

**CAPACITOR CLASS ACTIONS  
NATIONAL SETTLEMENT AGREEMENT**

Between:

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

(the "Plaintiffs")

and

**ELNA CO., LTD. and ELNA AMERICA, INC.**

(the "Settling Defendants")

Executed June 4, 2021

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**Table of Contents**

|  |           |
|--|-----------|
| <b>RECITALS .....</b>  | <b>1</b>  |
| <b>SECTION 1 - DEFINITIONS .....</b>   | <b>4</b>  |
| <b>SECTION 2 - SETTLEMENT APPROVAL .....</b>   | <b>14</b> |
| 2.1 Best Efforts .....   | 14        |
| 2.2 Motions Seeking Approval of Notice and Certification or Authorization for Settlement Purposes..... | 14        |
| 2.3 Motions Seeking Approval of the Settlement .....   | 16        |
| 2.4 Pre-Motion Confidentiality.....  | 16        |
| <b>SECTION 3 - SETTLEMENT BENEFITS.....</b>  | <b>17</b> |
| 3.1 Payment of Settlement Amount .....   | 17        |
| 3.2 Taxes and Interest .....   | 17        |
| <b>SECTION 4 - COOPERATION .....</b>   | <b>18</b> |
| 4.1 Extent of Cooperation .....  | 18        |
| 4.2 Limits on Use of Documents .....   | 25        |
| 4.3 Intervention in the U.S. Litigation .....  | 28        |
| <b>SECTION 5 - DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST .....</b>                    | <b>28</b> |
| 5.1 Distribution Protocol(s).....  | 28        |
| <b>SECTION 6 - OPTING-OUT.....</b>   | <b>28</b> |
| 6.1 The Opt-Out Deadline has Expired.....  | 28        |
| <b>SECTION 7 - RELEASES AND DISMISSALS .....</b>   | <b>29</b> |
| 7.1 Release of Releasees.....  | 29        |
| 7.2 Covenant Not to Sue.....   | 29        |

**TABLE OF CONTENTS**  
(continued)

|  |   |           |
|--|---|-----------|
| 7.3  | No Further Claims or Litigation .....                               | 29        |
| 7.4  | Dismissal of the Proceedings.....                                   | 30        |
| 7.5  | Dismissal of Other Actions.....                                     | 30        |
| <b>SECTION 8 - BAR ORDER AND WAIVER OF SOLIDARITY .....</b>                            |   | <b>31</b> |
| 8.1  | Ontario and British Columbia Bar Order .....                        | 31        |
| 8.2  | Québec Waiver or Renunciation of Solidarity Order .....             | 34        |
| 8.3  | Claims Against Other Entities Reserved .....                        | 35        |
| <b>SECTION 9 - EFFECT OF SETTLEMENT .....</b>  |   | <b>35</b> |
| 9.1  | No Admission of Liability.....                                      | 35        |
| 9.2  | Agreement Not Evidence .....  | 36        |
| <b>SECTION 10 - CERTIFICATION OR AUTHORIZATION TO AMEND FOR SETTLEMENT ONLY .....</b>  |   | <b>36</b> |
| <b>SECTION 11 - NOTICE TO SETTLEMENT CLASS.....</b>                                    |   | <b>37</b> |
| 11.1   | Notices Required .....  | 37        |
| 11.2   | Form and Distribution of Notices.....                               | 37        |
| <b>SECTION 12 - ADMINISTRATION AND IMPLEMENTATION .....</b>                            |   | <b>38</b> |
| 12.1   | Mechanics of Administration .....                                   | 38        |
| <b>SECTION 13 - CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES.....</b> |   | <b>38</b> |
| <b>SECTION 14 - NON-APPROVAL OR TERMINATION OF SETTLEMENT AGREEMENT .....</b>          |   | <b>38</b> |
| 14.1   | Right of Termination.....   | 38        |
| 14.2   | Effect of Non-Approval or Termination of Settlement Agreement ..... | 40        |
| 14.3   | Allocation of Settlement Amount Following Termination.....          | 40        |
| 14.4   | Survival of Provisions After Termination .....                      | 41        |

**TABLE OF CONTENTS**  
(continued)

|   |           |
|---|-----------|
| <b>SECTION 15 - MISCELLANEOUS .....</b>                   | <b>41</b> |
| 15.1 Motions for Directions .....                         | 41        |
| 15.2 Releasees Have No Liability for Administration ..... | 41        |
| 15.3 Headings, etc.....                                   | 42        |
| 15.4 Computation of Time.....                             | 42        |
| 15.5 Ongoing Jurisdiction .....                           | 42        |
| 15.6 Governing Law.....                                   | 43        |
| 15.7 Entire Agreement.....                                | 43        |
| 15.8 Amendments.....                                      | 43        |
| 15.9 Binding Effect.....                                  | 44        |
| 15.10 Counterparts .....                                  | 44        |
| 15.11 Negotiated Agreement.....                           | 44        |
| 15.12 Language.....                                       | 44        |
| 15.13 Transaction .....                                   | 45        |
| 15.14 Recitals .....                                      | 45        |
| 15.15 Schedules .....                                     | 45        |
| 15.16 Acknowledgements.....                               | 45        |
| 15.17 Authorized Signatures.....                          | 45        |
| 15.18 Notice.....   | 46        |
| 15.19 Date of Execution .....                             | 46        |

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**RECITALS**

- A. WHEREAS the Electrolytic Proceedings were commenced by the Ontario Electrolytic Plaintiffs in London, Ontario, the BC Plaintiffs in Vancouver, British Columbia and the Québec Plaintiff in Montreal, Québec;
- B. WHEREAS the Ontario Film Action was commenced on behalf of a national class by the Ontario Film Plaintiff in London, Ontario;
- C. WHEREAS the Settling Defendants are named in the Electrolytic Proceedings and the Ontario Film Action, but are not named in the BC Film Action;
- D. WHEREAS the BC Plaintiffs and BC Counsel are the representative plaintiff and class counsel, respectively, in the BC Film Action;
- E. WHEREAS the Plaintiffs intend to transfer all litigation relating to Film Capacitors to the Ontario Court and to litigate the Ontario Film Action on behalf of a national class;
- F. WHEREAS the Settling Defendant ELNA Co., Ltd. is named in the Québec Action, but only in respect of Electrolytic Capacitors;
- G. WHEREAS the Plaintiffs respectively allege in the Electrolytic Proceedings and the Ontario Film Action that certain companies, including the Settling Defendants, participated in an unlawful conspiracy to fix, raise, maintain or stabilize the price of Electrolytic and Film Capacitors in Canada, contrary to Part VI of the *Competition Act* and the common law and/or civil law;
- H. WHEREAS the Settling Defendants deny that they manufactured Film Capacitors during the Film Class Period;
- I. WHEREAS proceedings including Other Actions have been commenced by other plaintiffs in Canada and the U.S. alleging joint and several liability against the Settling Defendants in respect of an alleged single unlawful conspiracy involving both Electrolytic and Film Capacitors, and while the Settling Defendants deny this allegation, they wish to finally resolve and protect against similar allegations in Canada now and in the future;

- J. WHEREAS the Electrolytic Settlement Amount is to be paid in respect of the Electrolytic Proceedings for the benefit of the Electrolytic Settlement Class, and the Film Settlement Amount is to be paid in respect of the Ontario Film Action for the benefit of the Ontario Film Settlement Class;
- K. WHEREAS the Settling Defendants do not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct alleged in the Proceedings, or in any Other Actions, or otherwise;
- L. WHEREAS the Plaintiffs, Class Counsel and the Settling Defendants agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the Settling Defendants or evidence of the truth of any of the Plaintiffs' allegations against the Settling Defendants, which allegations are expressly denied by the Settling Defendants;
- M. WHEREAS the Settling Defendants are entering into this Settlement Agreement in order to achieve a final and nationwide resolution of all Released Claims asserted or which could have been asserted against the Releasees by the Plaintiffs and the Settlement Classes in the respective Proceedings and any Other Actions, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;
- N. WHEREAS the Settling Defendants have agreed to provide meaningful cooperation to the Plaintiffs in addition to the Settlement Amount, relating to the Electrolytic Proceedings, which cooperation is a material factor to the Plaintiffs in the formulation of the terms of this Settlement Agreement;
- O. WHEREAS the Settling Defendants do not hereby attorn to the jurisdiction of the Courts or any other court or tribunal in respect of any civil, criminal or administrative process except to the extent they have previously done so in the respective Proceedings or as expressly provided in this Settlement Agreement with respect to the Proceedings;
- P. WHEREAS Counsel for the Settling Defendants and Class Counsel have engaged in extensive arm's-length settlement discussions and negotiations resulting in this Settlement Agreement relating to Canada;
- Q. WHEREAS as a result of these settlement discussions and negotiations, the Settling Defendants and the Plaintiffs have entered into this Settlement Agreement, which

embodies all of the terms and conditions of the settlement between the Settling Defendants and the Plaintiffs, both individually and on behalf of the Settlement Classes they represent or seek to represent, subject to approval of the Courts;

- R. WHEREAS the Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, having regard to the burdens and expense in prosecuting the Proceedings, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the Settlement Classes they represent or seek to represent;
- S. WHEREAS the Parties therefore wish to and hereby finally resolve on a national basis, without admission of liability, the Proceedings and any Other Actions as against the Settling Defendants;
- T. WHEREAS the Québec Action has already been authorized, by judgment of the Québec Court, on March 22, 2019;
- U. WHEREAS for the purposes of settlement only, the Parties now consent to certification or authorization of the Proceedings as class proceedings and to the Settlement Classes and the Common Issues in respect of each of the Proceedings solely for the purposes of implementing this Settlement Agreement in a coordinated and consistent manner across Canada and contingent on approvals by the Courts as provided for in this Settlement Agreement, on the express understanding that such certification or authorization shall not derogate from the respective rights of the Parties in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason;
- V. WHEREAS a notice program and opt-out process has already been provided to the Settlement Classes in respect of the Proceedings, on a national basis and two members of the Electrolytic Settlement Class and three members of the Ontario Film Settlement Class have opted-out; and
- W. WHEREAS the Plaintiffs assert that they are adequate class representatives for the Settlement Classes they represent or seek to represent and are or will seek to be appointed representative plaintiffs in their respective Proceedings;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, it is agreed by the Parties that the BC Electrolytic Action, the Ontario Electrolytic Action, and the Ontario Film Action be settled and dismissed with prejudice as to the Settling Defendants only, without costs as to the Parties or the Releasees, and that the Québec Action shall be settled out of court without costs as to the Settling Defendants only, subject to the approval of the Courts, on the following terms and conditions:

### SECTION 1 - DEFINITIONS

For the purposes of this Settlement Agreement only, including the Recitals and Schedules hereto:

- (1) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices and the costs of claims administration, but excluding Class Counsel Fees and Class Counsel Disbursements.
- (2) **BC Counsel** means Camp Fiorante Matthews Mogerman <sup>LLP</sup>.
- (3) **BC Court** means the Supreme Court of British Columbia.
- (4) **BC Electrolytic Action** means the proceeding commenced by the BC Plaintiff before the BC Court that is identified in Schedule "A" to this Settlement Agreement.
- (5) **BC Electrolytic Settlement Class** means the settlement class in respect of the BC Electrolytic Action that is defined in Schedule "A" to this Settlement Agreement.
- (6) **BC Electrolytic Settlement Class Member(s)** means a member of the BC Electrolytic Settlement Class.
- (7) **BC Film Action** means *Ramsay v. Okaya Electric Industries Co., Ltd., et. al.*, commenced in the British Columbia Supreme Court (Vancouver Registry) bearing Court File No. S-156006.
- (8) **BC Plaintiff** means Sara Ramsay.



- (9) **Claims Administrator** means the firm to be proposed by Class Counsel and appointed by the Courts to administer the Settlement Amount in accordance with the provisions of this Settlement Agreement and the Distribution Protocol, and any employees of such firm.
- (10) **Capacitor(s)** means Electrolytic Capacitors and Film Capacitors.
- (11) **Class Counsel** means Ontario Counsel, BC Counsel and Québec Counsel.
- (12) **Class Counsel Disbursements** include the disbursements and applicable taxes incurred by Class Counsel in the prosecution of the Proceedings, as well as any adverse costs awards issued against the Plaintiffs in the Proceedings.
- (13) **Class Counsel Fees** include the fees of Class Counsel, GST or HST (as the case may be) and other applicable taxes or charges thereon, including any amounts payable by Class Counsel or the Settlement Class Members to any other body or Person, including the Fonds d'aide aux actions collectives in Québec, as a result of the Settlement Agreement.
- (14) **Class Period** means all dates inclusive of the Electrolytic Class Period and the Film Class Period.
- (15) **Common Electrolytic Issue** means: Did the Settling Defendants conspire to fix, raise, maintain or stabilize the price of, or allocate markets and customers of, Electrolytic Capacitors directly or indirectly in Canada during the Electrolytic Class Period? If so, what damages, if any, did Settlement Class Members suffer?
- (16) **Common Film Issue** means: Did the Settling Defendants conspire to fix, raise, maintain or stabilize the price of, or allocate markets and customers of, Film Capacitors directly or indirectly in Canada during the Film Class Period? If so, what damages, if any, did Settlement Class Members suffer?
- (17) **Common Issues** means the Common Electrolytic Issue and the Common Film Issue.
- (18) **Counsel for the Settling Defendants** means DLA Piper (Canada) LLP.
- (19) **Courts** means the Ontario Court, the BC Court and the Québec Court.

