

**FILM CAPACITORS CLASS ACTION  
NATIONAL SETTLEMENT AGREEMENT**

Between:

**SEAN ALLOTT, SARA RAMSAY AND OPTION CONSOMMATEURS**  
(the "Plaintiffs")

and

**SHIZUKI ELECTRIC CO., INC. (INCORRECTLY NAMED IN THE ONTARIO AND BC  
FILM PROCEEDINGS AS SHIZUKI ELECTRIC CO., LTD.) AND AMERICAN SHIZUKI  
CORPORATION**  
(the "Settling Defendants")

Executed November 2, 2023

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**RECITALS**

- A. WHEREAS the Film Proceedings were commenced by the Ontario Plaintiff in London, Ontario and the BC Plaintiff in Vancouver, British Columbia;
- B. WHEREAS the Film Proceedings include allegations that certain companies, including the Settling Defendants, participated in an unlawful conspiracy to fix, raise, maintain or stabilize the price of Film Capacitors in Canada contrary to Part VI of the *Competition Act*, RSC 1985, c. C-34, and the common law and/or civil law;
- C. WHEREAS the Settling Defendants did not manufacture or market Electrolytic Capacitors during the Class Period, or otherwise, and are not named as defendants in the Electrolytic Proceedings;
- D. WHEREAS the Ontario Film Proceeding is pleaded to comprise a national class including Settlement Class Members residing or based in all Canadian provinces and territories;
- E. WHEREAS the BC Film Proceeding names the Settling Defendants, and pursuant to this Settlement Agreement and subject to its terms, the BC Plaintiff will seek a parallel order in the BC Court approving this Settlement Agreement;
- F. WHEREAS there is a Québec Electrolytic Proceeding, but no proceeding has been commenced in Québec in respect of Film Capacitors. The Settlement Class of the national Ontario Film Proceeding includes Settlement Class Members resident in the province of Québec;
- G. WHEREAS the Settling Defendants do not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct alleged in the Film Proceedings, or otherwise;

- H. WHEREAS the Plaintiffs, Class Counsel, and the Settling Defendants agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the Settling Defendants, or evidence of the truth of any of the Plaintiffs' allegations against the Settling Defendants, which allegations are expressly denied by the Settling Defendants;
- I. WHEREAS the Settling Defendants are entering into this Settlement Agreement in order to achieve a final and nationwide resolution of all claims asserted or which could have been asserted against the Releasees by the Plaintiffs and the Settlement Class in the Film Proceedings, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;
- J. WHEREAS on December 30, 2015, the United States District Court of the Northern District of California dismissed the complaint against the Settling Defendant, American Shizuki Corporation in the U.S. Proceedings, which raises allegations similar to those raised in the Film Proceedings and, although leave to amend the complaint was allowed, no amendment was filed;
- K. WHEREAS on November 6, 2020, the United States District Court of the Northern District of California granted an order approving a settlement agreement in the U.S. Proceedings whereby the Settling Defendant Shizuki Electric Co., Inc. agreed to pay one million US Dollars (USD \$1,000,000) to the benefit of the US settlement class, in consideration for, *inter alia*, a release of liability, including in respect of its past and present, direct and indirect, subsidiaries, joint ventures and affiliates including but not limited to the Settling Defendant American Shizuki Corporation;
- L. WHEREAS the Settling Defendant, Shizuki Electric Co., Inc. had *de minimis* direct Film Capacitors commerce to a small number of Canadian customers during the Class Period;

- M. WHEREAS the Settling Defendants formally withdrew from the Japan Film Capacitor trade association on April 17th, 2003, and ceased to attend any meetings of the Japan Film Capacitor trade association thereafter;
- N. WHEREAS the Settling Defendants were not subject to any interviews or subpoenas by the United States Department of Justice capacitors anti-trust regulatory investigations or in any other similar investigations regarding the price-fixing of Capacitors in any other country;
- 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 expressly provided in this Settlement Agreement with respect to the Film 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 classes the Plaintiffs 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 Film 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 classes they seek to represent;

- S. WHEREAS the Parties therefore wish to and hereby finally resolve on a national basis, without admission of liability, the Film Proceedings as against the Settling Defendants;
- T. WHEREAS the deadline to opt-out of the Film Proceedings expired on October 24, 2018, pursuant to Orders of the Courts; and
- U. WHEREAS for the purposes of settlement only, the Parties now consent to certification of the Film Proceedings as class proceedings and to the national Settlement Class and a Common Issue in respect of the Film 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 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.

