

ONTARIO
SUPERIOR COURT OF JUSTICE

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
CORPORATION; AVX CORPORATION; RUBYCON CORPORATION; RUBYCON AMERICA
CORPORATION; ELNA CO., LTD.; ELNA AMERICA INC.; MATSUSHITA ELECTRIC
INDUSTRIES 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

AMENDED FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

AMENDED THIS 2nd DAY OF May 2018
PURSUANT TO THE ORDER OF Justice Baker
DATED THE 29th DAY OF NOV 2016
Kerri Dowling
LOCAL REGISTRAR, SUPERIOR COURT OF JUSTICE
MONTREAL
SOUS LE NOM D'UN
SOUSSIGNÉ À L'ORDONNANCE DE
MONTREAL
19

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

If you wish to defend this proceeding but are unable to pay legal fees, legal aid may be available to you by contacting a local legal aid office.

Date: August 6, 2014

Issued by: _____
80 Dundas Street
London, Ontario
N6A 6K1

TO: PANASONIC CORPORATION
1006, Oaza Kadoma,
Kadoma-shi, Osaka 571-8501
Japan

AND TO: PANASONIC CORPORATION OF NORTH AMERICA
Two Riverfront Plaza,
Newark, New Jersey 07102
United States

AND TO: PANASONIC CANADA INC.
5770 Ambler Drive
Mississauga, Ontario L4W 2T3
Canada

AND TO: SANYO ELECTRIC CO., LTD.
5-5, Keihan-Hondori, 2-Chome
Moriguchi City, Osaka 570-8677
Japan

AND TO: NEC TOKIN CORPORATION
7-1, Kohriyama 6-chome, Taihaku-ku
Sendai-shi, Miyagi 982-8510
Japan

AND TO: NEC TOKIN AMERICA INC.
2460 North First Street, Suite 220
San Jose, California, 95131
United States

- AND TO: KEMET CORPORATION**
2835 Kemet Way
Simpsonville, South Carolina 29681
United States
- AND TO: KEMET ELECTRONICS CORPORATION**
2835 Kemet Way
Simpsonville, South Carolina 29681
United States
- AND TO: NIPPON CHEMI-CON CORPORATION**
5-6-4, Osaki,
Shinagawa-ku, Tokyo 141-8605
Japan
- AND TO: UNITED CHEMI-CON CORPORATION**
9801 West Higgins Road
Rosemont, Illinois 60018
United States
- AND TO: HITACHI CHEMICAL CO., LTD.**
Grantokyo South Tower, 1-9-2
Marunouchi Chiyoda-ku, Tokyo, 100-6606
Japan
- AND TO: HITACHI CHEMICAL COMPANY AMERICA, LTD.**
10080 North Wolfe Road, Suite SW3-200
Cupertino, California 95014
United States
- AND TO: HITACHI CANADA**
5450 Explorer Drive, Suite 501
Mississauga, Ontario, L4W 5M1
Canada
- AND TO: NICHICON CORPORATION**
Karasumadori Oike-agaru
Nakagyo-ku, Kyoto, 604-0845
Japan
- AND TO: NICHICON (AMERICA) CORPORATION**
927 East State Parkway
Schaumburg, Illinois 60173
United States
- AND TO: AVX CORPORATION**
One AVX Boulevard
Fountain Inn, South Carolina 29644-9039
United States

- AND TO: RUBYCON CORPORATION**
1938-1, Nishi-Minowa
Ina-City, Nagano Prefecture 399-4593
Japan
- AND TO: RUBYCON AMERICA INC.**
4293 Lee Avenue
Gurnee, Illinois 60031
United States
- AND TO: ELNA CO., LTD.**
3-8-11 Shin-Yokohama
Kohoku-ku, Yokohama, Kanagawa Prefecture, 222-0033
Japan
- AND TO: ELNA AMERICA INC.**
879 West 190th Street, Suite 100
Gardena, California 90248
United States
- AND TO: MATSUO ELECTRIC CO., LTD.**
3-5-3 Sennari-cho
Toyonaka-shi, Osaka 561-8558
Japan
- AND TO: TOSHIN KOGYO CO., LTD.**
Tsukasa Bldg. 2-15-4
Uchikanda Chiyoda-ku, Tokyo
Japan
- AND TO: SAMSUNG ELECTRO-MECHANICS**
Gyeonggi-Do Suwon-Si Youngtong-Gu Maeyoung-Ro 150
(Maetan-Dong) 443-743
South Korea
- AND TO: SAMSUNG ELECTRO-MECHANICS AMERICA, INC.**
3333 Michelson Drive, Suite 600
Irvine, California 92612
United States
- AND TO: SAMSUNG ELECTRONICS CANADA INC.**
2050 Derry Road West
Mississauga, Ontario, L5N 0B9
Canada
- AND TO: ROHM CO., LTD.**
21 Saiin Mizosaki-cho
Ukyo-ku, Kyoto 615-8585
Japan

AND TO: ROHM SEMICONDUCTOR U.S.A., LLC
2323 Owen Street, Suite 150
Santa Clara, California 95054
United States

AND TO: HITACHI AIC INC.
1065, Kugeta
Moka-shi, Tochigi 321-4521
Japan

AND TO: HITACHI CHEMICAL ELECTRONICS CO., LTD.
1500, Ogawa
Chikusei-shi, Ibaraki 308-8521
Japan

AND TO: FPCAP ELECTRONICS (SUZHOU) CO., LTD.
112 Sutong Road
Suzhou Industrial Park, Jiangsu 215021
China

AND TO: FUJITSU LTD.
Shiodome City Center
1-5-2 Higashi-Shimbashi
Minato-ku, Tokyo 105-7123
Japan

AND TO: FUJITSU CANADA, INC.
155 University Avenue, Suite 1600
Toronto, Ontario
M5H 3B7
Canada

