



Court File No. 3795/14 CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) THURSDAY, THE 13<sup>th</sup> DAY  
MR. JUSTICE RAIKES ) OF APRIL, 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**

**(Certification for Settlement Purposes and Notice Approval  
– ROHM Settlement)**

**THIS MOTION** made by the Plaintiffs for an Order certifying this proceeding as a class proceeding for settlement purposes as Rohm Co. Ltd. and Rohm Semiconductor U.S.A., LLC (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 September 13, 2022 attached to this Order as **Schedule “A”** (the “**Settlement Agreement**”), and on hearing the submissions of counsel for the Plaintiffs, Counsel for the Settling Defendants, and counsel for the Non-Settling Defendants in the Ontario Electrolytic Action;

**AND ON BEING ADVISED** that RicePoint Administration Inc. has consented to being appointed as notice provider in accordance with the terms of this Order;

**AND WHEREAS** that the opt-out period provided pursuant to the Order of this Court made on June 28, 2018 satisfied 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;

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

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

All Persons or entities in Canada who purchased Electrolytic Capacitors or a product containing a Electrolytic Capacitor between September 1, 1997 and December 31, 2014, other than (1) all BC Settlement Class members (2) all Québec Settlement Class members and (3) Excluded Persons.

Electrolytic Capacitor means: aluminum and tantalum electrolytic capacitors;

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

Excluded Person means: each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing, and those Persons who opt-out of the Proceedings in accordance with the orders of the applicable Courts.

4. **THIS COURT ORDERS** that the Ontario Electrolytic Action is certified on the basis of the following issue which is common to the Ontario 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 Class Period? If so, what damages, if any, did 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 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 Settlement Class, Class Period and Common 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 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 Defendants.
7. **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"**.

8. **THIS COURT ORDERS** that the plan of dissemination of the Notice (the “Plan of Dissemination”) is hereby approved in the form attached hereto as **Schedule “F”** and that the Notice shall be disseminated in accordance with the Plan of Dissemination.
9. **THIS COURT ORDERS** that RicePoint Administration Inc. is appointed to disseminate the Notice in accordance with the terms of this Order.
10. **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.
11. **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, this Order shall be deemed to have been set aside and declared null and void and of no force or effect, without the need for any further Order of this Court. 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 Settlement Class Members.

Date: April 13, 2023



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The Honourable Mr. Justice R. Raikes

# Schedule "A"

## CAPACITORS CLASS ACTION NATIONAL SETTLEMENT AGREEMENT

Between:

**CYGNUS ELECTRONICS CORPORATION, SEAN ALLOTT, SARA RAMSAY AND OPTION  
CONSOUMMATEURS**

(the "Plaintiffs")

and

**ROHM CO. LTD, AND ROHM SEMICONDUCTOR U.S.A., LLC.**

(the "Settling Defendants")

Executed September 13, 2022

164-0987

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**CAPACITORS CLASS ACTION  
NATIONAL SETTLEMENT AGREEMENT**

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**CAPACITORS CLASS ACTION  
NATIONAL SETTLEMENT AGREEMENT**

**RECITALS**

- A. WHEREAS the 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 a separate Ontario Film Action, which named the Settling Defendants, was commenced by the Ontario Film Plaintiff in London, Ontario;
- C. WHEREAS the Settling Defendants are not named in the BC Film Action;
- D. WHEREAS the Proceedings and the Ontario Film Action respectively allege that certain companies, including the Settling Defendants, participated in an unlawful conspiracy to fix, raise, maintain or stabilize the price of Electrolytic and film capacitors in Canada, contrary to Part VI of the *Competition Act* and the common law and/or civil law;
- E. WHEREAS the Settling Defendants represent that they have never manufactured film capacitors and have never sold film capacitors anywhere in the world, and the Settling Defendants represent that they have never participated in the conspiracy meetings alleged in the Ontario Film Action or the BC Film Action;
- F. WHEREAS the Ontario Film Action shall be resolved with the Settling Defendants by way of a with prejudice dismissal of the Ontario Film Action, but without payment of consideration to, and corresponding release from, a film settlement class;
- G. 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;
- H. 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;

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- I. 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 Class in the Proceedings, and in order to achieve a with prejudice dismissal of the Ontario Film Action, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;
- J. WHEREAS the Settling Defendants have agreed to provide cooperation to Plaintiffs in the 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;
- K. WHEREAS the Settling Defendants do not hereby attorn to the jurisdiction of the Courts or any other court or tribunal in respect of any civil, criminal or administrative process except to the extent they have previously done so in the Proceedings or as expressly provided in this Settlement Agreement with respect to the Proceedings;
- L. WHEREAS Counsel for the Settling Defendants and Class Counsel have engaged in extensive arm's-length settlement discussions and negotiations, lasting more than a year resulting in this Settlement Agreement relating to Canada;
- M. 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;
- N. WHEREAS Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, having regard to the burdens and expense in prosecuting the Proceedings, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the Settlement Classes they represent or seek to represent;
- O. WHEREAS the Parties therefore wish to and hereby finally resolve on a national basis, without admission of liability, the Proceedings as against the Settling Defendants;

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- P. WHEREAS the Québec Action has already been authorized, by judgement of the Québec Court, on March 22, 2019;
- Q. 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 a Common Issue 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
- R. WHEREAS a notice program and opt-out process had already been provided to the Settlement Classes on a national basis; and
- S. WHEREAS the Plaintiffs assert that they are adequate class representatives for the Settlement Classes they seek to represent and 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 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 Parties, or the Releasees, and that the Québec Action shall be settled out of court as to the Settling Defendants, without costs to the Parties, or the Releasees, 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.

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- (2) **Approval Hearings** mean 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 Action** means the proceeding commenced by the BC Plaintiff before the BC Court that is identified in Schedule "A" to this Settlement Agreement.
- (4) **BC Counsel** means Camp Fiorante Matthews Mogerman <sup>LLP</sup>.
- (5) **BC Court** means the Supreme Court of British Columbia.
- (6) **BC Film Action** means the proceeding commenced before the BC Court, bearing File No. 156006.
- (7) **BC Plaintiff** means Sara Ramsay.
- (8) **BC Settlement Class** means the settlement class in respect of the BC Action that is defined in Schedule "A" to this Settlement Agreement.
- (9) **Claims Administrator** means the firm to be proposed by Class Counsel and appointed by the Courts to administer the Settlement Amount in accordance with the provisions of the Settlement Agreement and the Distribution Protocol, and any employees of such firm.
- (10) **Class Counsel** means Ontario Counsel, Québec Counsel and BC Counsel.
- (11) **Class Counsel Disbursements** include the disbursements and applicable taxes incurred by Class Counsel in the prosecution of the Proceedings, as well as any adverse costs awards issued against the Plaintiffs in the Proceedings.
- (12) **Class Counsel Fees** include the fees of Class Counsel, GST or HST (as the case may be) and other applicable taxes or charges thereon, including any amounts payable by Class Counsel or the Settlement Class Members to any other body or Person, including the Fonds d'aide aux actions collectives in Québec, as a result of the Settlement Agreement.
- (13) **Class Period** means September 1, 1997 to December 31, 2014.
- (14) **Common 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

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or indirectly in Canada during the Class Period? If so, what damages, if any, did Settlement Class Members suffer?

- (15) **Counsel for the Settling Defendants** means Fasken <sup>LLP</sup>.
- (16) **Courts** means the Ontario Court, the Québec Court and the BC Court.
- (17) **COVID-19 Pandemic** means the novel coronavirus and the limitations imposed by governments on the conduct of their citizens, including limitations to international travel and meeting size.
- (18) **Defendants** means the entities named as defendants in any of the Proceedings as set out in Schedule "A" to this Settlement Agreement, and any Persons added as defendants in the Proceedings in the future. For greater certainty, Defendants includes, without limitation, the Settling Defendants.
- (19) **Distribution Protocol** means the plan to be developed by Class Counsel for distributing the Settlement Amount, plus accrued interest and less approved Administration Expenses and Class Counsel Fees and Disbursements, to Settlement Class Members, as approved by the Courts.
- (20) **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.
- (21) **Effective Date** means the date when the Final Orders have been received from all Courts approving this Settlement Agreement.
- (22) **Electrolytic Capacitors** means aluminum and tantalum electrolytic capacitors.
- (23) **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.
- (24) **Execution Date** means the date on the cover page, as of which the Parties have executed this Settlement Agreement.

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- (25) **Final Order(s)** means a final judgment entered by a Court approving this Settlement Agreement in accordance with its terms, once the time to appeal such judgment has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the approval of this Settlement Agreement in accordance with its terms, upon a final disposition of all appeals.
- (26) **Non-Settling Defendant(s)** means any Defendant that is not: (i) a Settling Defendant; (ii) a Settled Defendant; or (iii) a Defendant against whom the Proceedings have been dismissed or discontinued, either before or after the Execution Date.
- (27) **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 Class of: (i) the certification or authorization of the Proceedings as class proceedings for settlement purposes; (ii) the dates and locations of the Approval Hearings; and, (iii) the process by which a Settlement Class Member may object to the settlement.
- (28) **Ontario Counsel** means Foreman & Company Professional Corporation.
- (29) **Ontario Court** means the Ontario Superior Court of Justice.
- (30) **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.
- (31) **Ontario Electrolytic Plaintiffs** means Cygnus Electronics Corporation and Sean Allott.
- (32) **Ontario Film Action** means the proceeding commenced before the BC Court, bearing Court File No.: 1272/16 CP.
- (33) **Ontario Film Plaintiff** means Sean Allott.
- (34) **Ontario Settlement Class** means the settlement class in respect of the Ontario Electrolytic Action that is defined in Schedule "A" to this Settlement Agreement.
- (35) **Other Actions** means any other actions or proceedings, excluding the Proceedings, relating to Released Claims commenced by a Settlement Class Member either before or after the Effective Date.

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- (36) **Party and Parties** means the Settling Defendants, the Plaintiffs, and, where necessary, the Settlement Class Members.
- (37) **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.
- (38) **Plaintiffs** means the Ontario Electrolytic Plaintiffs, the Québec Plaintiff and the BC Plaintiff, but does not include the Ontario Film Plaintiff.
- (39) **Proceedings** means the Ontario Electrolytic Action, the Québec Action, and the BC Action as defined in Schedule "A" to this Settlement Agreement, but does not include the Ontario Film Action.
- (40) **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 Claims.
- (41) **Québec Action** means the proceeding commenced by the Québec Plaintiff before the Québec Court identified in Schedule "A" to this Settlement Agreement.
- (42) **Québec Counsel** means Belleau Lapointe s.e.n.c.r.l.
- (43) **Québec Court** means the Superior Court of Québec.
- (44) **Québec Plaintiff** means Option consommateurs.
- (45) **Québec Settlement Class** means the settlement class in respect of the Québec Action that is defined in Schedule "A" to this Settlement Agreement.
- (46) **Recitals** means the recitals to this Settlement Agreement.
- (47) **Released Claims** means any and all manner of claims, demands, actions, suits, 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

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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 Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall or may have, relating in any way to any conduct occurring anywhere that is alleged or that could have been alleged in the Proceedings or that is arising from their factual predicate, during the 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 Class Period, including, without limitation, any claims for consequential, subsequent or follow on harm that arise after the Class Period in respect of any agreement or conduct arising from the factual predicate of the Proceedings, or any amended complaint or pleading therein, that occurred during the Class Period. For greater certainty, nothing herein shall be construed to release any Claims arising from breach of contract, for negligence, bailment, failure to deliver, lost goods, delayed or damaged goods or any similar claim between the Releasees and Releasers relating to Electrolytic Capacitors.

