

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

SEAN ALLOTT

Plaintiff

- and -

AVX CORPORATION; ELNA CO., LTD.; ELNA AMERICA INC.; HITACHI CHEMICAL CO., LTD.; HITACHI CHEMICAL COMPANY AMERICA, LTD.; HITACHI CANADA; HITACHI AIC INC.; KEMET CORPORATION; KEMET ELECTRONICS CORPORATION; MATSUO ELECTRIC CO., LTD.; NICHICON CORPORATION; NICHICON (AMERICA) CORPORATION; NIPPON CHEMI-CON CORPORATION; UNITED CHEMI-CON CORPORATION; NISSEI ELECTRIC CO. LTD.; NITSUKO ELECTRONICS CORPORATION; OKAYA ELECTRIC INDUSTRIES CO., LTD.; OKAYA ELECTRIC AMERICA, INC.; PANASONIC CORPORATION; PANASONIC CORPORATION OF NORTH AMERICA; PANASONIC CANADA INC.; SANYO ELECTRIC CO., LTD.; SANYO ELECTRONIC DEVICE (U.S.A.) CORP.; SANYO NORTH AMERICA CORPORATION; ROHM CO., LTD.; ROHM SEMICONDUCTOR U.S.A., LLC f/k/a ROHM ELECTRONICS U.S.A., LLC; RUBYCON CORPORATION; RUBYCON AMERICA INC.; SHINYEI KAISHA; SHINYEI TECHNOLOGY CO., LTD.; SHINYEI CAPACITOR CO., LTD.; SHINYEI CORPORATION OF AMERICA; SHIZUKI ELECTRIC CO., LTD.; AMERICAN SHIZUKI CORPORATION; SOSHIN ELECTRIC CO., LTD.; SOSHIN ELECTRONICS OF AMERICA INC.; TAITSU CORPORATION; TAITSU AMERICA, INC.; TOSHIN KOGYO CO., LTD.; HOLY STONE ENTERPRISE CO., LTD.; MILESTONE GLOBAL TECHNOLOGY, INC. d/b/a HOLYSTONE INTERNATIONAL; VISHAY INTERTECHNOLOGY, INC.; and VISHAY POLYTECH CO., LTD. f/k/a HOLYSTONE POLYTECH CO., LTD.

Defendants

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

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## **PLAINTIFF'S MOTION RECORD**

(Motion for Discontinuances)

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November 21, 2016

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# Tab 1



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SUPERIOR COURT OF JUSTICE**

B E T W E E N:

SEAN ALLOTT

Plaintiff

- and -

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Defendants

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

**NOTICE OF MOTION**

**THE PLAINTIFF** will make a Motion to the Court on November 29, 2016 at 10:00am, or as soon thereafter as the motion can be heard, before Mr. Justice Raikes, at the Court House, 80 Dundas Street, London, Ontario.

**PROPOSED METHOD OF HEARING:**

The motion is to be heard

- in writing under subrule 37.12.1(1) because it is made without notice;
- in writing as an opposed motion under subrule 37.12.1(4);
- orally.

**THIS MOTION IS FOR:**

1. An Order approving the discontinuance of the within proceeding, without prejudice and without costs, as against Vishay Intertechnology Inc. (“Vishay”) in accordance with the tolling and standstill agreement reached between the plaintiff and Vishay (the “Tolling and Standstill Agreement”) pursuant to section 29 of the *Class Proceedings Act*, 1992, S.O. 1992, c.6;
2. An order approving the discontinuance of the within proceeding as against the defendants Sanyo Electric Co., Ltd., Sanyo Electronic Device (U.S.A.) Corp. and Sanyo North America Corporation (collectively “Sanyo”) pursuant to section 29 of the *Class Proceedings Act*, 1992, S.O. 1992, c.6;
3. An Order granting leave to file an Amended Statement of Claim to remove Vishay and Sanyo in the form attached as **Schedule “A”**;
4. An Order that notice under sections 19 and 29 of the *Class Proceedings Act*, 1992, S.O. 1992, c. 6 is not required; and,
5. Such further and other relief as counsel may advise and this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. On May 13, 2016, the plaintiff issued a Statement of Claim alleging a price-fixing conspiracy among the defendants concerning film capacitors (“Capacitors”);
2. Following the issuance of the Statement of Claim, plaintiff’s counsel continued its investigations and have had discussions with counsel for both Vishay and Sanyo regarding the allegations in the Statement of Claim;
3. The plaintiff and Vishay have entered into a Tolling and Standstill Agreement dated November 11, 2016 which provides for, among other things, the discontinuance of this action as against Vishay;
4. The Tolling and Standstill Agreement tolls any and all limitation periods applicable to the claims as of May 13, 2016, the date the Statement of Claim was filed;
5. The discontinuance of the action against Vishay will simplify the progress of this action by limiting the role of Vishay without giving up any rights to bring them back into the action should it become advisable or necessary in the future;
6. The agreement to discontinue against Vishay is not and shall not be construed as a release of any causes of action that are or may be asserted in the within proceedings;
7. The action should be dismissed as against Sanyo as those defendants do not manufacture or sell film capacitors during the class period;
8. Given the nature of the discontinuance sought pursuant to the Tolling and Standstill Agreement with Vishay and as against Sanyo, notice under sections 19 and/or 29 of the *Class Proceedings Act* is not necessary at this time;
9. *The Class Proceedings Act 1992*, S.O., 1990, including but not limited to ss. 12 and 29;
10. *The Rules of Civil Procedure*, in particular Rules 23 and 26; and,

11. Such further and other grounds as counsel may advise and this Honourable Court permits.

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

1. The pleadings and proceedings herein;
2. The affidavit of Stephanie Legdon, sworn November 18, 2016; and,
3. Such further and other evidence as counsel may advise and this Honourable Court may permit.

November 21, 2016

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**AND TO: McCarthy Tetrault LLP**

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**AND TO: Kenji Kasahara**

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Representative Director for the Defendant Toshin Kogyo Co., Ltd.

**Schedule "A"**

Court File No.: 1272/16 CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**SEAN ALLOTT**

**Plaintiff**

- and -

AVX CORPORATION; ELNA CO., LTD.; ELNA AMERICA INC.; HITACHI CHEMICAL CO., LTD.; HITACHI CHEMICAL COMPANY AMERICA, LTD.; HITACHI CANADA; HITACHI AIC INC.; KEMET CORPORATION; KEMET ELECTRONICS CORPORATION; MATSUO ELECTRIC CO., LTD.; NICHICON CORPORATION; NICHICON (AMERICA) CORPORATION; NIPPON CHEMI-CON CORPORATION; UNITED CHEMI-CON CORPORATION; NISSEI ELECTRIC CO. LTD.; NITSUKO ELECTRONICS CORPORATION; OKAYA ELECTRIC INDUSTRIES CO., LTD.; OKAYA ELECTRIC AMERICA, INC.; PANASONIC CORPORATION; PANASONIC CORPORATION OF NORTH AMERICA; PANASONIC CANADA INC.; ~~SANYO ELECTRIC CO., LTD.; SANYO ELECTRONIC DEVICE (U.S.A.) CORP.; SANYO NORTH AMERICA CORPORATION;~~ ROHM CO., LTD.; ROHM SEMICONDUCTOR U.S.A., LLC f/k/a ROHM ELECTRONICS U.S.A., LLC; RUBYCON CORPORATION; RUBYCON AMERICA INC.; SHINYEI KAISHA; SHINYEI TECHNOLOGY CO., LTD.; SHINYEI CAPACITOR CO., LTD.; SHINYEI CORPORATION OF AMERICA; SHIZUKI ELECTRIC CO., LTD.; AMERICAN SHIZUKI CORPORATION; SOSHIN ELECTRIC CO., LTD.; SOSHIN ELECTRONICS OF AMERICA INC.; TAITSU CORPORATION; TAITSU AMERICA, INC.; TOSHIN KOGYO CO., LTD.; HOLY STONE ENTERPRISE CO., LTD.; MILESTONE GLOBAL TECHNOLOGY, INC. d/b/a HOLYSTONE INTERNATIONAL; ~~VISHAY INTERTECHNOLOGY, INC.;~~ and VISHAY POLYTECH CO., LTD. f/k/a HOLYSTONE POLYTECH CO., LTD.

**Defendants**

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

**AMENDED STATEMENT OF CLAIM**

**TO THE DEFENDANTS**

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the Plaintiff. 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 Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, 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.

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:

Issued by: \_\_\_\_\_

80 Dundas Street  
London, Ontario  
N6A 6K1

**TO: AVX CORPORATION**  
One AVX Boulevard  
Fountain Inn, South Carolina 29644-9039  
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.**  
970 W. 190 Street, Suite 920  
Torrance, California 90502  
United States

**AND TO: HITACHI CHEMICAL CO., LTD.**  
Grantokyo South Tower, 6F 1-9-2 Marunouchi  
Chiyoda-ku, Tokyo, 100-0005  
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: HITACHI AIC INC.**  
1065, Kugeta  
Moka-shi, Tochigi 321-4521  
Japan
- 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: MATSUO ELECTRIC CO., LTD.**  
3-5-3 Sennari-cho  
Toyonaka-shi, Osaka 561-0829  
Japan
- AND TO: NICHICON CORPORATION**  
511, Nijoudencho, Kkarasumadori Oike-agaru  
Nakagyo-ku, Kyoto, 604-0845  
Japan
- AND TO: NICHICON (AMERICA) CORPORATION**  
927 East State Parkway  
Schaumburg, Illinois 60173  
United States
- AND TO: NIPPON CHEMI-CON CORPORATION**  
5-6-4, Osaki  
Shinagawa-ku, Tokyo 141-8305  
Japan
- AND TO: UNITED CHEMI-CON CORPORATION**  
1701 Golf Rd, Suite 1-1200  
Rolling Meadows, Illinois 60008  
United States
- AND TO: NISSEI ELECTRIC CO. LTD.**  
201 Motodate  
Hanamaki, Iwate, 025-0061  
Japan

**AND TO: NITSUKO ELECTRONICS CORPORATION**  
2031-1, Ogawara  
Suzaka-shi, Nagano-ken, 382-0071  
Japan

**AND TO: OKAYA ELECTRIC INDUSTRIES CO., LTD.**  
16-9, Todorki 6 chome  
Setagaya-ku, Tokyo 158-8543  
Japan

**AND TO: OKAYA ELECTRIC AMERICA, INC.**  
52 Marks Road, Suite 1  
Valparaiso, Indiana 46383  
United States

**AND 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.**~~  
~~2-5-5, Keihan Hondori,~~  
~~Moriguchi City, Osaka 570-8677~~  
~~Japan~~

~~**AND TO: SANYO ELECTRONIC DEVICE (U.S.A.) CORP.**~~  
~~2710 Gateway Oaks Dr., Suite 100~~  
~~Sacramento, California 95833~~  
~~United States~~

~~**AND TO: SANYO NORTH AMERICA CORPORATION**~~  
~~2710 Gateway Oaks Dr.~~  
~~Sacramento, California, 95833~~  
~~United States~~

**AND TO: ROHM CO., LTD.**  
21 Saiin Mizosaki-cho  
Ukyo-ku, Kyoto 615-8585  
Japan

- AND TO: ROHM SEMICONDUCTOR U.S.A., LLC f/k/a ROHM ELECTRONICS U.S.A., LLC**  
2323 Owen Street, Suite 150  
Santa Clara, California 95054  
United States
- AND TO: RUBYCON CORPORATION**  
1938-1, Nishi-Minowa  
Ina-Shi, Nagano Prefecture 399-4593  
Japan
- AND TO: RUBYCON AMERICA INC.**  
4293 Lee Avenue  
Gurnee, Illinois 60031  
United States
- AND TO: SHINYEI KAISHA**  
77-1 Kyomachi  
Chuo-ku, Kobe 651-0178  
Japan
- AND TO: SHINYEI TECHNOLOGY CO., LTD.**  
77-1 Kyomachi  
Chuo-ku, Kobe 651-0178  
Japan
- AND TO: SHINYEI CAPACITOR CO., LTD.**  
Shinagawa Crystal Square 11F  
1-6-41 Konan, Minato-ku, Tokyo 108-0075  
Japan
- AND TO: SHINYEI CORPORATION OF AMERICA**  
1120 Avenue of the Americas, 4<sup>th</sup> Floor  
New York, New York 10036  
United States
- AND TO: SHIZUKI ELECTRIC CO., LTD.**  
10-45 Taisha-cho  
Nishinomiya-shi, Hyogo 662-0867  
Japan
- AND TO: AMERICAN SHIZUKI CORPORATION**  
301 West O Street  
Ogallala, Nebraska 69153  
United States
- AND TO: SOSHIN ELECTRIC CO., LTD.**  
3-13-16 Mita  
Minato-ku, Tokyo, 108-8322  
Japan

- AND TO: SOSHIN ELECTRONICS OF AMERICA INC.**  
2520 Mission College Boulevard, Suite 104  
Santa Clara, California 95054  
United States
- AND TO: TAITSU CORPORATION**  
2-23-20, Kizuki  
Nakahara-ku, Kawasaki, Kanagawa 211-0025  
Japan
- AND TO: TAITSU AMERICA, INC.**  
6153 Fairmont Ave, Suite 100  
San Diego, California 92120  
United States
- AND TO: TOSHIN KOGYO CO., LTD.**  
Tsukasa Bldg. 2F 2-15-4 Uchikanda  
Chiyoda-ku, Tokyo 101-0047  
Japan
- AND TO: HOLY STONE ENTERPRISE CO., LTD.**  
62, Sec.2. Huang Shan R.  
Nei HU Sist., Taipei  
Taiwan
- AND TO: MILESTONE GLOBAL TECHNOLOGY, INC. d/b/a HOLYSTONE INTERNATIONAL**  
41700 Ivy St. #D  
Murrieta, California 92562  
United States
- ~~**AND TO: VISHAY INTERTECHNOLOGY, INC.**~~  
~~63 Lancaster Avenue~~  
~~Malvern, Pennsylvania 19355-2143~~  
~~United States~~
- AND TO: VISHAY POLYTECH CO., LTD. f/k/a HOLYSTONE POLYTECH CO., LTD.**  
16 Ohdaira Kumagami Miharu-machi  
Tamura-gun, Fukushima 963-7704  
Japan

## CLAIM

1. The Plaintiff claims on behalf of himself 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 plaintiff as the representative plaintiff 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 plaintiff 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 plaintiff 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 Film 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 film capacitors ("Film Capacitors") in Canada during the class period.
- 3. The defendants and their unnamed co-conspirators manufactured, marketed, distributed, and/or sold Film Capacitors in Canada and throughout the world. The defendants had market power in the market for Film 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 capacitor. 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. Film Capacitors use

insulating plastic film and one of two conductive materials, propylene or polyester. Film Capacitors include the following four generations: (1) film and aluminum foil capacitors, (2) film and other metal capacitors, (3) layered capacitors, and (4) surface-mount capacitors.

6. Film Capacitors are used in appliances, lighting, power supply, digital AV, communications devices, games, direct current (DC) links for inverters, snubbers for inverters, battery filters, and electric compressors, among other electronics.
7. The defendants manufactured, sold, and distributed Film Capacitors to original equipment manufacturers (“OEMs”) and others in Canada, Asia, Europe, the United States, and elsewhere.
8. During the period commencing as early as January 1, 2007 and continuing up to the present (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 Film Capacitors.
9. The conduct of the defendants and their co-conspirators caused injury to the plaintiff and the other class members, namely that they were compelled to pay, and did pay, artificially inflated prices, directly or indirectly, for Film Capacitors (the “Overcharge”).
10. Damages and equitable remedies are claimed. The application of the doctrine of waiver of tort is also sought.

#### **THE PLAINTIFF AND THE CLASS**

11. The plaintiff, Sean Allott, is an individual resident of the City of London, in the Province of Ontario. Sean Allott is an IT professional and a significant consumer of electronic

products. During the Class Period, Sean Allott was a purchaser of Film Capacitors manufactured by the defendants. Specifically, Sean Allott purchased microwave ovens and Macbooks (including Macbook chargers) during the class period, which contained Film Capacitors.

12. The plaintiff seeks to represent a class consisting of:

*All persons and entities in Canada who purchased Film Capacitors or a product containing a Film Capacitor between January 1, 2007 and the present.*

## **DEFENDANTS**

13. The defendants are jointly and severally liable for the actions of and damages allocable to the co-conspirators, including unnamed co-conspirators.
14. 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.
15. 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.

**AVX**

16. 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. It is a subsidiary of Kyocera Corporation, a Japanese corporation that owns approximately 72% of the outstanding common stock in AVX Corporation. During the Class Period, AVX Corporation manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
17. The defendant AVX Corporation is referred to herein as “AVX.”