AND TO: HOLYSTONE ENTERPRISE CO., LTD.
62, Sec.2. Huang Shan R.
Nei HU Sist., Taipei
Taiwan

AND TO: VISHAY POLYTECH CO., LTD. f/k/a HOLYSTONE POLYTECH CO., LTD.
16 Ohdaira Kumagami Miharu-machi
Fukushima 963-7704
Japan

AND TO: MILESTONE GLOBAL TECHNOLOGY, INC. d/b/a HOLYSTONE INTERNATIONAL
41700 Ivy St. #D
Murrieta, California 92562
United States

AND TO: HOLY STONE HOLDINGS CO., LTD.
Level 5, Development Bank of Samoa Building
Beach Road, Apia, Samoa

CLAIM

1. **THE PLAINTIFFS CLAIM** on behalf of themselves and the class:
 - a. an Order pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (the “CPA”), certifying this action as a class proceeding and appointing the plaintiffs as the representative plaintiffs for the Class;
 - b. general damages calculated on an aggregate basis or otherwise for breach of the *Competition Act*, RSC 1985 c. C-34 (the “*Competition Act*”), conspiracy, unlawful means tort and unjust enrichment, in an amount sufficient to compensate the plaintiffs and the class members for the harm done to them as a result of the defendants’ unlawful conduct;
 - c. punitive damages in an amount to be determined at trial;
 - d. an equitable rate of interest on all sums found due and owing to the plaintiffs and the other class members and, further, or in the alternative, post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, Chapter C.43;
 - e. an accounting, restitution, and disgorgement for common law conspiracy, unjust enrichment, waiver of tort and unlawful means tort;
 - f. an Order compelling the creation of a litigation trust to hold and distribute the monetary relief awarded pursuant to a plan of administration and distribution under sections 25 and 26 of the *CPA*;
 - g. an injunction enjoining the defendants from conspiring or agreeing with each other, or others, to raise, maintain, fix, or stabilize the price of Capacitors;

- h. an Order compelling the creation of a conspicuous notice program to class members pursuant to section 19 of the *CPA* in order to facilitate the plan of distribution claimed herein;
- i. costs of investigation and prosecution of this proceeding pursuant to section 36 of the *Competition Act*;
- j. costs for the administration of the plan of distribution for relief obtained in this action;
- k. costs of this action on a substantial indemnity scale including applicable taxes; and
- l. such further and other relief as this court deems just.

NATURE OF THE ACTION

2. This action arises from a conspiracy between the defendants to fix, raise, maintain, or stabilize prices of aluminum and tantalum electrolytic capacitors ("Capacitors") in Canada during the Class Period.
3. The defendants and their unnamed co-conspirators manufactured, marketed, distributed, and/or sold Capacitors in Canada and throughout the world. The defendants had market power in the market for Capacitors in Canada throughout the Class Period.
4. Capacitors are electronic components that serve as one of the fundamental building blocks of all types of electrical circuits. Virtually every electrical circuit contains one or more capacitors. Generally, a capacitor is used in an electric circuit to store an electrical charge.
5. In its basic form, a capacitor consists of one or more pairs of conductors, separated by an insulator, with wires connected to the two conducting plates.

6. The defendants, and their unnamed co-conspirators, sold Capacitors to original equipment manufacturers (“OEMs”) and others in Canada, Asia, Europe, the United States, and elsewhere.
7. During the period commencing September 1, 1997 and continuing up to ~~the present~~December 31, 2014 (the “Class Period”), it is alleged that the defendants and their senior executives participated in illegal and secretive meetings and made unlawful agreements relating to the prices for Capacitors.
8. The conduct of the defendants and their co-conspirators caused injury to the plaintiffs and the other class members, namely that they were compelled to pay, and did pay, artificially inflated prices, directly or indirectly for Capacitors (the “Overcharge”).
9. Damages and equitable remedies are claimed. The application of the doctrine of waiver of tort is also sought.

THE PLAINTIFFS AND THE CLASS

10. The plaintiff Cygnus Electronics Corporation is an Ontario Corporation carrying on business in the contract electronics manufacturing field. During the Class Period, Cygnus Electronics Corporation was a purchaser of Capacitors manufactured by the defendants.
11. The plaintiff Sean Allott is an individual resident of the City of London, in the Province of Ontario. Sean Allott is an information technology professional and a significant personal consumer of electronic products. During the Class Period, Sean Allott was a purchaser of products containing Capacitors manufactured by the defendants.
12. Cygnus Electronics Corporation and Sean Allott are together referred to herein as the “Plaintiffs.”

13. The Plaintiffs seek to represent a class consisting of:

all persons and entities in Canada who purchased electrolytic capacitors or products which contained electrolytic capacitors between September 1, 1997 and the present ~~December 31, 2014~~, other than (1) all persons and entities resident in British Columbia and, (2) all persons and entities ~~other than legal persons established for a private interest, partnership, or association, who had under its direction or control more than 50 persons bound to it by contract of employment~~ who purchased said products in Quebec during that period.

DEFENDANTS

14. The defendants are jointly and severally liable for the actions of, and damages allocable to, the co-conspirators, including unnamed co-conspirators.
15. Where a particular entity within a corporate family of the defendants engaged in anti-competitive conduct, it did so on behalf of all entities within that corporate family. The individual participants in the conspiratorial meetings and discussions entered into agreements on behalf of, and reported these meetings and discussions to, their respective corporate families.
16. Various persons, partnerships, sole proprietors, firms, corporations, and individuals not named as defendants in this lawsuit, the identities of which are presently unknown, have participated as co-conspirators with the defendants in the unlawful behaviour alleged herein, and have performed acts and made statements in furtherance of the conspiracy or in furtherance of the anticompetitive conduct.