- (48) **Releasee(s)** means, jointly and severally, individually and collectively, the Settling Defendants and all of their present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated and all of their past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives, and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing. No other Defendants are Releasees.
- (49) **Releasers** means, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members, on behalf of themselves and any Person or entity claiming by

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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, other than Persons who opted out of the Proceedings in accordance with orders of the Courts.

- (50) **Schedules** means the schedules to this Settlement Agreement.
- (51) **Settled Defendant(s)** means any Defendant (excluding the Settling Defendants) that has exucted 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.
- (52) **Settlement Agreement** means this agreement, including the Recitals and Schedules.
- (53) **Settlement Amount** means the sum of four hundred fifty thousand Canadian Dollars (CAD \$ 450,000.00).
- (54) **Settlement Class(es)** means all Persons included in the Ontario Settlement Class, the Québec Settlement Class and the BC Settlement Class.
- (55) **Settlement Class Member(s)** means a member of a Settlement Class.
- (56) **Settling Defendant(s)** means Rohm Co. Ltd. and Rohm Semiconductor U.S.A., LLC.
- (57) **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.
- (58) **U.S. Litigation** means the direct and indirect purchaser class proceedings in the United States which pertain to film, aluminum and tantalum electrolytic capacitors which have been consolidated and are proceeding as class actions litigation under the general style of cause, for both direct and indirect purchaser class proceedings, *In re: Capacitors Antitrust Litigation*, case number 3:14-cv-03264-JD, U.S. District Court for the Northern District of California.

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## 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 Action, and a prompt, complete declaration of settlement out of court of the Québec Action as against the Settling Defendants. The Parties agree that the Plaintiffs may seek permission from the Courts to conduct a coordinated hearing of the settlement approval motions on a national basis.

### 2.2 Motions Seeking Approval of Notice and Certification or Authorization

- (1) Subject to subsection 2.2(3), the Ontario Electrolytic Plaintiffs and BC Plaintiff shall bring motions before the Courts, at such time as the Plaintiffs in their sole discretion deem appropriate, for orders approving the Notice of Certification and of Approval Hearings and certifying or authorizing each of the Proceedings commenced in their respective jurisdictions as a class proceeding as against the Settling Defendants (for settlement purposes only).
- (2) Subject to subsection 2.2(3) the Québec Plaintiff shall bring a motion for authorization to amend the authorized class definition in the Québec Action as against the Settling Defendants (for settlement purposes only) to reflect the Class Period, and for approval of the Notice of Certification and of Approval Hearings, at such time as the Plaintiffs in their sole discretion deem appropriate.
- (3) The Ontario order approving the Notice of Certification and of Approval Hearings and certifying the Ontario Electrolytic Action for settlement purposes shall be proposed to the Ontario Court substantially in the form attached as Schedule "B". The form and content of the Québec and BC orders approving the Notice of Certification and of Approval Hearings and to amend the authorized class definition in the Québec Action as against the Settling Defendants for settlement purposes 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.

### **2.3 Motions Seeking Approval of the Settlement**

- (1) As soon as practicable after the orders referred to in subsection 2.2(1) and (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 Electrolytic Action order approving this Settlement Agreement shall be proposed to the Ontario Court substantially in the form attached as Schedule "C". The Québec Action and BC Action 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 "C", as may be modified by the Ontario Court.
- (3) Concurrent with seeking the Ontario order approving the Settlement Agreement in the Ontario Electrolytic Action, the Ontario Film Plaintiff shall seek an Order for a with-prejudice dismissal of the Ontario Film Action, substantially in the form attached as Schedule "D," as modified by the Ontario Court.
- (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 subsection 2.2 is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior consent of Counsel for the Settling Defendants and Class Counsel, as the case may be, except to legal counsel or as required for the purposes of financial reporting 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) Upon the Date of Execution, Class Counsel may provide a copy of this Settlement Agreement to the Courts and Non-Settling Defendants.

## **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

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Defendants. Within forty five (45) days of the Execution Date, the Settling Defendants shall pay the Settlement Amount to Class Counsel for deposit into the Trust Account.

- (2) The Settlement Amount shall be inclusive of all amounts, including interest and costs. The Settlement Amount and other consideration to be provided in accordance with the terms of this Settlement Agreement shall be provided in full satisfaction of the Released Claims against the Releasees.
- (3) The Releasees shall have no obligation to pay any amount in addition to the Settlement Amount in respect to the Released 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 Class and shall become and remain part of the Trust Account.
- (2) Subject to subsection 3.2(3), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account shall be the responsibility of the Settlement Class. 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,

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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 forty-five (45) days after the Execution Date or at a time mutually agreed upon by the Parties acting reasonably, the Settling Defendants shall provide to Class Counsel:
  - (a) an oral evidentiary proffer, through a virtual meeting not to exceed four (4) hours in length, between Class Counsel and Counsel for the Settling Defendants, including at the discretion of the Settling Defendants their U.S. Litigation counsel, which will summarize the Settling Defendants' relevant and non-privileged information derived from their investigation and factual inquiries in respect of the matters at issue in the Proceedings, including information derived from business records, testimonial transcripts and employee or witness interviews (if applicable), including, to the extent known by the Settling Defendants:
    - (i) information regarding how the alleged conspiracy was formed, implemented and enforced, including specific examples of methods employed by the Defendants and any non-defendant alleged co-conspirators in furtherance of the alleged conspiracy;
    - (ii) information regarding the duration of the alleged conspiracy;
    - (iii) information regarding products involved in the alleged conspiracy and the source of that information,
    - (iv) information regarding the volume of direct sales of Electrolytic Capacitors to customers in Canada during the Class Period, and the identification of those customers, if any;
    - (v) answers to Class Counsel's questions and identification of the conduct, involvement, and role of each Defendant, to the extent known, in the alleged conspiracy;

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- (vi) information regarding the identities and known particulars of any key officers, directors, employees, or agents of the Settling Defendants, the Defendants, and any any non-defendant alleged co-conspirators who witnessed and/or participated in conduct relevant to the allegations in the Proceedings;
  - (vii) subject to any confidential or other contractual restrictions or arrangements with any existing or prior customers, disclosure to Class Counsel of the Settling Defendants' major Electrolytic Capacitor customers over the Class Period, and the identities and any known particulars of the major global original equipment manufacturers reasonably known to the Settling Defendants that purchased Electrolytic Capacitors to be incorporated into finished products (including those sold into Canada) during the Class Period;
  - (viii) the identification of "key" documents relevant to the alleged conspiracy and to the conduct of specific Defendants as requested, with Bates numbers where available. Counsel for the Settling Defendants agree to provide reasonable assistance in locating these "key" documents once the documents in 4.1(3) are delivered, and to answer reasonable follow up questions about those documents and about the information provided in the proffer.
- (b) Notwithstanding any other provision of this Settlement Agreement, and for greater certainty, it is agreed that all statements made and information provided by Counsel for the Settling Defendants as part of the oral evidentiary proffer are privileged, will be kept strictly confidential, and may not be directly or indirectly disclosed to any other Person, unless disclosure is ordered by a Court. Further, absent a Court order, Class Counsel will not attribute any factual information obtained from the proffer to the Settling Defendants and/or Counsel for the Settling Defendants. Notwithstanding the foregoing, Class Counsel may: (i) use information obtained from the proffer in the prosecution of the Proceedings, including for the purpose of developing the Distribution Protocol or any other allocation plan relating to any settlement or judgment proceeds, except the prosecution of any claims against Releasees; and (ii) rely on such information to

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certify that, to the best of Class Counsel's knowledge, information and belief, such information has evidentiary support or will likely have evidentiary support after reasonable opportunity for further investigation or discovery, but, absent a court order, the Plaintiffs shall not introduce any information from a proffer into the record or subpoena any Counsel for the Settling Defendants related to a proffer.

- (2) Within sixty (60) days after the Effective Date, or at a time mutually agreed upon by the Parties acting reasonably, the Settling Defendants shall make reasonable efforts to provide to Class Counsel:
- (a) copies of all Documents, together with any pre-existing translations of those Documents, produced by the Settling Defendants to the Canadian Competition Bureau, the U.S. Department of Justice and/or in the U.S. Litigation, all to be provided in electronic form if available. The U.S. Litigation Documents will, to the extent possible, be produced with the same document numbers utilized in the U.S. Litigation and shall include any pre-existing and non-privileged electronic coding or metadata produced in the U.S. Litigation;
  - (b) any deposition transcripts for depositions of current or former employees, officers or directors of the Releasees in the U.S. Litigation (including exhibits thereto), all to be provided in electronic form if available and any pre-existing translations of the foregoing into English;
  - (c) electronic copies of any declarations or affidavits of current or former employees, officers or directors of the Releasees, including all exhibits thereto, taken in the U.S. Litigation, and any pre-existing translations into English;
  - (d) electronic copies of any responses to written interrogatories by the Releasees, including all schedules thereto, taken in the U.S. Litigation, and any pre-existing translations into English;
  - (e) electronic copies of any responses to requests to admit provided by the Releasees in the U.S. Litigation and any pre-existing translations into English;
  - (f) disclosure of all customer and sales data produced in the US litigation. The Settling Defendants agree to provide reasonable assistance to Class Counsel and to

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answer reasonable questions in respect of the sales and customer data that is produced;

- (g) to the extent not disclosed by the preceding paragraph, disclosure of:
  - (i) a summary of the Settling Defendants' volume of global Electrolytic Capacitors sales during the Class Period;
  - (ii) customer and sales data concerning the Settling Defendants' direct sales of Electrolytic Capacitors to customers in Canada during the Class Period together with any Canadian-specific or Canadian purchaser-specific documents within the knowledge or possession of the Settling Defendants;
- (3) Within ninety (90) days of a request from Class Counsel, not to be made until either a) the Proceedings are certified or authorized on a contested basis against the Non-Settling Defendants, or b) Class Counsel is developing a proposal to distribute funds to Settlement Class Members through the Distribution Protocol, the Settling Defendants agree to make reasonable efforts to provide their general understanding of the finished products they believe their customers may produce.
- (4) Within ninety (90) days of a request from Class Counsel, not to be made until the preparation of the Plaintiff's or loss or damage analysis for trial, and to the extent not already provided under subsection 4.1(2)(f) or (g), additional sales information regarding the Settling Defendants' sales of Electrolytic Capacitors in North America for the full duration of the Class Period plus two years before and after it and cost information associated with those sales, to the extent that information exists at the Execution Date.
- (5) The Documents to be delivered pursuant to subsection 4.1(2)(b)-(2)(g) shall be delivered as a separate production from the Documents, if any, to be delivered pursuant to subsection 4.1(2)(a) or identified by Bates number as part of the production of Documents to be delivered pursuant to subsection 4.1(2)(a). After the Proceedings have been certified, other than for settlement purposes, as against the Non-Settled Defendants the Settling Defendants agree to produce native versions of documents included in subsection 4.1(2), with metadata, to the extent that they are reasonably available.
- (6) If requested by Class Counsel, the Settling Defendants agree to provide a voluntary video or telephone interview with Counsel for the Settling Defendants and one current employee

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of the Settling Defendants with knowledge of the alleged conspiracy within sixty (60) days after the Proceedings have been certified, other than for settlement purposes, as against the Non-Settled Defendants. The voluntary interview, not to exceed eight hours in length, shall not be under oath but may be recorded by electronic means, provided the Plaintiffs so elect, and provided reasonable advanced notice of no less than thirty (30) days is given to the Settling Defendants. Costs incurred by, and the expenses of, the employee(s) of the Settling Defendants in relation to such interview, including any cost for a translator, shall be the responsibility of the Settling Defendants.