**ELNA**

18. 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 Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
19. 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 970 W. 190 Street, Suite 920, Torrance, California 90502, United States. During the Class Period, ELNA America Inc. manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.
20. The defendants ELNA Co., Ltd. and ELNA America Inc. are together referred to herein as “ELNA.”

***Hitachi Chemical***

21. The defendant Hitachi Chemical Co., Ltd. is a Japanese corporation with its principal place of business located at Grantokyo South Tower, 6F 1-9-2 Marunouchi Chiyoda-ku, Tokyo, 100-0005 Japan. During the Class Period, Hitachi Chemical Co., Ltd. manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
22. 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. manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.
23. The defendant Hitachi Canada, a subsidiary of Hitachi Chemical Company America, Ltd. is a Canadian Corporation with its principal place of business located at 5450 Explorer Drive, Suite 501, Mississauga, Ontario, L4W 5M1, Canada. During the Class Period, Hitachi Canada manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.
24. 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. It is affiliated with and controlled by Hitachi Chemical Co., Ltd. During the Class Period, Hitachi AIC Inc. manufactured, marketed, sold, and/or distributed Film 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 HolyStone Polytech Co., Ltd.

25. The defendants Hitachi Chemical Co., Ltd., Hitachi Chemical Company America, Ltd., Hitachi Canada, and Hitachi AIC Inc. are all part of the Hitachi Group, and are together referred to herein as "Hitachi."

### ***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 Film Capacitors directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
27. 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 distributed Film Capacitors directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
28. The defendants KEMET Corporation and KEMET Electronics Corporation are together referred to herein as "KEMET."

### ***Matsuo***

29. 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 561-0829, Japan. During the Class Period, Matsuo Electric Co., Ltd., manufactured, marketed, sold, and/or

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

30. The defendant Matsuo Electric Co., Ltd. is referred to herein as “Matsuo.”

***Nichicon***

31. The defendant Nichicon Corporation is a Japanese corporation with its principal place of business located at 511, Nijoudenchou, Kkarasumadori Oike-agaru, Nakagyo-ku, Kyoto, 604-0845 Japan. During the Class Period, Nichicon Corporation manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
32. 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. Nichicon (America) Corporation manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
33. The defendants Nichicon Corporation and Nichicon (America) Corporation are together referred to herein as “Nichicon.”

***Nippon Chemi-Con***

34. 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 141-8305, Japan. During the Class Period, Nippon Chemi-Con Corporation manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

35. 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 1701 Golf Rd., Suite 1-1200, Rolling Meadows, Illinois 60008, United States. During the Class Period, United Chemi-Con manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
36. The defendants Nippon Chemi-Con Corporation and United Chemi-Con Corporation are together referred to herein as “Nippon Chemi-Con.”

***Nissei***

37. The defendant Nissei Electric Co. Ltd. is a Japanese corporation with its principal place of business located at 201, Motodate, Hanamaki, Iwate, 025-0061, Japan. During the Class Period, Nissei Electric Co. Ltd. manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
38. The defendant Nissei Electric Co. Ltd. is referred to herein as “Nissei.”

***Nitsuko***

39. The defendant Nitsuko Electronics Corporation is a Japanese corporation with its principal place of business located at 2031-1, Ogawara, Suzaka-shi, Nagano-ken, 382-0071, Japan. During the Class Period, Nitsuko Electronics Corporation manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
40. The defendant Nitsuko Electronics Corporation is referred to herein as “Nitsuko.”



**Okaya**

41. The defendant Okaya Electric Industries Co., Ltd. is a Japanese corporation with its principal place of business at 16-9, Todorki 6 chome, Setagaya-ku, Tokyo 158-8543, Japan. During the Class Period, Okaya Electric Industries Co., Ltd. manufactured, marketed, sold, and/or distributed Film Capacitors, directly and through its subsidiaries or affiliates, to customers throughout Canada.
42. The defendant Okaya Electric America, Inc., an Indiana corporation, is a wholly owned subsidiary of Okaya Electric Industries Co., Ltd. with its principal place of business located at 52 Marks Road, Suite 1, Valparaiso, Indiana 46383, United States. During the Class Period, Okaya Electric America, Inc. manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers through Canada.
43. The defendants Okaya Electric Industries Co., Ltd. and Okaya Electric America, Inc. are together referred to herein as “Okaya”.

**~~Panasonic and Sanyo~~**

44. 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, in its own capacity and in its capacity as Matsushita Electric Industrial Co., Ltd. manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
45. 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 manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.

46. The defendant Panasonic Canada Inc., a subsidiary of Panasonic Corporation of North America, is a Canadian corporation with its principal place of business located at 5770 Ambler Drive, Mississauga, Ontario, L4W 2T3, Canada. During the Class Period, Panasonic Corporation—Canada Inc. manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.

~~47. 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 2-5-5, Keihan-Hondori, 2-Chome, Moriguchi City, Osaka 570-8677, Japan. During the Class Period, Sanyo Electric Co., Ltd. manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.~~

~~48. The defendant Sanyo Electronic Device (U.S.A.) Corp. is a Delaware corporation with its principal place of business located at 2710 Gateway Oaks Dr., Suite 100, Sacramento, California 95833, United States. It is affiliated with and controlled by Sanyo Electric Group Ltd. During the Class Period, Sanyo Electronic Device (U.S.A.) Corp. manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.~~

~~49. The defendant Sanyo North America Corporation is a Delaware corporation with its principal place of business located at 2710 Gateway Oaks Dr., Sacramento, California 95833, United States. It is affiliated with and controlled by Sanyo Electric Group Ltd.~~

~~During the Class Period, Sanyo North America Corporation manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.~~

~~50.47.~~ The defendants Panasonic Corporation, Panasonic Corporation of North America, and Panasonic Canada Inc., ~~Sanyo Electric Co., Ltd., Sanyo Electronic Device (U.S.A.) Corp., and Sanyo North America Corporation~~ are collectively referred to herein as “Panasonic.”

### **ROHM**

~~51.48.~~ 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 Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~52.49.~~ 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. Rohm Semiconductor U.S.A., LLC formerly operated as ROHM Electronics U.S.A., LLC prior to January 1, 2009. During the Class Period, ROHM Semiconductor U.S.A., LLC manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.

~~53.50.~~ The defendants ROHM Co., Ltd. and ROHM Semiconductor U.S.A., LLC f/k/a ROHM Electronics U.S.A., LLC are together referred to herein as “ROHM.”

**Rubycon**

~~54.~~51. The defendant Rubycon Corporation is a Japanese corporation with its principal place of business located at 1938-1, Nishi-Minowa, Ina-Shi, Nagano Prefecture 399-4593, Japan. During the Class Period, Rubycon Corporation manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~55.~~52. 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. manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.

~~56.~~53. The defendants Rubycon Corporation and Rubycon America Inc. are together referred to herein as “Rubycon.”

**Shinyei**

~~57.~~54. The defendant Shinyei Kaisha is a Japanese corporation with its principal place of business located at 77-1 Kyomachi, Chuo-ku, Kobe 651-0178, Japan. During the Class Period, Shinyei Kaisha manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~58.~~55. The defendant Shinyei Technology Co., Ltd. is a Japanese corporation and a corporate affiliate of Shinyei Kaisha with its principal place of business located at 77-1 Kyomachi, Chuo-ku, Kobe 651-0178, Japan. Until in or around February 2011, Shinyei Technology

Co., Ltd. manufactured, marketed, sold, and/or distributed Film Capacitors either directly or indirectly, to customers throughout Canada.

~~59.~~56. The defendant Shinyei Capacitor Co., Ltd. is a Japanese corporation and a corporate affiliate of Shinyei Kaisha with its principal place of business located at Shinagawa Crystal Square 11F, 1-6-41 Konan, Minato-ku, Tokyo 108-0075, Japan. Starting in or around February 2011, Shinyei Capacitor Co., Ltd. was established by Shinyei Kaisha to acquire the Film Capacitors business of Shinyei Technology Co., Ltd. After in or around February 2011, Shinyei Capacitor Co., Ltd. manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.

~~60.~~57. The defendant Shinyei Corporation of America, a Delaware corporation and a wholly owned subsidiary of Shinyei Kaisha with its principal place of business located at 1120 Avenue of the Americas, 4<sup>th</sup> Floor, New York, New York 10036, United States. During the Class Period, Shinyei Corporation of America manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.

~~61.~~58. The defendants Shinyei Kaisha, Shinyei Technology Co., Ltd., Shinyei Capacitor Co., Ltd., and Shinyei Corporation of America are together referred to herein as “Shinyei.”

### ***Shizuki***

~~62.~~59. The defendant Shizuki Electric Co., Ltd. is a Japanese corporation with its principal place of business located at 10-45 Taisha-cho, Nishinomiya-shi, Hyogo 662-0867, Japan. During the Class Period, Shizuki Electric Co., Ltd. manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~63-60.~~ The defendant American Shizuki Corporation is a Nebraska corporation with its principal place of business located at 301 West O Street, Ogallala, Nebraska 69153, United States. It is affiliated with and controlled by Shizuki Electric Co., Ltd. During the Class Period, American Shizuki Corporation manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.

~~64-61.~~ The defendants Shizuki Electric Co., Ltd. and American Shizuki Corporation are together referred to herein as “Shizuki”.

### ***Soshin***

~~65-62.~~ The defendant Soshin Electric Co., Ltd. is a Japanese corporation with its principal place of business located at 3-13-16 Mita, Minato-ku, Tokyo 108-8322 108-8322, Japan. During the Class Period, Soshin Electric Co., Ltd. manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~66-63.~~ The defendant Soshin Electronics of America Inc., a California corporation, is a wholly owned subsidiary of Soshin Electric Co., Ltd. with its principal place of business located at 2520 Mission College Boulevard, Suite 104, Santa Clara, California 95054, United States. During the Class Period, Soshin Electronics of America Inc. manufactured, marketed, sold, and/or distributed Film Capacitors throughout Canada.

~~67-64.~~ The defendants Soshin Electric Co., Ltd. and Soshin Electronics of America Inc. are together referred to herein as “Soshin”.

### ***Taitso***

~~68-65.~~ The defendant Taitso Corporation is a Japanese corporation with its principal place of business located at 2-23-20, Kizuki, Nakahara-ku, Kawasaki, Kanagawa 211-0025,

Japan. During the Class Period, Taitso Corporation manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~69.66.~~ The defendant Taitso America, Inc., a California corporation, is a wholly owned subsidiary of Taitso Corporation with its principal place of business located at 6153 Fairmont Ave, Suite 100, San Diego, California 92120, United States. During the Class Period, Taitso America, Inc. manufactured, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.

~~70.67.~~ The defendants Taitso Corporation and Taitso America, Inc. are together referred to herein as "Taitso".

### ***Toshin Kogyo***

~~71.68.~~ The defendant Toshin Kogyo Co., Ltd., is a Japanese corporation with its principal place of business located at 101-0047 Tsukasa Bldg, 2-15-4 Uchikanda Chiyoda-ku, Tokyo, Japan. During the Class Period, Toshin Kogyo Co., Ltd. manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries or affiliates to customers throughout Canada.

~~72.69.~~ The defendant Toshin Kogyo Co., Ltd. is referred to herein as "Toshin Kogyo."

### ***Holy Stone***

~~73.70.~~ The defendant Holy Stone Enterprise Co., Ltd. is a foreign 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 Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~74.71.~~ 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 Film Capacitors, either directly or indirectly, to customers throughout Canada.

~~75.72.~~ The defendant Milestone Global Technology, Inc. d/b/a Holy Stone 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. 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. manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.

~~76.73.~~ The defendants Holy Stone Enterprise Co., Ltd. and Milestone Global Technology, Inc. d/b/a Holystone International are together referred to herein as "Holy Stone."

***Vishay***

~~77.~~ The defendant Vishay Intertechnology, Inc. is a Delaware corporation with its principal place of business located at 63 Lancaster Avenue, Malvern, Pennsylvania 19355-2143, United States. During the Class Period, Vishay Intertechnology, Inc. manufactured, marketed, sold, and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~78.74.~~ 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. is a Japanese corporation with its principal place of business located at 16 Ohdaira Kumagami Miharu-machi, Tamura-gun Fukushima 963-7704 Japan. During the Class Period, Vishay Polytech Co., Ltd. manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.

~~79.75.~~ The defendants ~~Vishay Intertechnology, Inc. and Vishay Polytech Co., Ltd. f/k/a HolyStone Polytech Co., Ltd. are together~~ is referred to herein as “Vishay”.

~~80.76.~~ Collectively, the defendants named in paragraphs 16 to ~~752~~ are referred to herein as the “Defendants”.

## **FACTUAL BACKGROUND**

### ***The Film Capacitors Industry***

~~81.77.~~ The structure and characteristics of the market for Film Capacitors in Canada are conducive to the conspiracy alleged herein.

~~82.78.~~ There are substantial barriers that preclude, reduce or make more difficult entry into the Film 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.

~~83.79.~~ There are no close substitutes for Film Capacitors in Canada. Film Capacitors are one of the fundamental components found in electrical circuits in many electronic devices that are used today. There is no alternative to Film Capacitors in Canada.

~~84.~~80. Film Capacitors are commodity products that are interchangeable among the Defendants. Film Capacitors of like technical and operational specification are mutually interchangeable. A specific Film Capacitor manufactured by one of the Defendants can be exchanged for a Film Capacitor manufactured by another Defendant so long as it has the same technical and operational specifications.

~~85.~~81. The price of Film Capacitors provided to OEMs and their subsidiaries is reflected, in whole or in part, in the price of electronics purchased in Canada.

~~86.~~82. The Defendants dominate the global Film Capacitors market, including the sale of Film Capacitors in Canada.

***The Conspiracy to Fix the Price of Film Capacitors***

~~87.~~83. The acts alleged under this heading are, collectively, the “Conspiracy Acts.”

~~88.~~84. During the Class Period, the Defendants and unnamed co-conspirators conspired and/or agreed with each other to fix, maintain, increase or control the price for the supply of Film Capacitors and/or to enhance unreasonably the prices of Film Capacitors and /or to lessen unduly competition in the sale of Film Capacitors in Canada.

~~89.~~85. 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 meetings with each other at times and places, some of which are unknown to the plaintiff. As a result of the communications and meetings, the Defendants and unnamed co-conspirators unlawfully conspired and/or agreed to:

- a. unreasonably enhance the prices of Film Capacitors in Canada;
- b. fix, maintain, increase, and/or control the prices of Film Capacitors in Canada;

- c. monitor and/or enforce adherence to an agreed-upon pricing scheme;
- d. restrain trade in the sale of Film Capacitors in Canada; and
- e. lessen unduly competition in the sale of Film Capacitors in Canada.

~~90.~~86. 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 Film Capacitors in Canada;
- b. communicated secretly, in person, by telephone, and by e-mail, to discuss and fix prices of Film Capacitors;
- c. made formal agreements with respect to the prices of Film Capacitors;
- d. exchanged information regarding the prices of Film Capacitors for the purposes of monitoring and enforcing adherence to the agreed-upon prices;
- e. rigged bids for the sale of Film Capacitors to OEMs and their subsidiaries;
- f. allocated sales, territories, customers, and/or markets for supply of Film Capacitors;
- g. fixed, maintained, controlled, prevented, and/or lessened the production and/or supply of Film Capacitors; and
- h. disciplined any conspirator which failed to comply with the conspiracy.

~~91.~~87. 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 class members.

~~92-88.~~ The Defendants were motivated to conspire and their predominant purposes and predominant concerns were to harm the plaintiff and the other class members who purchased Film Capacitors by requiring them to pay unlawfully high prices for Film Capacitors.

~~93-89.~~ 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.

~~94-90.~~ The Conspiracy Acts alleged in this claim to have been done by each Defendant were authorized, ordered, and/or 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**

~~95-91.~~ Commencing in or around 2014, regulatory authorities in a number of jurisdictions announced investigations into price-fixing of the capacitors industry.

~~96-92.~~ 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 both electrolytic and Film Capacitors.

~~97-93.~~ In or around April 2014, the Antitrust Division of the United States Department of Justice ("DOJ") confirmed to industry sources that the government had 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.

~~98.94.~~ 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 Kunlin 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.

~~99.95.~~ Since early 2014, investigations into the capacitors industry have also been opened by the Japanese Fair Trade Commission, the South Korean Fair Trade Commission, the Taiwanese Fair Trade Commission, the Singapore Competition Commission, and the European Commission's competition authority.

## **CAUSES OF ACTION**

### ***Breach of the Competition Act***

~~100.96.~~ The Defendants are in breach of section 45 of Part VI of the *Competition Act* and caused injury to the plaintiff 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*.