Panasonic and Sanyo

17. The defendant Panasonic Corporation is a Japanese corporation with its principal place of business located at 1006, Oaza Kadoma, Kadoma-shi, Osaka 571-8501, Japan. Until October 1, 2008, Panasonic Corporation operated under the name of Matsushita Electric Industrial Co., Ltd. During the Class Period, Panasonic Corporation manufactured,

marketed, sold, and/or distributed Capacitors either directly or through its subsidiaries, agents, or affiliates to customers throughout Canada.

18. The defendant Panasonic Corporation of North America, a wholly owned subsidiary of Panasonic Corporation, is a Delaware corporation with its principal place of business located at Two Riverfront Plaza, Newark, New Jersey 07102, United States. During the Class Period, Panasonic Corporation of North America sold and/or distributed Capacitors to customers throughout Canada.
19. On or around April 1, 2015, Panasonic Corporation of North America merged with Sanyo North America Corporation. Sanyo North America Corporation, was until the time of its merger with Panasonic Corporation of North America, a Delaware corporation and a wholly owned subsidiary of the defendant, Sanyo Electric Co., Ltd., with its principal place of business located at 2055 Sanyo Avenue, San Diego, California 92154. During the Class Period until the date of the merger, Sanyo North America Corporation sold and/or distributed Capacitors to customers throughout Canada. As a result of the merger, the defendant, Panasonic Corporation of North America, is responsible for any proven liabilities of Sanyo North America Corporation.
20. The defendant Panasonic Canada Inc., a subsidiary of Panasonic Corporation of North America, is a Canadian corporation with its principle place of business located at 5770 Ambler Drive, Mississauga, Ontario L4W 2T3, Canada. During the Class Period, Panasonic Canada Inc. sold and/or distributed Capacitors to customers throughout Canada.
21. The defendant Sanyo Electric Co., Ltd., a Japanese corporation, is, as of December 2009, a wholly owned subsidiary of Panasonic Corporation, with its principal place of business located at 5-5, Keihan-Hondori, 2-Chome, Moriguchi City, Osaka 570-8677, Japan. During the Class Period, Sanyo Electric Co., Ltd. manufactured, marketed, sold, and/or

distributed Capacitors either directly or through its subsidiaries, agents, or affiliates to customers throughout Canada.

22. The defendants Panasonic Corporation, Panasonic Corporation of North America, Panasonic Canada Inc., and Sanyo Electric Co., Ltd. are collectively referred to herein as "Panasonic." With regard to any allegations pertaining to Sanyo Electric Co., Ltd. prior to its acquisition by Panasonic, it is referred to herein as "Sanyo."

NEC Tokin

23. The defendant NEC Tokin Corporation, a subsidiary of NEC Corporation, is a Japanese company with its principal place of business located at 7-1, Kohriyama 6-chome, Taihaku-ku, Sendai-shi, Miyagi 982-8510, Japan. During the Class Period, NEC Tokin Corporation manufactured, marketed, sold, and/or distributed Capacitors either directly or through its subsidiaries, agents, or affiliates throughout Canada.
24. The defendant NEC Tokin America Inc., a California Corporation, is a wholly owned subsidiary of NEC Tokin Corporation, with its principal place of business located at 2460 North First Street, Suite 220, San Jose, California 95131, United States. During the Class Period, NEC Tokin America Inc., sold, and/or distributed Capacitors throughout Canada.
25. The defendants NEC Tokin Corporation and NEC Tokin America Inc. are together referred to herein as "NEC Tokin."

KEMET

26. The defendant KEMET Corporation is a Delaware corporation with its principal place of business located at 2835 Kemet Way, Simpsonville, South Carolina 29681, United States. During the Class Period, KEMET Corporation manufactured, marketed, sold, and/or distributed Capacitors directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

27. On March 12, 2012, KEMET Corporation announced that it agreed to form a capital and business alliance with NEC Tokin Corporation because of their respective professed interests in increasing their tantalum electrolytic capacitor sales, reducing costs in areas such as procurement and production, sharing their technological knowledge, and benefiting financially through the cross-selling of each other's products. As a result of this alliance, KEMET Corporation received 34% of the outstanding shares of NEC Tokin (the remainder being held by non-party NEC Corporation), which provided KEMET Corporation with 51% of the outstanding voting rights. KEMET Corporation currently holds the option to purchase NEC Corporation's shares in NEC Tokin, which would thereby effect an acquisition of NEC Tokin by KEMET Corporation.
28. The defendant KEMET Electronics Corporation, a Delaware corporation, is a wholly owned subsidiary of KEMET Corporation with its principal place of business located at 2835 Kemet Way, Simpsonville, South Carolina 29681, United States. During the Class Period, KEMET Electronics Corporation manufactured, marketed, sold, and/or Capacitors directly or through its subsidiaries, agents, or affiliates to customers throughout Canada.
29. The defendants KEMET Corporation and KEMET Electronics Corporation are together referred to herein as "KEMET." The KEMET-NEC Tokin alliance shall be referred to herein as "KEMET-NEC Tokin."

Nippon Chemi-Con

30. The defendant Nippon Chemi-Con Corporation is a Japanese corporation with its principal place of business located at 5-6-4, Osaki, Shinagawa-ku, Tokyo 141-8605, Japan. During the Class Period, Nippon Chemi-Con Corporation manufactured, marketed, sold, and/or distributed Capacitors either directly or through its subsidiaries, agents, or affiliates to customers throughout Canada.

31. The defendant United Chemi-Con Corporation, an Illinois Corporation, is a wholly owned subsidiary of Nippon Chemi-Con Corporation with its principal place of business located at 9801 West Higgins Road, Rosemont, Illinois 60018, United States. During the Class Period, United Chemi-Con Corporation manufactured, marketed, sold and/or distributed Capacitors either directly or through its subsidiaries, agents, or affiliates to customers throughout Canada.
32. The defendants Nippon Chemi-Con Corporation and United Chemi-Con Corporation are together referred to herein as "Nippon Chemi-Con."