- (20) **COVID-19 Pandemic** means the novel coronavirus and the limitations imposed by governments on the conduct of their citizens, including limitations to international travel and in-person meetings.
- (21) **Defendants** means the Electrolytic Defendants and the Film Defendants.
- (22) **Distribution Protocol(s)** means the plan(s) to be developed by Class Counsel for distributing the Settlement Amount, plus accrued interest and less approved Administration Expenses, Class Counsel Disbursements and Class Counsel Fees, to Settlement Class Members, as approved by the Courts.
- (23) **Documents** means all papers, computer or electronic records, or other materials within the scope of Rule 1.03(1) and Rule 30.01(1) of the Ontario *Rules of Civil Procedure* and any copies, reproductions or summaries of the foregoing, including microfilm copies and computer images.
- (24) **Effective Date** means the date when the Final Orders have been received from all Courts approving this Settlement Agreement in both the Ontario Film Action and the Electrolytic Proceedings.
- (25) **Electrolytic Capacitors** means aluminum and tantalum electrolytic capacitors.
- (26) **Electrolytic Class Period** means September 1, 1997 to December 31, 2014.
- (27) **Electrolytic Defendants** means the entities named as defendants in any of the Electrolytic Proceedings as set out in Schedule "A" to this Settlement Agreement, and any Persons added as defendants in the Electrolytic Proceedings in the future. For greater certainty, Electrolytic Defendants includes, without limitation, the Settling Defendants.
- (28) **Electrolytic Plaintiffs** means the Ontario Electrolytic Plaintiffs, the BC Plaintiff and the Québec Plaintiff, in the context of the Electrolytic Proceedings.
- (29) **Electrolytic Proceedings** means the Ontario Electrolytic Action, the BC Electrolytic Action, and the Québec Action as defined in Schedule "A" to this Settlement Agreement.
- (30) **Electrolytic Releasors** means, jointly and severally, individually and collectively, the Electrolytic Plaintiffs and the Electrolytic Settlement Class Members, and all of their present and former direct and indirect parents, owners, subsidiaries, divisions, affiliates,

associates (as defined in the *Canada Business Corporations Act*, RSC 1985, c C-44), partners, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, shareholders, attorneys, trustees, servants and representatives, members, managers and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.

- (31) **Electrolytic Settlement Amount** means the sum of CAD \$2,475,000.00.
- (32) **Electrolytic Settlement Class(es)** means all Persons included in the Ontario Electrolytic Settlement Class, the BC Electrolytic Settlement Class, and the Québec Settlement Class.
- (33) **Electrolytic Settlement Class Member(s)** means a member of an Electrolytic Settlement Class.
- (34) **Excluded Person** means each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing, and those Persons who opted-out of the Proceedings in accordance with the orders of the applicable Courts.
- (35) **Execution Date** means the date on the cover page, as of which the Parties have executed this Settlement Agreement.
- (36) **Film Capacitors** means capacitors which use insulating plastic film and one of two conductive materials, propylene and/or polyester. Film Capacitors include, but are not limited to, the following four generations: (1) film and aluminum foil capacitors, (2) film and other metal capacitors, (3) layered capacitors, and (4) surface-mount capacitors (*i.e.*, capacitors without leaves).
- (37) **Film Class Period** means January 1, 2002 to December 31, 2014.
- (38) **Film Defendants** means the entities named as defendants in the Ontario Film Action as set out in Schedule "B" to this Settlement Agreement, and any Persons added as defendants in the Ontario Film Action in the future. For greater certainty, the Film Defendants includes, without limitation, the Settling Defendants.

- (39) **Film Proceedings** means the Ontario Film Action and the BC Film Action.
- (40) **Film Releasers** means, jointly and severally, individually and collectively, the Ontario Film Plaintiff and the Ontario Film Settlement Class Members, and all of their present and former direct and indirect parents, owners, subsidiaries, divisions, affiliates, associates (as defined in the *Canada Business Corporations Act*, RSC 1985, c C-44), partners, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, shareholders, attorneys, trustees, servants and representatives, members, managers and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.
- (41) **Film Settlement Amount** means the sum of CAD \$25,000.00.
- (42) **Film Settlement Class Member(s)** means a member of the Ontario Film Settlement Class.
- (43) **Final Order(s)** means a final judgment entered by a Court approving this Settlement Agreement in accordance with its terms, once the time to appeal such judgment has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the approval of this Settlement Agreement in accordance with its terms, upon a final disposition of all appeals.
- (44) **Non-Settling Electrolytic Defendant(s)** means any Electrolytic Defendant that is not: (i) a Settling Defendant; (ii) a Settled Electrolytic Defendant; or (iii) an Electrolytic Defendant against whom the Electrolytic Proceedings have been dismissed or discontinued and is not a Releasee, either before or after the Execution Date.
- (45) **Non-Settling Film Defendant(s)** means any Film Defendant that is not: (i) a Settling Defendant; (ii) a Settled Film Defendant; or (iii) a Film Defendant against whom the Ontario Film Action has been dismissed or discontinued and is not a Releasee, either before or after the Execution Date.
- (46) **Non-Settling Defendants** means the Non-Settling Electrolytic Defendants and the Non-Settling Film Defendants.

- (47) **Notice of Certification and of Approval Hearings** means the form or forms of notice, agreed to by the Plaintiffs and the Settling Defendants, or such other form or forms of notice as may be approved by the Courts, which informs the Settlement Classes of: (i) the certification or authorization of the Proceedings as class proceedings for settlement purposes; (ii) the right to opt-out of the certified or authorized Proceedings has expired; (iii) the hearing(s) at which the Courts will be asked to approve the Settlement Agreement; and, (iv) the process by which a Settlement Class Member may object to the settlement.
- (48) **Ontario Counsel** means Foreman & Company Professional Corporation.
- (49) **Ontario Court** means the Ontario Superior Court of Justice.
- (50) **Ontario Electrolytic Action** means the proceeding commenced by the Ontario Electrolytic Plaintiffs before the Ontario Court as identified in Schedule "A" to this Settlement Agreement.
- (51) **Ontario Electrolytic Plaintiff(s)** means Cygnus Electronics Corporation and Sean Allott in the context of the Ontario Electrolytic Action.
- (52) **Ontario Electrolytic Settlement Class** means the settlement class in respect of the Ontario Electrolytic Action that is defined in Schedule "A" to this Settlement Agreement.
- (53) **Ontario Electrolytic Settlement Class Member(s)** means a member of the Ontario Electrolytic Settlement Class.
- (54) **Ontario Film Action** means the proceeding commenced by the Ontario Film Plaintiff before the Ontario Court as identified in Schedule "B" to this Settlement Agreement.
- (55) **Ontario Film Plaintiff** means Sean Allott in the context of the Ontario Film Action.
- (56) **Ontario Film Settlement Class** means the settlement class in respect of the Ontario Film Action that is defined in Schedule "B" to this Settlement Agreement.
- (57) **Ontario Film Settlement Class Member(s)** means a member of the Ontario Film Settlement Class.
- (58) **Other Actions** means any actions or proceedings, excluding the Proceedings, relating to Released Claims commenced by a Settlement Class Member either before or after the

Effective Date, including, without limitation, *McPherson v. Panasonic Corp.*, et. al., commenced in the Court of Queen's Bench for Manitoba, bearing court file number C1-14-01-92235; and *Fraser v. Panasonic Corp.*, et. al. commenced in Court of Queen's Bench for Saskatchewan bearing court file number Q.B.G. 2150-2014.

- (59) **Party and Parties** means the Settling Defendants, the Plaintiffs, and, where necessary, the Settlement Class Members.
- (60) **Person(s)** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.
- (61) **Plaintiffs** means the Electrolytic Plaintiffs and the Film Plaintiff.
- (62) **Proceedings** means the Electrolytic Proceedings and the Ontario Film Action.
- (63) **Proportionate Liability** means the proportion of any judgment that, had the Settling Defendants not settled, the Ontario Court or the BC Court, as applicable, would have apportioned to the Settling Defendants and the other Releasees in respect of the Released Electrolytic Claims or Released Film Claims, as applicable.
- (64) **Québec Action** means the proceeding commenced by the Québec Plaintiff before the Québec Court as identified in Schedule "A" to this Settlement Agreement.
- (65) **Québec Counsel** means Belleau Lapointe s.e.n.c.r.l.
- (66) **Québec Court** means the Superior Court of Québec.
- (67) **Québec Plaintiff** means Option consommateurs.
- (68) **Québec Settlement Class** means the settlement class in respect of the Québec Action that is defined in Schedule "A" to this Settlement Agreement, which includes both the class authorized by the Québec Court on March 22, 2019 and the amendments to the class definition in the Québec Action as against the Settling Defendants to be sought for settlement purposes to reflect the Electrolytic Class Period.

- (69) **Québec Settlement Class Member(s)** means a member of the Québec Settlement Class.
- (70) **Recitals** means the recitals to this Settlement Agreement.
- (71) **Released Claims** means Released Electrolytic Claims and Released Film Claims.
- (72) **Released Electrolytic Claims** means any and all manner of claims, demands, actions, suits, declaratory relief, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages of any kind (including compensatory, punitive or other damages) whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees and Class Counsel Disbursements), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, in this or any other Canadian or foreign jurisdiction (all of the foregoing, collectively, "Claims" or, individually, a "Claim"), that the Electrolytic Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall or may have, as a result of, in connection with or relating in any way whatsoever to any conduct that is alleged or that could have been alleged in the Electrolytic Proceedings or that is arising from their factual predicate up to the end of the Electrolytic Class Period, including, without limitation, any Claims, whether in Canada or elsewhere, as a result of, in connection with or relating in any way whatsoever to an alleged conspiracy or other unlawful agreement or any other horizontal or vertical, or unilateral or coordinated, anti-competitive conduct (whether that conduct occurred in Canada or elsewhere) relating in any way whatsoever to the purchase, sale, pricing, discounting, marketing, offering or distributing of Electrolytic Capacitors or products containing Electrolytic Capacitors in Canada during the Electrolytic Class Period, including, without limitation, any claims for consequential, subsequent or follow on harm that arise after the Electrolytic Class Period in respect of any agreement or conduct arising from the factual predicate of the Electrolytic Proceedings, or any amended complaint or pleading therein, that occurred during the Electrolytic Class Period. For greater certainty, nothing herein shall be construed to release any Claims arising from breach of contract, for negligence, bailment, failure to deliver, lost goods, delayed, or damaged goods or any similar claim between the Releasees and Electrolytic Releasors relating to Electrolytic Capacitors.

- (73) **Released Film Claims** means any and all manner of claims, demands, actions, suits, declaratory relief, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages of any kind (including compensatory, punitive or other damages) whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees and Class Counsel Disbursements), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, in this or any other Canadian or foreign jurisdiction (all of the foregoing, collectively, "Claims" or, individually, a "Claim"), that the Film Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall or may have, as a result of, in connection with or relating in any way whatsoever to any conduct that is alleged or that could have been alleged in the Ontario Film Action or that is arising from their factual predicate up to the end of the Film Class Period, including, without limitation, any Claims, whether in Canada or elsewhere, as a result of, in connection with or relating in any way whatsoever to an alleged conspiracy or other unlawful agreement or any other horizontal or vertical, or unilateral or coordinated, anti-competitive conduct (whether that conduct occurred in Canada or elsewhere) relating in any way whatsoever to the purchase, sale, pricing, discounting, marketing, offering or distributing of Film Capacitors or products containing Film Capacitors in Canada during the Film Class Period, including, without limitation, any claims for consequential, subsequent or follow on harm that arise after the Film Class Period in respect of any agreement or conduct arising from the factual predicate of the Ontario Film Action, or any amended complaint or pleading therein, that occurred during the Film Class Period. For greater certainty, nothing herein shall be construed to release any Claims arising from breach of contract, for negligence, bailment, failure to deliver, lost goods, delayed, or damaged goods or any similar claim between the Releasees and Film Releasers relating to Film Capacitors.
- (74) **Releasee(s)** means, jointly and severally, individually and collectively, the Settling Defendants and all of their present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, owners, associates (as defined in the *Canada Business Corporations Act*, RSC 1985, c C-44), partners, joint ventures, franchisees, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated and all of their respective past, present and future officers, directors, employees,



agents, shareholders, attorneys, trustees, servants and representatives, members, managers and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing. No other Defendants are Releasees.

- (75) **Releasors** means the Electrolytic Releasors and the Film Releasors.
- (76) **Schedules** means the schedules to this Settlement Agreement.
- (77) **Settled Electrolytic Defendant(s)** means any Electrolytic Defendant (excluding the Settling Defendants) that executes its own settlement agreement in the Proceedings and whose settlement agreement becomes effective in accordance with its terms, whether or not such settlement agreement is in existence at the Execution Date.
- (78) **Settled Film Defendant(s)** means any Film Defendant (excluding the Settling Defendants) that executes its own settlement agreement in the Proceedings and whose settlement agreement becomes effective in accordance with its terms, whether or not such settlement agreement is in existence at the Execution Date.
- (79) **Settlement Agreement** means this agreement, including the Recitals and Schedules.
- (80) **Settlement Amount** means the sum of two million and five hundred thousand Canadian Dollars (CAD \$2,500,000.00), which is the sum of the Electrolytic Settlement Amount and the Film Settlement Amount, to be paid by the Settling Defendants.
- (81) **Settlement Class(es)** means all Persons included in the Electrolytic Settlement Classes and the Ontario Film Settlement Class.
- (82) **Settlement Class Member(s)** means a member of a Settlement Class.
- (83) **Settling Defendant(s)** means ELNA Co., Ltd. and ELNA America, Inc.
- (84) **Trust Account** means a guaranteed investment vehicle, liquid money market account or equivalent security offered by a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, SC 1991, c 46) or a Provincially Registered Credit Union (listed under the *Credit Unions and Caisses Populaires Act*, 1994, S.O. 1994, c. 11) held at a Canadian financial institution under the control of Ontario Counsel for the benefit of the Settlement Class Members or the Settling Defendants, as provided for in this Settlement Agreement.

- (85) **U.S. Litigation** means the direct and indirect purchaser class proceedings in the United States which pertain to film, aluminum and tantalum electrolytic capacitors which have been consolidated and are proceeding as class actions litigation under the general style of cause, for both direct and indirect purchaser class proceedings, *In re: Capacitors Antitrust Litigation*, case number 3:14-cv-03264-JD, U.S. District Court for the Northern District of California.