~~401.97.~~ Further, or in the alternative, the defendants Hitachi Canada and Panasonic Canada Inc. (the “Canadian Defendants”) are in breach of section 46(1) of the Part VI of the *Competition Act* and caused injury to the plaintiff and the other class members which renders the Canadian Defendants jointly and severally liable to pay damages and costs of investigation pursuant to section 36 of the *Competition Act*.

~~402.98.~~ The plaintiff 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 co-conspirators actively, intentionally, and purposively concealed the existence of the combination and conspiracy from the plaintiff and others.

### ***Civil Conspiracy***

~~403.99.~~ Further, or in the alternative, the Conspiracy Acts were unlawful acts under the *Competition Act* and/or in restraint of trade directed towards the plaintiff and the other class members. The Defendants and their co-conspirators knew that the unlawful acts alleged herein would likely cause injury to the plaintiff 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 plaintiff and the other class members and the Defendants are jointly and severally liable for the tort of conspiracy to injure.

~~404.100.~~ The plaintiff and the other class members suffered damages as a result of the Defendants’ conspiracy.

***Unlawful Means Tort***

~~405.~~101. Further, or in the alternative, the Conspiracy Acts were unlawful acts intended to cause the plaintiff and the other class members economic loss, either as an end in itself or as a necessary means of enriching the Defendants.

~~406.~~102. 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 Film 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.

~~407.~~103. The plaintiff 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***

~~408.~~104. The Defendants have each been unjustly enriched by the receipt of the Overcharge. The plaintiff and the other class members have suffered a corresponding deprivation in the amount of such Overcharge.

~~409.~~105. Since the Overcharge that was received by the Defendants from the plaintiff 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***

~~410.~~106. Further, or in the alternative, the plaintiff pleads and relies on the doctrine of waiver of tort and states 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*

~~411-107.~~As a result of the Conspiracy Acts:

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

~~412-108.~~During the Class Period, the plaintiff and the other class members purchased Film Capacitors and products containing Film Capacitors. By reason of the alleged violations of the *Competition Act* and the common law, the plaintiff and the other class members have been overcharged for those Film Capacitors and products containing Film Capacitors by paying more than they would have paid in the absence of the illegal conspiracy and, as a result, the plaintiff and the other class members have suffered damages.

~~413-109.~~The plaintiff asserts that the Overcharge is capable of being quantified on an aggregate basis as the difference between the prices actually paid by the class members and the prices which would have been paid in the absence of the unlawful conspiracy.

~~414-110.~~All amounts payable to the class on account of damages and disgorgement should be calculated on an aggregated basis pursuant to s. 24 of the *Class Proceedings Act, 1992*, or otherwise.



***Punitive Damages***

~~445.~~111.The plaintiff asserts that the Defendants' conduct was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, willful, and in contumelious disregard of the plaintiff's 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***

~~446.~~112.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 *Class Proceedings Act, 1992*.

***Injunction***

~~447.~~113.The plaintiff claims for the Defendants to be permanently enjoined from carrying on business in contravention of the applicable laws.

***Conspicuous Notice Plan***

~~448.~~114.The plaintiff requests 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 *Class Proceedings Act, 1992*.

**STATUTES RELIED UPON**

~~449.~~115.The plaintiff pleads and relies 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**

~~120.116.~~ 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)).

~~124.117.~~ The Plaintiff proposes that this action be tried in the City of London, in the Province of Ontario.

May 13, 2016

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Lawyers for the Plaintiff

SEAN ALLOT  
Plaintiff

v. AVX CORPORATION, ET AL.  
Defendants

Court File No. 1272/16 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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**AMENDED STATEMENT OF CLAIM**

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Lawyers for the Plaintiff

SEAN ALLOT  
Plaintiff

v. AVX CORPORATION, et al.  
Defendants

Court File No. 1272/16 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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**NOTICE OF MOTION**  
(Discontinuances)

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**HARRISON PENZA LLP**  
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Lawyers for the Plaintiff

# Tab 2

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**SEAN ALLOTT**

**Plaintiff**

- and -

AVX CORPORATION; ELNA CO., LTD.; ELNA AMERICA INC.; HITACHI CHEMICAL CO., LTD.; HITACHI CHEMICAL COMPANY AMERICA, LTD.; HITACHI CANADA; HITACHI AIC INC.; KEMET CORPORATION; KEMET ELECTRONICS CORPORATION; MATSUO ELECTRIC CO., LTD.; NICHICON CORPORATION; NICHICON (AMERICA) CORPORATION; NIPPON CHEMI-CON CORPORATION; UNITED CHEMI-CON CORPORATION; NISSEI ELECTRIC CO. LTD.; NITSUKO ELECTRONICS CORPORATION; OKAYA ELECTRIC INDUSTRIES CO., LTD.; OKAYA ELECTRIC AMERICA, INC.; PANASONIC CORPORATION; PANASONIC CORPORATION OF NORTH AMERICA; PANASONIC CANADA INC.; SANYO ELECTRIC CO., LTD.; SANYO ELECTRONIC DEVICE (U.S.A.) CORP.; SANYO NORTH AMERICA CORPORATION; ROHM CO., LTD.; ROHM SEMICONDUCTOR U.S.A., LLC f/k/a ROHM ELECTRONICS U.S.A., LLC; RUBYCON CORPORATION; RUBYCON AMERICA INC.; SHINYEI KAISHA; SHINYEI TECHNOLOGY CO., LTD.; SHINYEI CAPACITOR CO., LTD.; SHINYEI CORPORATION OF AMERICA; SHIZUKI ELECTRIC CO., LTD.; AMERICAN SHIZUKI CORPORATION; SOSHIN ELECTRIC CO., LTD.; SOSHIN ELECTRONICS OF AMERICA INC.; TAITSU CORPORATION; TAITSU AMERICA, INC.; TOSHIN KOGYO CO., LTD.; HOLY STONE ENTERPRISE CO., LTD.; MILESTONE GLOBAL TECHNOLOGY, INC. d/b/a HOLYSTONE INTERNATIONAL; VISHAY INTERTECHNOLOGY, INC.; and VISHAY POLYTECH CO., LTD. f/k/a HOLYSTONE POLYTECH CO., LTD.

**Defendants**

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

**AFFIDAVIT OF STEPHANIE LEGDON  
(sworn November 18, 2016)**

**I, STEPHANIE LEGDON**, of the City of London, in the County of Middlesex, **MAKE OATH  
AND SAY:**

1. I am a lawyer in the class actions group at Harrison Pensa <sup>LLP</sup>, which is counsel for the Plaintiff in *Sean Allott v. AVX Corporation et al.*, (Court File No. 1272/16 CP) (the "Action").

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

### **NATURE OF THE MOTION**

3. I swear this affidavit in support of the plaintiff's motion for an order:
  - a. approving the discontinuance of the Action, without prejudice and without costs, as against Vishay Intertechnology Inc. ("Vishay") in accordance with the tolling and standstill agreement reached between the plaintiff and Vishay (the "Tolling and Standstill Agreement") pursuant to section 29 of the *Class Proceedings Act*, 1992, S.O. 1992, c.6;
  - b. approving the discontinuance of the Action as against the defendants Sanyo Electric Co., Ltd, Sanyo Electronic Device (U.S.A.) Corp. and Sanyo North America Corporation (collectively "Sanyo") pursuant to section 29 of the *Class Proceedings Act*, 1992, S.O. 1992, c.6;
  - c. granting leave to file an Amended Statement of Claim to remove Vishay and Sanyo as defendants to the Action; and,
  - d. directing that notice under sections 19 and 29 of the *Class Proceedings Act*, 1992, S.O. 1992, c. 6 is not required.

### **PROCEDURAL HISTORY**

4. On or about May 13, 2016, a Statement of Claim was issued on behalf of Sean Allott in a proposed class action against the defendants. The Statement of Claim includes allegations of unlawful conspiracy to raise, fix, maintain and/or stabilize the price of film capacitors in Canada. Attached hereto and marked as **Exhibit "A"** is a copy of the Statement of Claim.

5. Since the Statement of Claim was issued, the plaintiff has participated in arm's length and adversarial negotiations concerning the Tolling and Standstill Agreement. In the paragraphs that follow, I will provide further details respecting the considerations on the part of plaintiff's counsel which justify the Tolling and Standstill Agreement with Vishay.

#### **THE TOLLING AND STANDSTILL AGREEMENTS**

6. The plaintiff has entered into a Tolling and Standstill Agreement with Vishay dated November 11, 2016.
7. In the course of arm's length and adversarial negotiations with counsel for Vishay, plaintiff's counsel was advised of the following facts:
  - a. On May 26, 2015, the United States District Court of the Northern District of California dismissed Vishay from *In re: Capacitors Antitrust Litigation*, Master File No: 3:14-cv-03264-JD (ND.Ca.) which raises allegations similar to those raised in the Action;
  - b. Vishay has not been advised by any regulatory authority that it is the subject of any investigation relating to the prices of Capacitors and denies any involvement in any conspiracy to fix prices of Capacitors as alleged in the Action; and,
  - c. Vishay has agreed to a recital in the Tolling and Standstill Agreement which states that, "Vishay Intertechnology has advised the Plaintiff that it is not aware of any facts or circumstances relating to the conduct of Vishay Intertechnology or its employees that could give rise to liability pursuant to Part VI of the *Competition Act*, RSC 195, c. C-34 in respect of Capacitors".
8. The following comments can be made about the Tolling and Standstill Agreement entered into with Vishay:
  - a. it tolls any and all limitation periods applicable to the claims as of May 13, 2016,



- the date the Statement of Claim was filed;
- b. the discontinuance is without costs and without prejudice to any claim a proposed class member, including the plaintiff, may have as against Vishay;
  - c. the discontinuance as against Vishay will streamline the litigation by limiting the role of that party without giving up any rights to bring it back into the Action should it become advisable or necessary in the future; and,
  - d. the agreement to discontinue against Vishay is not and shall not be construed as a release of any causes of action that are or may be asserted in the Action.
9. Pursuant to the Tolling and Standstill Agreement, Vishay is required to promptly inform the plaintiff if Vishay Intertechnology, Inc. or any of its affiliates make public disclosure of being the subject of an investigation related to Capacitors by the following government regulators: the United States Department of Justice, the Canadian Competition Bureau, the European Commission, Brazil's Council for Economic Defence, China's National Development and Reform Commission, the Japan Fair Trade Commission, the Taiwan Fair Trade Commission, the Competition Commission of Singapore or the Korea Fair Trade Commission.

***Sanyo North American Corporation***

10. Following the issuance of the Statement of Claim, plaintiff's counsel has continued its investigation into the alleged conspiracy involving film capacitors. Further, plaintiff's counsel has had a series of discussions with counsel for Sanyo.
11. In the course of those discussions, plaintiff's counsel has received representations from Sanyo's counsel that Sanyo did not manufacture or sell film capacitors during the class period as its business was limited to other types of capacitors. Attached hereto and marked as **Exhibit "B"** is a copy of an e-mail from Emrys Davis, counsel to Sanyo, dated

June 20, 2016 which confirms that Sanyo did not manufacture or sell film capacitors.

12. In support of Sanyo's position, Sanyo's counsel provided plaintiff's counsel with a declaration of Mr. Toshiyuki Takata which was filed in connection with the U.S. capacitors class action matter. Mr. Takata is currently the Chief, Device Solutions Business Division, Automotive & Industrial Systems at Panasonic Corporation. Mr. Takata previously held the position of Manager, Capacitors Business Division, Electronic Device Company at Sanyo Electric Co., Ltd. Mr. Takata was duly authorized to execute said declaration on behalf of Sanyo Electric Co., Ltd.
13. Mr. Takata's declaration states that Sanyo Electric Co., Ltd. manufactures and sells aluminum electrolytic capacitors under the brand name OS-CON and tantalum electrolytic capacitors under the brand name POSCAP. OS-CONs and POSCAPs are Sanyo Electric Co. Ltd.'s only capacitor products. The declaration further states that until around March 2010, Sanyo Electric Co., Ltd. also sold general aluminum electrolytic capacitors. Attached hereto and marked as **Exhibit "C"** is a copy of Mr. Takata's declaration.
14. Further, the Second Amended Direct Purchaser Complaint and the Fourth Amended Indirect Purchaser Complaint in the U.S. capacitors class action matters allege that Sanyo manufactured, marketed and sold only electrolytic capacitors. The allegations in respect of Sanyo, which are limited to electrolytic capacitors, are set out at paragraphs 34 and 35 of the Direct Purchaser Complaint and at paragraphs 53 and 54 of the Indirect Purchaser Complaint. Attached hereto and marked as **Exhibits "D"** and **"E"** respectively are extracts of the relevant portions of the Second Amended Direct Purchaser Complaint and the Fourth Amended Indirect Purchaser Complaint in the U.S. capacitors class action matters.
15. As a result of the plaintiff's investigation and the discussions with Sanyo's counsel, plaintiff's counsel is satisfied that Sanyo did not manufacture or sell film capacitors during

the class period and as such, the plaintiff moves for leave to discontinue as against Sanyo.


16. In the opinion of plaintiff's counsel, the approval of the Tolling and Standstill Agreement, including the discontinuance of the Action as against Vishay, as well as the discontinuance of the Action as against Sanyo, is prudent and in the best interest of the proposed class members at this time.
17. If the Court grants leave to discontinue as against Vishay and Sanyo, the plaintiff seeks leave to amend the Statement of Claim to remove references to Vishay and Sanyo. Attached hereto and marked as **Exhibit "F"** is a copy of the proposed Amended Statement of Claim.

**NOTICE**

18. Given the nature of the discontinuances sought pursuant to the Tolling and Standstill Agreements and as against Sanyo who did not manufacture or sell film capacitors during the class period, in the opinion of plaintiff's counsel, notice under sections 19 and/or 29 of the *Class Proceedings Act* is not necessary at this time.

SWORN BEFORE ME at the City of )  
London, in the County of Middlesex, )  
in the Province of Ontario this 18<sup>th</sup> )  
day of November, 2016. )

  
STEPHANIE LEGDON

  
Commissioner for taking affidavits

Anni Marina Barry, a Commissioner, etc.,  
Province of Ontario, for Harrison Pensa LLP,  
Barristers and Solicitors.  
Expires April 11, 2019.

**This is EXHIBIT "A" referred to in the  
Affidavit of STEPHANIE LEGDON  
sworn before me, this 18<sup>th</sup> day of November, 2016**

  
A Commissioner, etc.

Anni Marina Barry, a Commissioner, etc.,  
Province of Ontario, for Harrison Pensa LLP,  
Barristers and Solicitors.  
Expires April 11, 2019.



ONTARIO  
SUPERIOR COURT OF JUSTICE



SEAN ALLOTT

Plaintiff

- and -

AVX CORPORATION; ELNA CO., LTD.; ELNA AMERICA INC.; HITACHI CHEMICAL CO., LTD.; HITACHI CHEMICAL COMPANY AMERICA, LTD.; HITACHI CANADA; HITACHI AIC INC.; KEMET CORPORATION; KEMET ELECTRONICS CORPORATION; MATSUO ELECTRIC CO., LTD.; NICHICON CORPORATION; NICHICON (AMERICA) CORPORATION; NIPPON CHEMI-CON CORPORATION; UNITED CHEMI-CON CORPORATION; NISSEI ELECTRIC CO. LTD.; NITSUKO ELECTRONICS CORPORATION; OKAYA ELECTRIC INDUSTRIES CO., LTD.; OKAYA ELECTRIC AMERICA, INC.; PANASONIC CORPORATION; PANASONIC CORPORATION OF NORTH AMERICA; PANASONIC CANADA INC.; SANYO ELECTRIC CO., LTD.; SANYO ELECTRONIC DEVICE (U.S.A.) CORP.; SANYO NORTH AMERICA CORPORATION; ROHM CO., LTD.; ROHM SEMICONDUCTOR U.S.A., LLC f/k/a ROHM ELECTRONICS U.S.A., LLC; RUBYCON CORPORATION; RUBYCON AMERICA INC.; SHINYEI KAISHA; SHINYEI TECHNOLOGY CO., LTD.; SHINYEI CAPACITOR CO., LTD.; SHINYEI CORPORATION OF AMERICA; SHIZUKI ELECTRIC CO., LTD.; AMERICAN SHIZUKI CORPORATION; SOSHIN ELECTRIC CO., LTD.; SOSHIN ELECTRONICS OF AMERICA INC.; TAITSU CORPORATION; TAITSU AMERICA, INC.; TOSHIN KOGYO CO., LTD.; HOLY STONE ENTERPRISE CO., LTD.; MILESTONE GLOBAL TECHNOLOGY, INC. d/b/a HOLYSTONE INTERNATIONAL; VISHAY INTERTECHNOLOGY, INC.; and VISHAY POLYTECH CO., LTD. f/k/a HOLYSTONE POLYTECH CO., LTD.