Hitachi

33. The defendant Hitachi Chemical Co., Ltd. is a Japanese corporation with its principal place of business located at Grantokyo South Tower, 1-9-2, Marunouchi, Chiyoda-ku, Tokyo, 100-6606, Japan. During the Class Period, Hitachi Chemical Co., Ltd. manufactured, marketed, sold, and/or distributed Capacitors either directly or through its subsidiaries, agents, or affiliates to customers throughout Canada.
34. The defendant Hitachi Chemical Electronics Co., Ltd. is a Japanese corporation with its principal place of business located at 1500 Ogawa, Chikusei-shi, Ibaraki 308-8521 Japan. Hitachi Chemical Electronics Co., Ltd. is affiliated with and controlled by Hitachi Chemical Co., Ltd. During the Class Period, Hitachi Chemical Electronics Co., Ltd. manufactured, marketed, sold, and/or distributed Capacitors, either directly or indirectly, to customers throughout Canada.
35. The defendant Hitachi AIC Inc. is a Japanese corporation with its principal place of business located at 1065 Kugeta, Moka-shi, Tochigi, 321-4521 Japan. Hitachi AIC Inc. is affiliated with and controlled by Hitachi Chemical Co., Ltd. During the Class Period, Hitachi AIC Inc. manufactured, marketed, sold, and/or distributed Capacitors, either directly or

indirectly, to customers throughout Canada. Hitachi AIC Inc. sold its Capacitors division to Holy Stone Enterprise Co., Ltd. in or around December 2009. The acquisition was completed in or around April 2010 and the newly acquired division was renamed Holy Stone Polytech Co., Ltd.

36. The defendant Hitachi Chemical Company America, Ltd., a New York corporation, is a wholly owned subsidiary of Hitachi Chemical Co., Ltd. with its principal place of business located at 10080 North Wolfe Road, Suite SW3-200, Cupertino, California 95014, United States. During the Class Period, Hitachi Chemical Company America, Ltd. sold and/or distributed Capacitors to customers throughout Canada.
37. The defendant Hitachi Canada, a subsidiary of Hitachi Chemical Company America, Ltd., is a Canadian Corporation with its principle place of business located at 5450 Explorer Drive, Suite 501, Mississauga Ontario, L4W 5M1, Canada. During the Class Period, Hitachi Canada sold and/or distributed Capacitors to customers throughout Canada.
38. The defendants Hitachi Chemical Co., Ltd., Hitachi Chemical Electronics Co., Ltd., Hitachi AIC Inc., Hitachi Chemical Company America, Ltd., and Hitachi Canada are all part of the Hitachi Group, and are together referred to herein as "Hitachi."

Nichicon

39. The defendant Nichicon Corporation is a Japanese corporation with its principal place of business located at Karasumadori Oike-agaru, Nakagyo-ku, Kyoto, 604-0845 Japan. During the Class Period and until the company's sale of its tantalum capacitor production operations to AVX Corporation in February 2013, Nichicon Corporation manufactured, marketed, sold, and distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers Canada. During the entire Class Period, Nichicon

Corporation manufactured, marketed, sold, and/or distributed Capacitors either directly or through its subsidiaries, agents, or affiliates to customers throughout Canada.

40. The defendant Nichicon (America) Corporation, an Illinois corporation, is a wholly owned subsidiary of Nichicon Corporation with its principal place of business located at 927 East State Parkway, Schaumburg, Illinois 60173, United States. During the Class Period and until Nichicon Corporation's sale of its tantalum capacitor production operations to AVX Corporation in February 2013, Nichicon (America) Corporation sold and/or distributed Capacitors either directly or through its subsidiaries, agents, or affiliates to customers throughout Canada.
41. FPCAP Electronics (Suzhou) Co., Ltd. is a wholly owned subsidiary of Nichicon Corporation with its principal place of business located at 112 Sutong Road, Suzhou Industrial Park, Jiangsu 215021, China. Nichicon Corporation acquired Fujitsu Media Devices, Ltd.'s Capacitor business division in or about April 2009 which was thereafter renamed FPCAP Electronics (Suzhou) Co., Ltd. From in or about April 2009 to present, the defendant FPCAP Electronics (Suzhou) Co., Ltd. manufactured, marketed, sold, and/or distributed Capacitors, either directly or indirectly, for sale throughout Canada.
42. The defendants Nichicon Corporation, Nichicon (America) Corporation, and FPCAP Electronics (Suzhou) Co., Ltd. are together referred to herein as "Nichicon."

AVX

43. The defendant AVX Corporation is a Delaware Corporation with its principal place of business located at One AVX Boulevard, Fountain Inn, South Carolina 29644-9039, United States. AVX Corporation is a subsidiary of Kyocera Corporation, a Japanese corporation that owns approximately 72% of the outstanding common stock in AVX Corporation. In or about February 2013, AVX Corporation acquired Nichicon Corporation's

tantalum capacitor production facilities in Japan and China, thereby expanding their global tantalum capacitor manufacturing operations. During the Class Period, AVX Corporation manufactured, marketed, sold, and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

44. The defendant AVX Corporation is referred to herein as "AVX."

Rubycon

45. The defendant Rubycon Corporation is a Japanese corporation with its principal place of business located at 1938-1, Nishi-Minowa, Ina-City, Nagano Prefecture 399-4593, Japan. During the Class Period, Rubycon Corporation manufactured, marketed, sold, and/or distributed Capacitors either directly or through its subsidiaries, agents, or affiliates to customers throughout Canada.

46. The defendant Rubycon America Inc., an Illinois corporation, is a wholly owned subsidiary of Rubycon Corporation with its principal place of business located at 4293 Lee Avenue, Gurnee, Illinois 60031, United States. During the Class Period, Rubycon America Inc. sold and/or distributed Capacitors to customers throughout Canada.