- (7) If requested by Class Counsel, the Settling Defendants agree to use reasonable efforts to:
- (a) authenticate any of their Documents or data produced in accordance with subsection 4.1(2) to the extent the Settling Defendants can establish their authenticity and that the Plaintiffs require their authentication for their admission and use at any point in the Proceedings; and
  - (b) make available any reasonably necessary current employee(s), officer(s) or director(s) of the Settling Defendants with relevant knowledge of the alleged conspiracy to provide affidavit or testimonial evidence on summary judgement or at the trial or as the Parties may otherwise agree, to the extent that such evidence is required by the Plaintiffs, at a location to be mutually agreed upon as the circumstances require. The parties agree to reasonably collaborate in respect of minimizing the costs, time or travel requirements incurred by, and the expenses of, the employee(s) of the Settling Defendants in relation to such testimony, including any cost for a translator, and agree that Class Counsel shall assume these costs.
- (8) The obligation to produce and authenticate Documents produced pursuant to subsection 4.1(2) shall be a continuing one to the extent that additional Documents are provided by the Settling Defendants to the Canadian Competition Bureau, the U.S. Department of Justice or in the context of the U.S. Litigation regarding Electrolytic Capacitors which is at issue in the Proceedings. Class Counsel and the Plaintiffs shall, in reference to this continuing obligation, consult with Counsel for the Settling Defendants and seek to utilize the least burdensome, costly and intrusive means for the Settling Defendants to discharge their obligation under this provision.

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- (9) Nothing in this Settlement Agreement shall require, or shall be construed to require, the Settling Defendants, or any representative or employee of the Settling Defendants, to disclose or produce any Documents or information that is legally privileged or to disclose or produce any Documents or information in breach of any order, non-disclosure, privacy or confidentiality obligation, regulatory directive, rule or law of this or any jurisdiction, it being understood and agreed that no non-disclosure or confidentiality obligation applies or shall apply to prevent the productions contemplated by subsections 4.1(1), (2), (3) and (4).
- (10) If any of the Documents referenced in 4.1(9) are accidentally or inadvertently disclosed or produced, such Documents shall be promptly returned to the Settling Defendants and the Documents and the information contained therein shall not be disclosed or used, directly or indirectly, except with the express written permission of the Settling Defendants, and the production of such Documents shall in no way be construed to have waived in any manner any privilege, doctrine, law, or protection attached to such Documents.
- (11) The obligations of the Settling Defendants to cooperate as particularized in Section 4.1 shall not be affected by the release provisions contained in Section 6 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, except for the obligation in subsection 4.1(3) which shall cease on final distribution of all monetary recoveries in the Proceedings. For greater certainty, the Plaintiffs' failure to strictly enforce any of the deadlines for the Settling Defendants to provide cooperation pursuant to this Section 4.1 is not a waiver of the cooperation rights granted by Section 4.1.
- (12) If the Settling Defendants materially breach this Section 4.1, the Plaintiffs may move before the Courts to enforce the terms of this Settlement Agreement or set aside the approval of the Settlement Agreement or a part thereof, and may exercise any rights they have to seek or obtain testimony, discovery, information or Documents from current officers, directors and/or employees of the Settling Defendants.
- (13) Subject to subsection 4.1(12), 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, including the officers, directors or employees of the Settling Defendants and other Releasees as at the Effective Date, and the Plaintiffs and Class Counsel agree that they shall not pursue any other

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means of discovery against, or seek to compel the evidence of, the Settling Defendants and the other Releasees or their current officers, directors, employees, agents, or counsel, whether in Canada or elsewhere and whether under the rules or laws of any Canadian or foreign jurisdiction.

- (14) For greater clarity, the Plaintiffs do not in any case waive any rights they have to seek or obtain testimony, discovery, information or Documents from those officers, directors and/or employees of the Settling Defendants and other Releasees who, as at the Effective Date, are former officers, directors and/or employees of the Settling Defendants and other Releasees.
- (15) 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, Class Counsel agree to exercise good faith in seeking cooperation from the Settling Defendants, agree not to seek information that is not necessary, cumulative or duplicative and agree otherwise to avoid imposing undue or unreasonable burdens or expenses on the Settling Defendants.
- (16) The scope of the Settling Defendants' cooperation under this Settlement Agreement shall be limited to the allegations asserted in the Proceedings as presently filed.
- (17) The Settling Defendants shall make their best efforts to ensure the accuracy of any of the documents or information described in 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 that Section.

#### **4.2 Limits on Use of Documents**

- (1) It is understood and agreed that all Documents and information made available or provided by the Settling Defendants to the Plaintiffs and Class Counsel under this Settlement Agreement, shall be used only in connection with the prosecution of the claims in the Proceedings, and shall not be used directly or indirectly for any other purpose, except to the extent that the Documents or information are or become publicly available. The Plaintiffs and Class Counsel agree they will not disclose the Documents and information provided by the Settling Defendants except: (i) to experts, consultants or third-party service providers retained by them in connection with the Proceedings who have agreed to comply with the provisions of this Settlement Agreement and any confidentiality

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orders issued pursuant to subsection 4.2(2); (ii) to the extent that the Documents or information are or become publicly available; (iii) as necessary for the prosecution of the Proceedings; or (iv) as otherwise required by law. Subject to the foregoing, the Plaintiffs and Class Counsel shall take reasonable precautions to ensure and maintain the confidentiality of such Documents and information, and of any work product of Class Counsel that discloses such Documents and information, except to the extent that the Documents and information are or become publicly available.

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

In the event that a Person applies for an order requiring the Plaintiffs to disclose or produce any Documents or information provided by the Settling Defendants as cooperation under this Settlement Agreement, the Plaintiffs shall notify the Settling Defendants of such application promptly upon becoming aware of it and no later than ten (10) days after disclosure or production is sought, in order that the Settling Defendants may move to oppose such disclosure or production. In no circumstances shall the Plaintiffs or Class Counsel apply for or consent to such an application for disclosure or production. The Plaintiffs and Class Counsel shall not disclose the confidential information or Documents until the Settling Defendants' motion has been decided and a final order has been issued requiring the Plaintiffs and/or Class Counsel to produce the relevant information or Documents, except: (i) to the extent such information or Documents are or become otherwise publicly available; or (ii) as ordered to do so by a Court.

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**SECTION 5 - DISTRIBUTION OF THE SETTLEMENT AMOUNT  
AND ACCRUED INTEREST**

**5.1 Distribution Protocol**

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

**SECTION 6 - RELEASES AND DISMISSALS**

**6.1 Release of Releasees**

- (1) Upon the Effective Date, subject to subsection 6.2, in consideration of payment of the Settlement Amount and for other valuable consideration set forth in this Settlement Agreement, the Releasors forever and absolutely release and forever discharge the Releasees from the Released Claims.

**6.2 Covenant Not to Sue**

- (1) Notwithstanding subsection 6.1, upon the Effective Date, for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasors do not release the Releasees, but instead covenant and undertake not to make any claim in any way or to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

**6.3 No Further Claims**

- (1) Upon the Effective Date, the Releasors and Class Counsel shall not now or hereafter institute, continue, provide assistance for or maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee, or against any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claim, except for the continuation of the Proceedings against the Non-Settling Defendants or unnamed co-conspirators that are not Releasees or, if the Proceedings are not certified or authorized, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendants or unnamed co-conspirator that is not a Releasee. For the

purposes of this subsection 6.3(1), Class Counsel includes anyone currently employed by or a partner with Class Counsel.

- (2) Subsection 6.3 shall be inoperative to the extent that it requires any lawyer who is a member of the Law Society of British Columbia to breach his or her obligations under section 3.2-10 of the Law Society of British Columbia's *Code of Professional Conduct for British Columbia* by refraining from participation or involvement in any claim or action in a British Columbia court.

#### **6.4 Dismissal of the Proceedings**

- (1) Upon the Effective Date, the Ontario Electrolytic Action, Ontario Film Action, and the BC 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 declaration of settlement out of court in the Québec Court in respect of the Québec Action.

#### **6.5 Dismissal of Other Actions**

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

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and receives benefits under this Settlement Agreement shall be dismissed as against the Releasees, without costs and without reservation.

## SECTION 7 - BAR ORDER AND WAIVER OF SOLIDARITY

### 7.1 Ontario and British Columbia Bar Order

- (1) The Plaintiffs and the Settling Defendants agree that the Ontario order and British Columbia order approving this Settlement Agreement must include a bar order in respect of the Ontario Electrolytic Action and the BC 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 Claims, which were or could have been brought in the Proceedings or otherwise, or could in the future be brought on the basis of the same events, actions and omissions underlying the Proceedings, by any Non-Settling Defendants, any named or unnamed alleged co-conspirator that is not a Releasee, any Settled Defendant, or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Defendants, any named or unnamed alleged co-conspirator that is not a Releasee, any Settled Defendant, or any other Person or party, are barred, prohibited and enjoined in accordance with the terms of this subsection (unless such claim is made in respect of a claim by a Person who has validly opted-out of the Proceedings);
  - (b) A provision that if the Ontario Court or BC Court, as applicable, ultimately determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise:
    - (i) the Ontario Electrolytic Plaintiffs or BC Plaintiff, as applicable, and the Ontario Settlement Class or BC Settlement Class, as applicable, shall not be entitled to claim or recover from the Non-Settling 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;

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- (ii) the Ontario Electrolytic Plaintiffs or BC Plaintiff, as applicable, and the Ontario Settlement Class or BC Settlement Class, as applicable, shall limit their claims against the Non-Settling 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 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 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 Settlement Class or BC Settlement Class, as applicable, if any, and, for greater certainty, the Ontario Settlement Class or BC 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 Defendants and/or, named or unnamed alleged co-conspirators and/or, any other Person or party that is not a Releasee, if permitted by law; and
  
- (iii) the Ontario Court and the BC Court, as applicable, shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Ontario Electrolytic Action or BC Action, as applicable, 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 or BC 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 Action, as applicable, and shall not be binding on the Releasees in any other proceeding.