Defendants

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

## STATEMENT OF CLAIM

### TO THE DEFENDANTS

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the Plaintiff. 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 Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, 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.

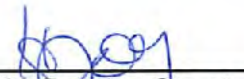
If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

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: May 13/16

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

**TO: AVX CORPORATION**  
One AVX Boulevard  
Fountain Inn, South Carolina 29644-9039  
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.**  
970 W. 190 Street, Suite 920  
Torrance, California 90502  
United States

**AND TO: HITACHI CHEMICAL CO., LTD.**  
Grantokyo South Tower, 6F 1-9-2 Marunouchi  
Chiyoda-ku, Tokyo, 100-0005  
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: HITACHI AIC INC.**  
1065, Kugeta  
Moka-shi, Tochigi 321-4521  
Japan
- 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: MATSUO ELECTRIC CO., LTD.**  
3-5-3 Sennari-cho  
Toyonaka-shi, Osaka 561-0829  
Japan
- AND TO: NICHICON CORPORATION**  
511, Nijoudenchou, Kkarasumadori Oike-agaru  
Nakagyo-ku, Kyoto, 604-0845  
Japan
- AND TO: NICHICON (AMERICA) CORPORATION**  
927 East State Parkway  
Schaumburg, Illinois 60173  
United States
- AND TO: NIPPON CHEMI-CON CORPORATION**  
5-6-4, Osaki  
Shinagawa-ku, Tokyo 141-8305  
Japan
- AND TO: UNITED CHEMI-CON CORPORATION**  
1701 Golf Rd, Suite 1-1200  
Rolling Meadows, Illinois 60008  
United States
- AND TO: NISSEI ELECTRIC CO. LTD.**  
201 Motodate  
Hanamaki, Iwate, 025-0061  
Japan



- AND TO: NITSUKO ELECTRONICS CORPORATION**  
2031-1, Ogawara  
Suzaka-shi, Nagano-ken, 382-0071  
Japan
- AND TO: OKAYA ELECTRIC INDUSTRIES CO., LTD.**  
16-9, Todorki 6 chome  
Setagaya-ku, Tokyo 158-8543  
Japan
- AND TO: OKAYA ELECTRIC AMERICA, INC.**  
52 Marks Road, Suite 1  
Valparaiso, Indiana 46383  
United States
- AND 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.**  
2-5-5, Keihan-Hondori,  
Moriguchi City, Osaka 570-8677  
Japan
- AND TO: SANYO ELECTRONIC DEVICE (U.S.A.) CORP.**  
2710 Gateway Oaks Dr., Suite 100  
Sacramento, California 95833  
United States
- AND TO: SANYO NORTH AMERICA CORPORATION**  
2710 Gateway Oaks Dr.  
Sacramento, California, 95833  
United States
- AND TO: ROHM CO., LTD.**  
21 Saiin Mizosaki-cho  
Ukyo-ku, Kyoto 615-8585  
Japan



**AND TO: ROHM SEMICONDUCTOR U.S.A., LLC f/k/a ROHM ELECTRONICS U.S.A., LLC**  
2323 Owen Street, Suite 150  
Santa Clara, California 95054  
United States

**AND TO: RUBYCON CORPORATION**  
1938-1, Nishi-Minowa  
Ina-Shi, Nagano Prefecture 399-4593  
Japan

**AND TO: RUBYCON AMERICA INC.**  
4293 Lee Avenue  
Gurnee, Illinois 60031  
United States

**AND TO: SHINYEI KAISHA**  
77-1 Kyomachi  
Chuo-ku, Kobe 651-0178  
Japan

**AND TO: SHINYEI TECHNOLOGY CO., LTD.**  
77-1 Kyomachi  
Chuo-ku, Kobe 651-0178  
Japan

**AND TO: SHINYEI CAPACITOR CO., LTD.**  
Shinagawa Crystal Square 11F  
1-6-41 Konan, Minato-ku, Tokyo 108-0075  
Japan

**AND TO: SHINYEI CORPORATION OF AMERICA**  
1120 Avenue of the Americas, 4<sup>th</sup> Floor  
New York, New York 10036  
United States

**AND TO: SHIZUKI ELECTRIC CO., LTD.**  
10-45 Taisha-cho  
Nishinomiya-shi, Hyogo 662-0867  
Japan

**AND TO: AMERICAN SHIZUKI CORPORATION**  
301 West O Street  
Ogallala, Nebraska 69153  
United States

**AND TO: SOSHIN ELECTRIC CO., LTD.**  
3-13-16 Mita  
Minato-ku, Tokyo, 108-8322  
Japan

- AND TO: SOSHIN ELECTRONICS OF AMERICA INC.**  
2520 Mission College Boulevard, Suite 104  
Santa Clara, California 95054  
United States
- AND TO: TAITSU CORPORATION**  
2-23-20, Kizuki  
Nakahara-ku, Kawasaki, Kanagawa 211-0025  
Japan
- AND TO: TAITSU AMERICA, INC.**  
6153 Fairmont Ave, Suite 100  
San Diego, California 92120  
United States
- AND TO: TOSHIN KOGYO CO., LTD.**  
Tsukasa Bldg. 2F 2-15-4 Uchikanda  
Chiyoda-ku, Tokyo 101-0047  
Japan
- AND TO: HOLY STONE ENTERPRISE CO., LTD.**  
62, Sec.2. Huang Shan R.  
Nei HU Sist., Taipei  
Taiwan
- AND TO: MILESTONE GLOBAL TECHNOLOGY, INC. d/b/a HOLYSTONE INTERNATIONAL**  
41700 Ivy St. #D  
Murrieta, California 92562  
United States
- AND TO: VISHAY INTERTECHNOLOGY, INC.**  
63 Lancaster Avenue  
Malvern, Pennsylvania 19355-2143  
United States
- AND TO: VISHAY POLYTECH CO., LTD. f/k/a HOLYSTONE POLYTECH CO., LTD.**  
16 Ohdaira Kumagami Miharu-machi  
Tamura-gun, Fukushima 963-7704  
Japan

## CLAIM

1. The Plaintiff claims on behalf of himself 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 plaintiff as the representative plaintiff 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 plaintiff 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 plaintiff 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 Film 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 film capacitors ("Film Capacitors") in Canada during the class period.
- 3. The defendants and their unnamed co-conspirators manufactured, marketed, distributed, and/or sold Film Capacitors in Canada and throughout the world. The defendants had market power in the market for Film 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 capacitor. 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. Film Capacitors use insulating plastic film and one of two conductive materials, propylene or polyester. Film

Capacitors include the following four generations: (1) film and aluminum foil capacitors, (2) film and other metal capacitors, (3) layered capacitors, and (4) surface-mount capacitors.

6. Film Capacitors are used in appliances, lighting, power supply, digital AV, communications devices, games, direct current (DC) links for inverters, snubbers for inverters, battery filters, and electric compressors, among other electronics.
7. The defendants manufactured, sold, and distributed Film Capacitors to original equipment manufacturers (“OEMs”) and others in Canada, Asia, Europe, the United States, and elsewhere.
8. During the period commencing as early as January 1, 2007 and continuing up to the present (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 Film Capacitors.
9. The conduct of the defendants and their co-conspirators caused injury to the plaintiff and the class members, namely that they were compelled to pay, and did pay, artificially inflated prices, directly or indirectly, for Film Capacitors (the “Overcharge”).
10. Damages and equitable remedies are claimed. The application of the doctrine of waiver of tort is also sought.

#### **THE PLAINTIFF AND THE CLASS**

11. The plaintiff, Sean Allott, is an individual resident of the City of London, in the Province of Ontario. Sean Allott is an IT professional and a significant consumer of electronic products. During the Class Period, Sean Allott was a purchaser of Film Capacitors manufactured by

the defendants. Specifically, Sean Allott purchased microwave ovens and Macbooks (including Macbook chargers) during the class period, which contained Film Capacitors.

12. The plaintiff seeks to represent a class consisting of:

*All persons and entities in Canada who purchased Film Capacitors or a product containing a Film Capacitor between January 1, 2007 and the present.*

## **DEFENDANTS**

13. The defendants are jointly and severally liable for the actions of and damages allocable to the co-conspirators, including unnamed co-conspirators.
14. 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.
15. 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.

## **AVX**

16. 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. It is a subsidiary of Kyocera Corporation, a Japanese corporation that owns

approximately 72% of the outstanding common stock in AVX Corporation. During the Class Period, AVX Corporation manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

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

***ELNA***

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

19. 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 970 W. 190 Street, Suite 920, Torrance, California 90502, United States. During the Class Period, ELNA America Inc. manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.

20. The defendants ELNA Co., Ltd. and ELNA America Inc. are together referred to herein as "ELNA."

***Hitachi Chemical***

21. The defendant Hitachi Chemical Co., Ltd. is a Japanese corporation with its principal place of business located at Grantokyo South Tower, 6F 1-9-2 Marunouchi Chiyoda-ku, Tokyo, 100-0005 Japan. During the Class Period, Hitachi Chemical Co., Ltd. manufactured,

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

22. 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. manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.
23. The defendant Hitachi Canada, a subsidiary of Hitachi Chemical Company America, Ltd. is a Canadian Corporation with its principal place of business located at 5450 Explorer Drive, Suite 501, Mississauga, Ontario, L4W 5M1, Canada. During the Class Period, Hitachi Canada manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.
24. 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. It is affiliated with and controlled by Hitachi Chemical Co., Ltd. During the Class Period, Hitachi AIC Inc. manufactured, marketed, sold, and/or distributed Film 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 HolyStone Polytech Co., Ltd.
25. The defendants Hitachi Chemical Co., Ltd., Hitachi Chemical Company America, Ltd., Hitachi Canada, and Hitachi AIC Inc. are all part of the Hitachi Group, and are together referred to herein as "Hitachi."



***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 Film Capacitors directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
27. 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 distributed Film Capacitors directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
28. The defendants KEMET Corporation and KEMET Electronics Corporation are together referred to herein as "KEMET."

***Matsuo***

29. 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 561-0829, Japan. During the Class Period, Matsuo Electric Co., Ltd., manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
30. The defendant Matsuo Electric Co., Ltd. is referred to herein as "Matsuo."

***Nichicon***

31. The defendant Nichicon Corporation is a Japanese corporation with its principal place of business located at 511, Nijoudencho, Kkarasumadori Oike-agaru, Nakagyo-ku, Kyoto, 604-0845 Japan. During the Class Period, Nichicon Corporation manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
32. 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. Nichicon (America) Corporation manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
33. The defendants Nichicon Corporation and Nichicon (America) Corporation are together referred to herein as "Nichicon."

***Nippon Chemi-Con***

34. 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 141-8305, Japan. During the Class Period, Nippon Chemi-Con Corporation manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
35. 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 1701 Golf Rd., Suite 1-1200, Rolling Meadows, Illinois 60008, United States. During the Class Period, United Chemi-Con manufactured, marketed, sold, and/or distributed Film

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

36. The defendants Nippon Chemi-Con Corporation and United Chemi-Con Corporation are together referred to herein as “Nippon Chemi-Con.”

***Nissei***

37. The defendant Nissei Electric Co. Ltd. is a Japanese corporation with its principal place of business located at 201, Motodate, Hanamaki, Iwate, 025-0061, Japan. During the Class Period, Nissei Electric Co. Ltd. manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

38. The defendant Nissei Electric Co. Ltd. is referred to herein as “Nissei.”

***Nitsuko***

39. The defendant Nitsuko Electronics Corporation is a Japanese corporation with its principal place of business located at 2031-1, Ogawara, Suzaka-shi, Nagano-ken, 382-0071, Japan. During the Class Period, Nitsuko Electronics Corporation manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

40. The defendant Nitsuko Electronics Corporation is referred to herein as “Nitsuko.”

***Okaya***

41. The defendant Okaya Electric Industries Co., Ltd. is a Japanese corporation with its principal place of business at 16-9, Todorki 6 chome, Setagaya-ku, Tokyo 158-8543, Japan. During the Class Period, Okaya Electric Industries Co., Ltd. manufactured,

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

42. The defendant Okaya Electric America, Inc., an Indiana corporation, is a wholly owned subsidiary of Okaya Electric Industries Co., Ltd. with its principal place of business located at 52 Marks Road, Suite 1, Valparaiso, Indiana 46383, United States. During the Class Period, Okaya Electric America, Inc. manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers through Canada.
43. The defendants Okaya Electric Industries Co., Ltd. and Okaya Electric America, Inc. are together referred to herein as "Okaya".

***Panasonic and Sanyo***

44. 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, in its own capacity and in its capacity as Matsushita Electric Industrial Co., Ltd. manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
45. 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 manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.

46. The defendant Panasonic Canada Inc., a subsidiary of Panasonic Corporation of North America, is a Canadian corporation with its principal place of business located at 5770 Ambler Drive, Mississauga, Ontario, L4W 2T3, Canada. During the Class Period, Panasonic Corporation Canada Inc. manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.
47. 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 2-5-5, Keihan-Hondori, 2-Chome, Moriguchi City, Osaka 570-8677, Japan. During the Class Period, Sanyo Electric Co., Ltd. manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
48. The defendant Sanyo Electronic Device (U.S.A.) Corp. is a Delaware corporation with its principal place of business located at 2710 Gateway Oaks Dr., Suite 100, Sacramento, California 95833, United States. It is affiliated with and controlled by Sanyo Electric Group Ltd. During the Class Period, Sanyo Electronic Device (U.S.A.) Corp. manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.
49. The defendant Sanyo North America Corporation is a Delaware corporation with its principal place of business located at 2710 Gateway Oaks Dr., Sacramento, California 95833, United States. It is affiliated with and controlled by Sanyo Electric Group Ltd. During the Class Period, Sanyo North America Corporation manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.

50. The defendants Panasonic Corporation, Panasonic Corporation of North America, Panasonic Canada Inc., Sanyo Electric Co., Ltd., Sanyo Electronic Device (U.S.A.) Corp., and Sanyo North America Corporation are collectively referred to herein as "Panasonic."

**ROHM**

51. 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 Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
52. 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. Rohm Semiconductor U.S.A., LLC formerly operated as ROHM Electronics U.S.A., LLC prior to January 1, 2009. During the Class Period, ROHM Semiconductor U.S.A., LLC manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.
53. The defendants ROHM Co., Ltd. and ROHM Semiconductor U.S.A., LLC f/k/a ROHM Electronics U.S.A., LLC are together referred to herein as "ROHM."

**Rubycon**

54. The defendant Rubycon Corporation is a Japanese corporation with its principal place of business located at 1938-1, Nishi-Minowa, Ina-Shi, Nagano Prefecture 399-4593, Japan. During the Class Period, Rubycon Corporation manufactured, marketed, sold, and/or

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

55. 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. manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.
56. The defendants Rubycon Corporation and Rubycon America Inc. are together referred to herein as "Rubycon."

***Shinyei***

57. The defendant Shinyei Kaisha is a Japanese corporation with its principal place of business located at 77-1 Kyomachi, Chuo-ku, Kobe 651-0178, Japan. During the Class Period, Shinyei Kaisha manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
58. The defendant Shinyei Technology Co., Ltd. is a Japanese corporation and a corporate affiliate of Shinyei Kaisha with its principal place of business located at 77-1 Kyomachi, Chuo-ku, Kobe 651-0178, Japan. Until in or around February 2011, Shinyei Technology Co., Ltd. manufactured, marketed, sold, and/or distributed Film Capacitors either directly or indirectly, to customers throughout Canada.
59. The defendant Shinyei Capacitor Co., Ltd. is a Japanese corporation and a corporate affiliate of Shinyei Kaisha with its principal place of business located at Shinagawa Crystal Square 11F, 1-6-41 Konan, Minato-ku, Tokyo 108-0075, Japan. Starting in or around

February 2011, Shinyei Capacitor Co., Ltd. was established by Shinyei Kaisha to acquire the Film Capacitors business of Shinyei Technology Co., Ltd. After in or around February 2011, Shinyei Capacitor Co., Ltd. manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.

60. The defendant Shinyei Corporation of America, a Delaware corporation and a wholly owned subsidiary of Shinyei Kaisha with its principal place of business located at 1120 Avenue of the Americas, 4<sup>th</sup> Floor, New York, New York 10036, United States. During the Class Period, Shinyei Corporation of America manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.
61. The defendants Shinyei Kaisha, Shinyei Technology Co., Ltd., Shinyei Capacitor Co., Ltd., and Shinyei Corporation of America are together referred to herein as "Shinyei."