47. The defendants Rubycon Corporation and Rubycon America Inc. are together referred to herein as "Rubycon."

Elna

48. The defendant Elna Co., Ltd. is a Japanese corporation with its principal place of business located at 3-8-11 Shin-Yokohama, Kohoku-ku, Yokohama, Kanagawa Prefecture, 222-0033, Japan. During the Class Period, Elna Co., Ltd. manufactured, marketed, sold, and/or distributed Capacitors either directly or through its subsidiaries, agents, or affiliates to customers throughout Canada.

49. The defendant Elna America Inc., a California corporation, is a wholly owned subsidiary of Elna Co., Ltd. with its principal place of business located at 879 West 190th Street, Suite 100, Gardena, California 90248, United States. During the Class Period, Elna America Inc. sold and/or distributed Capacitors to customers throughout the Canada.
50. The defendants Elna Co., Ltd. and Elna America Inc. are together referred to herein as "Elna."

Matsuo

51. The defendant Matsuo Electric Co., Ltd. is a Japanese corporation with its principal place of business located at 3-5-3 Sennari-cho, Toyonaka-shi, Osaka 561-8558, Japan. During the Class Period, Matsuo Electric Co., Ltd. manufactured, marketed, sold, and/or distributed Capacitors either directly or through its subsidiaries, agents, or affiliates to customers throughout Canada.
52. Matsuo Electric Co., Ltd. is referred to herein as "Matsuo."

Toshin Kogyo

53. The defendant Toshin Kogyo Co., Ltd. is a Japanese corporation with its principal place of business at Tsukasa Bldg. 2-15-4, Uchikanda Chiyoda-ku, Tokyo, Japan. During the Class Period, Toshin Kogyo Co., Ltd. manufactured, marketed, sold, and/or distributed Capacitors products either directly or through its subsidiaries, agents or affiliates throughout Canada.
54. Toshin Kogyo Co., Ltd. is referred to herein as "Toshin Kogyo."

SEMCO

55. The defendant Samsung Electro-Mechanics is a South Korean corporation with its principal place of business located at Gyeonggi-Do Suwon-Si Youngtong-Gu Maeyoung-

Ro 150 (Maetan-Dong) 443-743, South Korea. It is a wholly-owned subsidiary of Samsung Group, a South Korean *chaebol* (a business conglomerate). During the Class Period, Samsung Electro-Mechanics manufactured, marketed, sold, and/or distributed Capacitors either directly or through its subsidiaries, agents, or affiliates to customers throughout Canada.

56. The defendant Samsung Electro-Mechanics America Inc., a California corporation, is a subsidiary of Samsung Electro-Mechanics with its principal place of business located at 3333 Michelson Drive, Suite 600, Irvine, California 92612, United States. During the Class Period, Samsung Electro-Mechanics America Inc. sold and/or distributed Capacitors to customers throughout Canada.
57. The defendant Samsung Electronics Canada Inc., a subsidiary of Samsung Electronics, an affiliate of Samsung Electro-Mechanics, is a Canadian corporation, with its principle place of business located at 2050 Derry Road West, Mississauga, Ontario L5N, 0B9, Canada. During the Class Period, Samsung Electronics Canada Inc. sold and/or distributed Capacitors to customers throughout Canada.
58. The defendants Samsung Electro-Mechanics, Samsung Electro-Mechanics America Inc., and Samsung Electronics Canada Inc. are together referred to herein as "SEMCO."

ROHM

59. The defendant ROHM Co., Ltd. is a Japanese corporation with its principal place of business located at 21 Saiin Mizosaki-cho, Ukyo-ku, Kyoto 615-8585 Japan. During the Class Period, ROHM Co., Ltd. manufactured, marketed, sold, and/or distributed Capacitors either directly or through its subsidiaries, agents, or affiliates to customers throughout Canada.

60. The defendant ROHM Semiconductor U.S.A., LLC., a Delaware limited liability corporation, is a subsidiary of ROHM Co., Ltd. with its principal place of business located at 2323 Owen Street, Suite 150, Santa Clara, California 95054, United States. During the Class Period, ROHM Semiconductor U.S.A., LLC. sold and/or distributed Capacitors to customers throughout Canada.
61. The defendants ROHM Co., Ltd. and ROHM Semiconductor U.S.A., LLC. are together referred to herein as "ROHM."

Fujitsu

62. The defendant Fujitsu Ltd. is a Japanese corporation with its principal place of business located at Shiodome City Center, 1-5-2 Higashi-Shimbashi, Minato-ku, Tokyo 105-7123, Japan. During the Class Period, Fujitsu Ltd. manufactured, marketed, sold, and/or distributed Capacitors either directly or through its subsidiaries, agents, or affiliates to customers throughout Canada.
63. The defendant Fujitsu Canada, Inc. is a Canadian corporation with its principal place of business at 155 University Avenue, Suite 1600, Toronto, Ontario M5H 3B7, Canada. Fujitsu Canada, Inc. is affiliated with and controlled by Fujitsu Ltd. During the Class Period, Fujitsu Canada, Inc. manufactured, marketed, sold, and/or distributed Capacitors, either directly or indirectly, to customers throughout Canada.
64. The defendants Fujitsu Ltd. and Fujitsu Canada, Inc. are together referred to herein as "Fujitsu".

Holy Stone

65. The defendant Holy Stone Enterprise Co., Ltd. is a Taiwanese corporation with its principal place of business located at 62, Sec.2, Huang Shan R., Nei HU Sist., Taipei, Taiwan. During the Class Period, Holy Stone Enterprise Co., Ltd. manufactured, marketed, sold,

and/or distributed Capacitors either directly or through its subsidiaries, agents, or affiliates to customers throughout Canada.

