statement of Claim naming Samsung Canada was filed, and ending on the date of the termination of this Agreement, as set forth in paragraphs 3 and 4 (the "Tolling Period"). Samsung Canada agrees not to assert directly or indirectly, plead, raise by defence or avoidance, or otherwise rely on any passage of time during the Tolling Period in asserting any time-related defence with respect to any claim for relief relating to capacitors that arises from or relates to the facts, events and circumstances in the claims filed in the Action.
3. Unless this Agreement is extended by written agreement of the Plaintiffs and Samsung Canada or terminated in accordance with paragraph 4, this Agreement shall remain in effect until

six (6) months after the discontinuance of the Action is granted, at which time this Agreement shall automatically terminate.

4. Either Party may elect to terminate this Agreement at any time. If one of the Parties hereto elects to terminate this Agreement, and the Plaintiffs wish to assert claims against Samsung Canada, then such claims shall be subject to any defences which are presently or in the future available to Samsung Canada. Should either Party wish to elect to terminate this Agreement, it shall notify counsel for the other Party of its desire to terminate this Agreement, and after such notice has been given Counsel shall meet and confer by telephone. After meeting and conferring by telephone either Party may terminate this Agreement by providing notice to the other Party. Following delivery of notice of termination of this Agreement, the Plaintiffs may apply, on notice to Samsung Canada served on its counsel of record at the address specified in paragraph 16, to the Court for leave to add Samsung Canada as a defendant in the Action. Subject to the terms of this Agreement, Samsung Canada reserves all rights to oppose the motion. If the Court grants leave to add Samsung Canada as a defendant in the Action, service of such claim can be affected by serving a copy of the claim on Samsung Canada counsel at the address specified in paragraph 16.

5. By entering this Agreement, neither the Plaintiffs nor Samsung Canada waive, dismiss, release or otherwise lose any available claims or defences.

6. Samsung Canada will promptly inform the Plaintiffs if it or any of its affiliates make public disclosure of being the subject of an investigation related to Capacitors by any government regulator including the United States Department of Justice, the Canadian Competition Bureau, the European Commission, Brazil's Council for Economic Defence, the Japan Fair Trade Commission, the Taiwan Fair Trade Commission, the Competition Commission of Singapore, the Korea Fair Trade Commission or the Chinese National Development and Reform Commission.

7. Samsung Canada agrees that if the Plaintiffs produce an affidavit of documents to the defendants following certification of the Action as a Class Proceeding at a contested hearing, Samsung Canada will, within 120 days (or such time as agreed to by the Plaintiffs and Samsung Canada), produce data regarding Samsung Canada's sales of electronic equipment for business purposes, consumer electronics and household electronic equipment including but not limited to televisions, laptop computers, washing machines, cellphones, smartphones, MP3 players and tablets during the Class Period. This obligation survives the termination of this Agreement, provided that Samsung Canada is not at that time a party to the Action.

8. The Plaintiffs may seek production from Samsung Canada, as a non-party, in accordance with the Ontario *Rules of Civil Procedure* and Samsung Canada may resist such production.

9. Neither the execution of this Agreement nor anything contained herein is intended to be, nor shall be deemed to be, an admission of any liability to anyone, or an admission of the existence of facts upon which liability could be based or an indication of the merits or lack thereof of any claims belonging to the Plaintiffs or the Proposed Class, or any defences which could be asserted by Samsung Canada, and this Agreement shall not be offered or received into evidence in any proceeding, except as necessary to approve or enforce the terms of this Agreement.

10. Nothing in this Agreement shall revive any claim or cause of action against Samsung Canada that was barred as of the date of this Agreement by any limitation period or other time-related defence.

11. The Parties hereto agree that they have reviewed this Agreement and have been provided with a sufficient opportunity to revise it. The Parties hereto also agree that they have had an opportunity to discuss this Agreement with their counsel and fully understand and appreciate the meaning and significance of the words and terms employed herein. Accordingly, the normal rule of construction, to the effect that any ambiguities are to be resolved against the drafting party, shall not be applied in the interpretation of this Agreement or any amendment or modification thereto.

12. Each of the undersigned represents that he or she has the authority to execute this Agreement on behalf of the Plaintiffs or Samsung Canada he or she represents as indicated in the signature lines below.

13. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument. This Agreement constitutes the entire and integrated agreement of the parties hereto regarding the subject matter hereof and is binding on the undersigned parties and on their representatives, successors, heirs and assigns.

14. This Agreement may be modified only in writing by the parties to this Agreement, except that any party can change the address for notice set forth in paragraph 16.

15. This Agreement is governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

16. Any and all notices, requests, directives, or communications required by the Agreement shall be in writing and shall, unless otherwise expressly provided herein, be given personally, by express courier, by postage prepaid mail, by facsimile transmission, or by email PDF files, and shall be addressed as follows:

For the Defendant Samsung Electronics
Canada Inc.

Robert E. Kwinter
Blake, Cassels & Graydon ^{LLP}
199 Bay Street
Toronto, Ontario M5L 1A9

Email: rob.kwinter@blakes.com



Robert E. Kwinter

For the Plaintiffs Cygnus Electronics
Corporation and Sean Allott

Jonathan J. Foreman
Foreman & Company
4 Covent Market Place
London, Ontario N6A 1E2

Email: jforeman@foremancompany.com



Jonathan J. Foreman

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*

**AFFIDAVIT OF ANNE LEGATE-WOLFE
(Motion for Discontinuances)**

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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*

**MOTION RECORD OF THE PLAINTIFFS'
(Motion for Discontinuances)**

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