***Shizuki***

62. The defendant Shizuki Electric Co., Ltd. is a Japanese corporation with its principal place of business located at 10-45 Taisha-cho, Nishinomiya-shi, Hyogo 662-0867, Japan. During the Class Period, Shizuki Electric Co., Ltd. manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
63. The defendant American Shizuki Corporation is a Nebraska corporation with its principal place of business located at 301 West O Street, Ogallala, Nebraska 69153, United States. It is affiliated with and controlled by Shizuki Electric Co., Ltd. During the Class Period, American Shizuki Corporation manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.



64. The defendants Shizuki Electric Co., Ltd. and American Shizuki Corporation are together referred to herein as "Shizuki".

***Soshin***

65. The defendant Soshin Electric Co., Ltd. is a Japanese corporation with its principal place of business located at 3-13-16 Mita, Minato-ku, Tokyo 108-8322 108-8322, Japan. During the Class Period, Soshin Electric Co., Ltd. manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

66. The defendant Soshin Electronics of America Inc., a California corporation, is a wholly owned subsidiary of Soshin Electric Co., Ltd. with its principal place of business located at 2520 Mission College Boulevard, Suite 104, Santa Clara, California 95054, United States. During the Class Period, Soshin Electronics of America Inc. manufactured, marketed, sold, and/or distributed Film Capacitors throughout Canada.

67. The defendants Soshin Electric Co., Ltd. and Soshin Electronics of America Inc. are together referred to herein as "Soshin".

***Taitso***

68. The defendant Taitso Corporation is a Japanese corporation with its principal place of business located at 2-23-20, Kizuki, Nakahara-ku, Kawasaki, Kanagawa 211-0025, Japan. During the Class Period, Taitso Corporation manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

69. The defendant Taitso America, Inc., a California corporation, is a wholly owned subsidiary of Taitso Corporation with its principal place of business located at 6153 Fairmont Ave,

Suite 100, San Diego, California 92120, United States. During the Class Period, Taitso America, Inc. manufactured, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.

70. The defendants Taitso Corporation and Taitso America, Inc. are together referred to herein as "Taitso".

***Toshin Kogyo***

71. The defendant Toshin Kogyo Co., Ltd., is a Japanese corporation with its principal place of business located at 101-0047 Tsukasa Bldg, 2-15-4 Uchikanda Chiyoda-ku, Tokyo, Japan. During the Class Period, Toshin Kogyo Co., Ltd. manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries or affiliates to customers throughout Canada.

72. The defendant Toshin Kogyo Co., Ltd. is referred to herein as "Toshin Kogyo."

***Holy Stone***

73. The defendant Holy Stone Enterprise Co., Ltd. is a foreign 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 Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

74. 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 Film Capacitors, either directly or indirectly, to customers throughout Canada.

75. The defendant Milestone Global Technology, Inc. d/b/a Holy Stone 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. 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. manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.
76. The defendants Holy Stone Enterprise Co., Ltd. and Milestone Global Technology, Inc. d/b/a Holystone International are together referred to herein as "Holy Stone."

***Vishay***

77. The defendant Vishay Intertechnology, Inc. is a Delaware corporation with its principal place of business located at 63 Lancaster Avenue, Malvern, Pennsylvania 19355-2143, United States. During the Class Period, Vishay Intertechnology, Inc. manufactured, marketed, sold, and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
78. 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. is a Japanese corporation with its principal place of business located at 16 Ohdaira Kumagami Miharumachi, Tamura-gun Fukushima 963-7704 Japan. During the Class Period, Vishay Polytech Co., Ltd. manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.

79. The defendants Vishay Intertechnology, Inc. and Vishay Polytech Co., Ltd. f/k/a HolyStone Polytech Co., Ltd. are together referred to herein as "Vishay".
80. Collectively, the defendants named in paragraphs 16 to 72 are referred to herein as the "Defendants".

## **FACTUAL BACKGROUND**

### ***The Film Capacitors Industry***

81. The structure and characteristics of the market for Film Capacitors in Canada are conducive to the conspiracy alleged herein.
82. There are substantial barriers that preclude, reduce or make more difficult entry into the Film 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.
83. There are no close substitutes for Film Capacitors in Canada. Film Capacitors are one of the fundamental components found in electrical circuits in many electronic devices that are used today. There is no alternative to Film Capacitors in Canada.
84. Film Capacitors are commodity products that are interchangeable among the Defendants. Film Capacitors of like technical and operational specification are mutually interchangeable. A specific Film Capacitor manufactured by one of the Defendants can be exchanged for a Film Capacitor manufactured by another Defendant so long as it has the same technical and operational specifications.

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

***The Conspiracy to Fix the Price of Film Capacitors***

87. The acts alleged under this heading are, collectively, the "Conspiracy Acts."
88. During the Class Period, the Defendants and unnamed co-conspirators conspired and/or agreed with each other to fix, maintain, increase or control the price for the supply of Film Capacitors and/or to enhance unreasonably the prices of Film Capacitors and /or to lessen unduly competition in the sale of Film Capacitors in Canada.
89. 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 meetings with each other at times and places, some of which are unknown to the plaintiff. As a result of the communications and meetings, the Defendants and unnamed co-conspirators unlawfully conspired and/or agreed to:
  - a. unreasonably enhance the prices of Film Capacitors in Canada;
  - b. fix, maintain, increase, and/or control the prices of Film Capacitors in Canada;
  - c. monitor and/or enforce adherence to an agreed-upon pricing scheme;
  - d. restrain trade in the sale of Film Capacitors in Canada; and
  - e. lessen unduly competition in the sale of Film Capacitors in Canada.
90. 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 Film Capacitors in Canada;
  - b. communicated secretly, in person, by telephone, and by e-mail, to discuss and fix prices of Film Capacitors;
  - c. made formal agreements with respect to the prices of Film Capacitors;
  - d. exchanged information regarding the prices of Film Capacitors for the purposes of monitoring and enforcing adherence to the agreed-upon prices;
  - e. rigged bids for the sale of Film Capacitors to OEMs and their subsidiaries;
  - f. allocated sales, territories, customers, and/or markets for supply of Film Capacitors;
  - g. fixed, maintained, controlled, prevented, and/or lessened the production and/or supply of Film Capacitors; and
  - h. disciplined any conspirator which failed to comply with the conspiracy.
91. 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 class members.
92. The Defendants were motivated to conspire and their predominant purposes and predominant concerns were to harm the plaintiff and the class members who purchased Film Capacitors by requiring them to pay unlawfully high prices for Film Capacitors.
93. 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.

94. The Conspiracy Acts alleged in this claim to have been done by each Defendant were authorized, ordered, and/or 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**

95. Commencing in or around 2014, regulatory authorities in a number of jurisdictions announced investigations into price-fixing of the capacitors industry.
96. 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 both electrolytic and Film Capacitors.
97. In or around April 2014, the Antitrust Division of the United States Department of Justice ("DOJ") confirmed to industry sources that the government had 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.
98. 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 Kunlin 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.

99. Since early 2014, investigations into the capacitors industry have also been opened by the Japanese Fair Trade Commission, the South Korean Fair Trade Commission, the Taiwanese Fair Trade Commission, the Singapore Competition Commission, and the European Commission's competition authority.

## **CAUSES OF ACTION**

### ***Breach of the Competition Act***

100. The Defendants are in breach of section 45 of Part VI of the *Competition Act* and caused injury to the plaintiff 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*.
101. Further, or in the alternative, the defendants Hitachi Canada and Panasonic Canada Inc. (the "Canadian Defendants") are in breach of section 46(1) of the Part VI of the *Competition Act* and caused injury to the plaintiff and the other class members which renders the Canadian Defendants jointly and severally liable to pay damages and costs of investigation pursuant to section 36 of the *Competition Act*.
102. The plaintiff 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 co-conspirators actively, intentionally, and purposively concealed the existence of the combination and conspiracy from the plaintiff and others.



***Civil Conspiracy***

103. Further, or in the alternative, the Conspiracy Acts were unlawful acts under the *Competition Act* and/or in restraint of trade directed towards the plaintiff and the other class members. The Defendants and their co-conspirators knew that the unlawful acts alleged herein would likely cause injury to the plaintiff 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 plaintiff and the other class members and the Defendants are jointly and severally liable for the tort of conspiracy to injure.
104. The plaintiff and the other class members suffered damages as a result of the Defendants' conspiracy.

***Unlawful Means Tort***

105. Further, or in the alternative, the Conspiracy Acts were unlawful acts intended to cause the plaintiff and the other class members economic loss, either as an end in itself or as a necessary means of enriching the Defendants.
106. 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 Film 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.
107. The plaintiff 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***

108. The Defendants have each been unjustly enriched by the receipt of the Overcharge. The plaintiff and the other class members have suffered a corresponding deprivation in the amount of such Overcharge.
109. Since the Overcharge that was received by the Defendants from the plaintiff 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***

110. Further, or in the alternative, the plaintiff pleads and relies on the doctrine of waiver of tort and states 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***

111. As a result of the Conspiracy Acts:
- a. the prices of Film Capacitors and products containing Film Capacitors have been enhanced unreasonably and/or fixed at artificially high and non-competitive levels;  
and
  - b. competition in the sale of Film Capacitors has been unduly restrained.
112. During the Class Period, the plaintiff and the other class members purchased Film Capacitors and products containing Film Capacitors. By reason of the alleged violations of the *Competition Act* and the common law, the plaintiff and the other class members

have been overcharged for those Film Capacitors and products containing Film Capacitors by paying more than they would have paid in the absence of the illegal conspiracy and, as a result, the plaintiff and the other class members have suffered damages.

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

114. All amounts payable to the class on account of damages and disgorgement should be calculated on an aggregated basis pursuant to s. 24 of the *Class Proceedings Act, 1992*, or otherwise.

***Punitive Damages***

115. The plaintiff asserts that the Defendants' conduct was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, willful, and in contumelious disregard of the plaintiff's 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***

116. 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 *Class Proceedings Act, 1992*.

***Injunction***

117. The plaintiff claims for the Defendants to be permanently enjoined from carrying on business in contravention of the applicable laws.

***Conspicuous Notice Plan***

118. The plaintiff requests 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 *Class Proceedings Act, 1992*.

**STATUTES RELIED UPON**

119. The plaintiff pleads and relies 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**

120. 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)).

121. The Plaintiff proposes that this action be tried in the City of London, in the Province of Ontario.

May 13, 2016

**HARRISON PENZA LLP**  
Barristers & Solicitors  
450 Talbot Street  
London, ON N6A 4K3

**Jonathan J. Foreman (LSUC #45087H)**  
Tel: (519) 679-9660  
Fax: (519) 667-3362

Lawyers for the Plaintiff

SEAN ALLOT  
Plaintiff

v.

AVX CORPORATION, ET AL.  
Defendants

Court File No. 1272-16

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the *Class Proceedings Act, 1992*

**STATEMENT OF CLAIM**

**HARRISON PENZA LLP**  
450 Talbot Street  
London, ON N6A 4K3

**Jonathan J. Foreman (LSUC #45087H)**  
Tel: (519) 679-9660  
Fax: (519) 667-3362

Lawyers for the Plaintiff

**This is EXHIBIT “B” referred to in the  
Affidavit of STEPHANIE LEGDON  
sworn before me, this 18<sup>th</sup> day of November, 2016**

  
\_\_\_\_\_  
*A Commissioner, etc.*

Anni Marina Barry, a Commissioner, etc.,  
Province of Ontario, for Harrison Pensa LLP,  
Barristers and Solicitors.  
Expires April 11, 2019.

## Bowden, Sarah

---

**From:** Emrys Davis <DavisE@bennettjones.com>  
**Sent:** Monday, June 20, 2016 5:37 PM  
**To:** Foreman, Jonathan  
**Cc:** Hallett, Kassandra; John Rook  
**Subject:** RE: Capacitors  
**Attachments:** IPP Fourth Amended Complaint (redacted version).pdf; DPP Second Amended Complaint (redacted).pdf; Takata Declaration.pdf

Jon,

Further to our call, I attach some documents filed in the US capacitors proceedings which support my statement to you earlier today that the SANYO entities did not manufacture or sell film capacitors.

1. Both the DPP and IPP complaints in the US distinguish between the Panasonic entities, which are alleged to have manufactured and sold both electrolytic and film capacitors, and the SANYO entities, which are alleged to have manufactured and sold only electrolytic capacitors. See for example paragraphs 32 to 35 of the DPP complaint and paragraphs 51 to 54 of the IPP complaint.
2. In support of its motion for summary judgment under the FTAIA, SANYO filed the attached declaration of Mr. Takata which states at paragraphs 2-3: "SANYO Japan manufactures and sells polymer aluminum electrolytic capacitors under the brand name OS-CON and polymer tantalum electrolytic capacitors under the brand name POSCAP. OS-CONs and POSCAPs are SANYO Japan's only capacitor products...Until around March 2010, SANYO Japan also sold general (non-polymer) aluminum electrolytic capacitors." I also draw to your attention that Mr. Takata testified that as of April 1, 2015, SANYO North America Corporation ceased to exist following its merger with Panasonic Corporation of North America.

I hope this provides the comfort you need so that I can recommend to Panasonic that it instruct Bennett Jones to accept service for the Panasonic entities in exchange for your dismissing the SANYO entities from the film capacitor action. Frankly, we're saving you the trouble of serving on entities we think you'd ultimately agree to dismiss against in any event. I would also appreciate you passing on this information to your co-counsel so that we avoid this same issue in BC and Quebec if possible.

Let me know and I will seek instructions.

Yours truly,



Emrys Davis  
Litigation Associate, Bennett Jones LLP

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E. [davise@bennettjones.com](mailto:davise@bennettjones.com)



Download my [vCard](#)



**This is EXHIBIT "C" referred to in the  
Affidavit of STEPHANIE LEGDON  
sworn before me, this 18<sup>th</sup> day of November, 2016**

  
A Commissioner, etc.

Anni Marina Barry, a Commissioner, etc.,  
Province of Ontario, for Harrison Pensa LLP,  
Barristers and Solicitors.  
Expires April 11, 2019.

Declaration of Toshiyuki Takata  
(on behalf of Defendant Sanyo  
Electric Co., Ltd.)

**REDACTED VERSION**

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12 *Counsel for Defendants*  
*Panasonic Corporation*  
 13 *Panasonic Corporation of North America*  
*SANYO Electric Co., Ltd.*  
 14 *SANYO North America Corporation*

15  
 16 **IN THE UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
 17 **SAN FRANCISCO DIVISION**

18 **IN RE CAPACITORS ANTITRUST**  
 19 **LITIGATION**

Case No. 3:14-cv-03264-JD

**DECLARATION OF TOSHIYUKI  
 TAKATA**

20  
 21 REDACTED VERSION OF DOCUMENT  
 SOUGHT TO BE SEALED  
 22  
 23  
 24  
 25  
 26  
 27  
 28

**DECLARATION OF TOSHIYUKI TAKATA**

I, Toshiyuki Takata, declare:

1. I am Chief, Device Solutions Business Division, Automotive & Industrial Systems Company at Panasonic Corporation, and I previously held the position of Manager, Capacitor Business Division, Electronic Device Company at SANYO Electric Co., Ltd., and am duly authorized to execute this Declaration on behalf of SANYO Electric Co., Ltd. (“SANYO Japan”).

2. SANYO Japan manufactures and sells polymer aluminum electrolytic capacitors under the brand name OS-CON and polymer tantalum electrolytic capacitors under the brand name POSCAP. OS-CONs and POSCAPs are SANYO Japan’s only capacitor products.

3. Until around March 2010, SANYO Japan also sold general (non-polymer) aluminum electrolytic capacitors. SANYO Japan did not manufacture these capacitors. SANYO Japan purchased general (non-polymer) aluminum electrolytic capacitors from SUN Electronic Industries Corporation (“SUN”). SANYO Japan was a shareholder with 50% ownership of SUN until 2008, at which time it began selling its shares, and by April of 2015, SANYO Japan no longer had any ownership interest in SUN.



4. SANYO Japan has capacitor production facilities in Japan, and SANYO Japan also sells capacitors manufactured in the production facilities of business segments located outside of Japan that include P.T. SANYO Jaya Components Indonesia, which manufactures polymer aluminum electrolytic capacitors and polymer tantalum electrolytic capacitors, and that previously included, until December 2014, SANYO ELECTRONIC COMPONENTS (SUZHOU) CO., LTD., which manufactured polymer tantalum electrolytic capacitors.

5. During the time period 2002-2014, SANYO Japan sold more than 2,600 different capacitor models. SANYO Japan sold capacitors domestically to customers in Japan, and sales to third-party customers located outside Japan were generally made by SANYO Japan’s regional sales affiliates that operated in those regions. I understand that records that show these sales transactions as they are maintained and relied upon in the regular course of business have been produced to Plaintiffs bearing bates numbers PAN-C0305147, PAN-C0305148, and PAN-

1 C0305149, and the information set forth below concerning SANYO Japan’s sales transactions is  
2 reflected in these records.