## **SECTION 2 - SETTLEMENT APPROVAL**

### **2.1 Best Efforts**

- (1) The Parties shall use their best efforts to implement this Settlement Agreement and to secure the prompt, complete and final dismissal with prejudice of the Proceedings as against the Settling Defendants in the Ontario Electrolytic Action, Ontario Film Action and BC Electrolytic Action, and a prompt, complete declaration of settlement out of court of the Québec Action as against the Settling Defendants in the Québec Action. It is agreed that the Plaintiffs may seek permission from the courts to conduct the approval process of this settlement on a national basis through a coordinated joint hearing before the Courts.

### **2.2 Motions Seeking Approval of Notice and Certification or Authorization for Settlement Purposes**

- (1) Subject to subsection 2.2(3) and 2.2(4), the Ontario Plaintiffs and the BC Plaintiffs shall bring motions before the Ontario Court and BC Court, respectively, as soon as practicable after the Execution Date for orders approving the Notice of Certification and of Approval Hearings and certifying each of the Proceedings commenced in their respective jurisdictions as a class proceeding as against the Settling Defendants (for settlement purposes only).
- (2) Subject to subsection 2.2(3) and 2.2(4), the Québec Plaintiff shall bring a motion for authorization to amend the authorized class definition in the Québec Action as against the Settling Defendants (for settlement purposes only) to reflect the Electrolytic Class Period, and for approval of the Notice of Certification and of Approval Hearings, as soon as practicable after the Execution Date.
- (3) The Ontario order approving the Notice of Certification and of Approval Hearings described in subsection 2.2(1) and certifying the Ontario Electrolytic Action for settlement purposes shall be proposed to the Ontario Court substantially in the form attached as

Schedule “C”. The Ontario Film Plaintiff shall seek an order in the Ontario Film Action substantially in the form attached as Schedule “D” including recognition that the Settling Defendants are not named as defendants in the BC Film Action or in respect of Film Capacitors in the Québec Action, and a declaration that the opt-out periods provided in the BC Film Action and the Québec Action satisfy the requirement of section 9 of the *Class Proceedings Act*, 1992, S.O. 1992, c. 6 for the purposes of the Ontario Film Action, that no further opt-out period is necessary for the Ontario Film Action and that the opt-out period expired on October 24, 2018, or in the alternative to such declaration, providing such further opt-out period as may be required to certify for settlement purposes a class comprising all Film Settlement Class Members.

- (4) Subject to subsection 2.2(5), the form and content of the Québec and BC orders approving the Notice of Certification and of Approval Hearings described in subsection 2.2(1) and authorizing or certifying the Québec Action and BC Electrolytic Action for settlement purposes shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the Ontario order attached as Schedule “C”, as may be modified by the Ontario Court or as agreed by the Parties.
- (5) At the hearings described in subsections 2.2(1) and 2.2(2), and subject to subsection 2.2(6), Class Counsel shall seek orders in the BC Film Action and the Québec Action, respectively, which:
  - (a) recognize that: (i) the Ontario Film Action comprises a national class; (ii) the Settling Defendants were named in the Ontario Film Action but not in the BC Film Action and not in respect of Film Capacitors in the Québec Action, as applicable; and (iii) the Settling Defendants have settled the Released Film Claims on a national basis in the Ontario Film Action; and
  - (b) declare that: (i) a national opt-out period was provided in the Film Proceedings and the Québec Action pursuant to the orders of the Ontario Court, the BC Court and the Québec Court, made on June 28, 2018, September 26, 2018 and July 25, 2018, respectively; (iii) the national opt-out period was sufficient and effective for all Persons in British Columbia who purchased a Film Capacitor or a product containing a Film Capacitor during the Film Class Period, or for all Persons who purchased in Québec at least one Film Capacitor or a product containing at least one Film Capacitor during the Film Class Period, as applicable; and (iv) no further

opt-out period is necessary for Persons in British Columbia who purchased a Film Capacitor or a product containing a Film Capacitor during the Film Class Period, or for Persons who purchased in Québec at least one Film Capacitor or a product containing at least one Film Capacitor during the Film Class Period, as applicable.

- (6) If the Ontario Court declines to certify for settlement purposes the Ontario Film Action with a class including all Film Settlement Class Members, the Plaintiffs will seek orders from each of the Courts in respect of the Film Proceedings and the Québec Action on terms, agreed with the Settling Defendants, which facilitate a binding nationwide settlement and release of all Released Film Claims by all Film Settlement Class Members.

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

- (1) As soon as practicable after the orders referred to in subsections 2.2(1) and 2.2(2) have been granted and the Notice of Certification and of Approval Hearings has been published, the Plaintiffs shall bring motions before the Courts for orders approving this Settlement Agreement.
- (2) The Ontario order approving this Settlement Agreement in the Ontario Electrolytic Action, shall be proposed to the Ontario Court substantially in the form attached as Schedule "E". The Ontario Film Plaintiff shall seek an order in the Ontario Film Action substantially in the form attached as Schedule "F". The orders approving this Settlement Agreement in the BC Electrolytic Action and Québec Action shall be agreed upon by the Parties, and shall mirror the substance and, where possible, the form of the Ontario orders as may be modified by the Ontario Court or as agreed by the Parties.
- (3) For greater clarity, if the Plaintiffs are granted orders in accordance with subsection 2.2(6), as soon as practicable thereafter the Plaintiffs will seek orders approving this Settlement Agreement from each of the Courts in respect of the Film Proceedings and the Québec Action on terms, agreed with the Settling Defendants, which facilitate a binding nationwide settlement and release of all Released Film Claims by all Film Settlement Class Members.
- (4) This Settlement Agreement shall only become final on the Effective Date.

### **2.4 Pre-Motion Confidentiality**

- (1) Until the first of the motions required by subsection 2.2 is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them

without the prior consent of Counsel for the Settling Defendants and Class Counsel, as the case may be, except to legal counsel or as required for the purposes of financial reporting, annual reports or the preparation of financial records (including tax returns and financial statements), as necessary to give effect to the terms of this Settlement Agreement, or as otherwise required by law.

### **SECTION 3 - SETTLEMENT BENEFITS**

#### **3.1 Payment of Settlement Amount**

- (1) On the Execution Date, Class Counsel shall provide the necessary deposit information or wiring information, whichever is necessary to remit payment, to Counsel for the Settling Defendants. Within forty-five (45) days of the Execution Date, the Settling Defendants shall pay the Settlement Amount to Class Counsel for deposit into the Trust Account.
- (2) The Settlement Amount shall be inclusive of all amounts, including interest and costs. The Settlement Amount and other consideration to be provided in accordance with the terms of this Settlement Agreement shall be provided in full satisfaction of the Released Claims against the Releasees.
- (3) The Releasees shall have no obligation to pay any amount in addition to the Settlement Amount in respect to the Released Claims for any reason, pursuant to or in furtherance of this Settlement Agreement or the Proceedings.
- (4) Ontario Counsel or its duly appointed agent shall maintain the Trust Account as provided for in this Settlement Agreement.
- (5) Ontario Counsel or its duly appointed agent shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Courts obtained after notice to the Parties.

#### **3.2 Taxes and Interest**

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

Settlement Classes. Ontario Counsel or its duly appointed agent shall be solely responsible to fulfill all tax reporting and payment requirements arising from the monies in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned on the monies in the Trust Account shall be paid from the Trust Account.

- (3) The Settling Defendants shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned by the monies in the Trust Account or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is not approved, is terminated or otherwise fails to take effect, in which case the interest earned on the Settlement Amount in the Trust Account shall be paid to the Settling Defendants who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by Ontario Counsel or its duly appointed agent.

#### **SECTION 4 - COOPERATION**

##### **4.1 Extent of Cooperation**

- (1) Within thirty (30) days after the Execution Date or at a time mutually agreed upon by the Parties acting reasonably, but prior to the settlement approval motions contemplated in subsection 2.3, the Settling Defendants shall provide to Class Counsel:

(a) an oral evidentiary proffer, through a meeting between Class Counsel and Counsel for the Settling Defendants, including their U.S. Litigation counsel if the Settling Defendants so elect, which will summarize relevant information originating with the Settling Defendants that is not covered by privilege relating to the allegations in the Proceedings. The information shall be derived from the Settling Defendants' pre-existing work product, investigations, interviews and factual inquiries in respect of the matters at issue in the Proceedings. To the extent known, the information will include, without limitation:

- (i) information regarding the substance and chronology of contacts, meetings and communications during the Class Period that are relevant to the allegations in the Proceedings and that occurred between, among or including the Settling Defendants and other Defendants in respect of Electrolytic Capacitors sold to customers in the industry segments in which

the Settling Defendants operated, including without limitation, the sale of Electrolytic Capacitors in the automotive industry segment;

- (ii) information regarding the conduct of other Defendants in respect of the contacts, meetings and communications described in (i);
  - (iii) disclosure to Class Counsel of the identities and known particulars (if permitted by law) of “key” former officers, directors, and employees of the Settling Defendants who witnessed and/or participated in conduct relevant to the allegations in the Proceedings; and
  - (iv) the identification and description of “key” documents possessed by the Settling Defendants in respect of conduct relevant to the allegations in the Proceedings.
- (b) The method and meeting place of the oral evidentiary proffer shall be agreed upon between the Parties having regard to the COVID-19 Pandemic and may be conducted virtually through a secure virtual meeting platform. The oral evidentiary proffer may last up to one full business day. Counsel for the Settling Defendants shall make themselves available for reasonable follow-up questions by Class Counsel. Class Counsel may request a meeting with Counsel for the Settling Defendants, which shall not exceed two (2) hours, for the purpose of discussing Class Counsel’s consolidated reasonable follow-up questions.
- (c) Notwithstanding any other provision of this Settlement Agreement, and for greater certainty, it is agreed that all statements made and information provided by Counsel for the Settling Defendants as part of the oral evidentiary proffer and follow-up questioning are privileged, will be kept strictly confidential, and may not be directly or indirectly disclosed to any other Person, unless disclosure is ordered by a Court or unless there is an agreement between the Plaintiffs and the Settling Defendants to make such disclosure. Further, absent a Court order, Class Counsel will not attribute any information obtained from the proffer or follow-up questioning to the Settling Defendants and/or Counsel for the Settling Defendants. Notwithstanding the foregoing, Class Counsel may: (i) use information obtained from the proffer and or follow-up questioning for their own internal use in connection with the prosecution of the Proceedings, in confidential without

prejudice settlement discussions with Non-Settling Defendants and for the purpose of developing the Distribution Protocol or any other allocation plan relating to any settlement or judgment proceeds, except in respect of the prosecution of any claims against Releasees; and (ii) rely on such information to certify that, to the best of Class Counsel's knowledge, information and belief, such information has evidentiary support or will likely have evidentiary support after reasonable opportunity for further investigation or discovery, but, absent a court order sought and obtained by another person, the Plaintiffs shall not introduce any information from a proffer or follow-up questioning into the record or subpoena any Counsel for the Settling Defendants related to a proffer or follow-up questioning.

- (2) It is understood that the evidentiary proffer and follow-up questioning described in Section 4.1(1) might take place before the Effective Date. In such event:
  - (a) any information provided in the course of that evidentiary proffer or follow-up questioning, including depictions of Documents, shall be subject to the terms and protections of this Settlement Agreement; and
  - (b) in the event that this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, information provided during the evidentiary proffer or follow-up questioning shall not be used by the Plaintiffs or Class Counsel, whether directly or indirectly, in any way for any reason, including, without limitation, against the Settling Defendants as an admission or evidence of any violation of any statute or law, or of any liability or wrongdoing by the Settling Defendants or of the truth of any claims or allegations in the Proceedings, and such information shall not be discoverable by any Person or treated as evidence of any kind, unless otherwise ordered by a court. In order to give effect to this agreement, Class Counsel agrees to make reasonable efforts to return all copies of any Documents received during, and destroy all copies of any notes taken during (or subsequent reports provided about), the evidentiary proffer and follow-up questioning and to provide written confirmation to the Settling Defendants of having done so.
- (3) Within sixty (60) days after the Effective Date, or at a time mutually agreed upon by the Parties acting reasonably, the Settling Defendants shall make reasonable efforts to



provide to Class Counsel, to the extent permitted by relevant protective or other court orders in the U.S. Litigation:

- (a) copies of all Documents, together with any pre-existing translations of those Documents, produced by the Settling Defendants to the Canadian Competition Bureau, the U.S. Department of Justice and/or in the U.S. Litigation, all to be provided in electronic form if available. The U.S. Litigation Documents will, to the extent possible, be produced with the same document numbers utilized in the U.S. Litigation and shall include any pre-existing and non-privileged electronic coding or metadata produced in the U.S. Litigation;
- (b) any deposition transcripts for depositions of current or former employees, officers or directors of the Releasees produced by the Settling Defendants in the U.S. Litigation (including exhibits thereto which originated from the Settling Defendants), including deposition transcripts of any future depositions given by the Settling Defendants in the U.S. Litigation, all to be provided in electronic form if available and any pre-existing translations of the foregoing;
- (c) electronic copies of any declarations or affidavits of current or former employees, officers or directors of the Releasees, including all exhibits thereto, taken in the U.S. Litigation and produced by the Settling Defendants, and any pre-existing translations;
- (d) any answers to interrogatories provided by the Settling Defendants in the U.S. Litigation and any pre-existing translations of the foregoing;
- (e) electronic copies of any responses to requests to admit provided by the Settling Defendants in the U.S. Litigation and any pre-existing translations into English;
- (f) disclosure of all customer and sales data produced in the U.S. Litigation by the Settling Defendants in addition to disclosure of customer and sales data concerning the Settling Defendants' direct sales of Electrolytic Capacitors to customers in Canada during the Class Period. The Settling Defendants agree to provide reasonable assistance to Class Counsel and to answer reasonable questions in respect of the sales and customer data that is produced;