66. In or about December 2009, Holy Stone Enterprise Co., Ltd. acquired Hitachi AIC Inc.'s Capacitors division and renamed it HolyStone Polytech Co., Ltd., which was a Japanese corporation and wholly owned subsidiary of Holy Stone Enterprise Co., Ltd. with its principal place of business in Fukushima, Japan. Until in or about June 2014, HolyStone Polytech Co., Ltd. manufactured, marketed, sold, and/or distributed Capacitors, either directly or indirectly, to customers throughout Canada.
67. The defendant, Holy Stone Holdings Co., Ltd. is a corporation organized and existing under the laws of Samoa. During the Class Period, Holy Stone Holdings Co., Ltd. manufactured, marketed, sold, and/or distributed Capacitors, either directly or indirectly, to customers throughout Canada. Further, Holy Stone Holdings Co., Ltd. retains the liabilities of its former Japanese subsidiary HolyStone Polytech Co., Ltd. for the activities of HolyStone Polytech Co., Ltd. before HolyStone Polytech Co., Ltd.'s sale to Vishay Intertechnology Inc. on or about June 11, 2014.
68. On or about June 11, 2014, Vishay Intertechnology, Inc. acquired HolyStone Polytech Co., Ltd. and renamed it Vishay Polytech Co., Ltd. The defendant Vishay Polytech Co., Ltd. f/k/a HolyStone Polytech Co., Ltd. is a Japanese corporation with its principal place of business located at 16 Ohdaira Kumagami Miharu- machi, Fukushima 963-7704, Japan. During the Class Period, Vishay Polytech Co., Ltd. f/k/a HolyStone Polytech Co., Ltd. manufactured, marketed, sold, and/or distributed Capacitors, either directly or indirectly, to customers throughout Canada.
69. The defendant Milestone Global Technology, Inc. d/b/a HolyStone International is a California corporation with its principal place of business located at 41700 Ivy St. #D, Murrieta, California 92562, United States. Milestone Global Technology, Inc. d/b/a

HolyStone International is a subsidiary of the defendant Holy Stone Enterprise Co., Ltd. and the direct sales office for North America. During the Class Period, Milestone Global Technology, Inc. d/b/a HolyStone International manufactured, marketed, sold, and/or distributed Capacitors, either directly or indirectly, to customers throughout Canada.

70. The defendants Holy Stone Enterprise Co., Ltd., Holy Stone Holdings Co., Ltd., Vishay Polytech Co., Ltd. f/k/a HolyStone Polytech Co., Ltd., and Milestone Global Technology, Inc. d/b/a HolyStone International, are together referred to herein as "Holy Stone."

71. Collectively, the defendants named in paragraphs 17 to 70 are referred to herein as the "Defendants."

FACTUAL BACKGROUND

The Capacitors Industry

72. The structure and the characteristics of the market for Capacitors in Canada are conducive to the conspiracy alleged herein.

73. There are substantial barriers that preclude, reduce, or make more difficult entry into the Capacitors market. New fabrication operations are required to meet the market demand and to adjust to technological changes. The industry also requires the establishment of a necessary supply chain for all raw materials. The Defendant manufacturers have developed longstanding relationships and their own processing capabilities for these raw materials.

74. There are no close substitutes for Capacitors in Canada. Capacitors are one of the fundamental components found in electrical circuits and all electronic devices that are used today. There is no alternative to Capacitors in Canada.

75. Capacitors are a commodity product that is interchangeable among the Defendants. Capacitors of like technical and operational specification are mutually interchangeable. A

specific Capacitor manufactured by one of the Defendants can be exchanged for a product of another Defendant so long as it has the same technical and operational specifications.

76. The price of Capacitors provided to OEMs and their subsidiaries is reflected, in whole or in part, in the price of electronics purchased in Canada.
77. The Defendants dominate the global Capacitors market, including the sale of Capacitors in Canada.

The Conspiracy to Fix the Price of Capacitors

78. The acts alleged under this heading are, collectively, the “Conspiracy Acts.”
79. During the Class Period, the Defendants and their unnamed co-conspirators conspired and/or agreed with each other to fix, maintain, increase, or control the price for the supply of Capacitors and/or to enhance unreasonably the prices of Capacitors and/or to lessen unduly competition in the sale of Capacitors in Canada.
80. During the Class Period, senior executives and employees of the Defendants, acting in their capacities as agents for the Defendants, engaged in communications, conversations, and attended meetings with each other at times and places, some of which are unknown to the Plaintiffs. As a result of the communications and meetings the Defendants and their unnamed co-conspirators unlawfully conspired and/or agreed to:
 - a. unreasonably enhance the prices of Capacitors in Canada;
 - b. fix, maintain, increase, or control the prices of Capacitors in Canada;
 - c. monitor and enforce adherence to an agreed-upon pricing scheme;
 - d. restrain trade in the sale of Capacitors in Canada; and
 - e. lessen unduly competition in the sale of Capacitors in Canada.

81. In furtherance of the conspiracy, during the Class Period the Defendants and/or their servants and agents:
- a. fixed, maintained, increased, controlled, and/or enhanced unreasonably the prices of Capacitors in Canada;
 - b. communicated secretly, in person and by telephone, to discuss and fix prices of Capacitors;
 - c. made formal agreements with respect to the prices of Capacitors;
 - d. exchanged information regarding the prices of Capacitors for the purposes of monitoring and enforcing adherence to the agreed-upon prices;
 - e. rigged bids for the sale of Capacitors to OEMs and their subsidiaries;
 - f. allocated sales, territories, customers, or markets for supply of Capacitors;
 - g. fixed, maintained, controlled, prevented, or lessened the production and/or supply of Capacitors; and
 - h. disciplined any conspirator which failed to comply with the conspiracy.
82. During the Class Period and continuing to the present, the Defendants and/or their servants and agents took active steps to, and did, conceal the unlawful conspiracy from the Plaintiffs and the other class members.
83. The Defendants were motivated to conspire and their predominant purposes and predominant concerns were to harm the Plaintiffs and the other class members who purchased Capacitors by requiring them to pay unlawfully high prices for Capacitors.
84. The Canadian subsidiaries of the foreign Defendants participated in and furthered the objectives of the conspiracy by knowingly modifying their competitive behaviour in

accordance with instructions received from their respective parent companies, and thereby acted as their agents in carrying out the conspiracy and are liable for such acts.