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- (c) A provision that nothing in the British Columbia and Ontario orders approving this Settlement Agreement, as applicable, shall limit, restrict or affect any arguments which the Non-Settling 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 Settlement Class or BC Settlement Class, as applicable, in the Ontario Electrolytic Action or BC Action, as applicable, or the rights of Ontario Electrolytic Plaintiffs and Ontario Settlement Class Members or BC Plaintiffs and BC Settlement Class Members, as applicable, to oppose or resist any such arguments, except as provided for in this section 7.1;
- (d) A provision that a Non-Settling Defendant may, on motion to the Ontario Court or BC Court, as applicable, and on at least ten (10) days' notice to Counsel for the Settling Defendants, and not to be brought until the Ontario Electrolytic Action or BC Action, as applicable, against the Non-Settling Defendants has been certified as a class proceeding (but not including any certification for settlement purposes), seek Orders for the following, which order shall be determined as if the Settling Defendants remained a party to the Ontario Electrolytic Action or BC Action, as applicable:
- (i) documentary discovery and an affidavit of documents (list of documents in British Columbia) from the Settling Defendants in accordance with the relevant rules of civil procedure;
  - (ii) oral discovery of a representative of the Settling Defendants, the transcript of which may be read in at trial;
  - (iii) leave to serve a request to admit (notice to admit in British Columbia) on the Settling Defendants in respect of factual matters; and/or
  - (iv) the production of a representative of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.

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- (e) A provision that the Settling Defendants retain all rights to oppose such motion(s) brought pursuant to subsection 7.1(1)(d). Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of Documents to be produced and/or for information obtained from discovery in accordance with subsection 7.1(1)(d). Notwithstanding any provision in the Ontario and British Columbia orders approving this Settlement Agreement, on any motion brought pursuant to subsection 7.1(1)(d), the Ontario Court or BC Court, as applicable, may make such orders as to costs and other terms as it considers appropriate.
  - (f) A provision that a Non-Settling Defendant may serve the motion(s) referred to in subsection 7.1(1)(d) on the Settling Defendants by service on Counsel for the Settling Defendants in the relevant Proceeding.
- (2) To the extent that such an order is granted pursuant to subsection 7.1(1)(d) and discovery is provided to the Non-Settling Defendants, a copy of all discovery provided, whether oral or documentary in nature, shall be provided by the Settling Defendants to the Plaintiffs and Class Counsel within ten (10) days of such discovery being provided to a Non-Settling Defendant(s).

## **7.2 Québec Waiver or Renunciation of Solidarity Order**

- (1) The Plaintiffs and the Settling Defendants agree that the Québec order approving this Settlement Agreement must include a waiver or renunciation of solidarity in respect of the Québec Action which includes the following:
  - (a) the Québec Plaintiff and the Québec Settlement Class expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts, deeds or other conduct of the Releasees relating to the Released 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 Defendants, the sales by the Non-Settling Defendants, and/or other applicable measure of proportionate liability of the Non-Settling Defendants;

- (c) any claims in warranty or any other claim or joinder of parties to obtain any contribution or indemnity from the Releasees relating to the Released Claims shall be inadmissible and void in the context of the Québec Action; and
- (d) the ability of Non-Settling Defendants to seek discovery from the Settling Defendants shall be determined according to the provisions of the *Code of Civil Procedure*, and the Settling Defendants shall retain and reserve all of their rights to oppose such discovery under any applicable law.

### **7.3 Claims Against Other Entities Reserved**

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

## **SECTION 8 - EFFECT OF SETTLEMENT**

### **8.1 No Admission of Liability**

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

### **8.2 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

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approve and/or enforce this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law or as provided in this Settlement Agreement.

#### **SECTION 9 - CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY**

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

#### **SECTION 10 - NOTICE TO SETTLEMENT CLASS**

##### **10.1 Notices Required**

- (1) The proposed Settlement Class shall be given the following notice: (i) Notice of Certification and of Approval Hearings (in English and in French as necessary); and (ii) notice of termination (if the Settlement Agreement is terminated or otherwise fails to take effect).
- (2) 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 Court's Order approving notice under Section 2.2, the Settling Defendants shall provide Class Counsel with a customer list with last known contact information for each customer in Canada, if any, who purchased Electrolytic Capacitors directly from the Settling Defendants during the Class Period for the purpose of facilitating direct notice to the Settling Defendants' customers.

**10.2 Form and Distribution of Notices**

- (1) The form of the notices referred to in subsection 10.1 and how and where they are published and distributed shall be as agreed to by the Plaintiffs and the Settling Defendants and, failing agreement, as ordered by the Courts.
- (2) The Plaintiffs shall bring and seek to schedule motions before the Courts seeking orders from the Courts approving the notices described in subsection 10.1. The Plaintiffs may determine the time of these motions in their full and complete discretion, after consultation with the Settling Defendants, and subject to subsection 2.2.

**SECTION 11 - ADMINISTRATION AND IMPLEMENTATION**

**11.1 Mechanics of Administration**

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

**SECTION 12 - CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES**

- (1) The Releasees shall not be liable for any fees, disbursements or taxes of any of Class Counsel's, the Plaintiffs' or Settlement Class Members' respective lawyers, experts, advisors, agents, or representatives.
- (2) Class Counsel shall pay the costs of the notices required by subsection 10.1 and any costs of translation required by subsection 14.12 from the Trust Account, as they become due. For greater certainty, Class Counsel may pay for the costs of the notices before the Effective Date, and may seek approval from the Court to recover those costs as a disbursement at any time.
- (3) Class Counsel may seek the Courts' approval to pay Class Counsel Fees contemporaneously with seeking approval of this Settlement Agreement. Class Counsel's court-approved fees shall be paid from the Trust Account after the Effective Date.

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- (4) Except as provided herein, Administration Expenses may only be paid out of the Trust Account after the Effective Date.

### **SECTION 13 - NON-APPROVAL OR TERMINATION OF SETTLEMENT AGREEMENT**

#### **13.1 Right of Termination**

- (1) In the event that:
- (a) any Court declines to certify or authorize the Settlement Class;
  - (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 the Parties agree that the releases, bar orders, waiver or renunciation of solidarity and covenants not to sue contemplated by this Settlement Agreement are all material terms;
  - (d) any Court approves this Settlement Agreement in a materially modified form;
  - (e) any Court issues an order approving this Settlement Agreement in a form that is materially inconsistent with the terms of this Settlement Agreement or not substantially in the form attached to this Settlement Agreement as Schedule "C";  
or
  - (f) any order approving this Settlement Agreement made by the Courts do not become Final Orders;

the Settling Defendants and the Plaintiffs shall have the right to terminate this Settlement Agreement by delivering a written notice pursuant to subsection 14.18, within thirty (30) days following the event described above. Except as provided for in subsection 13.4, if the Settling Defendants or the Plaintiffs exercise their right to terminate, the Settlement Agreement shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

- (2) In addition, if the Settlement Amount is not paid in accordance with Section 3.1(1), the Plaintiffs shall have the right to terminate this Settlement Agreement by delivering a written

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notice pursuant to subsection 14.18 or move before the Courts to enforce the terms of this Settlement Agreement.

- (3) Any order, ruling or determination made by any Court with respect to Class Counsel Fees 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.

### **13.2 Effect of Non-Approval or Termination of Settlement Agreement**

- (1) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason:
  - (a) no motion to certify or authorize any of the Proceedings as a class proceeding on the basis of this Settlement Agreement, or to approve this Settlement Agreement, which has not been decided, shall proceed;
  - (b) the Parties will cooperate in seeking to have any issued order 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 Class and the Common Issue pursuant to this Settlement Agreement, shall be without prejudice to any position that any of the Parties may later take on any issue in the Proceedings or any other litigation; and
  - (d) within ten (10) days of such termination having occurred, Class Counsel shall make reasonable efforts to destroy all Documents or other materials provided by the Settling Defendants under this Settlement Agreement or containing or reflecting information derived from such Documents or other materials received from the Settling Defendants, including any notes or work product of Class Counsel, and, to the extent Class Counsel has disclosed any Documents or information provided by the Settling Defendants or related notes or work product of Class Counsel to any other Person, shall recover and destroy such Documents or material. Class Counsel shall provide Counsel for the Settling Defendants with

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a written certification by Class Counsel of such destruction within ten (10) days of termination.

**13.3 Allocation of Settlement Amount Following Termination**

- (1) If the Settlement Agreement is terminated, Ontario Counsel shall, within thirty (30) business days of the written notice advising that the Settlement Agreement has been terminated in accordance with its terms, return to the Settling Defendants the Settlement Amount, plus all accrued interest thereon and less taxes paid on interest, any costs incurred with respect to the notices required by subsection 10.1, and any costs of translation required by subsection 14.12.

**13.4 Survival of Provisions After Termination**

- (1) If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, the provisions of subsections 3.2(3), 8.1, 8.2, 10.1, 10.2, 13.2, 13.3, 13.4 14.5 and 14.6 and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of subsections 3.2(3), 8.1, 8.2, 10.1, 10.2, 13.2, 13.3, 13.4, 14.5 and 14.6 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 14 - MISCELLANEOUS**

**14.1 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 Québec Action or the BC Action shall be determined by the Ontario Court.
- (2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties except for those motions concerned solely with the implementation and administration of the Distribution Protocol.

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**14.2 Releasees Have No Liability for Administration**

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

**14.3 Headings, etc.**

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

**14.4 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 *Rules of Civil Procedure*, RRO 1990, Reg 194, the act may be done on the next day that is not a holiday.

**14.5 Ongoing Jurisdiction**

- (1) Each of the Courts shall retain exclusive jurisdiction over the action 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.

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- (3) Notwithstanding subsections 14.5(1) and 14.5(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 Settlement Class member shall be determined by the Ontario Court.

#### **14.6 Governing Law**

- (1) Subject to section 14.6(2), this Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- (2) Notwithstanding section 14.6(1), for matters relating specifically to the BC Action or the Québec Action, the BC Court or Québec Court, as applicable, shall apply the law of its own jurisdiction and the laws of Canada applicable therein.

#### **14.7 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.

#### **14.8 Amendments**

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

#### **14.9 Binding Effect**

- (1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Settlement Class Members, the Settling Defendants, the Releasers, 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.

#### **14.10 Counterparts**

- (1) This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or electronic signature shall be deemed an original signature for purposes of executing this Settlement Agreement.
- (2) The Parties agree that either Party's failure to strictly enforce a right granted to it under this Settlement Agreement is not a waiver of that right.

#### **14.11 Negotiated Agreement**

- (1) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

#### **14.12 Language**

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

#### **14.13 Transaction**

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

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**14.14 Recitals**

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

**14.15 Schedules**

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

**14.16 Acknowledgements**

- (1) Each of the Parties hereby affirms and acknowledges that:
- (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood this Settlement Agreement;
  - (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
  - (c) he, she or the Party's representative fully understands each term of this Settlement Agreement and its effect; and
  - (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of this Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

**14.17 Authorized Signatures**

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

**14.18 Notice**

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

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**FOR THE PLAINTIFFS AND CLASS COUNSEL:**

**Foreman & Company  
Professional Corporation**  
c/o Jonathan Foreman  
4 Covent Market Place  
London, ON N6A 1E2

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

**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

**Camp Fiorante Matthews Mogerman <sup>LLP</sup>**  
c/o David G.A. Jones  
400-856 Homer St,  
Vancouver, BC V6B 2W

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

**FOR THE SETTLING DEFENDANTS:**

**Fasken <sup>LLP</sup>**  
Paul Martin  
Bay Adelaide Centre,  
333 Bay St. #2400,  
Toronto, ON M5H 2T6

Tel : (416) 865-4439  
Fax : (416) 364-7813  
Email : pmartin@fasken.com

**14.19 Date of Execution**

(1) The Parties have executed this Settlement Agreement 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 Professional Corp.**  
Ontario Counsel

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**Sara Ramsay**, by her counsel

Name of Authorized Signatory:

David Jones

Signature of Authorized Signatory:

p.p.