- (g) a summary of the Settling Defendants' best information concerning its global sales statistics for Electrolytic Capacitors during the Class Period; and
  - (h) disclosure to Class Counsel of any reasonably known general particulars of North American downstream uses of the Settling Defendants' Electrolytic Capacitors including the identity of major original equipment manufacturers reasonably known to the Settling Defendants to have purchased Electrolytic Capacitors which were incorporated into products sold in Canada within the Class Period.
- (4) The disclosures contemplated by subsections 4.1(3)(g) and (h) and responses to questions contemplated by subsection 4.1(3)(f) shall be given by way of oral evidentiary proffer by Counsel for the Settling Defendants and are subject to the terms and conditions set out in subsection 4.1(1)(c).
- (5) Within ninety (90) days of a request from Class Counsel, which shall not be made until the earlier of (i) a finalized discovery plan in the Ontario Electrolytic Capacitors Action or (ii) a finalized litigation protocol that provides for the production of documents in the Québec Action, unless it is otherwise agreed by the Parties that the request may be made on other reasonable grounds at an earlier time, the Settling Defendants agree to the conduct of a witness interview by the Plaintiffs with one (1) current employee of the Settling Defendants with knowledge of conduct relevant to the allegations made in the Proceedings. The interview may last up to two (2) full business days and will occur by videoconference using a virtual meeting platform. If applicable COVID-19 related restrictions have been lifted, the Plaintiffs may seek to conduct the interview in person, in which case the interview will occur in Japan, unless the Settling Defendants consent to an in-person interview outside of Japan. The interview shall not be under oath, shall not be recorded and shall be subject to the terms and conditions set out in subsection 4.1(1)(c) as if the information provided by the witness in the interview was by way of proffer given by Counsel for the Settling Defendants. Costs incurred by, and the expenses of, the employee(s) of the Settling Defendants in relation to such interview, including any cost for a translator, shall be the responsibility of the Settling Defendants. Absent a court order sought and obtained by another person, the Plaintiffs shall not introduce any information obtained from the interview into the record or subpoena the witness to testify in respect of the content of the interview. If such employee refuses to provide information, or otherwise cooperate, the Settling Defendants shall use reasonable efforts to make him or her available for the

interview, where “reasonable efforts” shall not include disciplining or terminating their employment. While the Plaintiffs may pursue enforcement of any or all of their rights to receive the witness interview and related cooperation under this clause, the failure of an employee to agree to make himself or herself available, or to otherwise cooperate with the Plaintiffs, shall not constitute a violation of this Settlement Agreement.

- (6) The Settling Defendants agree to use reasonable efforts to make available one (1) individual to authenticate any of their Documents or data produced in accordance with subsection 4.1(3) to the extent the Settling Defendants can establish their authenticity and the Plaintiffs, acting reasonably, require their authentication for their admission and use at any point in the Proceedings.
- (7) The Settling Defendants agree to use reasonable efforts make available one (1) current employee of the Settling Defendants with knowledge of conduct relevant to the allegations made in the Proceedings for the purposes of giving trial testimony solely by videoconference from his or her country of residence, to the extent that such evidence is reasonably required by the Plaintiffs. The Plaintiffs shall use reasonable efforts to arrange that such trial testimony be allowed to be given by videoconference; however, if the Court does not agree to allow such trial testimony to be received by videoconference, the Settling Defendants agree to use reasonable efforts to make the current employee available to give in-person testimony at trial in Canada. The Parties agree to collaborate to minimize the costs and inconvenience incurred by, and the expenses of, the employee in relation to providing such testimony, and agree that the Plaintiffs shall assume those costs. If such employee refuses to testify, the Settling Defendants shall use reasonable efforts to make him or her available to testify by videoconference or in-person, as the case may be, where “reasonable efforts” shall not include disciplining or terminating their employment. The failure of an employee to agree to make himself or herself available, or to otherwise cooperate with the Plaintiffs, shall not constitute a violation of this Settlement Agreement.
- (8) The obligation to produce and authenticate Documents produced pursuant to subsection 4.1(6) shall be a continuing one to the extent that additional Documents are provided by the Settling Defendants to the Canadian Competition Bureau, the U.S. Department of Justice or in the context of the U.S. Litigation regarding Electrolytic Capacitors which are at issue in the Proceedings. Class Counsel and the Plaintiffs shall, in reference to this

continuing obligation, consult with Counsel for the Settling Defendants and seek to utilize the least burdensome, costly and intrusive means for the Settling Defendants to discharge their obligation under this provision.

- (9) Nothing in this Settlement Agreement shall require, or shall be construed to require, the Settling Defendants, or any representative or employee of the Settling Defendants, to disclose or produce any Documents or information that is legally privileged or to disclose or produce any Documents or information in breach of any order, non-disclosure, privacy or confidentiality obligation, regulatory directive, rule or law of this or any jurisdiction, it being understood and agreed that no non-disclosure or confidentiality obligation applies or shall apply to prevent the productions contemplated by subsection 4.1(3).
- (10) If any of the Documents referenced in section 4.1 are accidentally or inadvertently disclosed or produced, such Documents shall be promptly returned to the Settling Defendants and the Documents and the information contained therein shall not be disclosed or used, directly or indirectly, except with the express written permission of the Settling Defendants, and the production of such Documents shall in no way be construed to have waived in any manner any privilege, doctrine, law, or protection attached to such Documents.
- (11) The obligations of the Settling Defendants to cooperate as particularized in section 4.1 shall not be affected by the release provisions contained in section 7 of this Settlement Agreement. The obligations of the Settling Defendants to cooperate shall cease at the date of final judgment in the Proceedings as against all Defendants. For greater certainty, the Plaintiffs' failure to strictly enforce any of the deadlines for the Settling Defendants to provide cooperation pursuant to this section 4.1 is not a waiver of the cooperation rights granted by section 4.1.
- (12) The cooperation obligations outlined herein are essential and material terms of the Settlement Agreement. Subject to subsections 4.1(5) and (7), if the Settling Defendants materially breach this Section, the Plaintiffs may move before the Courts to enforce the terms of this Settlement Agreement—and may exercise any rights they have to seek or obtain testimony, discovery, information or Documents from current officers, directors and/or employees of the Settling Defendants.

- (13) Subject to subsection 4.1(13), the provisions set forth in this subsection are the exclusive means by which the Plaintiffs and Class Counsel may obtain discovery, information or Documents from the Settling Defendants and other Releasees, including the officers, directors or employees of the Settling Defendants and other Releasees as at the Effective Date, and the Plaintiffs and Class Counsel agree that they shall not pursue any other means of discovery against, or seek to compel the evidence of, the Settling Defendants and the other Releasees or their current officers, directors, employees, agents, or counsel, whether in Canada or elsewhere and whether under the rules or laws of any Canadian or foreign jurisdiction.
- (14) For greater clarity, the Plaintiffs do not in any case waive any rights they have to seek or obtain testimony, discovery, information or Documents from those officers, directors and/or employees of the Settling Defendants and other Releasees who, as at the Effective Date, are former officers, directors and/or employees of the Settling Defendants and other Releasees.
- (15) A material factor influencing the Settling Defendants' decision to execute this Settlement Agreement is their desire to limit the burden and expense of this litigation. Accordingly, the Plaintiffs agree to exercise good faith in seeking cooperation from the Settling Defendants, agree not to seek information that is unnecessary or duplicative, and agree otherwise to avoid imposing undue or unreasonable burdens or expense on the Settling Defendants.

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

- (1) It is understood and agreed that all Documents and information made available or provided by the Settling Defendants to the Plaintiffs under this Settlement Agreement, shall be used only in connection with the prosecution of the claims in the Proceedings, and shall not be used directly or indirectly for any other purpose, except to the extent that the Documents or information are or become publicly available not through breach of this Agreement. Subject to the subsections 4.1(1)(c), 4.1(4) and 4.1(5), the Plaintiffs and Class Counsel agree they will not disclose the Documents and information provided by the Settling Defendants except: (i) to experts, consultants or third-party service providers retained by them in connection with the Proceedings who have agreed to comply with the provisions of this Settlement Agreement and any confidentiality orders issued pursuant to subsection 4.2(2); (ii) to the extent that the Documents or information are or become

publicly available; (iii) as necessary for the prosecution of the Proceedings; or (iv) as otherwise required by law. Subject to the foregoing, the Plaintiffs and Class Counsel shall take reasonable precautions to ensure and maintain the confidentiality of such Documents and information, and of any work product of Class Counsel that discloses such Documents and information, except to the extent that the Documents and information are or become publicly available not through breach of this Agreement.

- (2) If the Plaintiffs intend to produce for discovery or file in the Proceedings any Documents or other information provided by the Settling Defendants as cooperation under the Settlement Agreement (and there is not already a confidentiality order that applies), the Plaintiffs shall provide the Settling Defendants with an advance description of the Documents or other information sought to be produced or filed at least sixty (60) days in advance of the proposed production or filing, in order that the Settling Defendants may move to obtain a sealing or confidentiality order or similar relief. If, within the sixty (60) day period, the Settling Defendants do not so move, the Plaintiffs and Class Counsel can produce or file the information or Documents in the ordinary course. If, within that sixty (60) day period, the Settling Defendants so move, the Plaintiffs and Class Counsel shall not disclose the confidential Documents or information until the Settling Defendants' motion has been decided and all applicable appeal periods have expired, except, so as not to delay prosecution of the Proceedings, Class Counsel may: (i) provide, on an interim basis, Documents or information to external counsel for the Non-Settling Defendants in the Proceedings provided that counsel for the Non-Settling Defendants agree that, until the Settling Defendants' motion has been decided and all applicable appeal periods have expired, they will keep the Documents or information on an external counsel of record only basis and will only disclose such Documents or information to independent expert(s) retained by a Party for the purposes of the Proceedings, as well as secretarial, clerical or other support personnel of such expert(s) to whom disclosure is reasonably necessary. An independent expert may not be an employee of a Plaintiff or Defendant in the Proceedings, or a competitor of the Settling Defendants; and (ii) file such Documents or information with the relevant Court in sealed envelopes or other appropriate containers, segregated from the public record, endorsed with the title of the Proceeding and the following statement: "This envelope/box/container containing documents which are filed by [name of Party] and subject to a pending confidentiality motion is not to be opened nor the contents thereof to be displayed or revealed to any non-Court personnel except by order of the Court" and such records shall not form part of the public record in the relevant

Proceeding except upon order of the relevant Court or by agreement of all Parties and/or the Settling Defendants whose confidential information is contained therein.

- (3) In the event that a Person applies for an order requiring the Plaintiffs to disclose or produce any Documents or information provided by the Settling Defendants as cooperation under this Settlement Agreement, the Plaintiffs shall notify the Settling Defendants of such application promptly upon becoming aware of it and no later than ten (10) days after disclosure or production is sought, in order that the Settling Defendants may move to oppose such disclosure or production. In no circumstances shall the Plaintiffs or Class Counsel apply for or consent to such an application for disclosure or production. The Plaintiffs and Class Counsel shall not disclose the confidential information or Documents until the Settling Defendants' motion has been decided and a final order has been issued requiring the Plaintiffs and/or Class Counsel to produce the relevant information or Documents, except: (i) to the extent such information or Documents are or become otherwise publicly available; (ii) as ordered to do so by a Court; or (iii) in the event that the Person making the request is a Non-Settling Defendant, so as not to delay prosecution of the relevant Proceeding(s), Class Counsel may provide, on an interim basis, Documents or information to counsel for the Non-Settling Defendants provided that counsel for the Non-Settling Defendants agree and give assurances that, until a final order has been issued requiring the Plaintiffs and/or Class Counsel to produce the relevant information or Documents, and all applicable appeal periods have expired, the Documents or information will remain with external counsel and will only be disclosed to independent expert(s) retained by a Party for the purposes of the relevant Proceeding, as well as secretarial, clerical or other support personnel of such expert(s) to whom disclosure is reasonably necessary. An independent expert may not be an employee of a Plaintiff or Defendant in the relevant Proceeding, or a competitor of the Settling Defendants.
- (4) The Plaintiffs shall in good faith consult with the Settling Defendants before the Plaintiffs agree to the terms of any confidentiality agreement or confidentiality order which would govern the confidentiality of information or Documents originating from the Settling Defendants in the Proceedings, and shall make best efforts to accommodate the Settling Defendants' reasonable requests in respect of same.

- (5) For greater certainty, nothing in this section 4.2 permits the Plaintiffs to disclose or use information in a manner inconsistent with the terms and conditions of subsections 4.1(1)(c), 4.1(4) or 4.1(5).

### **4.3 Intervention in the U.S. Litigation**

- (1) The Settling Defendants and other Releasees shall not oppose any application that may be brought by or on behalf of the Plaintiffs to: (i) intervene in the U.S. Litigation (if such intervention is possible) in order to gain access to discovery, depositions, documents and other Documents and information subject to a protective order that are relevant to the Proceedings; or (ii) compel a U.S. resident to “give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal” pursuant to Title 28 of the United States Code §1782 for the prosecution of the Proceedings, provided such application is not otherwise inconsistent with the terms of this Settlement Agreement. However, it is understood and agreed that neither the Settling Defendants nor the other Releasees have any obligation to bring or otherwise participate in such an application.

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

### **5.1 Distribution Protocol(s)**

- (1) After the Effective Date, at a time wholly within the discretion of Class Counsel, but on notice to the Settling Defendants, Class Counsel will make an application seeking orders from the Courts approving the Distribution Protocol(s).
- (2) Class Counsel will ensure that the Distribution Protocol(s) complies with the requirements of Québec law, including without limitation: (i) in respect of remittances to the *Fonds d'Aide of actions collectives*; and (ii) in the event that there is any remaining balance in the Trust Account that must be allocated *cy pres* or otherwise to one or more recipients.

## **SECTION 6 - OPTING-OUT**

### **6.1 The Opt-Out Deadline has Expired**

- (1) The deadline to opt-out of the Proceedings expired on October 24, 2018, pursuant to Orders of the Ontario, BC and Québec Courts.