85. The Conspiracy Acts alleged in this claim to have been done by each Defendant were authorized, ordered, and done by each Defendant's officers, directors, agents, employees, or representatives while engaged in the management, direction, control, or transaction of its business affairs.

REGULATORY INVESTIGATIONS

86. Commencing in or around 2014, regulatory authorities in a number of jurisdictions announced investigations into price-fixing of the capacitors industry.
87. The Brazilian antitrust authority, the Administrative Counsel for Economic Defense, stated in a press release in 2014 that it had established an administrative proceeding to investigate the alleged price-fixing of Capacitors.
88. In or around April 2014, the Antitrust Division of the United States Department of Justice ("U.S. DOJ") confirmed to industry sources that the government has opened an investigation into price fixing in the Capacitors industry. The San Francisco division of the FBI is assisting with this investigation, which is ongoing.
89. On or about July 2, 2014, the People's Republic of China's National Development and Reform Commission ("NDRC"), an agency which regulates price-related anticompetitive activity by the Chinese State Council, confirmed its investigation into the Capacitors industry through a report published in the China Supervision and Antitrust Journal and written by Xu Kunlin, Director-General of the NDRC's Price Supervision and Antimonopoly Bureau. In this report, Xu revealed that one Japanese Capacitor company self-reported its conspiracy activity in March, 2014, and that this company and other Japanese

Capacitor manufacturers held regular conferences to exchange market information related to their products.

90. On or about June 24, 2014, the Japanese Fair Trade Commission (“JFTC”) conducted raids of approximately eight capacitors manufacturers believed to be members of the conspiracy, including Panasonic, NEC Tokin, Hitachi, Nichicon, and Nippon Chemi-Con.
91. Since the beginning of 2014, investigations into the capacitors industry have also been opened by the South Korean Fair Trade Commission, the Taiwanese Fair Trade Commission, and the European Commission’s competition authority.
92. On or about September 2, 2015, NEC Tokin agreed to plead guilty to charges laid by the U.S. DOJ that it conspired to fix the prices of Capacitors and to pay a fine of \$13,800,000 USD.
93. In November 2015, the European Commission sent Statements of Objections to ten manufacturers of Capacitors alleging violations of EU antitrust laws. The European Commission stated that it had concerns that the price-fixing conspiracy had run from at least 1997 to 2014.
94. On or about December 9, 2015, the Taiwanese Fair Trade Commission fined the following Defendants for price-fixing electrolytic capacitors: Nippon Chemi-Con Corporation (\$57,645,798.64 USD), Rubycon Corporation (\$38,506,640.64 USD), Elna Co., Ltd. (\$2,363,468.49 USD), NEC Tokin Corporation (\$37,587,171.18 USD), Vishay Polytech Co., Ltd. (\$962,666.02 USD), and Matsuo Electric Co., Ltd. (\$749,768.72 USD). It also fined the following related corporate entities: Hongkong Chemi-con Limited, Taiwan Chemi-Con Corporation, Sanyo Electric (Hong Kong) Ltd., and Nichicon (Hong Kong) Ltd.
95. On or about March 29, 2016, the JFTC fined the following Defendants for price-fixing Capacitors: Nippon Chemi-Con Corporation (\$12,972,930.95 USD), Nichicon Corporation

(\$32,906,946.80 USD), Rubycon Corporation (\$9,655,115.16 USD), NEC Tokin Corporation (\$1,148,126.99 USD), and Matsuo Electric Co., Ltd. (\$3,869,278.36 USD). The Commission also issued a cease-and-desist orders to the Defendants, as well as to Vishay Polytech Co., Ltd. Hitachi AIC Inc. has also been added to this list but no fines or orders have been made against it as of yet.

96. On or about April 27, 2016, it was announced by the U.S. DOJ that the Defendant Hitachi Chemical Co., Ltd. will plead guilty to charges laid in the U.S. for conspiring to fix prices of Capacitors sold to customers in the United States and elsewhere. A plea agreement has been entered into and the proposed fine is \$3,800,000 USD. The information filed by the U.S. DOJ indicates that the conspiracy under investigation began as early as 1997.
97. On or about August 22, 2016, it was announced by the U.S. DOJ that the Defendants, Rubycon Corporation, Elna Co., Ltd., and Holy Stone Holdings Co., Ltd. on behalf of its former subsidiary HolyStone Polytech Co., Ltd. will plead guilty to charges laid in the U.S. for conspiring to fix prices of Capacitors sold to customers in the United States and elsewhere. Pursuant to the guilty pleas, Rubycon will pay a fine of \$12,000,000 USD and Holy Stone Holdings Co. Ltd. will pay a fine of \$600,000 USD on behalf of its former subsidiary, HolyStone Polytech Co., Ltd. Information with respect to the fine paid by Elna Co., Ltd. has not yet been made publicly available. The informations filed by the U.S. DOJ with respect to Rubycon Corporation, Elna Co., Ltd. and Holy Stone Holdings Co. indicate that the conspiracy under investigation began as early as 1997.
98. On or about November 2, 2016, it was announced by the U.S. DOJ that a federal grand jury had indicted a total of six executives from NEC Tokin Corporation, Nippon Chemi-Con Corporation, Nichicon Corporation, and Rubycon Corporation for conspiring to fix prices of Capacitors sold to customers in the United States and elsewhere. The indictment indicates that the conspiracy under investigation began as early as 1997.

99. The Defendant NEC Tokin has confirmed that it has been contacted or raided by American, Chinese, and European authorities and has stated that it is cooperating with authorities.
100. The Defendant Toshin Kogyo has confirmed that it has been contacted by Japanese, Chinese, and Taiwanese authorities.