**Camp Fiorante Matthews Mogerman** <sup>LLP</sup>  
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

**Rohm Co. Ltd. and Rohm Semiconductor U.S.A., LLC,**

Name of Authorized Signatory  
(I have authority to bind Rohm Co.  
Ltd. and Rohm Semiconductor  
U.S.A., LLC)

Toshihiko Ushiro

Signature of Authorized Signatory:

ROHM Co., Ltd.  
General Manager, Legal & Intellectual Property Division

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**Sara Ramsay**, by her counsel

Name of Authorized Signatory: \_\_\_\_\_

Signature of Authorized Signatory: \_\_\_\_\_

**Camp Fiorante Matthews Mogerman** <sup>LLP</sup>  
BC Counsel

**Option consommateurs**, by its counsel

Name of Authorized Signatory: Maxime Nasr

Signature of Authorized Signatory: [Signature]

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

**Rohm Co. Ltd. and Rohm Semiconductor U.S.A., LLC,**

Name of Authorized Signatory  
(I have authority to bind Rohm Co.  
Ltd. and Rohm Semiconductor  
U.S.A., LLC) \_\_\_\_\_

Signature of Authorized Signatory: \_\_\_\_\_

**SCHEDULE "A"  
PROCEEDINGS**

<b>Proceeding</b>	<b>Plaintiff(s)</b>	<b>Defendants</b>	<b>Settlement Class</b>
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 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.	All Persons in Canada who purchased Electrolytic Capacitors or a product containing an Electrolytic Capacitor during the 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. 500-06-000704-144 (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.

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Proceeding	Plaintiff(s)	Defendants	Settlement Class
<p>British Columbia Supreme Court (Vancouver Registry) Court File No. S-146293 (the "BC Action")</p>	<p>Sara Ramsay</p>	<p>Panasonic Corporation f/k/a/ Matsushita Electric Industrial Co., Ltd.; Panasonic Corporation of North America; Panasonic Canada Inc.; Sanyo Electric Co., Ltd.; Sanyo Electronic Device (U.S.A.) Corp.; Sanyo North America Corporation; Taiyo Yuden Co., Ltd.; Taiyo Yuden (USA) Inc.; NEC Tokin Corporation; NEC Tokin America, Inc.; KEMET 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 Electro-Mechanics America Inc.; Samsung Electronics Canada Inc.; ROHM Co., Ltd. and ROHM Semiconductor U.S.A., LLC</p>	<p>All Persons in British Columbia who purchased Electrolytic Capacitors or a product containing an Electrolytic Capacitor during the Class Period except Excluded Persons.</p>

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**SCHEDULE "B"**

Court File No. 3795/14 CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE \_\_\_\_\_ ) , THE DAY  
 ) OF , 2022

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**

**(Certification, Opt-Out and Notice Approval)**

**THIS MOTION** made by the Plaintiffs for an Order certifying this proceeding as a class proceeding for settlement purposes as Rohm Co. Ltd. and Rohm Semiconductor U.S.A., LLC (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 ●, 2022 attached to this Order as Schedule "A" (the "Settlement Agreement"), and on hearing the

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

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

**AND WHEREAS** that the opt-out period provided pursuant to the Order of this Court made on \*, satisfied 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 \*;

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

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

All Persons or entities in Canada who purchased Electrolytic Capacitors or a product containing a Electrolytic Capacitor between September 1, 1997 and December 31, 2014, other than (1) all BC 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.

Excluded Person means: each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing, and those Persons who opt-out of the Proceedings in accordance with the orders of the applicable Courts.

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

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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 Class Period? If so, what damages, if any, did 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 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 Settlement Class, Class Period and Common 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 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 Defendants.
7. **THIS COURT ORDERS** that the notice of certification and settlement approval hearing (the "Notice") is hereby approved substantially in the form attached hereto as Schedule "B".
8. **THIS COURT ORDERS** that the plan of dissemination of the Notice (the "Plan of Dissemination") is hereby approved in the form attached hereto as Schedule "C" and that the Notice shall be disseminated in accordance with the Plan of Dissemination.
9. **THIS COURT ORDERS** that ● is appointed to disseminate the Notice in accordance with the terms of this Order.
10. **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.
11. **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, this Order shall be deemed to have been set aside and declared null and void and of no force or effect, without the need for any further Order of this Court. In those circumstances, a case

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

Date:

\_\_\_\_\_  
The Honourable \_\_\_\_\_

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CYGNUS ELECTRONICS CORPORATION, et al. v. PANASONIC CORPORATION, et al. Court File No. 3795/14 CP  
Plaintiffs Defendants

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

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

**ORDER  
(Certification, Opt-Out and Notice Approval)**

**Foreman & Company  
Professional Corporation**  
4 Covent Market Place  
London, ON N6A 1E2

**Jonathan J. Foreman (LSO #45087H)**  
Tel: (519) 679-9660  
Fax: (519) 667-3362  
E-mail: jforeman@harrisonpensa.com

Schedule "C"

Court File No. 3795/14 CP

ONTARIO  
SUPERIOR COURT OF JUSTICE

THE HONOURABLE \_\_\_\_\_ ) , THE DAY  
 ) OF , 2022

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  
(Settlement Approval)

THIS MOTION made by the Plaintiffs for an Order approving the settlement agreement entered into with Rohm Co. Ltd. and Rohm Semiconductor U.S.A., LLC (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 ●, 2022 attached to this Order as Schedule "A" (the "Settlement Agreement"), and on hearing the

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

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

**AND ON BEING ADVISED** that the deadline for opting-out of the Ontario Electrolytic Action has passed, and there were ● opt-outs;

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

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

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hereby dismissed in respect of Released Claims against the Settling Defendants and the Releasees, without costs and with prejudice.

8. **THIS COURT ORDERS** that, upon the Effective Date, subject to paragraph 10, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
9. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor who has not validly opted-out of this action, as well as Class Counsel, shall not now or hereafter institute, continue, provide assistance for or maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claim, except for the continuation of the Proceedings against the Non-Settling Defendants or unnamed co-conspirators that are not Releasees or, if the Proceedings are not certified or authorized, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendants or unnamed co-conspirator that is not a Releasee.
10. **THIS COURT ORDERS** that the use of the terms "Releasors" and "Released Claims" in this Order does not constitute a release of claims by those members of the Ontario 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 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 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 Claims, which were or could have been brought in the Proceedings or otherwise, or could in the future be brought on the basis of the same events, actions and omissions underlying the Proceedings, by any Non-Settling Defendants, any named or unnamed alleged co-conspirator that is not a Releasee, any Settled Defendant, or any other Person or party against a Releasee, or by a Releasee

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

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

- a. the Ontario Electrolytic Plaintiffs and Ontario Settlement Class members shall not be entitled to claim or recover from the Non-Settling 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 Settlement Class Members shall limit their claims against the Non-Settling 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 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 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 Settlement Class members, if any, and, for greater certainty, the Ontario 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

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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 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 Settlement Class in the Ontario Electrolytic Action or the rights of Ontario Electrolytic Plaintiffs and Ontario 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 Defendant may, on motion to this Court determined as if the Settling Defendants remained party to this action, brought on at least ten (10) days' notice to Counsel for the Settling Defendants and not to be brought until the Ontario Electrolytic Action against the Non-Settling 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

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- 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 Defendants.
16. **THIS COURT ORDERS** that the Settling Defendants retains all rights to oppose such motion(s) brought under paragraph 15. Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of Documents to be produced and/or for information obtained from discovery in accordance with paragraph 15. Notwithstanding any provision in the Ontario and British Columbia orders approving this Settlement Agreement, on any motion brought pursuant to paragraph 15, the Ontario Court or BC Court, as applicable, may make such orders as to costs and other terms as it considers appropriate.
17. **THIS COURT ORDERS** that a Non-Settling Defendant may serve the motion(s) referred to in paragraph 15 above on the Settling Defendants by service on Counsel for the Settling Defendants in the Ontario Electrolytic Action.
18. **THIS COURT ORDERS** that for purposes of implementation, administration, interpretation and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Settling Defendants acknowledge and attorn to the jurisdiction of this Court solely for the purpose of implementing, administering, interpreting and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.
19. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any Releasors has or may have against the Non-Settling 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.
21. **THIS COURT ORDERS** that the Settlement Amount shall be held in the Trust Account by Ontario Counsel or its duly appointed agent for the benefit of Settlement Class Members, pending further order of this Court on notice to the Defendants and, after the Effective Date, the Settlement Amount can be used to pay Class Counsels Disbursements incurred for the benefit of the Settlement Classes in the continued prosecution of the Ontario

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

22. **THIS COURT ORDERS** that, upon the Effective Date, the Ontario Electrolytic Action is hereby dismissed as against the Settling Defendants, without costs and with prejudice.
23. **THIS COURT ORDERS** that the approval of the Settlement Agreement is contingent upon parallel orders for approval being made by the BC Court and the Québec Court, and the terms of this Order shall not be effective unless and until the Settlement Agreement is approved by the BC Court and the Québec Court, and the BC Action has been dismissed with prejudice and without costs and the Québec Action has been declared settled out of court without costs and without reservation as against the Settling Defendants in the relevant proceeding by the Courts. If such orders are not secured in British Columbia and Québec, this Order shall be null and void and without prejudice to the rights of the parties to proceed with the Ontario Electrolytic Action and any agreement between the parties incorporated in this Order shall be deemed in any subsequent proceedings to have been made without prejudice.
24. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms, this Order shall be declared null and void on subsequent motion made on notice.
25. **THIS COURT ORDERS** that this Order, including but not limited to the approval of the Settlement Agreement and any reasons given by the Court in relation thereto, except as to paragraphs 12 to 17 of the Order, is without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Ontario Electrolytic Action.

Date:

\_\_\_\_\_  
The Honourable \_\_\_\_\_

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Schedule "D"

Court File No. 1272/16 CP

THE HONOURABLE ) , THE DAY  
 ) OF , 2022

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

**THIS MOTION** made by the Plaintiffs for an Order dismissing the Ontario Film Action against Rohm Co. Ltd. and Rohm Semiconductor U.S.A., LLC (the "Settling Defendants") with prejudice, pursuant to the settlement agreement entered into with 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 ●, 2022 attached to this Order as Schedule "A" (the "Settlement Agreement"), and on hearing the submissions of counsel for the Plaintiffs, Counsel for the Settling Defendants and counsel for the Non-Settling Defendants in the Ontario Film Action;

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**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 deadline for opting-out of the Ontario Electrolytic Action has passed, and there were ● opt-outs;

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

26. **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.
27. **THIS COURT ORDERS** that, in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
28. **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.
29. **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.
30. **THIS COURT ORDERS** that this Order and any reasons given by the Court in relation thereto, is without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing 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 in the Ontario Film Action as against the Non-Settling Defendants.