## **SECTION 7 - RELEASES AND DISMISSALS**

### **7.1 Release of Releasees**

- (1) Upon the Effective Date, subject to subsection 7.2, in consideration of payment of the Settlement Amount, the without costs dismissal or settlement out of court of the Proceedings, and for other valuable consideration set forth in this Settlement Agreement, the Electrolytic Releasors forever and absolutely release and forever discharge the Releasees from the Released Electrolytic Claims.
- (2) Upon the Effective Date, subject to subsection 7.2, in consideration of the without costs dismissal or settlement out of court of the Proceedings, and for other valuable consideration set forth in this Settlement Agreement, the Film Releasors forever and absolutely release and forever discharge the Releasees from the Released Film Claims.

### **7.2 Covenant Not to Sue**

- (1) Notwithstanding subsection 7.1, upon the Effective Date, for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasors do not release the Releasees, but instead covenant and undertake not to make any claim in any way or to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

### **7.3 No Further Claims or Litigation**

- (1) Upon the Effective Date, the Releasors and Class Counsel shall not now or hereafter institute, continue, intervene in, provide assistance for, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, action, suit, cause of action, claim or demand against any Releasee, or against any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claim except for the continuation of the Proceedings against the Non-Settling Defendants or unnamed co-conspirators that are not Releasees or, if the Proceedings are not certified or authorized, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendants or unnamed co-conspirator that is not a Releasee. For the purposes of this subsection 7.3(1), Class Counsel includes anyone currently employed by or a partner with Class Counsel. For greater certainty and

without limiting the generality of the foregoing, the Releasors shall not assert or pursue a Released Claim against any Releasee under the laws of any foreign jurisdiction.

- (2) Subsection 7.3 shall be inoperative as against BC Counsel to the extent that it is inconsistent with BC Counsel's obligations under section 3.2-10 of the Law Society of British Columbia's *Code of Professional Conduct for British Columbia*.

#### **7.4 Dismissal of the Proceedings**

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

#### **7.5 Dismissal of Other Actions**

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

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

## **SECTION 8 - BAR ORDER AND WAIVER OF SOLIDARITY**

### **8.1 Ontario and British Columbia Bar Order**

(1) The Plaintiffs and the Settling Defendants agree that the orders in the Ontario Electrolytic Action and BC Electrolytic Action approving this Settlement Agreement must include a bar order in respect of the Ontario Electrolytic Action and the BC Electrolytic Action which includes the following terms:

- (a) A provision that all claims for contribution, indemnity or other claims over, whether asserted, unasserted, or asserted in a representative capacity, inclusive of interest, taxes and costs relating to the Released Electrolytic Claims which were or could have been brought in the Electrolytic Proceedings or any Other Action, or otherwise, or could in the future be brought on the basis of the same events, actions and omissions underlying the Electrolytic Proceedings, by any Non-Settling Electrolytic Defendants, any named or unnamed alleged co-conspirator that is not a Releasee, any Settled Electrolytic Defendant, or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Electrolytic Defendants, any named or unnamed alleged co-conspirator that is not a Releasee, any Settled Electrolytic Defendant, or any other Person or party, are barred, prohibited and enjoined in accordance with the terms of this subsection (unless such claim is made in respect of a claim by a Person who has validly opted-out of the Proceedings);
- (b) A provision that if the Ontario Court or BC Court, as applicable, ultimately determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise:
  - (i) the Ontario Electrolytic Plaintiffs or BC Plaintiff, as applicable, and the Ontario Electrolytic Settlement Class or BC Electrolytic Settlement Class, as applicable, shall not be entitled to claim or recover from the Non-Settling Electrolytic Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award,

disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;

- (ii) the Ontario Electrolytic Plaintiffs or BC Plaintiff, as applicable, and the Ontario Electrolytic Settlement Classes or BC Electrolytic Settlement Class, as applicable, shall limit their claims against the Non-Settling Electrolytic Defendants and/or, named or unnamed alleged co-conspirators and/or, any other Person or party that is not a Releasee, to include, and shall be entitled to recover from the Non-Settling Electrolytic Defendants and/or, named or unnamed alleged co-conspirators and/or, any other Person or party that is not a Releasee, only such claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigation costs claimed pursuant to section 36 of the *Competition Act*) attributable to the aggregate of the several liability of the Non-Settling Electrolytic Defendants and/or, named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee, to the Ontario Electrolytic Plaintiffs or BC Plaintiff, as applicable, and the Ontario Electrolytic Settlement Class or BC Electrolytic Settlement Class, as applicable, if any, and, for greater certainty, the Ontario Electrolytic Settlement Class or BC Electrolytic Settlement Class shall be entitled to seek to recover such damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigation costs claimed pursuant to section 36 of the *Competition Act*) on a joint and several basis as between the Non-Settling Electrolytic Defendants and/or, named or unnamed alleged co-conspirators and/or, any other Person or party that is not a Releasee, if permitted by law; and
- (iii) the Ontario Court and the BC Court, as applicable, shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Ontario Electrolytic Action or BC Electrolytic Action, as applicable, whether or not the Settling Defendants remain in the Ontario Electrolytic Action or BC Electrolytic Action, or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be

determined as if the Releasees are parties to the Ontario Electrolytic Action or BC Electrolytic Action, as applicable, and any determination by the Court in respect of the Proportionate Liability of the Releasees shall only apply in the Ontario Electrolytic Action or BC Electrolytic Action, as applicable, and shall not be binding on the Releasees in any other proceeding;

- (c) A provision that nothing in the Ontario and British Columbia orders approving this Settlement Agreement, as applicable, shall limit, restrict or affect any arguments which the Non-Settling Electrolytic Defendants may make regarding the reduction of any assessment of damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigation costs claimed pursuant to section 36 of the *Competition Act*), or judgment against them in favour of members of the Ontario Electrolytic Settlement Class or BC Electrolytic Settlement Class, as applicable, in the Ontario Electrolytic Action or BC Electrolytic Action, as applicable, or the rights of Ontario Electrolytic Plaintiffs and Ontario Electrolytic Settlement Class Members or BC Plaintiff and BC Electrolytic Settlement Class Members, as applicable, to oppose or resist any such arguments, except as provided for in this section 8.1;
- (d) A provision that a Non-Settling Electrolytic Defendant may, on motion to the Ontario Court or BC Court, as applicable, and on at least twenty (10) days' notice to Counsel for the Settling Defendants, and not to be brought until the Ontario Electrolytic Action or BC Electrolytic Action, as applicable, has been certified as a class proceeding against the Non-Settling Electrolytic Defendants (but not including any certification for settlement purposes), seek Orders for the following, which shall be determined as if the Settling Defendants remained a party to the Ontario Electrolytic Action or BC Electrolytic Action, as applicable:
  - (i) documentary discovery and an affidavit of documents (list of documents in British Columbia) from the Settling Defendants in accordance with the relevant rules of civil procedure;
  - (ii) oral discovery of a representative of the Settling Defendants, the transcript of which may be read in at trial;

- (iii) leave to serve a request to admit (notice to admit in British Columbia) on the Settling Defendants in respect of factual matters; and/or
  - (iv) the production of a representative of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Electrolytic Defendants;
- (e) A provision that the Settling Defendants retain all rights to oppose such motion(s) brought pursuant to subsection 8.1(1)(d). Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of Documents to be produced and/or for information obtained from discovery in accordance with subsection 8.1(1)(d). Notwithstanding any provision in the Ontario and British Columbia orders approving this Settlement Agreement, on any motion brought pursuant to subsection 8.1(1)(d), the Ontario Court or BC Court, as applicable, may make such orders as to costs and other terms as it considers appropriate; and
- (f) A provision that a Non-Settling Electrolytic Defendant may serve the motion(s) referred to in subsection 8.1(1)(d) on the Settling Defendants by service on Counsel for the Settling Defendants in the relevant Proceeding.
- (2) To the extent that such an order is granted pursuant to subsection 8.1(1)(d) and discovery is provided to the Non-Settling Electrolytic Defendants, a copy of all discovery provided, whether oral or documentary in nature, shall be provided by the Settling Defendants to the Plaintiffs and Class Counsel within ten (10) days of such discovery being provided to a Non-Settling Electrolytic Defendants(s).
- (3) The Plaintiffs and the Settling Defendants agree that the orders in the Ontario Film Action approving this Settlement Agreement must include a bar order in respect of the Ontario Film Action in the same form contemplated by Sections 8.1 (1) and (2), with necessary modification.

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

- (1) The Plaintiffs and the Settling Defendants agree that the Québec order approving this Settlement Agreement must include a waiver or renunciation of solidarity in respect of the Québec Action which includes the following:

- (a) the Québec Plaintiff and the Québec Settlement Class expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts, deeds or other conduct of the Releasees relating to the Released Claims;
- (b) the Québec Plaintiff and the Québec Settlement Class shall henceforth only be able to claim and recover damages, including punitive damages, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) attributable to the conduct of the Non-Settling Defendants, the sales by the Non-Settling Defendants, and/or other applicable measure of proportionate liability of the Non-Settling Defendants;
- (c) any claims in warranty or any other claim or joinder of parties to obtain any contribution or indemnity from the Releasees relating to the Released Claims shall be inadmissible and void in the context of the Québec Action; and
- (d) the ability of Non-Settling Defendants to seek discovery from the Settling Defendants shall be determined according to the provisions of the *Code of Civil Procedure*, and the Settling Defendants shall retain and reserve all of their rights to oppose such discovery under any applicable law.

### **8.3 Claims Against Other Entities Reserved**

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

## **SECTION 9 - EFFECT OF SETTLEMENT**

### **9.1 No Admission of Liability**

- (1) The Parties expressly reserve all of their rights if this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason. The Parties further agree that, whether or not this Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with or arising from this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an

admission of any violation of any statute or law, or of any wrongdoing or liability by any of the Releasees, or of the truth of any of the claims or allegations contained in the Proceedings or any Other Actions, or any other pleading filed by the Plaintiffs or any other Settlement Class Member.

## **9.2 Agreement Not Evidence**

- (1) The Parties agree that, whether or not it is not approved, is terminated or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with or arising from this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, or to defend against the assertion of Released Claims, as necessary in insurance-related proceeding, or as otherwise required by law or as provided in this Settlement Agreement.

## **SECTION 10 - CERTIFICATION OR AUTHORIZATION TO AMEND FOR SETTLEMENT ONLY**

- (1) The Parties agree that the BC Electrolytic Action and Ontario Electrolytic Action and Ontario Film Action shall be certified as class proceedings and the authorized class definition in the Québec Action shall be amended as against the Settling Defendants solely for purposes of settlement of the Proceedings and the approval of this Settlement Agreement by the Courts, and such certification or authorization to amend shall not be used or relied on as against the Defendants for any other purpose or in any other proceeding.
- (2) The Plaintiffs agree that, in the motions for certification or authorization of the Proceedings as class proceedings for settlement purposes and for the approval of this Settlement Agreement, the only common issues that they will seek to define are the Common Electrolytic Issue and the Common Film Issue, and the only classes that they will assert are the Settlement Classes.
- (3) The Parties agree that the certification or authorization of the Proceedings as against the Settling Defendants for the purpose of implementing this Settlement Agreement, shall not



derogate in any way from the rights of the Plaintiffs as against the Non-Settling Defendants, except as expressly set out in this Settlement Agreement.

## **SECTION 11 - NOTICE TO SETTLEMENT CLASS**

### **11.1 Notices Required**

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

### **11.2 Form and Distribution of Notices**

- (1) The form of the notices referred to in subsection 11.1 and how and where they are published and distributed shall be as agreed to by the Plaintiffs and the Settling Defendants and, failing agreement, as ordered by the Courts.
- (2) The Plaintiffs shall bring and seek to schedule motions before the Courts seeking orders from the Courts approving the notices described in subsection 11.1. The Plaintiffs may determine the time of these motions in their full and complete discretion, after consultation with the Settling Defendants, and subject to subsection 2.2.
- (3) The form of the notices referred to in subsection 11.1 shall provide that Ontario Film Settlement Class Members wishing to object to the Settlement Agreement be permitted to file objections to the Ontario Court in writing and in French if they so choose (in which case Class Counsel agree to make available an unofficial translation for use by the Court), and be invited to contact Class Counsel to discuss ways to have their objections heard orally before the Court in French if they so choose.

## **SECTION 12 - ADMINISTRATION AND IMPLEMENTATION**

### **12.1 Mechanics of Administration**

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

## **SECTION 13 - CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES**

- (1) The Releasees shall not be liable for any fees, disbursements or taxes of any of Class Counsel's, the Plaintiffs' or Settlement Class Members' respective lawyers, experts, advisors, agents, or representatives.
- (2) Subject to section 14.3, Class Counsel shall pay the costs of the notices required by subsection 11.1 and any costs of translation required by subsection 15.12 from the Trust Account, as they become due.
- (3) Class Counsel may seek the Courts' approval to pay Class Counsel Fees and Disbursements contemporaneously with seeking approval of this Settlement Agreement. Class Counsel's court-approved fees shall be paid from the Trust Account after the Effective Date.
- (4) Except as provided herein, Administration Expenses may only be paid out of the Trust Account after the Effective Date.

## **SECTION 14 - NON-APPROVAL OR TERMINATION OF SETTLEMENT AGREEMENT**

### **14.1 Right of Termination**

- (1) In the event that:
  - (a) any Court declines to certify or authorize the Settlement Classes, for settlement purposes only, as contemplated by this agreement;

- (b) the Ontario Court or the BC Court declines to dismiss the Proceedings against the Settling Defendants or the Québec Action is not fully settled out of court as against the Settling Defendants;
- (c) any Court declines to approve this Settlement Agreement or any material term thereof, and the Parties agree that the cooperation, releases, bar orders, waiver or renunciation of solidarity and covenants not to sue contemplated by this Settlement Agreement are all material terms;
- (d) any Court approves this Settlement Agreement in a materially modified form;
- (e) any Court issues an order approving this Settlement Agreement in a form that is materially inconsistent with the terms of this Settlement Agreement or not substantially in the form attached to this Settlement Agreement as Schedules “E” or “F”; or
- (f) any order approving this Settlement Agreement made by the Courts do not become Final Orders;

the Settling Defendants and the Plaintiffs shall have the right to terminate this Settlement Agreement by delivering a written notice pursuant to subsection 15.18, within thirty (30) days following the event described above.