3 6. The sale price of each individual capacitor sold by SANYO Japan was generally  
4 very low, and the price of individual capacitors of the same model but sold at different times or  
5 to different purchasers varied based on factors such as the purchasers’ bargaining power, the  
6 volume of purchase, and changes in input and manufacturing costs over time.

7 7. Apart from extremely limited exceptions, SANYO Japan did not sell capacitors to  
8 third-party customers located in the U.S. during the 2002-2014 time period. Capacitors  
9 manufactured by SANYO Japan and its overseas business segments that were purchased by  
10 customers located in the U.S. were sold by SANYO Japan’s subsidiaries or related entities  
11 located in the U.S. Specifically, prior to July 1, 2009, a subsidiary of SANYO Japan called  
12 SANYO Electronic Device (U.S.A.) Corporation (“SDC”) sold capacitors to customers located  
13 in the U.S. Prior to 2004, SDC was known as SANYO Video Components (U.S.A.) Corporation  
14 (“SVC”). On July 1, 2009, SDC ceased being a standalone corporation, and was merged into  
15 SANYO North America Corporation (“SNA”) as an internal division. From July 1, 2009, until  
16 July 1, 2014, SNA sold capacitors to customers located in the U.S. through its internal division  
17 SDC. On July 1, 2014, SDC’s capacitor sales business was transferred to Panasonic Industrial  
18 Devices Sales Company of North America (“PIDSA”), which is an internal division of Panasonic  
19 Corporation of North America (“PNA”), a subsidiary of Panasonic Corporation. As of April 1,  
20 2015, SNA ceased to exist following its merger with PNA.

21 8. During the time period 2002-2014, SANYO Japan’s sales transaction data shows  
22   
23  that pertained to transactions between SANYO Japan and third-party customers in  
24 the U.S. Moreover, these records do not appear to reflect actual sales transactions by SANYO  
25 Japan to third-party customers in the U.S., but rather credits or adjustments to previous sales  
26 possibly as part of an accounting correction or return.

1           9.       Sales made by SANYO Japan’s U.S.-based sales affiliates listed in Paragraph 7  
2 above, as a percentage of SANYO Japan’s total global capacitor sales during the time period  
3 2002-2014, based on SANYO Japan’s sales data, were approximately [REDACTED]

4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 Therefore, [REDACTED] of the annual sales of SANYO Japan’s capacitors during the  
8 relevant time period were made to non-U.S. customers and were both billed-to non-U.S. entities  
9 and shipped-to non-U.S. entities. Specifically, by year the percentages of sales by SANYO  
10 Japan and its sales affiliates that were made to non-U.S. customers were approximately [REDACTED]

11 [REDACTED]  
12 [REDACTED]  
13           10.     I understand from documents filed in the *In re Capacitors Antitrust Litigation*,  
14 specifically the exhibits to a letter filed with the court by the defendants on May 13, 2015, that  
15 the “direct purchaser plaintiffs” are asserting claims based on sales of capacitors by SANYO  
16 Japan made outside of the United States to purchasers located in the United States, when those  
17 purchasers subsequently imported those capacitors to the United States either as components of  
18 finished products or as standalone products.

19           11.     During the 2002-2014 time period, SANYO Japan made no such sales outside of  
20 the U.S. to third-party purchasers located in the U.S., and SANYO Japan’s sales transaction data  
21 shows no sales to third-party U.S. entities where the ship-to or bill-to information was outside of  
22 the U.S.

23           12.     I further understand that the “direct purchaser plaintiffs” are asserting claims  
24 based on sales of capacitors by SANYO Japan made outside of the United States to non-United  
25 States subsidiaries or affiliates of United States companies, when those purchasers subsequently  
26 imported those capacitors to the United States either as components of finished products or as  
27 standalone products.

1           13.     During the 2002-2014 time period, SANYO Japan or its non-U.S. regional sales  
2 affiliates did sell capacitors to purchasers that SANYO Japan understands are non-U.S. affiliates  
3 of U.S. companies. As an example of such sales, SANYO Japan's regional sales affiliate  
4 SANYO ELECTRONIC COMPONENTS (SINGAPORE) PTE., LTD. ("SECS") operating in  
5 Singapore made sales to IBM Singapore Pte. Ltd. in Singapore. SANYO Japan's sales data  
6 shows these sales.

7           14.     SANYO Japan does not track or monitor the movement of the capacitors that are  
8 sold and delivered to third-party customers after the initial sale, and therefore SANYO Japan has  
9 no knowledge or information regarding the importation to the U.S. of any specific capacitor  
10 described in the preceding paragraph either as a standalone capacitor or as a component of a  
11 finished product.

12           15.     During the 2002-2014 time period, SANYO Japan or its non-U.S. regional sales  
13 affiliates also sold capacitors to non-U.S. entities such as original design manufacturers  
14 ("ODMs"), electronics manufacturing services ("EMSEs"), and other contract manufacturers,  
15 which other companies contract with to manufacture products. The non-U.S. ODMs, EMSEs,  
16 and contract manufacturers were the actual purchasers of these capacitors, and the capacitors  
17 were shipped to, and the capacitors were paid for by, these non-U.S. entities at locations outside  
18 of the U.S. As an example of such sales, SANYO Japan's regional sales affiliate SANYO  
19 ELECTRONIC COMPONENTS (Hong Kong) Ltd. Taiwan Branch ("SECH") operating in  
20 Taiwan made sales to [REDACTED] in Taiwan. SANYO Japan's sales  
21 data shows these sales.

22           16.     SANYO Japan does not track or monitor the movement of the capacitors that are  
23 sold and delivered to third-party customers after the initial sale, and therefore SANYO Japan has  
24 no knowledge or information regarding the importation to the U.S. of any specific capacitor  
25 described in the preceding paragraph either as a standalone capacitor or as a component of a  
26 finished product.

1 17. I understand that the "indirect purchaser plaintiffs" are asserting claims based on  
2 sales of capacitors by SANYO Japan to distributors located outside of the United States, which  
3 those distributors then resold to purchasers located in the United States.

4 18. During the 2002-2014 time period, SANYO Japan or its non-U.S. regional sales  
5 affiliates sold capacitors to distributors located outside the U.S., and the capacitors were shipped  
6 to, and the capacitors were paid for, at locations outside of the U.S. As an example of such sales,  
7 SANYO Japan made sales to distributors [REDACTED] and [REDACTED]  
8 [REDACTED] in Taiwan. SANYO Japan's sales data shows these sales.

9 19. When SANYO Japan or its regional sales affiliates sell capacitors to non-U.S.  
10 distributors, SANYO Japan's expectation and understanding is that the distributors will re-sell  
11 the capacitors in the regions in which they are located, and to the extent any non-U.S.  
12 distributors make sales to purchasers within the U.S., SANYO Japan believes that such sales  
13 were rare and minimal. SANYO Japan does not generally track or monitor the movement of the  
14 capacitors that it or its regional sales affiliates sell to distributors after the initial sale, and  
15 therefore SANYO Japan has no knowledge or information regarding the importation to the  
16 United States of any specific capacitor described in the preceding paragraph. Distributors do, at  
17 times, provide information concerning the customers to whom they sell, but even in that event  
18 SANYO Japan has no knowledge or information regarding the specific capacitors that are sold to  
19 such purchasers.

20 20. The foregoing information is true and correct to the best of my present knowledge  
21 and/or is derived from company records and company personnel with knowledge of each subject.  
22 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United  
23 States of America that the foregoing is true and correct.

24 Executed in OSAKA, Japan, on Sep. 25, 2015. 高田俊幸  
25  
26 Toshiyuki Takata



**This is EXHIBIT “D” referred to in the  
Affidavit of STEPHANIE LEGDON  
sworn before me, this 18<sup>th</sup> day of November, 2016**

  
A Commissioner, etc.

Anni Marina Barry, a Commissioner, etc.,  
Province of Ontario, for Harrison Pensa LLP,  
Barristers and Solicitors.  
Expires April 11, 2019.

1 Joseph R. Saveri (State Bar No. 130064)  
 Andrew M. Purdy (State Bar No. 261912)  
 2 JOSEPH SAVERI LAW FIRM, INC.  
 505 Montgomery Street, Suite 625  
 3 San Francisco, California 94111  
 Telephone: (415) 500-6800  
 4 Facsimile: (415) 395-9940  
 Email: jsaveri@saverilawfirm.com  
 5 apurdy@saverilawfirm.com  
 mweiler@saverilawfirm.com  
 6 jdallal@saverilawfirm.com  
 rmcewan@saverilawfirm.com

7  
 8 *Interim Direct Purchaser Class Counsel and*  
*Attorneys for Plaintiffs Chip-Tech, Ltd., Dependable*  
*Component Supply Corp., eIQ Energy Inc. and*  
 9 *Walker Component Group, Inc.*

10 [Additional Counsel Listed on Signature Page]

11 **UNITED STATES DISTRICT COURT**  
 12 **NORTHERN DISTRICT OF CALIFORNIA**

13  
 14 **IN RE CAPACITORS ANTITRUST**  
 15 **LITIGATION**

Master File No. 3:14-cv-03264-JD

**CONSOLIDATED SECOND AMENDED**  
**CLASS ACTION COMPLAINT and**  
**COMPLAINT OF FLEXTRONICS**  
**INTERNATIONAL USA, INC.**

16  
 17 **THIS DOCUMENT RELATES TO:**

**JURY TRIAL DEMANDED**

18 **DIRECT PURCHASER CLASS ACTION;**  
 19 **FLEXTRONICS INTERNATIONAL USA,**  
**INC.'S INDIVIDUAL ACTION**

20  
 21  
 22  
 23  
 24 **REDACTED VERSION OF DOCUMENT**  
 25 **SOUGHT TO BE SEALED**  
 26  
 27  
 28

1 Flextronics manufactures electronic products and other goods at locations around the world, including  
2 in the United States. Flextronics directly purchases Capacitors for the purpose of manufacturing  
3 electronic products for United States-based customers and by United States end-users. Flextronics’s  
4 products are sold for consumer, medical, automotive, aerospace, and defense applications, among  
5 others. Flextronics directly purchased Capacitors from one or more Defendants during the Class Period,  
6 and has suffered injury as a result of the Flextronics Defendants’ anticompetitive and unlawful conduct.  
7 Flextronics brings its action against the Flextronics Defendants individually, not in a representative  
8 capacity on behalf of the putative class alleged by the Direct Purchaser class herein.

9 **C. Defendants**

10 **1. Panasonic/SANYO**

11 32. Defendant Panasonic Corporation is a Japanese corporation with its principal place of  
12 business located at 1006, Oaza Kadoma, Kadoma-shi, Osaka 571-8501, Japan. Until October 1, 2008,  
13 Panasonic Corporation operated under the name of Matsushita Electric Industrial Co., Ltd.  
14 (“Matsushita”). During the Class Period, Matsushita and Panasonic (together, “Panasonic Corp.”)  
15 manufactured, sold and distributed aluminum, tantalum and film capacitors either directly or through its  
16 business units, subsidiaries, agents or affiliates to United States purchasers.

17 33. Defendant Panasonic Corporation of North America (“PCNA”), a wholly owned  
18 subsidiary of Panasonic Corporation, is a Delaware corporation with its principal place of business  
19 located at Two Riverfront Plaza, Newark, New Jersey 07102. During the Class Period, PCNA—either  
20 directly or through its business units, subsidiaries, agents or affiliates (including, without limitation,  
21 Panasonic Industrial Sales Company)—sold and distributed to United States purchasers aluminum,  
22 tantalum, and film capacitors manufactured by business units, subsidiaries, agents or affiliates of its  
23 corporate parent, Panasonic Corporation.

24 34. Defendant SANYO Electric Co., Ltd. (“SANYO Co.”), a Japanese corporation, is, as of  
25 December 2009, a wholly owned subsidiary of Panasonic Corporation, with its principal place of  
26 business located at 15-5, Keihan-Hondori, 2-Chome, Moriguchi City, Osaka 570-8677, Japan. During  
27 the Class Period, SANYO Co. manufactured, sold and distributed aluminum and tantalum capacitors,  
28 either directly or through its business units, subsidiaries, agents or affiliates to United States purchasers.

1 Prior to its acquisition by Panasonic in December 2009, SANYO had no corporate affiliation with  
2 Panasonic Corporation or its business units, subsidiaries, agents or affiliates.

3 35. Defendant SANYO North America Corporation (“SANYO NA”), a Delaware  
4 corporation, is a wholly owned subsidiary of SANYO Co., with its principal place of business located at  
5 2055 Sanyo Avenue, San Diego, California 92154. During the Class Period, SANYO NA—either  
6 directly or through its business units, subsidiaries, agents or affiliates—sold and distributed to United  
7 States purchasers aluminum and tantalum capacitors manufactured by business units, subsidiaries,  
8 agents or affiliates of its corporate parent, SANYO Co.

9 36. Defendants Panasonic Corp. and PCNA are together referred to herein as “Panasonic.”  
10 Defendants SANYO Co. and SANYO NA are together referred to herein as “SANYO,” and, together  
11 with Panasonic, the entities are referred to herein as “Panasonic/SANYO.”

## 12 2. NEC TOKIN

13 37. Defendant NEC TOKIN Corporation (“NEC TOKIN Corp.”), a Japanese company  
14 currently partially owned by both Defendant KEMET Electronics Corporation and non-party NEC  
15 Corporation, has its principal place of business located at 7-1, Kohriyama 6-chome, Taihaku-ku, Sendai-  
16 shi, Miyagi 982-8510, Japan. During the Class Period, NEC TOKIN Corp. manufactured, sold, and  
17 distributed aluminum and tantalum capacitors either directly or through its business units, subsidiaries,  
18 agents or affiliates to United States purchasers.

19 38. Defendant NEC TOKIN America, Inc. (“NEC TOKIN America”), a California  
20 corporation, is a wholly owned subsidiary of NEC TOKIN Corp. with its principal place of business  
21 located at 2460 North First Street, Suite 220, San Jose, California 95131. During the Class Period, NEC  
22 TOKIN America—either directly or through its business units, subsidiaries, agents or affiliates—sold  
23 and distributed to United States purchasers aluminum and tantalum capacitors manufactured by  
24 business units, subsidiaries, agents or affiliates of its corporate parent, NEC TOKIN Corp..

25 39. Defendants NEC TOKIN Corp. and NEC TOKIN America are together referred to  
26 herein as “NEC TOKIN.”

27  
28

**This is EXHIBIT “E” referred to in the  
Affidavit of STEPHANIE LEGDON  
sworn before me, this 18<sup>th</sup> day of November, 2016**

  
A Commissioner, etc.

Anni Marina Barry, a Commissioner, etc.,  
Province of Ontario, for Harrison Pensa LLP,  
Barristers and Solicitors.  
Expires April 11, 2019.

1 Joseph W. Cotchett (36324)  
Steven N. Williams (175489)  
2 Adam J. Zapala (245748)  
Elizabeth Tran (280502)  
3 **COTCHETT, PITRE & McCARTHY, LLP**  
840 Malcolm Road, Suite 200  
4 Burlingame, CA 94010  
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6 swilliams@cpmlegal.com  
azapala@cpmlegal.com  
7 etran@cpmlegal.com

8 *Interim Lead Counsel for the*  
*Putative Indirect Purchaser Class*  
9

10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**  
12 **SAN FRANCISCO DIVISION**

13  
14 **IN RE CAPACITORS ANTITRUST**  
**LITIGATION**

**Master File No. 14-cv-03264-JD**

15  
16 **THIS DOCUMENT RELATES TO:**  
17 **ALL INDIRECT PURCHASER ACTIONS**  
18

**INDIRECT PURCHASER PLAINTIFFS’**  
**FOURTH CONSOLIDATED COMPLAINT**

**JURY DEMAND**

19  
20  
21  
22 **\*\*REDACTED – PUBLIC VERSION\*\***  
23  
24  
25  
26  
27  
28

1           50. Defendants Rubycon Corp. and Rubycon America Inc. are herein collectively  
2 referred to as “Rubycon.”

3                           **d. Panasonic Defendants**

4           51. Defendant Panasonic Corp. is a Japanese corporation with its principal place of  
5 business in Osaka, Japan. Panasonic Corp. is one of the world’s leading manufacturers of  
6 capacitors. Panasonic Corp.—directly and/or through its subsidiaries, which it wholly owned and/or  
7 controlled—manufactured, marketed, and/or sold electrolytic and film capacitors that were  
8 purchased throughout the United States, including in this District, during the Film Class Period. The  
9 JFTC raided Panasonic Corp. in June 2014 in connection with its investigation of the capacitor  
10 industry. The DOJ, China NDRC, Korea FTC, and EC are also investigating Panasonic Corp.  
11 Panasonic Corp. has applied for the DOJ’s and China NDRC’s leniency programs, meaning it will  
12 likely receive amnesty from criminal prosecution in return for full cooperation with government  
13 antitrust authorities.