Date:

\_\_\_\_\_  
The Honourable \_\_\_\_\_

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CYGNUS ELECTRONICS CORPORATION, et al.

v. PANASONIC CORPORATION, et al.  
Defendants

Court File No. 3795/14 CP

Plaintiffs

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the *Class Proceedings Act*,  
1992

**ORDER  
(Settlement Approval)**

**Foreman & Company  
Professional Corporation**  
4 Covent Market Place  
London, ON N6A 1E2

**Jonathan J. Foreman (LSO #45087H)**  
Tel: (519) 679-9660  
Fax: (519) 667-3362  
E-mail: [jforeman@harrisonpensa.com](mailto:jforeman@harrisonpensa.com)

# Schedule "B"

## LEGAL NOTICE AUTHORIZED BY THE ONTARIO SUPERIOR COURT OF JUSTICE, THE SUPREME COURT OF BRITISH COLUMBIA AND THE SUPERIOR COURT OF QUÉBEC

### NOTICE OF CERTIFICATION FOR SETTLEMENT PURPOSES AND OF SETTLEMENT APPROVAL HEARING IN CANADIAN ELECTROLYTIC & FILM CAPACITORS CLASS ACTIONS

Did you purchase an aluminum or tantalum electrolytic capacitor or an electronic device containing an aluminum or tantalum electrolytic capacitor between September 1, 1997 and December 31, 2014 or a film capacitor or an electronic device containing a film capacitor between January 1, 2002 and December 31, 2014? If so, your legal rights could be affected.

#### WHAT ARE THE CLASS ACTIONS ABOUT?

"Electrolytic capacitors" and "film capacitors" are two types of electronic components used in an electrical circuit in order to store a charge. Aluminum and tantalum electrolytic and film capacitors are found in electronics like smartphones, gaming consoles, home appliances and televisions, among other products.

Class actions alleging price-fixing and related conduct are ongoing in Canada, on behalf of Canadians who purchased: 1) an aluminum or tantalum electrolytic capacitor or a product containing an aluminum or tantalum electrolytic capacitor between September 1, 1997 and December 31, 2014 (the "Electrolytic Settlement Class Members"), and/or 2) a film capacitor or a product containing a film capacitor between January 1, 2002 and December 31, 2014 (the "Film Settlement Class Members") (collectively the "Class Actions").

#### ELECTROLYTIC AND FILM CAPACITOR SETTLEMENTS

Settlements have been reached with ROHM Co., Ltd. and ROHM Semiconductor U.S.A., LLC (f/k/a ROHM Electronics U.S.A., LLC) ("ROHM"); with Fujitsu Ltd. and Fujitsu Canada, Inc. ("Fujitsu"); with KEMET Corporation and KEMET Electronics Corporation ("KEMET") and with Nichicon Corporation and Nichicon (America) Corporation ("Nichicon") in the electrolytic capacitors matter, and with KEMET and Nichicon in the film capacitors matter (collectively, the "Settling Defendants").

ROHM, Fujitsu, KEMET and Nichicon have agreed to pay CAD \$450,000, CAD \$465,000, CAD \$6,200,000, and CAD \$14,150,000 respectively, totalling CAD \$21,265,000 (the "Electrolytic Settlement Amount"), for the benefit of the Electrolytic Settlement Class Members.

KEMET and Nichicon have also agreed to pay CAD \$325,000 and CAD \$350,000 respectively, totalling CAD \$675,000 (the "Film Settlement Amount") for the benefit of the Film Settlement Class Members.

The Settling Defendants will provide cooperation to the plaintiffs in pursuing their claims against the remaining non-settling defendants. In exchange, ROHM, Fujitsu, KEMET and Nichicon will be provided with a full release of the claims made against them in the Class Actions. The settlements are not admissions of liability, fault, or wrongdoing, but are compromises of disputed claims.

The plaintiffs sought and were granted certification/amended authorization for settlement purposes in Ontario, British Columbia and Québec on behalf of the Electrolytic Settlement Class Members. Certification was also sought and granted for settlement purposes in Ontario on behalf of all national Film Settlement Class Members.

Prior settlements were reached with other defendants in the Class Actions and have been approved by previous orders of the courts.

#### SETTLEMENT APPROVAL HEARINGS

The settlements must be approved by the courts before they become effective. Hearings are to take place in Ontario, British Columbia and Québec for the electrolytic capacitors matter and in Ontario for the film capacitors matter at:

- the Ontario Superior Court of Justice on [DATE] at [TIME], by virtual hearing;
- the Supreme Court of British Columbia on [DATE] at [TIME], in person at [location]; and
- the Superior Court of Québec on [DATE] at [TIME], in person at [location] and by virtual hearing.

If you think you are an Electrolytic or Film Settlement Class Member in a jurisdiction that is having a virtual settlement approval hearing and you want to participate, please contact the lawyers working on the Class Actions as listed below for instructions and particulars on how to join the hearing, or visit [www.capacitorclassaction.ca](http://www.capacitorclassaction.ca) for more information.

Pursuant to the settlements with ROHM and Nichicon, concurrently with the settlement approval hearings, a dismissal of the Ontario Film Action will be sought as against ROHM and a dismissal of the Ontario Electrolytic Action and a discontinuance of the BC

Electrolytic Action will be sought against FPCAP Electronics (Suzhou) Co., Ltd., a wholly owned subsidiary of Nichicon Corporation from 2009 until its dissolution in 2016.

#### DISTRIBUTION OF SETTLEMENT FUNDS

The Electrolytic Settlement Amount and the Film Settlement Amount, minus court-approved lawyers' fees, disbursements and applicable taxes, will be held in separate interest-bearing trust accounts, along with the previous settlement amounts, for the benefit of Electrolytic and Film Settlement Class Members in the Class Actions (the "Settlement Funds").

As the Class Actions remain ongoing and as further recoveries may be achieved, the Settlement Funds will not be distributed to Electrolytic or Film Settlement Class Members at this time. At a future time, the courts will approve a process for the payment of claims to class members. A further notice will be provided at the time of distribution.

#### STATUS OF THE CLASS ACTIONS

ROHM, Fujitsu, KEMET and Nichicon are respectively the fifth, sixth seventh and eighth groups of defendants to enter into settlements in the electrolytic class action. KEMET and Nichicon are respectively the sixth and seventh groups of defendants to enter into a settlement in the film class action. The Class Actions continue against 12 non-settling defendants in the electrolytic capacitors matter and 22 non-settling defendants in the film capacitors matter.

#### SETTLEMENT APPROVAL AND LAWYERS' FEES

At the settlement approval hearings, the courts will determine whether the settlements are fair, reasonable, and in the best interests of the Electrolytic and Film Settlement Class Members. At this time, the lawyers working on these Class Actions will be requesting court approval of fees of 25% of the Electrolytic and Film Settlement Amounts, plus disbursements and applicable taxes. If approved, these amounts may be paid to the lawyers out of the settlement funds at that time.

**If you do not oppose the proposed settlements, you do not need to do anything at this time.**

If you wish to comment on or object to the settlement agreements or the lawyer's fees, you must deliver a written submission to one of the law firms listed below by [DATE]. The lawyers will forward any submissions to the appropriate court.

#### OPTING OUT OF THE PROCEEDINGS

The court-ordered deadline for Electrolytic and Film Class Members to opt out of the Class Actions was October 24, 2018. If you did not previously opt out, you are legally bound by the result of the Class Actions, including the ROHM, Fujitsu, KEMET and Nichicon settlement agreements.

#### MORE INFORMATION

If you have any questions about the Class Actions or to review the long form notice which contains additional information please visit [www.capacitorclassaction.ca](http://www.capacitorclassaction.ca) or contact:

*Foreman & Company*: Toll free at 1-855-814-4575 ext.107 or e-mail at [classactions@foremancompany.com](mailto:classactions@foremancompany.com) (Canada excluding BC and QC)

*Camp Fiorante Matthews Mogeran LLP*: Toll free at 1-800-689-2322 or e-mail at [info@cfmlawyers.ca](mailto:info@cfmlawyers.ca) (BC)

*Belleau Lapointe s.e.n.c.r.l.*: Toll free at 1-888-987-6701 or e-mail at [info@belleaulapointe.com](mailto:info@belleaulapointe.com) (QC)

## Schedule "C"

### NOTICE OF CERTIFICATION / AUTHORIZATION FOR SETTLEMENT PURPOSES AND SETTLEMENT APPROVAL HEARINGS IN THE MATTER OF THE ELECTROLYTIC & FILM CAPACITORS CLASS ACTIONS

**TO: All persons in Canada who purchased an aluminum or tantalum electrolytic capacitor or a product containing an aluminum or tantalum electrolytic capacitor between September 1, 1997 and December 31, 2014 (the "Electrolytic Settlement Class Members") and/or a film capacitor or a product containing a film capacitor between January 1, 2002 and December 31, 2014 (the "Film Settlement Class Members").**

*If you bought an electronic device such as computers, smartphones, gaming consoles, home appliances and televisions containing an electrolytic and/or film capacitor, you may be an Electrolytic or Film Settlement Class Member and your legal rights could be affected.*

**PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS.**

#### **1. WHAT IS A CLASS ACTION?**

A class action is a lawsuit filed by one person on behalf of a large group of people that has been "certified" or "authorized" by a Canadian court and determines "common issues" for the group of people known as the "class".

#### **2. WHAT ARE ELECTROLYTIC AND FILM CAPACITORS AND WHAT ARE THESE CLASS ACTIONS ABOUT?**

"Electrolytic capacitors" and "film capacitors" are two types of electronic components used in an electrical circuit in order to store a charge. Aluminum and tantalum electrolytic and film capacitors are found in electronics like smartphones, gaming consoles, home appliances and televisions, among other products.

In 2014, class proceedings were initiated in Ontario, in British Columbia and in Québec on behalf of Canadians who purchased an aluminum or tantalum electrolytic capacitor or a product containing an aluminum or tantalum electrolytic capacitor between September 1, 1997 and December 31, 2014 (the "Electrolytic Class Period"). In 2016, separate class proceedings were initiated on behalf of Canadians who purchased a film capacitor or a product containing a film capacitor between January 1, 2002 and December 31, 2014 (the "Film Class Period") (together the "Class Actions")

The Class Actions claim that the companies that sell aluminum or tantalum electrolytic and film capacitors were involved in unlawful conspiracies to fix, maintain or increase the prices of these products.

#### **3. WHAT IS A SETTLEMENT AND WHAT SETTLEMENTS HAVE BEEN REACHED IN THESE CLASS ACTIONS?**

##### *What is a settlement?*

A settlement is when a defendant agrees to pay money to the members of the class action in exchange for having the case against it dismissed.

Four settlement agreements have been reached in the Class Actions. The plaintiffs in the Class Actions have agreed to provide a combined notice of these settlements to class members in their respective proceedings.