- (2) Except as provided for in subsection 14.4, if the Settling Defendants or the Plaintiffs exercise their right to terminate, the Settlement Agreement shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.
- (3) In addition, if the Settlement Amount is not paid in accordance with Section 3.1(1), the Plaintiffs shall have the right to terminate this Settlement Agreement by delivering a written notice pursuant to subsection 15.18 or move before the Courts to enforce the terms of this Settlement Agreement.
- (4) Any order, ruling or determination made by any Court with respect to Class Counsel Fees and Disbursements or the Distribution Protocol shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

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

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

#### **14.3 Allocation of Settlement Amount Following Termination**

- (1) If the Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, Ontario Counsel shall, within thirty (30) business days of the written notice

advising that the Settlement Agreement has been terminated in accordance with its terms, return to the Settling Defendants the Settlement Amount, plus all accrued interest thereon and less taxes paid on interest, any costs incurred with respect to the notices and translations required by subsections 11.1 and/or 15.12 up to a maximum of CAD \$25,000.00.

#### **14.4 Survival of Provisions After Termination**

- (1) If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, the provisions of subsections 3.1(5), 3.2(3), 4.1(2)(b), 9.1, 9.2, 11.1, 11.2, 14.1(2), 14.2, 14.3, 14.4, 15.2, 15.5 and 15.6 and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of subsections 3.1(5), 3.2(3), 4.1(2)(b), 9.1, 9.2, 11.1, 11.2, 14.1(2), 14.2, 14.3, 14.4, 15.2, 15.5 and 15.6 within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

### **SECTION 15 - MISCELLANEOUS**

#### **15.1 Motions for Directions**

- (1) Class Counsel or the Settling Defendants may apply to the Courts as may be required for directions in respect of the interpretation, implementation and administration of this Settlement Agreement. Unless the Courts order otherwise, motions for directions that do not relate specifically to matters affecting the BC Electrolytic Action or Québec Action shall be determined by the Ontario Court.
- (2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties except for those motions concerned solely with the implementation and administration of the Distribution Protocol.

#### **15.2 Releasees Have No Liability for Administration**

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

### **15.3 Headings, etc.**

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

### **15.4 Computation of Time**

- (1) In the computation of time in this Settlement Agreement, except where a contrary intention appears:
  - (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
  - (b) only in the case where the time for doing an act expires on a holiday as “holiday” is defined in the Ontario *Rules of Civil Procedure*, RRO 1990, Reg 194, the act may be done on the next day that is not a holiday.
- (2) Any failure by the Plaintiffs to demand adherence to, or seek enforcement of, a deadline applicable to any obligation of the Settling Defendants herein shall in no way constitute a waiver of said obligation or deadline.

### **15.5 Ongoing Jurisdiction**

- (1) Each of the Courts shall retain exclusive jurisdiction over the actions commenced in its jurisdiction and the Parties thereto.
- (2) The Parties agree that no Court shall make any order or give any direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a complementary order or direction being made or given by the other Court(s) with which it shares jurisdiction over that matter unless the Court takes act in its order or direction of

the agreement between the parties to renounce rights arising from said order or direction in the event that complementary order or direction is not made or given by the other Court(s) with which it shares jurisdiction over that matter.

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

#### **15.6 Governing Law**

- (1) Subject to section 15.6(2), this Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- (2) Notwithstanding section 15.6(1), for matters relating specifically to the BC Electrolytic Action, BC Film Action, or Québec Action, the BC Court or Québec Court, as applicable, shall apply the law of its own jurisdiction and the laws of Canada applicable therein.

#### **15.7 Entire Agreement**

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

#### **15.8 Amendments**

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

### **15.9 Binding Effect**

- (1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Settlement Class Members, the Settling Defendants, the Releasors, the Releasees and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made by the Plaintiffs shall be binding upon all Releasors and every covenant and agreement made by the Settling Defendants shall be binding upon all of the Releasees.

### **15.10 Counterparts**

- (1) This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or electronic signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

### **15.11 Negotiated Agreement**

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

### **15.12 Language**

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



### **15.13 Transaction**

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

### **15.14 Recitals**

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

### **15.15 Schedules**

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

### **15.16 Acknowledgements**

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

### **15.17 Authorized Signatures**

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

**15.18 Notice**

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

**FOR THE PLAINTIFFS AND CLASS COUNSEL:**

**Foreman & Company  
Professional Corporation**

c/o Jonathan Foreman  
4 Covent Market Place  
London, ON N6A 1E2

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

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

c/o Reidar Mogerman QC  
400-856 Homer St,  
Vancouver, BC V6B 2W

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

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

c/o Maxime Nasr  
300 Place d'Youville, Office B-10  
Montreal, QC H2Y 2B6

Tel: (514) 987-6700  
Fax: (514) 987-6886  
E-mail: mnasr@belleaulapointe.com

**FOR THE SETTLING DEFENDANTS:**

**DLA PIPER (CANADA) LLP**

c/o Kevin Wright  
666 Burrard Street, Suite 2800  
Vancouver, BC V6C 2Z7

Tel: (604) 643-6461  
Fax: (604) 605-3577  
Email: kevin.wright@dlapiper.com

**15.19 Date of Execution**

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

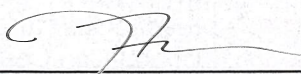
**Cygnus Electronics Corporation  
and Sean Allott**, by their counsel

Name of Authorized Signatory: Jonathan Foreman

Signature of Authorized Signatory:   
Foreman & Company Professional Corporation  
Ontario Counsel

Sara Ramsay, by her counsel

Name of Authorized Signatory: Jonathan Foreman

Signature of Authorized Signatory:   
Camp Fiorante Matthews Mogerman <sup>LLP</sup>  
BC Counsel

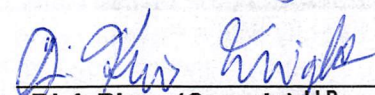

Option Consommateurs, by its counsel

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

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

ELNA Co., Ltd. and ELNA America, Inc. by their counsel

Name of Authorized Signatory J. Kevin Wright

Signature of Authorized Signatory:   
(I have authority to bind ELNA Co. Ltd. and ELNA America, Inc.)  DLA Piper (Canada) <sup>LLP</sup>  
Counsel for the Settling Defendants

Signature of Authorized Signatory:



\_\_\_\_\_  
**Foreman & Company Professional Corporation**  
Ontario Counsel

**Sara Ramsay**, by her counsel

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

Signature of Authorized Signatory:

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

**Option Consommateurs**, by  
its counsel

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

Josée Cavalancia

Signature of Authorized Signatory:



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

**ELNA Co., Ltd. and ELNA America, Inc.** by their  
counsel

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

Signature of Authorized Signatory:  
(I have authority to bind ELNA Co.,  
Ltd. and ELNA America, Inc.)

\_\_\_\_\_  
**DLA Piper (Canada)** <sup>LLP</sup>  
Counsel for the Settling Defendants

**SCHEDULE “A”  
ONTARIO AND BC ELECTROLYTIC PROCEEDINGS AND QUÉBEC ACTION**

| Proceeding   | Plaintiff(s)  | Defendants  | Settlement Class   |
|--|---|---|--|
| <p>Ontario Superior Court of Justice Court File No. 3795/14 CP (the “Ontario Electrolytic Action”)</p> | <p>Cygnus Electronics Corporation and Sean Allott</p> | <p>Panasonic Corporation; Panasonic Corporation of North America; Panasonic Canada Inc.; Sanyo Electric Co., Ltd.; NEC Tokin Corporation; NEC Tokin America Inc.; KEMET Corporation; KEMET Electronics Corporation; Nippon Chemi-Con Corporation; United Chemi-Con Corporation; Hitachi Chemical Co., Ltd.; Hitachi Chemical Company America, Ltd.; Hitachi Canada; Nichicon Corporation; Nichicon (America) Corporation; AVX Corporation; Rubycon Corporation; Rubycon America Inc.; Elna Co., Ltd.; Elna America Inc.; Matsuo Electric Co., Ltd.; Toshin Kogyo Co., Ltd.; Samsung Electro-Mechanics; Samsung Electro-Mechanics America Inc.; Samsung Electronics Canada Inc.; ROHM Co., Ltd.; ROHM Semiconductor U.S.A., LLC; Hitachi AIC Inc.; Hitachi Chemical Electronics Co., Ltd.; FPCAP Electronics (Suzhou) Co., Ltd.; Fujitsu Ltd.; Fujitsu Canada, Inc.; Holy Stone Enterprise Co., Ltd.; Vishay Polytech Co., Ltd. f/k/a Holystone Polytech Co., Ltd.; Milestone Global Technology, Inc. d/b/a Holystone International; and Holy Stone Holdings Co., Ltd.</p> | <p>All Persons in Canada who purchased Electrolytic Capacitors or a product containing an Electrolytic Capacitor during the Electrolytic Class Period other than (1) all BC Electrolytic Settlement Class Members (2) all Québec Settlement Class Members and (3) Excluded Persons.</p> <p>Electrolytic Capacitor means: aluminum and tantalum electrolytic capacitors; and,</p> <p>Electrolytic Class Period means: September 1, 1997 to December 31, 2014.</p> |
| <p>Québec Superior Court (District of Montreal), File No. 500-06-000704-144 (the “Québec Action”)</p>  | <p>Option consommateurs</p>                           | <p>Panasonic Corporation; Sanyo Electric Group Ltd.; NEC Tokin Corporation; Nippon Chemi-Con Corporation; Hitachi Chemical Co. Ltd.; Nichicon Corporation; Hitachi AIC Inc.; Elna Co. Ltd.; Holy Stone Enterprise Co., Ltd.; Holy Stone Holdings Co., Ltd; Matsuo Electric Co., Ltd.; Rohm Co., Ltd.; Rubycon Corporation; Toshin Kogyo Co., Ltd.</p>   | <p>All Persons who purchased in Québec at least one Electrolytic Capacitor or a product containing at least one Electrolytic Capacitor during the Electrolytic Class Period, except Excluded Persons.</p>  |

| Proceeding  | Plaintiff(s)       | Defendants  | Settlement Class  |
|---|--------------------|---|---|
| <p>British Columbia Supreme Court (Vancouver Registry) Court File No. S-146293 (the "BC Electrolytic Action")</p> | <p>Sara Ramsay</p> | <p>Panasonic Corporation f/k/a/ Matsushita Electric Industrial Co., Ltd.; Panasonic Corporation of North America; Panasonic Canada Inc.; Sanyo Electric Co., Ltd.; Sanyo Electronic Device (U.S.A.) Corp.; Sanyo North America Corporation; Taiyo Yuden Co., Ltd.; Taiyo Yuden (USA) Inc.; NEC Tokin Corporation; NEC Tokin America, Inc.; KEMET Electronics Corporation; Nippon Chemi-Con Corporation; United Chemi-Con, Inc.; Hitachi Chemical Co., Ltd.; Hitachi AIC Inc.; Hitachi Chemical Co. America, Ltd.; Hitachi Canada; Fujitsu Ltd.; Fujitsu Canada, Inc.; Nichicon Corporation; FPCAP Electronics (Suzhou) Co., Ltd.; Nichicon (America) Corporation; AVX Corporation; Rubycon Corporation; Rubycon America Inc.; Elna Co., Ltd.; Elna America Inc.; Matsuo Electric Co., Ltd.; Toshin Kogyo Co., Ltd.; Holy Stone Enterprise Co., Ltd.; Milestone Global Technology, Inc. d.b.a Holystone International; Vishay Intertechnology, Inc.; Vishay Polytech Co., Ltd. f/k/a/ Holy Stone Polytech Co., Ltd.; Samsung Electro-Mechanics; Samsung Electro-Mechanics America Inc.; Samsung Electronics Canada Inc.; ROHM Co., Ltd. and ROHM Semiconductor U.S.A., LLC</p> | <p>All Persons in British Columbia who purchased Electrolytic Capacitors or a product containing an Electrolytic Capacitor during the Electrolytic Class Period except Excluded Persons.</p> <p>Electrolytic Capacitor means: aluminum and tantalum electrolytic capacitors; and,</p> <p>Electrolytic Class Period means: September 1, 1997 to December 31, 2014.</p> |

**SCHEDULE “B”  
ONTARIO FILM ACTION**

| Proceeding   | Plaintiff          | Defendants   | Settlement Class   |
|--|--------------------|--|--|
| <p>Ontario Superior Court of Justice Court File No. 1272/16 CP (the “Ontario Film Action”)</p> | <p>Sean Allott</p> | <p>AVX Corporation; Elna Co., Ltd.; Elna America Inc.; Hitachi Chemical Co., Ltd.; Hitachi Chemical Company America, Ltd.; Hitachi Canada; Hitachi AIC Inc.; KEMET Corporation; KEMET Electronics Corporation; Matsuo Electric Co., Ltd.; Nichicon Corporation; Nichicon (America) Corporation; Nippon Chemi-Con Corporation; United Chemi-Con Corporation; Nissei Electric Co. Ltd.; Nitsuko Electronics Corporation; Okaya Electric Industries Co., Ltd.; Okaya Electric America, Inc.; Panasonic Corporation; Panasonic Corporation Of North America; Panasonic Canada Inc.; Rohm Co., Ltd.; Rohm Semiconductor U.S.A., Llc F/K/A Rohm Electronics U.S.A., Llc; Rubycon Corporation; Rubycon America Inc.; Shinyei Kaisha; Shinyei Technology Co., Ltd.; Shinyei Capacitor Co., Ltd.; Shinyei Corporation of America; Shizuki Electric Co., Ltd.; American Shizuki Corporation; Soshin Electric Co., Ltd.; Soshin Electronics of America Inc.; Taitso Corporation; Taitso America, Inc.; Toshin Kogyo Co., Ltd.; Holy Stone Enterprise Co., Ltd.; Milestone Global Technology, Inc. D/B/A Holystone International; and Vishay Polytech Co., Ltd. F/K/A Holystone Polytech Co., Ltd.</p> | <p>All Persons in Canada who purchased Film Capacitors or a product containing a Film Capacitor during the Film Class Period.</p> <p>Film Capacitor means: capacitors which use insulating plastic film and one of two conductive materials, propylene and/or polyester. Film Capacitors include, but are not limited to, the following four generations: (1) film and aluminum foil capacitors, (2) film and other metal capacitors, (3) layered capacitors, and (4) surface-mount capacitors (i.e., capacitors without leaves); and,</p> <p>Film Class Period means: January 1, 2002 to December 31, 2014.</p> |

**SCHEDULE "C"**

Court File No. 3795/14 CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE \_\_\_\_\_ ) , THE DAY  
) OF , 2021

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

**CYGNUS ELECTRONICS CORPORATION and SEAN ALLOTT**

**Plaintiffs**

- and -

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

**Defendants**

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

**ORDER**

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

**THIS MOTION** made by the Plaintiffs for an Order certifying this proceeding as a class proceeding for settlement purposes as against ELNA Co., Ltd. and ELNA America, Inc. (the "Settling Defendants") and approving the notice of settlement approval hearings and the method of dissemination of said notice was heard this day at the Court House, 80 Dundas Street, London, Ontario.