CAUSES OF ACTION

Breach of the Competition Act

101. The Defendants are in breach of section 45 of Part VI of the *Competition Act* and caused injury to the Plaintiffs and the other class members which renders the Defendants jointly and severally liable to pay damages and costs of investigation pursuant to section 36 of the *Competition Act*.
102. Further, or in the alternative, the Defendants Hitachi Canada, Panasonic Canada Inc., and Fujitsu Canada, Inc. (the "Canadian Defendants") are in breach of section 46(1) of Part VI of the *Competition Act* and caused injury to the Plaintiffs and the other class members which renders the Canadian Defendants jointly and severally liable to pay damages and costs of the investigation pursuant to section 36 of the *Competition Act*.
103. The Plaintiffs and the other class members did not discover, and could not discover through the exercise of reasonable diligence, the existence of the claims sued upon until recently because the Defendants and their unnamed co-conspirators actively, intentionally, and purposively concealed the existence of the combination and conspiracy from the Plaintiffs and the other class members.

Civil Conspiracy

104. Further, or in the alternative, the Conspiracy Acts were unlawful acts under the *Competition Act* and/or in restraint of trade directed towards the Plaintiffs and the other

class members. The Defendants and their unnamed co-conspirators knew that the unlawful acts alleged herein would likely cause injury to the Plaintiffs and the other class members and, as such, the Defendants are jointly and severally liable for the tort of civil conspiracy. Further, or alternatively, the predominant purpose of the Conspiracy Acts was to injure the Plaintiffs and the other class members, and the Defendants are jointly and severally liable for the tort of conspiracy to injure.

105. The Plaintiffs and the other class members suffered damages as a result of the Defendants' conspiracy.

Unlawful Means Tort

106. Further, or in the alternative, the Conspiracy Acts were unlawful acts intended to cause the Plaintiffs and the other class members' economic loss, as an end in itself or as a necessary means of enriching the Defendants.

107. The Conspiracy Acts taken by the Defendants were unlawful under the laws of the jurisdictions where the Conspiracy Acts took place and are actionable by third party OEMs of Capacitors located outside of Canada, or would be actionable by the OEMs located outside of Canada if they had suffered a loss. As such, the Defendants are jointly and severally liable for the unlawful means tort.

108. The Plaintiffs and the other class members suffered damages as a result of the Defendants' unlawful means tort and each of the Defendants is jointly and severally liable to pay the resulting damages.

Unjust Enrichment

109. The Defendants have each been unjustly enriched by the receipt of the Overcharge. The Plaintiffs and the other class members have suffered a corresponding deprivation in the amount of such Overcharge.

110. Since the Overcharge that was received by the Defendants from the Plaintiffs and the other class members resulted from the Defendants' wrongful or unlawful acts, there is and can be no juridical reason justifying the Defendants retaining any part of it.

Waiver of Tort

111. Further, or in the alternative, the Plaintiffs plead and rely on the doctrine of waiver of tort and state that the Defendants' conduct, including the alleged breaches of the *Competition Act* constitutes conduct which can be waived in favour of an election to receive restitutionary or other equitable remedies.

REMEDIES

Damages

112. As a result of the Conspiracy Acts:

- a. the prices of Capacitors and products containing Capacitors have been enhanced unreasonably and/or fixed at artificially high and non-competitive levels; and
- b. competition in the sale of Capacitors has been unduly restrained.

113. During the Class Period, the Plaintiffs and the other class members purchased Capacitors and products containing Capacitors. By reason of the alleged violations of the *Competition Act* and the common law, the Plaintiffs and the other class members have been overcharged for those Capacitors and products containing Capacitors by paying more than they would have paid in the absence of the illegal conspiracy and, as a result, the Plaintiffs and the other class members have suffered damages.

114. The Plaintiffs assert that the Overcharge is capable of being quantified on an aggregate basis as the difference between the prices actually paid by the Plaintiffs and the other class members and the prices which would have been paid in the absence of the unlawful conspiracy.

115. All amounts payable to the class on account of damages and disgorgement should be calculated on an aggregate basis pursuant to s. 24 of the *CPA*, or otherwise.

Punitive Damages

116. The Plaintiffs assert that the Defendants' conduct was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful, and in contumelious disregard of the Plaintiffs' rights and the rights of the other class members, and as such renders the Defendants liable to pay aggravated, exemplary, and punitive damages.

Plan of Distribution

117. Such damages ought to be held in a litigation trust and distributed pursuant to a plan of distribution under sections 25 and 26 of the *CPA*.

Injunction

118. The Plaintiffs claim for the Defendants to be permanently enjoined from carrying on business in contravention of the applicable laws.

Conspicuous Notice Plan

119. The Plaintiffs request the creation of a conspicuous and comprehensive notice program affording notice to the class members of the illegality of the Overcharge, interest, and other amounts paid by them and the amounts owing to them by the Defendants pursuant to section 19 of the *CPA*.

STATUTES RELIED UPON

120. The Plaintiffs plead and rely upon the *Class Proceedings Act, 1992*, S.O. 1992, c.6 as amended, the *Competition Act*, R.S.C. 1985, c.34 as amended, and the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

SERVICE OUTSIDE ONTARIO

121. This originating process may be served without Court order outside of Ontario in that the claim is:

- a. in respect of a tort committed in Ontario (Rule 17.02 (g));
- b. in respect of damages sustained in Ontario arising from a tort or a breach of contract wherever committed (Rule 17.02 (h));
- c. against a person outside of Ontario who is a necessary and proper party to this proceeding properly brought against another person served in Ontario (Rule 17.02(o)); and
- d. against a person carrying on business in Ontario (Rule 17.02 (p)).

THE PLAINTIFFS propose that this action be tried in the City of London, in the Province of Ontario.

August 6, 2014

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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*

**AMENDED FRESH AS AMENDED STATEMENT
OF CLAIM**

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