### What new settlements have been reached?

Settlements have been reached with ROHM Co., Ltd. and ROHM Semiconductor U.S.A., LLC (f/k/a ROHM Electronics U.S.A., LLC) (collectively “ROHM”); with Fujitsu Ltd. and Fujitsu Canada, Inc. (collectively “Fujitsu”); with KEMET Corporation and KEMET Electronics Corporation (collectively “KEMET”); and with Nichicon Corporation and Nichicon (America) Corporation (collectively “Nichicon” and together with ROHM, Fujitsu and KEMET, the “Settling Defendants”).

ROHM, Fujitsu, KEMET and Nichicon have respectively agreed to pay CAD \$450,000, CAD \$465,000, CAD \$6,200,000, and CAD \$14,150,000, totalling CAD \$21,265,000 (the “Electrolytic Settlement Amounts”), for the benefit of the Electrolytic Settlement Class Members.

KEMET and Nichicon have further agreed to pay CAD \$325,000 and CAD \$350,000 respectively (the “Film Settlement Amounts”) for the benefit of the Film Settlement Class Members.

In addition, the Settling Defendants have agreed to provide cooperation to the plaintiffs in pursuing their claims against the non-settling defendants. In exchange, they will be provided with a full release of the claims against them in relation to the Class Actions.

The settlements are not admissions of liability, fault, or wrongdoing, but are compromises of disputed claims. The plaintiffs sought and were granted certification/amended authorization for settlement purposes in Ontario, British Columbia and Québec on behalf of the Electrolytic Settlement Class Members. Certification was also sought and granted for settlement purposes in Ontario on behalf of all national Film Settlement Class Members.

### The Settlement Approval Hearings

The settlements are subject to court approval. There will be settlement approval hearings in Ontario, British Columbia and Québec for the electrolytic capacitors matters. There will also be a settlement approval hearing in Ontario for the film capacitors matter. These hearings will be held:

- Before the Ontario Superior Court of Justice on [DATE] at [TIME], by virtual hearing;
- Before the Supreme Court of British Columbia on [DATE] at [TIME], in-person at [LOCATION]; and
- Before the Superior Court of Québec on [DATE] at [TIME], in-person at [LOCATION] and by virtual hearing at [LINK];

In considering the approval of each settlement, the courts will decide whether the settlements are fair, reasonable, and in the best interests of Electrolytic and Film Settlement Class Members.

Pursuant to the settlements with ROHM and Nichicon, concurrently with the settlement approval hearings, a dismissal of the Ontario Film Action will be sought as against ROHM and a dismissal of the Ontario Electrolytic Action and a discontinuance of the BC Electrolytic Action will be sought

against FPCAP Electronics (Suzhou) Co., Ltd., a wholly owned subsidiary of Nichicon Corporation from 2009 until its dissolution in 2016.

If you think you are an Electrolytic or Film Settlement Class Member in a jurisdiction that is holding a virtual hearing and you want to participate, please contact the lawyers working on the Class Actions for instructions and particulars on how to join the hearing. Contact information for the lawyers can be found below. Please visit [www.capacitorclassaction.ca](http://www.capacitorclassaction.ca) for further information in advance of the settlement approval hearings.

#### Previous Settlements reached

Prior settlements were reached in the electrolytic capacitors matter with the Tokin, Panasonic, ELNA and Holy Stone defendants, valued collectively at CAD \$11,900,000, and in the film capacitors matter with the Okaya, Nitsuko, Panasonic, ELNA and Holy Stone defendants, valued collectively at CAD \$2,035,000. Those settlements have been approved by previous orders of the courts.

#### **4. WHO IS AFFECTED BY THESE SETTLEMENTS?**

While the Class Actions were started in Ontario, British Columbia and Québec, they include persons in all provinces and territories in Canada who purchased an electrolytic and/or film capacitor or a product containing an aluminum or tantalum electrolytic and/or a film capacitor.

The Electrolytic Settlement Class Members are: ***all persons in Canada who purchased an aluminum or tantalum electrolytic capacitor or a product containing an aluminum or tantalum electrolytic capacitor between September 1, 1997 and December 31, 2014.***

The Film Settlement Class Members are: ***all persons in Canada who purchased a film capacitor or a product containing a film capacitor between January 1, 2002 and December 31, 2014.***

#### **5. WHEN WILL THE SETTLEMENT AMOUNTS BE DISTRIBUTED?**

The Electrolytic Settlement Amounts and Film Settlement Amounts, minus court-approved lawyers' fees, disbursements and applicable taxes, will be held in separate interest-bearing trust accounts with the previous settlement amounts, for the benefit of the Electrolytic and Film Settlement Class Members in the Class Actions (the "Settlement Funds").

As the Class Actions remain ongoing and as further recoveries may be achieved, the Settlement Funds will not be distributed to Electrolytic or Film Settlement Class Members at this time. At a future time, the courts will approve a process for the payment of claims to class members. Watch for another notice explaining how to claim money from the settlement.

#### **6. WHAT IS THE STATUS OF THE CLASS ACTIONS AGAINST THE OTHER DEFENDANTS?**

ROHM, Fujitsu KEMET and Nichicon are respectively the fifth, sixth, seventh and eighth groups of defendants to enter into settlements in the electrolytic class actions. KEMET and Nichicon are respectively the sixth and seventh group of defendants to enter into a settlement in the film class

action. The Class Actions will continue against 12 non-settling defendants in the electrolytic capacitors matter and 22 non-settling defendants in the film capacitors matter.

In Québec, the class action with respect to electrolytic capacitors was authorized by the Superior Court of Québec on March 22, 2019. This means that the class action can proceed towards the trial against the non-settling defendants and the common issues (as defined in the authorization judgment) will be determined in a single proceeding on behalf of all the members of the authorized class. A motion for certification of the Ontario electrolytic class action was heard by the Ontario Superior Court of Justice over several days between September 28, 2022 – October 7, 2022. The Court's decision is currently under reserve.

## **7. WHAT DO I NEED TO DO AT THIS TIME?**

If you do not oppose the proposed settlements, you do not need to do anything.

If you want to tell the courts what you think about the proposed settlements or speak to the courts at the hearings mentioned above, you must send your written submissions to the lawyers working on the Class Actions **by [DATE] at the latest**. Contact information for the lawyers can be found below under heading 11. The lawyers will file all such submissions with the appropriate Court.

## **8. OPT OUT DEADLINE PASSED ON OCTOBER 24, 2018**

The court-ordered deadline for Electrolytic and Film Class Members to opt out of the Class Actions was **October 24, 2018**. If you did not previously opt out, you are legally bound by the results of the Class Actions, including the ROHM, Fujitsu, KEMET and Nichicon settlement agreements.

## **9. WHAT DO I HAVE TO PAY?**

You do not have to pay the lawyers working on the Class Actions any money. Lawyers working on these Class Actions will be paid from the money collected in these Class Actions. The courts will be asked to decide how much the lawyers will be paid. While the respective retainer agreements permit a fee request of up to 30%, at this time the lawyers will collectively be asking at the settlement approval hearings that the courts approve legal fees of 25% of the Electrolytic and Film Settlement Amounts, plus disbursements and applicable taxes. Any approved lawyers' fees, disbursements and applicable taxes may be paid out of the settlement amounts at that time.

If you wish to comment on or make an objection to lawyers' fees, a written submission must be delivered to the appropriate lawyers at the addresses listed below **by [DATE] at the latest**. Lawyers will forward all such submissions to the appropriate court. If you do not file a written submission by the deadline, you may not be entitled to participate in the hearing, and your submission may not be brought to the attention of the courts.

## **10. WHAT IF THE SETTLEMENT AGREEMENTS ARE NOT APPROVED?**

For the settlements reached in the electrolytic capacitors matter, the certification/authorization orders are only valid if the settlements are approved by all three courts in Ontario, BC and Québec and, in the case of the KEMET and Nichicon settlements, approval of the film capacitor settlements with those defendants. The certification order in the film capacitors matter requires the settlement to be approved by the court in Ontario and, in the case of the KEMET and Nichicon settlements, approval of the electrolytic capacitor settlements with those defendants.

QUESTIONS ? IN QUÉBEC CALL 1-888-987-6701 (TOLL FREE), IN BRITISH COLUMBIA CALL 1-800-689-2322 (TOLL FREE), ANYWHERE ELSE IN CANADA CALL 1-855-814-4575, EXT. 107 (TOLL FREE) OR VISIT [WWW.CAPACITORCLASSACTION.CA](http://WWW.CAPACITORCLASSACTION.CA).

If the settlements are not approved or if they otherwise fail to take effect, the certification/authorization orders will not stand, and the litigation will continue against ROHM, Fujitsu, KEMET and Nichicon in the Class Actions.

## 11. WHO ARE THE LAWYERS WORKING ON THESE CLASS ACTIONS?

- **British Columbia:** Camp Fiorante Matthews Mogerman <sup>LLP</sup> represents Electrolytic Settlement Class Members in British Columbia and can be reached at:

Toll free at 1-800-689-2322, by fax at 1-604-689-7554, by e-mail at [info@cfmlawyers.ca](mailto:info@cfmlawyers.ca) or by mail at Suite 400, 856 Homer Street, Vancouver, British Columbia V6B 2W5, Attention: Sharon Wong.

- **Québec:** Belleau Lapointe s.e.n.c.r.l. represents Electrolytic Settlement Class Members in Québec and can be reached at:

Toll free at 1-888-987-6701, by fax at 1-514-987-6886, by e-mail at [info@belleaulapointe.com](mailto:info@belleaulapointe.com) or by mail at 300, Place d'Youville, Bureau B-10, Montréal, Québec H2Y 2B6, Attention: Mélissa Bazin.

- **All other provinces and territories:** Foreman & Company represents Electrolytic Settlement Class Members in all provinces and territories other than British Columbia and Québec, and represents all Film Settlement Class Members in Canada. Foreman & Company can be reached:

Toll free at 1-855-814-4575 ext. 107, by fax at 1-226-884-5340, by e-mail at [classactions@foremancompany.com](mailto:classactions@foremancompany.com) or by mail at 4 Covent Market Place, London, Ontario N6A 1E2, Attention: Anni Barry.

## 12. WHERE CAN I ASK MORE QUESTIONS?

This notice contains only a summary of the ROHM, Fujitsu, KEMET and Nichicon settlements in the Class Actions. Electrolytic and Film Settlement Class Members are encouraged to review the complete settlement agreements. Copies of the settlement agreements can be downloaded from the settlement website at [www.capacitorclassaction.ca](http://www.capacitorclassaction.ca). If you would like copies of the settlement agreements or have questions that are not answered online, please contact the appropriate lawyers identified above. **Inquiries should not be directed to the courts.**

## 13. INTERPRETATION

This notice contains a summary of some of the terms of the ROHM, Fujitsu, KEMET and Nichicon settlement agreements. If there is a conflict between the provisions of this notice and the settlement agreements, the terms of the settlement agreements shall prevail.

## Schedule "D"

### Proposed Settlements totaling CAD \$21.94M Reached in Electrolytic & Film Capacitor Class Actions

LONDON, ON – [DATE] – Four proposed national settlements totaling \$21,940,000 for the benefit of class members have been reached in class actions alleging price fixing and related conduct on behalf of Canadians who purchased electrolytic and film capacitors and products containing electrolytic and film capacitors.