**ON READING** the materials filed, including the settlement agreement dated ●, 2021 attached to this Order as Schedule "A" (the "Settlement Agreement"), and on hearing the



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

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

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

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

All Persons in Canada who purchased Electrolytic Capacitors or a product containing an Electrolytic Capacitor during the Electrolytic Class Period other than (1) all BC Electrolytic Settlement Class Members and (2) all Québec Settlement Class Members and (3) Excluded Persons.

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

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

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

Did the Settling Defendants conspire to fix, raise, maintain or stabilize the price of, or allocate markets and customers of, Electrolytic Capacitors directly or indirectly in Canada during the Electrolytic Class Period? If so, what damages, if any, did the Ontario Electrolytic Settlement Class Members suffer?

5. **THIS COURT ORDERS** that the plaintiffs, Cygnus Electronics Corporation and Sean Allott, are appointed as the representative plaintiffs for the Ontario Electrolytic Settlement Class.

6. **THIS COURT ORDERS** that this Order, including but not limited to the certification of this action against the Settling Defendants for settlement purposes and the definitions of the Ontario Electrolytic Settlement Class, Electrolytic Class Period and Common Electrolytic Issue, and any reasons given by the Court in connection with this Order, is without prejudice to the rights and defences of the Non-Settling Electrolytic Defendants in connection with the ongoing Ontario Electrolytic Action and, without restricting the generality of the foregoing, may not be relied on by any Person to establish jurisdiction, the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the Ontario Electrolytic Action, as against the Non-Settling Electrolytic Defendants.
7. **THIS COURT ORDERS** that the opt-out period provided pursuant to the order of this Court made on June 28, 2018 satisfies the requirement of section 9 of the *Class Proceedings Act*, 1992, S.O. 1992, c. 6 for the purposes of this action, that no further opt-out period is necessary, and that the opt-out period expired on October 24, 2018.
8. **THIS COURT ORDERS** that the notices of certification and settlement approval hearing (the “**Notices**”) are hereby approved substantially in the form attached hereto as **Schedules “B-F”**.
9. **THIS COURT ORDERS** that the plan of dissemination of the Notices (the “**Plan of Dissemination**”) is hereby approved in the form attached hereto as **Schedule “G”** and that the Notices shall be disseminated in accordance with the Plan of Dissemination.
10. **THIS COURT ORDERS** that ● is appointed to disseminate the Notices in accordance with the terms of this Order.
11. **THIS COURT ORDERS** that this Order is contingent upon parallel orders being made by the BC Court and the Québec Court, and the terms of this Order shall not be effective unless and until such orders are made by the BC Court and the Québec Court.
12. **THIS COURT ORDERS** that if the Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, paragraphs 1 to 6 and 8 to 11 of this Order, including certification for settlement purposes, shall be deemed to have been set aside and declared null and void and of no force or effect, without the need for any further Order of this Court. In those circumstances, a case

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

Date:

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The Honourable Mr. Justice R. Raikes

CYGNUS ELECTRONICS CORPORATION, et al.  
Plaintiffs

v.

PANASONIC CORPORATION, et al.  
Defendants

Court File No. 3795/14 CP

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the *Class Proceedings Act, 1992*

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

---

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

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

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

**Jean-Marc Metrailler (LSO# 69848F)**

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

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

Lawyers for the Plaintiffs

**SCHEDULE "D"**

Court File No. 1272/16 CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) , THE DAY  
\_\_\_\_\_) OF , 2021

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*

**ORDER**

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

**THIS MOTION** made by the Plaintiff for an Order certifying this proceeding as a class proceeding for settlement purposes as against ELNA Co., Ltd. and ELNA America, Inc. (the "Settling Defendants") and approving the notice of settlement approval hearings and the method

of dissemination of said notice was heard this day at the Court House, 80 Dundas Street, London, Ontario.

**ON READING** the materials filed, including the settlement agreement dated ●, 2021 attached to this Order as Schedule “A” (the “Settlement Agreement”), and on hearing the submissions of counsel for the Plaintiff, Counsel for the Settling Defendants, and counsel for the Non-Settling Film Defendants in the Ontario Film Action;

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

**AND ON BEING ADVISED** that the Settling Defendants were named in the Ontario Film Action, but are not named in the BC Film Action or in respect of Film Capacitors in the Québec Action;

**AND ON BEING ADVISED** that the Ontario Film Action comprises a national class, and that the Settling Defendants have settled the Released Film Claims on a national basis in the Ontario Film Action;

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

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

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

Film Capacitor means: capacitors which use insulating plastic film and one of two conductive materials, propylene and/or polyester. Film Capacitors include, but are not limited to, the following four generations: (1) film and aluminum foil capacitors, (2) film and other metal capacitors, (3) layered capacitors, and (4) surface-mount capacitors (i.e., capacitors without leaves); and,

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

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

Did the Settling Defendants conspire to fix, raise, maintain or stabilize the price of, or allocate markets and customers of, Film Capacitors directly or indirectly in Canada during the Film Class Period? If so, what damages, if any, did the Ontario Film Settlement Class Members suffer?

5. **THIS COURT ORDERS** that the plaintiff, Sean Allott, is appointed as the representative plaintiff for the Ontario Film Settlement Class.
6. **THIS COURT ORDERS** that this Order, including but not limited to the certification of this action against the Settling Defendants for settlement purposes and the definitions of the Ontario Film Settlement Class, Film Class Period and Common Film Issue, and any reasons given by the Court in connection with this Order, is without prejudice to the rights and defences of the Non-Settling Film Defendants in connection with the Film Proceedings or Québec Action and, without restricting the generality of the foregoing, may not be relied on by any Person to establish jurisdiction, the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the Film Proceedings or Québec Action, as against the Non-Settling Film Defendants.
7. **THIS COURT ORDERS** that the national opt-out period provided in the Film Proceedings and Québec Action pursuant to the orders of this Court, the BC Court and the Québec Court, made on June 28, 2018, September 26, 2018 and July 25, 2018, respectively, satisfy the requirement of section 9 of the *Class Proceedings Act*, 1992, S.O. 1992, c. 6 for the purposes of this action, that no further opt-out period is necessary, and that the opt-out period expired on October 24, 2018.
8. **THIS COURT ORDERS** that this Order is contingent upon complementary orders being made by the BC Court and the Québec Court: i) acknowledging the contents of this Order, ii) stating that a national opt-out period was provided in the Film Proceedings and the Québec Action pursuant to the orders of the Ontario Court, the BC Court and the Québec Court, made on June 28, 2018, September 26, 2018 and July 25, 2018, respectively, (iii) stating that the national opt-out period was sufficient and effective for all Persons in British Columbia who purchased a Film Capacitor or a product containing a Film Capacitor during the Film Class Period, or for all Persons who purchased in Québec at least one Film

Capacitor or a product containing at least one Film Capacitor during the Film Class Period, as applicable, and (iv) stating that no further opt-out period is necessary for Persons in British Columbia who purchased a Film Capacitor or a product containing a Film Capacitor during the Film Class Period, or for Persons who purchased in Québec at least one Film Capacitor or a product containing at least one Film Capacitor during the Film Class Period, as applicable.

9. **THIS COURT ORDERS** that the terms of this Order shall not be effective unless and until the orders pursuant to paragraph 8 are made by the BC Court and the Québec Court.
10. **THIS COURT ORDERS** that the notices of certification and settlement approval hearing (the “**Notices**”) are hereby approved substantially in the form attached hereto as **Schedules “B”-“F”**.
11. **THIS COURT ORDERS** that the plan of dissemination of the Notices (the “**Plan of Dissemination**”) is hereby approved in the form attached hereto as **Schedule “G”** and that the Notices shall be disseminated in accordance with the Plan of Dissemination.
12. **THIS COURT ORDERS** that ● is appointed to disseminate the Notices in accordance with the terms of this Order.
13. **THIS COURT ORDERS** that if the Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, paragraphs 1 to 6 and 9 to 11 of this Order, including certification for settlement purposes, shall be deemed to have been set aside and declared null and void and of no force or effect, without the need for any further Order of this Court. In those circumstances, a case management conference shall be convened to seek directions, including in respect of the need for and form and content of additional notice to Ontario Film Settlement Class Members.

Date:

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The Honourable Mr. Justice R. Raikes



SEAN ALLOTT  
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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**ORDER  
(Film Capacitors - Certification and Notice  
Approval for Settlement Purposes)**

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

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Lawyers for the Plaintiff

**SCHEDULE "E"**

Court File No. 3795/14 CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE \_\_\_\_\_ ) , THE DAY  
 ) OF , 2020

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

CYGNUS ELECTRONICS CORPORATION and SEAN ALLOTT

Plaintiffs

- and -

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

Defendants

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

**ORDER  
(Electrolytic Capacitors - Settlement Approval)**

**THIS MOTION** made by the Plaintiffs for an Order approving the settlement agreement entered into with ELNA Co., Ltd. and ELNA America, Inc. (the "Settling Defendants") and dismissing this action as against the Settling Defendants, was heard this day at the Court House, 80 Dundas Street, London, Ontario.

**AND ON READING** the materials filed, including the settlement agreement dated ●, 2021 attached to this Order as Schedule "A" (the "Settlement Agreement"), and on hearing the

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

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

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

1. **THIS COURT ORDERS** that, for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that, in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Ontario Electrolytic Settlement Class.
4. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to section 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.
5. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each member of the Ontario Electrolytic Settlement Class including those Persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of the Ontario Electrolytic Action.
6. **THIS COURT ORDERS** that upon the Effective Date, each Ontario Electrolytic Settlement Class Member who has not validly opted-out of this action shall be deemed to have irrevocably consented to the dismissal of any Other Actions as against the Settling Defendants and the Releasees, without costs, with prejudice and without reservation.
7. **THIS COURT ORDERS** that upon the Effective Date, each Other Action commenced in Ontario by any Ontario Electrolytic Settlement Class Member who has not validly opted-out of this action shall be and is hereby dismissed in respect of Released Electrolytic

Claims against the Settling Defendants and the Releasees, without costs, with prejudice and without reservation.

8. **THIS COURT ORDERS** that, upon the Effective Date, subject to paragraph 10, each Electrolytic Releasor who has not validly opted-out of this action has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Electrolytic Claims.
9. **THIS COURT ORDERS** that, upon the Effective Date, each Electrolytic Releasor who has not validly opted-out of this action, as well as Class Counsel, shall not now or hereafter institute, continue, intervene in, provide assistance for, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, action, suit, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Electrolytic Claims, except for the continuation of the Proceedings against the Non-Settling Electrolytic Defendants or unnamed co-conspirators that are not Releasees or, if the Proceedings are not certified, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Electrolytic Defendants or unnamed co-conspirator that is not a Releasee. For the purposes of this paragraph 9, Class Counsel includes anyone currently or hereafter employed by or a partner with Class Counsel.
10. **THIS COURT ORDERS** that the use of the terms “Electrolytic Releasors” and “Released Electrolytic Claims” in this Order does not constitute a release of claims by those members of the Ontario Electrolytic Settlement Class who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.
11. **THIS COURT ORDERS** that, upon the Effective Date, each member of the Ontario Electrolytic Settlement Class who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way or to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Electrolytic Claims.
12. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted, unasserted, or asserted in a representative capacity, inclusive of interest, taxes and costs relating to the Released Electrolytic Claims, which were or could

have been brought in the Electrolytic Proceedings or any Other Actions, or otherwise, or could in the future be brought on the basis of the same events, actions and omissions underlying the Electrolytic Proceedings or any Other Actions, by any Non-Settling Electrolytic Defendants, any named or unnamed alleged co-conspirator that is not a Releasee, any Settled Electrolytic Defendant, or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Electrolytic Defendants, any named or unnamed alleged co-conspirator that is not a Releasee, any Settled Electrolytic Defendant, or any other Person or party, are barred, prohibited and enjoined in accordance with the terms of this paragraph (unless such claim is made in respect of a claim by a Person who has validly opted-out of the Proceedings);

13. **THIS COURT ORDERS** that if this Court ultimately determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise:
  - a. the Ontario Electrolytic Plaintiffs and Ontario Electrolytic Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Electrolytic Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;
  - b. the Ontario Electrolytic Plaintiffs and Ontario Electrolytic Settlement Class Members shall limit their claims against the Non-Settling Electrolytic Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee, to include, and shall only seek to recover from the Non-Settling Electrolytic Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee, only such claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigation costs claimed pursuant to section 36 of the *Competition Act*), attributable to the aggregate of the several liability of the Non-Settling Electrolytic Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee, to the Ontario Electrolytic Plaintiffs and Ontario Electrolytic Settlement