14           52. Defendant Panasonic Corp. of North America is a Delaware corporation with its  
15 principal place of business in Newark, New Jersey. It is a subsidiary of and wholly owned and/or  
16 controlled by its Japanese parent, Panasonic Corp. Panasonic Corp. of North America  
17 manufactured, marketed, and/or sold electrolytic and film capacitors that were purchased  
18 throughout the United States, including in this District, during the Film Class Period.

19           53. Defendant SANYO Electric Co., Ltd. is a Japanese corporation with its principal  
20 place of business in Osaka, Japan. SANYO Electric Co., Ltd.—directly and/or through its  
21 subsidiaries, which it wholly owned and/or controlled—manufactured, marketed, and/or sold  
22 electrolytic capacitors that were purchased throughout the United States, including in this District,  
23 during the Electrolytic Class Period.

24           54. Defendant SANYO Electronic Device (U.S.A.) Corp. is a Delaware corporation with  
25 its principal place of business in San Diego, California. It is a subsidiary of and wholly owned  
26 and/or controlled by its Japanese parent, SANYO Electric Co., Ltd. SANYO Electronic Device  
27 (U.S.A.) Corp. manufactured, marketed, and/or sold electrolytic capacitors that were purchased  
28 throughout the United States, including in this District, during the Electrolytic Class Period.

**This is EXHIBIT “F” referred to in the  
Affidavit of STEPHANIE LEGDON  
sworn before me, this 18<sup>th</sup> day of November, 2016**

  
\_\_\_\_\_  
*A Commissioner, etc.*

Anni Marina Barry, a Commissioner, etc.,  
Province of Ontario, for Harrison Pensa LLP,  
Barristers and Solicitors.  
Expires April 11, 2019.



**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**SEAN ALLOTT**

**Plaintiff**

- and -

AVX CORPORATION; ELNA CO., LTD.; ELNA AMERICA INC.; HITACHI CHEMICAL CO., LTD.; HITACHI CHEMICAL COMPANY AMERICA, LTD.; HITACHI CANADA; HITACHI AIC INC.; KEMET CORPORATION; KEMET ELECTRONICS CORPORATION; MATSUO ELECTRIC CO., LTD.; NICHICON CORPORATION; NICHICON (AMERICA) CORPORATION; NIPPON CHEMI-CON CORPORATION; UNITED CHEMI-CON CORPORATION; NISSEI ELECTRIC CO. LTD.; NITSUKO ELECTRONICS CORPORATION; OKAYA ELECTRIC INDUSTRIES CO., LTD.; OKAYA ELECTRIC AMERICA, INC.; PANASONIC CORPORATION; PANASONIC CORPORATION OF NORTH AMERICA; PANASONIC CANADA INC.; ~~SANYO ELECTRIC CO., LTD.; SANYO ELECTRONIC DEVICE (U.S.A.) CORP.; SANYO NORTH AMERICA CORPORATION;~~ ROHM CO., LTD.; ROHM SEMICONDUCTOR U.S.A., LLC f/k/a ROHM ELECTRONICS U.S.A., LLC; RUBYCON CORPORATION; RUBYCON AMERICA INC.; SHINYEI KAISHA; SHINYEI TECHNOLOGY CO., LTD.; SHINYEI CAPACITOR CO., LTD.; SHINYEI CORPORATION OF AMERICA; SHIZUKI ELECTRIC CO., LTD.; AMERICAN SHIZUKI CORPORATION; SOSHIN ELECTRIC CO., LTD.; SOSHIN ELECTRONICS OF AMERICA INC.; TAITSU CORPORATION; TAITSU AMERICA, INC.; TOSHIN KOGYO CO., LTD.; HOLY STONE ENTERPRISE CO., LTD.; MILESTONE GLOBAL TECHNOLOGY, INC. d/b/a HOLYSTONE INTERNATIONAL; ~~VISHAY INTERTECHNOLOGY, INC.;~~ and VISHAY POLYTECH CO., LTD. f/k/a HOLYSTONE POLYTECH CO., LTD.

**Defendants**

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

**AMENDED STATEMENT OF CLAIM**

**TO THE DEFENDANTS**

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the Plaintiff. 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 Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, 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.

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:

Issued by: \_\_\_\_\_

80 Dundas Street  
London, Ontario  
N6A 6K1

**TO: AVX CORPORATION**  
One AVX Boulevard  
Fountain Inn, South Carolina 29644-9039  
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.**  
970 W. 190 Street, Suite 920  
Torrance, California 90502  
United States

**AND TO: HITACHI CHEMICAL CO., LTD.**  
Grantokyo South Tower, 6F 1-9-2 Marunouchi  
Chiyoda-ku, Tokyo, 100-0005  
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: HITACHI AIC INC.**  
1065, Kugeta  
Moka-shi, Tochigi 321-4521  
Japan
- 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: MATSUO ELECTRIC CO., LTD.**  
3-5-3 Sennari-cho  
Toyonaka-shi, Osaka 561-0829  
Japan
- AND TO: NICHICON CORPORATION**  
511, Nijoudencho, Kkarasumadori Oike-agaru  
Nakagyo-ku, Kyoto, 604-0845  
Japan
- AND TO: NICHICON (AMERICA) CORPORATION**  
927 East State Parkway  
Schaumburg, Illinois 60173  
United States
- AND TO: NIPPON CHEMI-CON CORPORATION**  
5-6-4, Osaki  
Shinagawa-ku, Tokyo 141-8305  
Japan
- AND TO: UNITED CHEMI-CON CORPORATION**  
1701 Golf Rd, Suite 1-1200  
Rolling Meadows, Illinois 60008  
United States
- AND TO: NISSEI ELECTRIC CO. LTD.**  
201 Motodate  
Hanamaki, Iwate, 025-0061  
Japan

- AND TO: NITSUKO ELECTRONICS CORPORATION**  
2031-1, Ogawara  
Suzaka-shi, Nagano-ken, 382-0071  
Japan
- AND TO: OKAYA ELECTRIC INDUSTRIES CO., LTD.**  
16-9, Todorki 6 chome  
Setagaya-ku, Tokyo 158-8543  
Japan
- AND TO: OKAYA ELECTRIC AMERICA, INC.**  
52 Marks Road, Suite 1  
Valparaiso, Indiana 46383  
United States
- AND 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.**~~  
~~2-5-5, Keihan Hondori,~~  
~~Moriguchi City, Osaka 570-8677~~  
~~Japan~~
- ~~**AND TO: SANYO ELECTRONIC DEVICE (U.S.A.) CORP.**~~  
~~2710 Gateway Oaks Dr., Suite 100~~  
~~Sacramento, California 95833~~  
~~United States~~
- ~~**AND TO: SANYO NORTH AMERICA CORPORATION**~~  
~~2710 Gateway Oaks Dr.~~  
~~Sacramento, California, 95833~~  
~~United States~~
- AND TO: ROHM CO., LTD.**  
21 Saiin Mizosaki-cho  
Ukyo-ku, Kyoto 615-8585  
Japan

- AND TO: ROHM SEMICONDUCTOR U.S.A., LLC f/k/a ROHM ELECTRONICS U.S.A., LLC**  
2323 Owen Street, Suite 150  
Santa Clara, California 95054  
United States
- AND TO: RUBYCON CORPORATION**  
1938-1, Nishi-Minowa  
Ina-Shi, Nagano Prefecture 399-4593  
Japan
- AND TO: RUBYCON AMERICA INC.**  
4293 Lee Avenue  
Gurnee, Illinois 60031  
United States
- AND TO: SHINYEI KAISHA**  
77-1 Kyomachi  
Chuo-ku, Kobe 651-0178  
Japan
- AND TO: SHINYEI TECHNOLOGY CO., LTD.**  
77-1 Kyomachi  
Chuo-ku, Kobe 651-0178  
Japan
- AND TO: SHINYEI CAPACITOR CO., LTD.**  
Shinagawa Crystal Square 11F  
1-6-41 Konan, Minato-ku, Tokyo 108-0075  
Japan
- AND TO: SHINYEI CORPORATION OF AMERICA**  
1120 Avenue of the Americas, 4<sup>th</sup> Floor  
New York, New York 10036  
United States
- AND TO: SHIZUKI ELECTRIC CO., LTD.**  
10-45 Taisha-cho  
Nishinomiya-shi, Hyogo 662-0867  
Japan
- AND TO: AMERICAN SHIZUKI CORPORATION**  
301 West O Street  
Ogallala, Nebraska 69153  
United States
- AND TO: SOSHIN ELECTRIC CO., LTD.**  
3-13-16 Mita  
Minato-ku, Tokyo, 108-8322  
Japan

- AND TO: SOSHIN ELECTRONICS OF AMERICA INC.**  
2520 Mission College Boulevard, Suite 104  
Santa Clara, California 95054  
United States
- AND TO: TAITSU CORPORATION**  
2-23-20, Kizuki  
Nakahara-ku, Kawasaki, Kanagawa 211-0025  
Japan
- AND TO: TAITSU AMERICA, INC.**  
6153 Fairmont Ave, Suite 100  
San Diego, California 92120  
United States
- AND TO: TOSHIN KOGYO CO., LTD.**  
Tsukasa Bldg. 2F 2-15-4 Uchikanda  
Chiyoda-ku, Tokyo 101-0047  
Japan
- AND TO: HOLY STONE ENTERPRISE CO., LTD.**  
62, Sec.2. Huang Shan R.  
Nei HU Sist., Taipei  
Taiwan
- AND TO: MILESTONE GLOBAL TECHNOLOGY, INC. d/b/a HOLYSTONE INTERNATIONAL**  
41700 Ivy St. #D  
Murrieta, California 92562  
United States
- ~~**AND TO: VISHAY INTERTECHNOLOGY, INC.**~~  
~~63 Lancaster Avenue~~  
~~Malvern, Pennsylvania 19355-2143~~  
~~United States~~
- AND TO: VISHAY POLYTECH CO., LTD. f/k/a HOLYSTONE POLYTECH CO., LTD.**  
16 Ohdaira Kumagami Miharu-machi  
Tamura-gun, Fukushima 963-7704  
Japan

## CLAIM

1. The Plaintiff claims on behalf of himself 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 plaintiff as the representative plaintiff 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 plaintiff 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 plaintiff 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 Film 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 film capacitors ("Film Capacitors") in Canada during the class period.
- 3. The defendants and their unnamed co-conspirators manufactured, marketed, distributed, and/or sold Film Capacitors in Canada and throughout the world. The defendants had market power in the market for Film 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 capacitor. 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. Film Capacitors use



insulating plastic film and one of two conductive materials, propylene or polyester. Film Capacitors include the following four generations: (1) film and aluminum foil capacitors, (2) film and other metal capacitors, (3) layered capacitors, and (4) surface-mount capacitors.

6. Film Capacitors are used in appliances, lighting, power supply, digital AV, communications devices, games, direct current (DC) links for inverters, snubbers for inverters, battery filters, and electric compressors, among other electronics.
7. The defendants manufactured, sold, and distributed Film Capacitors to original equipment manufacturers (“OEMs”) and others in Canada, Asia, Europe, the United States, and elsewhere.
8. During the period commencing as early as January 1, 2007 and continuing up to the present (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 Film Capacitors.
9. The conduct of the defendants and their co-conspirators caused injury to the plaintiff and the other class members, namely that they were compelled to pay, and did pay, artificially inflated prices, directly or indirectly, for Film Capacitors (the “Overcharge”).
10. Damages and equitable remedies are claimed. The application of the doctrine of waiver of tort is also sought.

#### **THE PLAINTIFF AND THE CLASS**

11. The plaintiff, Sean Allott, is an individual resident of the City of London, in the Province of Ontario. Sean Allott is an IT professional and a significant consumer of electronic

products. During the Class Period, Sean Allott was a purchaser of Film Capacitors manufactured by the defendants. Specifically, Sean Allott purchased microwave ovens and Macbooks (including Macbook chargers) during the class period, which contained Film Capacitors.

12. The plaintiff seeks to represent a class consisting of:

*All persons and entities in Canada who purchased Film Capacitors or a product containing a Film Capacitor between January 1, 2007 and the present.*

## **DEFENDANTS**

13. The defendants are jointly and severally liable for the actions of and damages allocable to the co-conspirators, including unnamed co-conspirators.
14. 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.
15. 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.

**AVX**

16. 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. It is a subsidiary of Kyocera Corporation, a Japanese corporation that owns approximately 72% of the outstanding common stock in AVX Corporation. During the Class Period, AVX Corporation manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
17. The defendant AVX Corporation is referred to herein as “AVX.”

**ELNA**

18. 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 Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
19. 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 970 W. 190 Street, Suite 920, Torrance, California 90502, United States. During the Class Period, ELNA America Inc. manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.
20. The defendants ELNA Co., Ltd. and ELNA America Inc. are together referred to herein as “ELNA.”

***Hitachi Chemical***

21. The defendant Hitachi Chemical Co., Ltd. is a Japanese corporation with its principal place of business located at Grantokyo South Tower, 6F 1-9-2 Marunouchi Chiyoda-ku, Tokyo, 100-0005 Japan. During the Class Period, Hitachi Chemical Co., Ltd. manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
22. 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. manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.
23. The defendant Hitachi Canada, a subsidiary of Hitachi Chemical Company America, Ltd. is a Canadian Corporation with its principal place of business located at 5450 Explorer Drive, Suite 501, Mississauga, Ontario, L4W 5M1, Canada. During the Class Period, Hitachi Canada manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.
24. 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. It is affiliated with and controlled by Hitachi Chemical Co., Ltd. During the Class Period, Hitachi AIC Inc. manufactured, marketed, sold, and/or distributed Film 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 HolyStone Polytech Co., Ltd.

25. The defendants Hitachi Chemical Co., Ltd., Hitachi Chemical Company America, Ltd., Hitachi Canada, and Hitachi AIC Inc. are all part of the Hitachi Group, and are together referred to herein as "Hitachi."

### ***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 Film Capacitors directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
27. 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 distributed Film Capacitors directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
28. The defendants KEMET Corporation and KEMET Electronics Corporation are together referred to herein as "KEMET."

### ***Matsuo***

29. 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 561-0829, Japan. During the Class Period, Matsuo Electric Co., Ltd., manufactured, marketed, sold, and/or

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

30. The defendant Matsuo Electric Co., Ltd. is referred to herein as “Matsuo.”

***Nichicon***

31. The defendant Nichicon Corporation is a Japanese corporation with its principal place of business located at 511, Nijoudenchou, Kkarasumadori Oike-agaru, Nakagyo-ku, Kyoto, 604-0845 Japan. During the Class Period, Nichicon Corporation manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
32. 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. Nichicon (America) Corporation manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
33. The defendants Nichicon Corporation and Nichicon (America) Corporation are together referred to herein as “Nichicon.”

***Nippon Chemi-Con***

34. 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 141-8305, Japan. During the Class Period, Nippon Chemi-Con Corporation manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

35. 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 1701 Golf Rd., Suite 1-1200, Rolling Meadows, Illinois 60008, United States. During the Class Period, United Chemi-Con manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
36. The defendants Nippon Chemi-Con Corporation and United Chemi-Con Corporation are together referred to herein as “Nippon Chemi-Con.”

***Nissei***

37. The defendant Nissei Electric Co. Ltd. is a Japanese corporation with its principal place of business located at 201, Motodate, Hanamaki, Iwate, 025-0061, Japan. During the Class Period, Nissei Electric Co. Ltd. manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
38. The defendant Nissei Electric Co. Ltd. is referred to herein as “Nissei.”

***Nitsuko***

39. The defendant Nitsuko Electronics Corporation is a Japanese corporation with its principal place of business located at 2031-1, Ogawara, Suzaka-shi, Nagano-ken, 382-0071, Japan. During the Class Period, Nitsuko Electronics Corporation manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
40. The defendant Nitsuko Electronics Corporation is referred to herein as “Nitsuko.”

**Okaya**

41. The defendant Okaya Electric Industries Co., Ltd. is a Japanese corporation with its principal place of business at 16-9, Todorki 6 chome, Setagaya-ku, Tokyo 158-8543, Japan. During the Class Period, Okaya Electric Industries Co., Ltd. manufactured, marketed, sold, and/or distributed Film Capacitors, directly and through its subsidiaries or affiliates, to customers throughout Canada.
42. The defendant Okaya Electric America, Inc., an Indiana corporation, is a wholly owned subsidiary of Okaya Electric Industries Co., Ltd. with its principal place of business located at 52 Marks Road, Suite 1, Valparaiso, Indiana 46383, United States. During the Class Period, Okaya Electric America, Inc. manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers through Canada.
43. The defendants Okaya Electric Industries Co., Ltd. and Okaya Electric America, Inc. are together referred to herein as “Okaya”.