ROHM, Fujitsu, KEMET and Nichicon (together, the "Settling Defendants") have separately agreed to pay CAD \$450,000, CAD \$465,000, CAD \$6,200,000 and CAD \$14,150,000 respectively for the benefit of Electrolytic Settlement Class Members. KEMET and Nichicon have also agreed to pay CAD \$325,000 and CAD \$350,000 respectively for the benefit of Film Settlement Class Members.

An "electrolytic capacitor" and a "film capacitor" are two types of electronic components used in an electrical circuit to store a charge. They are found in electronics such as smartphones, gaming consoles, home appliances and televisions, among other electronic products.

To be a member of these class actions, one must have purchased an aluminum and tantalum electrolytic capacitor or a product containing an aluminum and tantalum electrolytic capacitor between September 1, 1997 and December 31, 2014 or have purchased a film capacitor or a product containing a film capacitor between January 1, 2002 and December 31, 2014.

In addition, the Settling Defendants have agreed to provide cooperation to the plaintiffs in pursuing their claims against the non-settling defendants. The settlements are not admissions of liability, fault, or wrongdoing, but are compromises of disputed claims. The settlements must be approved by the courts before they become effective.

Because the class actions are still ongoing and other settlements may be reached, the ROHM, Fujitsu, KEMET and Nichicon settlement amounts will not be distributed to class members at this time. A process for the payment of claims to class members, which is subject to court approval and will be on further notice to the class, will be put in place later.

For more detailed information, and to view the courts' orders, the settlement agreements, the court-approved notices and an explanation of the rights of settlement class members, please visit [www.capacitorclassaction.ca](http://www.capacitorclassaction.ca).

Class members are represented by:

*Foreman & Company* (Canada, excluding BC and QC)

*Camp Fiorante Matthews Mogerman*<sup>LLP</sup> (BC)

*Belleau Lapointe, s.e.n.c.r.l.* (QC)

Media contacts:

English: Jonathan Foreman - [classactions@foremancompany.com](mailto:classactions@foremancompany.com), 519-914-1175 x 102

French: Marie-Ève Dumont, Option consommateurs – 514-777-6133



## **Schedule "E"**

### **Banner Ad Content**

**Did you purchase an aluminum or tantalum electrolytic capacitor or a product containing them between September 1, 1997 and December 31, 2014 or a film capacitor or a product containing them between January 1, 2002 and December 31, 2014 in Canada? Products include smartphones, gaming consoles, home appliances and televisions among other electronic products.**

**IF SO, YOUR LEGAL RIGHTS MAY BE AFFECTED BY RECENT CLASS ACTION SETTLEMENTS. [CLICK TO LEARN MORE.](#)**

## Schedule "F"

### Electrolytic & Film Capacitors – Plan of Dissemination

The Notice of Certification/Amended Authorization for Settlement Purposes Only and Settlement Approval Hearings will be distributed in short-form, long-form, banner ad, and press release format (collectively the “Notices”). The Notices will be delivered via the following media:

1. The short-and long-form notices, a copy of the settlement agreements entered into with the parties, and a copy of certification/authorization for settlement purposes order(s), and a copy of the Ontario endorsement and any other endorsements issued in relation to the certification/amended authorization for settlement purposes and settlement approval process by the courts in Québec and British Columbia will be posted to the settlement website at [capacitorclassaction.ca](http://capacitorclassaction.ca) (.com) and [recourscondensateurs.ca](http://recourscondensateurs.ca) (.com) in English and French, where applicable. This information will also be posted, in English and French where practicable, on the respective websites of plaintiffs’ counsel.
2. A link to the settlement websites, as appropriate, will be posted on Class Counsel’s social media accounts (including but not limited to LinkedIn and Twitter).
3. By distribution to major news and broadcast outlets across Canada, in English and French, through a press release on Canada Newswire with promotion through Canada Newswire’s social media feeds.
4. The short-form notice will be provided to the following organizations, in English and in French, requesting voluntary distribution to their membership and/or that a copy of the short-form notice or information about the actions be posted on their website and social media channels, as applicable:
  - a. The Consumers’ Association of Canada;
  - b. The Consumers’ Council of Canada; and
  - c. Electronic Products & Technology.

The manner by which any Notices and/or information are distributed will be at the discretion of each organization.

5. There will be a nationally syndicated digital distribution of the banner ad on the Google Display Network, the Facebook network, and to news media websites within the PostMedia network for a period of sixty (60) days, with a target of a minimum 1,000,000 unique impressions. The banner ad will be provided in English and/or French as applicable and may be modified as necessary to fit the dimensions and specifications as required by particular websites and media providers. The banner ad will redirect class members to the settlement websites where they will be able to consult the long-form notice among other case documents.
6. Within seven (7) days of the first publication of the Notices, the short-form notice will be sent by direct mail, fax and/or e-mail to:
  - a. all persons who have registered to receive updates from Class Counsel about the Electrolytic and/or Film Class Actions;
  - b. any Canadian customers of the Settling Defendants disclosed to Class Counsel by the Settling Defendants;
  - c. any Canadian customers of the previously settled defendants, NEC Tokin Corporation and NEC Tokin America Inc. (collectively, "TOKIN"); Nitsuko Electronics Corporation ("Nitsuko"); Okaya Electric Industries Co. Ltd. and Okaya Electric America, Inc; (collectively, "Okaya"); Panasonic Corporation, Panasonic Corporation of North America, Panasonic Canada Inc. and Sanyo Electric Co., Ltd. (collectively, "Panasonic"); ELNA Co., Ltd. and ELNA America, Inc. (collectively, "ELNA"); and 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. and Vishay Intertechnology, Inc. (collectively "HolyStone"), as disclosed to Class Counsel; and

- d. any persons who have commenced any Other Action and/or their counsel of record.
7. The short-form notice will be mailed to all potential Electrolytic Capacitors Purchaser companies, except to those addresses where the mail was undeliverable, from the "Canadian Importers Database" pulled from Industry Canada under imported product codes HS6 -853221 -Electrical Capacitors; fixed, tantalum and 853222 -Electrical Capacitors; fixed, aluminum electrolytic. Appended to this Plan of Dissemination as **Schedule "A"** is a copy of the list of Electrolytic Capacitors Purchaser companies where the mailing was delivered to companies in 2020. For importers located in Québec, the short-form notice will be sent in English and French.
8. The short-form notice will be mailed to all potential Film Capacitors Purchaser companies, except to those addresses where the mail was undeliverable, from the "Canadian Importers Database" pulled from Industry Canada under imported product code HS6 - Electrical Fixed Capacitors -Dielectric of Paper or Plastics. Appended to this Plan of Dissemination as **Schedule "B"** is copy of the list of Film Capacitors Purchaser companies where the mailing was delivered to companies in 2020. For importers located in Québec, the short-form notice will be sent in English and French.

## Schedule "A"

ABB INC DIVISION AUTOMATION
ARROW ELECTRONICS CANADA LTD
AUTOLIV ELECTRONICS CANADA INC.
AVNET INTERNATIONAL (CANADA) LTD/AVNET INTERNATIONAL (CANADA
BLACKBERRY LIMITED f/k/a RESEARCH IN MOTION LIMITED
CELESTICA LLC
CHEMICALS DIV
C-MAC MICROCIRCUITS ULC
CMC ELECTRONICS INC /CMC ELECTRONIQUE INC
COMMUNICATIONS & POWER INDUSTRIES CANADA INC
COMMUNICATIONS SYSTEMS DIVISION OF GENERAL DYNAMICS CANADA
COOL INNOVATIONS INC
CREATION TECHNOLOGIES LP
DIGI-KEY CORPORATION
DY 4 SYSTEMS INC
ELECTRO SONIC INC
FINNING INTERNATIONAL INC
FUTURE ELECTRONICS INC.
HARRIS CANADA SYSTEMS, INC.
LOGICAN TECHNOLOGIES INC.
MACDONALD, DETTWILER AND ASSOCIATES CORPORATION
NANOWAVE TECHNOLOGIES INC
NEWAGE LTD
NEWARK ELECTRONICS CANADA
SCHNEIDER ELECTRIC IT CORPORATION
SIEMENS CANADA LIMITED/SIEMENS CANADA LIMITEE
SUSTAINABLE ENERGY TECHNOLOGIES LTD.
TECTROL INC
TECUMSEH PRODUCTS OF CANADA, LIMITED
TELEFLEX MEGATECH INC.
TTI (MONTREAL)
TTI, INC.
UTECH ELECTRONICS
UTI CANADA CONTRACT LOGISTICS INC

## Schedule "B"

ABB INC DIVISION AUTOMATION
ACME ELECTRIC (PORT HOPE) LIMITED
ADVENTEC MANUFACTURING INC
AKA INFORMATION DESIGN
ALSTOM RESEAU CANADA INC
ARROW ELECTRONICS CANADA LTD
BELDON SALES LIMITED
BOURGAULT INDUSTRIES LTD
CANADIAN NATURAL RESOURCES LIMITED
CARRIER ENTERPRISE CANADA, L.P.
CELESTICA LLC
CHEMICALS DIV
CREATION TECHNOLOGIES LP
DIGI-KEY CORPORATION
DRS TECHNOLOGIES CANADA LTD.
FORD MOTOR COMPANY OF CANADA LIMITED/FORD DU CANADA LIMITEE
FUTURE ELECTRONICS INC.
GENERAL ELECTRIC CANADA
GENERAL ELECTRIC CANADA INTERNATIONAL INC
KOMATSU AMERICA CORP.
LENNOX INDUSTRIES (CANADA) LTD./LES INDUSTRIES LENNOX (CANA
LES EQUIPEMENTS POWER SURVEY LTEE
MEASUREMENTS INTERNATIONAL LIMITED
MEVEX CORPORATION
MIRUS INTERNATIONAL INC.
NEWARK ELECTRONICS CANADA
RAYTHEON CANADA LIMITED
SANMINA-SCI CORPORATION
SIEMENS CANADA LIMITED/SIEMENS CANADA LIMITEE
SMS EQUIPMENT INC/EQUIPEMENT SMS INC
SOLENE ELECTRONIQUE INC
TECUMSEH PRODUCTS OF CANADA, LIMITED
TM4 INC.
TOSHIBA INTERNATIONAL CORPORATION
TOYOTA MOTOR MANUFACTURING CANADA INC
TRENCH LIMITED
TTI (MONTREAL)
TTI, INC.
UTECH ELECTRONICS
VOLTECH INTERNATIONAL INC.
YOUNG LIVING ESSENTIAL OILS, LC

CYGNUS ELECTRONICS CORPORATION, et al.  
Plaintiffs

v. PANASONIC CORPORATION, et al.  
Defendants

Court File No. 3795/14 CP

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the *Class Proceedings Act*,  
1992

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**ORDER**

**(Certification for Settlement Purposes and  
Notice Approval - ROHM)**

**FOREMAN & COMPANY**

**PROFESSIONAL CORPORATION**

4 Covent Market Place  
London, ON N6A 1E2

**Jonathan J. Foreman (LSO# 45087H)**

**Sarah Bowden (LSO# 56385D)**

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[sbowden@foremancompany.com](mailto:sbowden@foremancompany.com)

Lawyers for the Plaintiffs