Class Members, if any, and, for greater certainty, the Ontario Electrolytic Settlement Class Members shall be entitled to seek to recover such damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigation costs claimed pursuant to section 36 of the *Competition Act*) on a joint and several basis as between the Non-Settling Electrolytic Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee, if permitted by law; and

- c. this Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Ontario Electrolytic Action, whether or not the Settling Defendants remain in the Ontario Electrolytic Action or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Ontario Electrolytic Action and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in the Ontario Electrolytic Action and shall not be binding on the Releasees in any other proceeding.
14. **THIS COURT ORDERS** that nothing in this Order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Electrolytic Defendants may make regarding the reduction of any assessment of damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigation costs claimed pursuant to section 36 of the *Competition Act*) or judgment against them in favour of members of the Ontario Electrolytic Settlement Class in the Ontario Electrolytic Action or the rights of Ontario Electrolytic Plaintiffs and Ontario Electrolytic Settlement Class Members to oppose or resist any such arguments, except as provided for in this Order.
  15. **THIS COURT ORDERS** that, subject always to the direction of the trial judge, a Non-Settling Electrolytic Defendant may, on motion to this Court determined as if the Settling Defendants remained parties to this action, brought on at least ten (10) days' notice to Counsel for the Settling Defendants and not to be brought until the Ontario Electrolytic Action against the Non-Settling Electrolytic Defendants has been certified as a class proceeding (but not including any certification for settlement purposes), seek orders for the following:

- a. documentary discovery and affidavit(s) of documents from the Settling Defendants in accordance with the Ontario *Rules of Civil Procedure*;
  - b. oral discovery of representative(s) of the Settling Defendants, the transcript(s) of which may be read in at trial;
  - c. leave to serve request(s) to admit on the Settling Defendants in respect of factual matters; and/or
  - d. the production of representative(s) of the Settling Defendants to testify at trial, with such witness(es) to be subject to cross-examination by counsel for the Non-Settling Electrolytic Defendants.
16. **THIS COURT ORDERS** that the Settling Defendants retain all rights to oppose such motion(s) brought under paragraph 15. Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of Documents to be produced and/or for information obtained from discovery in accordance with paragraph 15. Notwithstanding any provision in this order, on any motion brought pursuant to paragraph 15, this Court may make such orders as to costs and other terms as it considers appropriate.
17. **THIS COURT ORDERS** that a Non-Settling Electrolytic Defendant may serve the motion(s) referred to in paragraph 15 above on the Settling Defendants by service on Counsel for the Settling Defendants in the Ontario Electrolytic Action.
18. **THIS COURT ORDERS** that for purposes of implementation, administration, interpretation and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Settling Defendants acknowledge and attorn to the jurisdiction of this Court solely for the purpose of implementing, administering, interpreting and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.
19. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any Releasor has or may have against the Non-Settling Electrolytic Defendants or named or unnamed alleged co-conspirators who are not Releasees.

20. **THIS COURT ORDERS** that no Releasee shall have any responsibility for and no liability whatsoever relating to the administration of the Settlement Agreement or Distribution Protocol(s).
21. **THIS COURT ORDERS** that the Settlement Amount shall be held in the Trust Account by Ontario Counsel or its duly appointed agent for the benefit of Ontario Electrolytic Settlement Class members, pending further order of this Court on notice to the Defendants. This paragraph shall not be interpreted as affecting the rights of the Plaintiffs or the Settlement Classes to claim such Class Counsel Disbursements in the context of a future costs award in their favour against the Non-Settling Defendants, or the rights of the Non-Settling Defendants to oppose and resist any such claim.
22. **THIS COURT ORDERS** that, upon the Effective Date, the Ontario Electrolytic Action is hereby dismissed as against the Settling Defendants, without costs and with prejudice.
23. **THIS COURT ORDERS** that the approval of the Settlement Agreement is contingent upon parallel orders for approval being made by the BC Court and the Québec Court, and the terms of this Order shall not be effective unless and until the Settlement Agreement is approved by the BC Court and the Québec Court, and the BC Electrolytic Action has been dismissed with prejudice and without costs and the Québec Action has been declared settled out of court without costs and without reservation as against the Settling Defendants in the relevant proceeding by the Courts. If such orders are not secured in British Columbia and Québec, this Order shall be null and void and without prejudice to the rights of the parties to proceed with the Ontario Electrolytic Action and any agreement between the parties incorporated in this Order shall be deemed in any subsequent proceedings to have been made without prejudice.
24. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms, this Order shall be declared null and void without need for further notice of this Court but with notice to the Ontario Electrolytic Settlement Class.
25. **THIS COURT ORDERS** that this Order, including but not limited to the approval of the Settlement Agreement and any reasons given by the Court in relation thereto, except as to paragraphs 12 to 17 of the Order, is without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Ontario Electrolytic Action and, without restricting the generality of the foregoing, may not be relied on by any Person to establish jurisdiction, the criteria for certification (including class definition) or the existence



or elements of the causes of action asserted in the Ontario Electrolytic Action as against the Non-Settling Defendants.

Date:

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

CYGNUS ELECTRONICS CORPORATION, et al.  
Plaintiffs

v.

PANASONIC CORPORATION, et al.  
Defendants

Court File No. 3795/14 CP

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the *Class Proceedings Act, 1992*

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**ORDER  
(Electrolytic Capacitors - Settlement Approval)**

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**FOREMAN & COMPANY  
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Lawyers for the Plaintiffs

**SCHEDULE "F"**

Court File No. 1272/16 CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE \_\_\_\_\_ ) , THE DAY  
 ) OF , 2021

**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*

**ORDER  
(Film Capacitors - Settlement Approval)**

**THIS MOTION** made by the Plaintiff for an Order approving the settlement agreement entered into with ELNA Co., Ltd. and ELNA America, Inc. (the "Settling Defendants") and dismissing this action as against the Settling Defendants, was heard this day at the Court House, 80 Dundas Street, London, Ontario.

**AND ON READING** the materials filed, including the settlement agreement dated ●, 2021 attached to this Order as Schedule “A” (the “Settlement Agreement”), and on hearing the submissions of counsel for the Plaintiff, Counsel for the Settling Defendants and counsel for the Non-Settling Film Defendants;

**AND ON BEING ADVISED** that the Settling Defendants were named in the Ontario Film Action, but are not named in the BC Film Action or in respect of Film Capacitors in the Québec Action;

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

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

1. **THIS COURT ORDERS** that, for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that, in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Ontario Film Settlement Class.
4. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to section 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.
5. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each member of the Ontario Film Settlement Class including those Persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of the Ontario Film Action.
6. **THIS COURT ORDERS** that upon the Effective Date, each Ontario Film Settlement Class Member who has not validly opted-out shall be deemed to have irrevocably consented to the dismissal of any Other Actions as against the Settling Defendants and the Releasees, without costs, with prejudice and without reservation.

7. **THIS COURT ORDERS** that upon the Effective Date, each Other Action commenced by any Ontario Film Settlement Class Member who has not validly opted-out shall be and is hereby dismissed in respect of Released Film Claims against the Settling Defendants and the Releasees, without costs, with prejudice and without reservation.
8. **THIS COURT ORDERS** that, upon the Effective Date, subject to paragraph 10, each Film Releasor who has not validly opted-out has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Film Claims.
9. **THIS COURT ORDERS** that, upon the Effective Date, each Film Releasor who has not validly opted-out as well as Class Counsel, shall not now or hereafter institute, continue, intervene in, provide assistance for, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, action, suit, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Film Claims, except for the continuation of the Proceedings against the Non-Settling Film Defendants or unnamed co-conspirators that are not Releasees or, if the Proceedings are not certified, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Film Defendants or unnamed co-conspirator that is not a Releasee. For the purposes of this paragraph 9, Class Counsel includes anyone currently or hereafter employed by or a partner with Class Counsel.
10. **THIS COURT ORDERS** that the use of the terms “Film Releasors” and “Released Film Claims” in this Order does not constitute a release of claims by those members of the Ontario Film Settlement Class who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.
11. **THIS COURT ORDERS** that, upon the Effective Date, each member of the Ontario Film Settlement Class who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way or to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Film Claims.
12. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted, unasserted, or asserted in a representative capacity, inclusive of interest, taxes and costs relating to the Released Film Claims, which were or could have

been brought in the Film Proceedings, Québec Action or any Other Actions, or otherwise, or could in the future be brought on the basis of the same events, actions and omissions underlying the Film Proceedings, Québec Action or any Other Actions, by any Non-Settling Film Defendants, any named or unnamed alleged co-conspirator that is not a Releasee, any Settled Film Defendant, or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Film Defendants, any named or unnamed alleged co-conspirator that is not a Releasee, any Settled Film Defendant, or any other Person or party, are barred, prohibited and enjoined in accordance with the terms of this paragraph (unless such claim is made in respect of a claim by a Person who has validly opted-out of the Film Proceedings or Québec Action);

13. **THIS COURT ORDERS** that if this Court ultimately determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise:
  - a. the Ontario Film Plaintiff and Ontario Film Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Film Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;
  - b. the Ontario Film Plaintiff and Ontario Film Settlement Class Members shall limit their claims against the Non-Settling Film Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee, to include, and shall only seek to recover from the Non-Settling Film Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee, only such claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigation costs claimed pursuant to section 36 of the *Competition Act*), attributable to the aggregate of the several liability of the Non-Settling Film Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee, to the Ontario Film Plaintiff and Ontario Film Settlement Class Members, if any, and, for greater certainty, the Ontario Film

Settlement Class Members shall be entitled to seek to recover such damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigation costs claimed pursuant to section 36 of the *Competition Act*) on a joint and several basis as between the Non-Settling Film Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee, if permitted by law; and

- c. this Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Ontario Film Action, whether or not the Settling Defendants remain in the Ontario Film Action or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Ontario Film Action and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in the Ontario Film Action and shall not be binding on the Releasees in any other proceeding.
14. **THIS COURT ORDERS** that nothing in this Order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Film Defendants may make regarding the reduction of any assessment of damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigation costs claimed pursuant to section 36 of the *Competition Act*) or judgment against them in favour of members of the Ontario Film Settlement Class in the Ontario Film Action or the rights of the Ontario Film Plaintiff and Ontario Film Settlement Class members to oppose or resist any such arguments, except as provided for in this Order.
  15. **THIS COURT ORDERS** that a Non-Settling Film Defendant may, subject always to the direction of the trial judge, on motion to this Court determined as if the Settling Defendants remained parties to the Ontario Film Action, brought on at least ten (10) days' notice to Counsel for the Settling Defendants and not to be brought until the Ontario Film Action against the Non-Settling Film Defendants has been certified as a class proceeding (but not including any certification for settlement purposes), seek orders for the following:
    - a. documentary discovery and affidavit(s) of documents from the Settling Defendants in accordance with the *Rules of Civil Procedure*;
    - b. oral discovery of representative(s) of the Settling Defendants, the transcript(s) of which may be read in at trial;

- c. leave to serve request(s) to admit on the Settling Defendants in respect of factual matters; and/or
  - d. the production of representative(s) of the Settling Defendants to testify at trial, with such witness(es) to be subject to cross-examination by counsel for the Non-Settling Film Defendants.
16. **THIS COURT ORDERS** that the Settling Defendants retain all rights to oppose such motion(s) brought under paragraph 15. Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of Documents to be produced and/or for information obtained from discovery in accordance with paragraph 15. Notwithstanding any provision in this order, on any motion brought pursuant to paragraph 15, this Court may make such orders as to costs and other terms as it considers appropriate.
17. **THIS COURT ORDERS** that a Non-Settling Film Defendant may serve the motion(s) referred to in paragraph 15 above on the Settling Defendants by service on Counsel for the Settling Defendants in the Ontario Film Action.
18. **THIS COURT ORDERS** that for purposes of implementation, administration, interpretation and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Settling Defendants acknowledge and attorn to the jurisdiction of this Court solely for the purpose of implementing, administering, interpreting and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.
19. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any Releasor has or may have against the Non-Settling Film Defendants or named or unnamed alleged co-conspirators who are not Releasees.
20. **THIS COURT ORDERS** that no Releasee shall have any responsibility for and no liability whatsoever relating to the administration of the Settlement Agreement or Distribution Protocol(s).
21. **THIS COURT ORDERS** that the Film Settlement Amount shall be held in the Trust Account by Ontario Counsel or its duly appointed agent for the benefit of Ontario Film Settlement Class members, pending further order of this Court on notice to the Defendants. This paragraph shall not be interpreted as affecting the rights of the Film



Plaintiff or the Ontario Film Settlement Classes to claim such Class Counsel Disbursements in the context of a future costs award in their favour against the Non-Settling Defendants, or the rights of the Non-Settling Defendants to oppose and resist any such claim.

22. **THIS COURT ORDERS** that, upon the Effective Date, the Ontario Film Action is hereby dismissed as against the Settling Defendants, without costs and with prejudice.
23. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms, this Order shall be declared null and void without need for further notice of this Court but with notice to the Ontario Film Settlement Class.
24. **THIS COURT ORDERS** that this Order, including but not limited to the approval of the Settlement Agreement and any reasons given by the Court in relation thereto, except as to paragraphs 12 to 17 of the Order, is without prejudice to the rights and defences of the Non-Settling Film Defendants in connection with the Ontario Film Action and, without restricting the generality of the foregoing, may not be relied on by any Person to establish jurisdiction, the criteria for certification (including class definition) or the existence or elements of the causes of action asserted by the Ontario Film Settlement Class as against the Non-Settling Film Defendants.

Date:

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

SEAN ALLOTT  
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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**ORDER  
(Film Capacitors - Settlement Approval)**

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