**~~Panasonic and Sanyo~~**

44. 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, in its own capacity and in its capacity as Matsushita Electric Industrial Co., Ltd. manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.
45. 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 manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.

46. The defendant Panasonic Canada Inc., a subsidiary of Panasonic Corporation of North America, is a Canadian corporation with its principal place of business located at 5770 Ambler Drive, Mississauga, Ontario, L4W 2T3, Canada. During the Class Period, Panasonic Corporation—Canada Inc. manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.

~~47. 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 2-5-5, Keihan-Hondori, 2-Chome, Moriguchi City, Osaka 570-8677, Japan. During the Class Period, Sanyo Electric Co., Ltd. manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.~~

~~48. The defendant Sanyo Electronic Device (U.S.A.) Corp. is a Delaware corporation with its principal place of business located at 2710 Gateway Oaks Dr., Suite 100, Sacramento, California 95833, United States. It is affiliated with and controlled by Sanyo Electric Group Ltd. During the Class Period, Sanyo Electronic Device (U.S.A.) Corp. manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.~~

~~49. The defendant Sanyo North America Corporation is a Delaware corporation with its principal place of business located at 2710 Gateway Oaks Dr., Sacramento, California 95833, United States. It is affiliated with and controlled by Sanyo Electric Group Ltd.~~

~~During the Class Period, Sanyo North America Corporation manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.~~

~~50.47.~~ The defendants Panasonic Corporation, Panasonic Corporation of North America, and Panasonic Canada Inc., ~~Sanyo Electric Co., Ltd., Sanyo Electronic Device (U.S.A.) Corp., and Sanyo North America Corporation~~ are collectively referred to herein as “Panasonic.”

### **ROHM**

~~51.48.~~ 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 Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~52.49.~~ 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. Rohm Semiconductor U.S.A., LLC formerly operated as ROHM Electronics U.S.A., LLC prior to January 1, 2009. During the Class Period, ROHM Semiconductor U.S.A., LLC manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.

~~53.50.~~ The defendants ROHM Co., Ltd. and ROHM Semiconductor U.S.A., LLC f/k/a ROHM Electronics U.S.A., LLC are together referred to herein as “ROHM.”

***Rubycon***

~~54.~~51. The defendant Rubycon Corporation is a Japanese corporation with its principal place of business located at 1938-1, Nishi-Minowa, Ina-Shi, Nagano Prefecture 399-4593, Japan. During the Class Period, Rubycon Corporation manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~55.~~52. 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. manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.

~~56.~~53. The defendants Rubycon Corporation and Rubycon America Inc. are together referred to herein as “Rubycon.”

***Shinyei***

~~57.~~54. The defendant Shinyei Kaisha is a Japanese corporation with its principal place of business located at 77-1 Kyomachi, Chuo-ku, Kobe 651-0178, Japan. During the Class Period, Shinyei Kaisha manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~58.~~55. The defendant Shinyei Technology Co., Ltd. is a Japanese corporation and a corporate affiliate of Shinyei Kaisha with its principal place of business located at 77-1 Kyomachi, Chuo-ku, Kobe 651-0178, Japan. Until in or around February 2011, Shinyei Technology

Co., Ltd. manufactured, marketed, sold, and/or distributed Film Capacitors either directly or indirectly, to customers throughout Canada.

~~59.~~56. The defendant Shinyei Capacitor Co., Ltd. is a Japanese corporation and a corporate affiliate of Shinyei Kaisha with its principal place of business located at Shinagawa Crystal Square 11F, 1-6-41 Konan, Minato-ku, Tokyo 108-0075, Japan. Starting in or around February 2011, Shinyei Capacitor Co., Ltd. was established by Shinyei Kaisha to acquire the Film Capacitors business of Shinyei Technology Co., Ltd. After in or around February 2011, Shinyei Capacitor Co., Ltd. manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.

~~60.~~57. The defendant Shinyei Corporation of America, a Delaware corporation and a wholly owned subsidiary of Shinyei Kaisha with its principal place of business located at 1120 Avenue of the Americas, 4<sup>th</sup> Floor, New York, New York 10036, United States. During the Class Period, Shinyei Corporation of America manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.

~~61.~~58. The defendants Shinyei Kaisha, Shinyei Technology Co., Ltd., Shinyei Capacitor Co., Ltd., and Shinyei Corporation of America are together referred to herein as “Shinyei.”

### ***Shizuki***

~~62.~~59. The defendant Shizuki Electric Co., Ltd. is a Japanese corporation with its principal place of business located at 10-45 Taisha-cho, Nishinomiya-shi, Hyogo 662-0867, Japan. During the Class Period, Shizuki Electric Co., Ltd. manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~63-60.~~ The defendant American Shizuki Corporation is a Nebraska corporation with its principal place of business located at 301 West O Street, Ogallala, Nebraska 69153, United States. It is affiliated with and controlled by Shizuki Electric Co., Ltd. During the Class Period, American Shizuki Corporation manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.

~~64-61.~~ The defendants Shizuki Electric Co., Ltd. and American Shizuki Corporation are together referred to herein as “Shizuki”.

### ***Soshin***

~~65-62.~~ The defendant Soshin Electric Co., Ltd. is a Japanese corporation with its principal place of business located at 3-13-16 Mita, Minato-ku, Tokyo 108-8322 108-8322, Japan. During the Class Period, Soshin Electric Co., Ltd. manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~66-63.~~ The defendant Soshin Electronics of America Inc., a California corporation, is a wholly owned subsidiary of Soshin Electric Co., Ltd. with its principal place of business located at 2520 Mission College Boulevard, Suite 104, Santa Clara, California 95054, United States. During the Class Period, Soshin Electronics of America Inc. manufactured, marketed, sold, and/or distributed Film Capacitors throughout Canada.

~~67-64.~~ The defendants Soshin Electric Co., Ltd. and Soshin Electronics of America Inc. are together referred to herein as “Soshin”.

### ***Taitso***

~~68-65.~~ The defendant Taitso Corporation is a Japanese corporation with its principal place of business located at 2-23-20, Kizuki, Nakahara-ku, Kawasaki, Kanagawa 211-0025,

Japan. During the Class Period, Taitso Corporation manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~69.66.~~ The defendant Taitso America, Inc., a California corporation, is a wholly owned subsidiary of Taitso Corporation with its principal place of business located at 6153 Fairmont Ave, Suite 100, San Diego, California 92120, United States. During the Class Period, Taitso America, Inc. manufactured, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.

~~70.67.~~ The defendants Taitso Corporation and Taitso America, Inc. are together referred to herein as "Taitso".

### ***Toshin Kogyo***

~~71.68.~~ The defendant Toshin Kogyo Co., Ltd., is a Japanese corporation with its principal place of business located at 101-0047 Tsukasa Bldg, 2-15-4 Uchikanda Chiyoda-ku, Tokyo, Japan. During the Class Period, Toshin Kogyo Co., Ltd. manufactured, marketed, sold, and/or distributed Film Capacitors either directly or through its subsidiaries or affiliates to customers throughout Canada.

~~72.69.~~ The defendant Toshin Kogyo Co., Ltd. is referred to herein as "Toshin Kogyo."

### ***Holy Stone***

~~73.70.~~ The defendant Holy Stone Enterprise Co., Ltd. is a foreign 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 Film Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~74.71.~~ 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 Film Capacitors, either directly or indirectly, to customers throughout Canada.

~~75.72.~~ The defendant Milestone Global Technology, Inc. d/b/a Holy Stone 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. 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. manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.

~~76.73.~~ The defendants Holy Stone Enterprise Co., Ltd. and Milestone Global Technology, Inc. d/b/a Holystone International are together referred to herein as "Holy Stone."

***Vishay***

~~77.~~ The defendant Vishay Intertechnology, Inc. is a Delaware corporation with its principal place of business located at 63 Lancaster Avenue, Malvern, Pennsylvania 19355-2143, United States. During the Class Period, Vishay Intertechnology, Inc. manufactured, marketed, sold, and/or distributed Capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Canada.

~~78.74.~~ 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. is a Japanese corporation with its principal place of business located at 16 Ohdaira Kumagami Miharu-machi, Tamura-gun Fukushima 963-7704 Japan. During the Class Period, Vishay Polytech Co., Ltd. manufactured, marketed, sold, and/or distributed Film Capacitors, either directly or indirectly, to customers throughout Canada.

~~79.75.~~ The defendants ~~Vishay Intertechnology, Inc. and Vishay Polytech Co., Ltd. f/k/a HolyStone Polytech Co., Ltd. are together~~ is referred to herein as “Vishay”.

~~80.76.~~ Collectively, the defendants named in paragraphs 16 to ~~752~~ are referred to herein as the “Defendants”.

## **FACTUAL BACKGROUND**

### ***The Film Capacitors Industry***

~~81.77.~~ The structure and characteristics of the market for Film Capacitors in Canada are conducive to the conspiracy alleged herein.

~~82.78.~~ There are substantial barriers that preclude, reduce or make more difficult entry into the Film 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.

~~83.79.~~ There are no close substitutes for Film Capacitors in Canada. Film Capacitors are one of the fundamental components found in electrical circuits in many electronic devices that are used today. There is no alternative to Film Capacitors in Canada.



~~84.~~80. Film Capacitors are commodity products that are interchangeable among the Defendants. Film Capacitors of like technical and operational specification are mutually interchangeable. A specific Film Capacitor manufactured by one of the Defendants can be exchanged for a Film Capacitor manufactured by another Defendant so long as it has the same technical and operational specifications.

~~85.~~81. The price of Film Capacitors provided to OEMs and their subsidiaries is reflected, in whole or in part, in the price of electronics purchased in Canada.

~~86.~~82. The Defendants dominate the global Film Capacitors market, including the sale of Film Capacitors in Canada.

***The Conspiracy to Fix the Price of Film Capacitors***

~~87.~~83. The acts alleged under this heading are, collectively, the “Conspiracy Acts.”

~~88.~~84. During the Class Period, the Defendants and unnamed co-conspirators conspired and/or agreed with each other to fix, maintain, increase or control the price for the supply of Film Capacitors and/or to enhance unreasonably the prices of Film Capacitors and /or to lessen unduly competition in the sale of Film Capacitors in Canada.

~~89.~~85. 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 meetings with each other at times and places, some of which are unknown to the plaintiff. As a result of the communications and meetings, the Defendants and unnamed co-conspirators unlawfully conspired and/or agreed to:

- a. unreasonably enhance the prices of Film Capacitors in Canada;
- b. fix, maintain, increase, and/or control the prices of Film Capacitors in Canada;

- c. monitor and/or enforce adherence to an agreed-upon pricing scheme;
- d. restrain trade in the sale of Film Capacitors in Canada; and
- e. lessen unduly competition in the sale of Film Capacitors in Canada.

~~90.~~86. 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 Film Capacitors in Canada;
- b. communicated secretly, in person, by telephone, and by e-mail, to discuss and fix prices of Film Capacitors;
- c. made formal agreements with respect to the prices of Film Capacitors;
- d. exchanged information regarding the prices of Film Capacitors for the purposes of monitoring and enforcing adherence to the agreed-upon prices;
- e. rigged bids for the sale of Film Capacitors to OEMs and their subsidiaries;
- f. allocated sales, territories, customers, and/or markets for supply of Film Capacitors;
- g. fixed, maintained, controlled, prevented, and/or lessened the production and/or supply of Film Capacitors; and
- h. disciplined any conspirator which failed to comply with the conspiracy.

~~91.~~87. 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 class members.

~~92-88.~~ The Defendants were motivated to conspire and their predominant purposes and predominant concerns were to harm the plaintiff and the other class members who purchased Film Capacitors by requiring them to pay unlawfully high prices for Film Capacitors.

~~93-89.~~ 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.

~~94-90.~~ The Conspiracy Acts alleged in this claim to have been done by each Defendant were authorized, ordered, and/or 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**

~~95-91.~~ Commencing in or around 2014, regulatory authorities in a number of jurisdictions announced investigations into price-fixing of the capacitors industry.

~~96-92.~~ 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 both electrolytic and Film Capacitors.

~~97-93.~~ In or around April 2014, the Antitrust Division of the United States Department of Justice ("DOJ") confirmed to industry sources that the government had 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.

~~98.94.~~ 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 Kunlin 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.

~~99.95.~~ Since early 2014, investigations into the capacitors industry have also been opened by the Japanese Fair Trade Commission, the South Korean Fair Trade Commission, the Taiwanese Fair Trade Commission, the Singapore Competition Commission, and the European Commission's competition authority.

## **CAUSES OF ACTION**

### ***Breach of the Competition Act***

~~100.96.~~ The Defendants are in breach of section 45 of Part VI of the *Competition Act* and caused injury to the plaintiff 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*.

~~401.97.~~ Further, or in the alternative, the defendants Hitachi Canada and Panasonic Canada Inc. (the “Canadian Defendants”) are in breach of section 46(1) of the Part VI of the *Competition Act* and caused injury to the plaintiff and the other class members which renders the Canadian Defendants jointly and severally liable to pay damages and costs of investigation pursuant to section 36 of the *Competition Act*.

~~402.98.~~ The plaintiff 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 co-conspirators actively, intentionally, and purposively concealed the existence of the combination and conspiracy from the plaintiff and others.

### ***Civil Conspiracy***

~~403.99.~~ Further, or in the alternative, the Conspiracy Acts were unlawful acts under the *Competition Act* and/or in restraint of trade directed towards the plaintiff and the other class members. The Defendants and their co-conspirators knew that the unlawful acts alleged herein would likely cause injury to the plaintiff 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 plaintiff and the other class members and the Defendants are jointly and severally liable for the tort of conspiracy to injure.

~~404.100.~~ The plaintiff and the other class members suffered damages as a result of the Defendants’ conspiracy.

***Unlawful Means Tort***

~~405-101.~~ Further, or in the alternative, the Conspiracy Acts were unlawful acts intended to cause the plaintiff and the other class members economic loss, either as an end in itself or as a necessary means of enriching the Defendants.

~~406-102.~~ 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 Film 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.

~~407-103.~~ The plaintiff 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***

~~408-104.~~ The Defendants have each been unjustly enriched by the receipt of the Overcharge. The plaintiff and the other class members have suffered a corresponding deprivation in the amount of such Overcharge.

~~409-105.~~ Since the Overcharge that was received by the Defendants from the plaintiff 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***

~~410-106.~~ Further, or in the alternative, the plaintiff pleads and relies on the doctrine of waiver of tort and states 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*

~~411.~~107.As a result of the Conspiracy Acts:

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

~~412.~~108.During the Class Period, the plaintiff and the other class members purchased Film Capacitors and products containing Film Capacitors. By reason of the alleged violations of the *Competition Act* and the common law, the plaintiff and the other class members have been overcharged for those Film Capacitors and products containing Film Capacitors by paying more than they would have paid in the absence of the illegal conspiracy and, as a result, the plaintiff and the other class members have suffered damages.

~~413.~~109.The plaintiff asserts that the Overcharge is capable of being quantified on an aggregate basis as the difference between the prices actually paid by the class members and the prices which would have been paid in the absence of the unlawful conspiracy.

~~414.~~110.All amounts payable to the class on account of damages and disgorgement should be calculated on an aggregated basis pursuant to s. 24 of the *Class Proceedings Act, 1992*, or otherwise.

***Punitive Damages***

~~445.~~111.The plaintiff asserts that the Defendants' conduct was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, willful, and in contemptuous disregard of the plaintiff's 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***

~~446.~~112.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 *Class Proceedings Act, 1992*.

***Injunction***

~~447.~~113.The plaintiff claims for the Defendants to be permanently enjoined from carrying on business in contravention of the applicable laws.

***Conspicuous Notice Plan***

~~448.~~114.The plaintiff requests 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 *Class Proceedings Act, 1992*.

**STATUTES RELIED UPON**

~~449.~~115.The plaintiff pleads and relies 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**

~~420.116.~~ 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)).

~~424.117.~~ The Plaintiff proposes that this action be tried in the City of London, in the Province of Ontario.

May 13, 2016

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SEAN ALLOT  
Plaintiff

v. AVX CORPORATION, ET AL.  
Defendants

Court File No. 1272/16 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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**AMENDED STATEMENT OF CLAIM**

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SEAN ALLOTT

v. AVX CORPORATION et al.

Court File No. 1272/16 CP

Plaintiff

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**ONTARIO  
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**AFFIDAVIT OF STEPHANIE LEGDON**  
(Discontinuances)

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**PLAINTIFF'S MOTION RECORD**  
(Motion for Discontinuances)

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