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 Film Proceedings be settled and dismissed on behalf of the national Settlement Class, with prejudice as to the Releasees who are named as Defendants only, without costs as to the Plaintiffs, the classes they represent or seek to represent, or the Releasees, subject to the approval of the Courts as may be ordered or agreed, on the following terms and conditions:

## **SECTION 1 - DEFINITIONS**

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

- (a) **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.
- (b) **Approval Hearings** mean the hearings to approve the motions brought by Class Counsel for the approval of the settlement provided for in this Settlement Agreement.
- (c) **BC Film Proceeding** means the proceeding commenced by the BC Plaintiff before the BC Court that is identified in Schedule "A" to this Settlement Agreement.
- (d) **BC Counsel** means Camp Fiorante Matthews Mogerman <sup>LLP</sup>.
- (e) **BC Court** means the Supreme Court of British Columbia.
- (f) **BC Plaintiff** means Sara Ramsay.
- (g) **BC Settlement Class** means the settlement class in respect of the BC Action that is defined in Schedule "A" to this Settlement Agreement;
- (h) **Capacitors** means electronic components that store electric charges between one or more pairs of conductors separated by an insulator, including Electrolytic Capacitors and/or Film Capacitors.
- (i) **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.
- (j) **Class Counsel** means Ontario Counsel, BC Counsel and Québec Counsel.
- (k) **Class Counsel Fees** include the fees, disbursements, costs, interest, 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 as a result of the Settlement Agreement.



- (l) **Class Period** means January 1, 2002 to December 31, 2014.
- (m) **Common 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 Class Period? If so, what damages, if any, did Settlement Class Members suffer?
- (n) **Courts** means the Ontario Court and the BC Court.
- (o) **Defendants** means the entities named as defendants in any of the Film Proceedings as set out in Schedule "A" to this Settlement Agreement, and any Persons added as defendants in the Film Proceedings in the future. For greater certainty, Defendants includes, without limitation, the Settling Defendants.
- (p) **Distribution Protocol** means the plan to be developed by Class Counsel for distributing the Settlement Amount, plus accrued interest and less approved Administration Expenses and Class Counsel Fees, to Settlement Class Members, as approved by the Courts.
- (q) **Documents** mean 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*, R.R.O 1990, Reg. 194, and any copies, reproductions or summaries of the foregoing, including microfilm copies and computer images.
- (r) **Effective Date** means the date when the Final Orders have been received from the Courts approving this Settlement Agreement.
- (s) **Electrolytic Capacitors** means aluminum and tantalum electrolytic capacitors.
- (t) **Electrolytic Proceedings** means the Ontario Electrolytic Proceeding, the BC Electrolytic Proceeding, and the Québec Electrolytic Proceeding as defined in Schedule "A" to this Settlement Agreement.

- (u) **Execution Date** means the date of the execution of this Settlement Agreement by counsel for all the Plaintiffs and the Settling Defendants.
- (v) **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.
- (w) **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).
- (x) **Film Proceedings** means the Ontario Film Proceeding and the BC Film Proceeding as defined in Schedule "A" to this Settlement Agreement.
- (y) **Final Order(s)** means the later of 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.
- (z) **Non-Settling Defendant(s)** means any Defendant that is not a Releasee and includes any Defendant that terminates its own settlement agreement in accordance with its terms or whose settlement otherwise fails to take effect for any reason, whether or not such settlement agreement is in existence at the Execution Date.
- (aa) **Notice of Certification and of Approval Hearings** means the form or forms of notice, agreed to by the Plaintiffs and the Settling Defendants, or such other form or forms of notice as may be approved by the Courts, which informs the Settlement Class of: (i) the

certification of the Film Proceedings as class proceedings for settlement purposes; (ii) the date and location of the Approval Hearings; and, (iii) the process by which a Settlement Class Member may object to the settlement.

- (bb) **Ontario Film Proceeding** means the proceeding commenced by the Ontario Plaintiff before the Ontario Court as identified in Schedule "A" to this Settlement Agreement.
- (cc) **Ontario Counsel** means Foreman & Company Professional Corporation.
- (dd) **Ontario Court** means the Ontario Superior Court of Justice.
- (ee) **Ontario Plaintiff** means Sean Allott.
- (ff) **Ontario Settlement Class** means the settlement class in respect of the Ontario Film Proceeding that is defined in Schedule "A" to this Settlement Agreement.
- (gg) **Opt-Out Deadline** means the date which is sixty (60) days after the date on which the Notice of Certification and of Approval Hearings is first published.
- (hh) **Other Actions** means any other actions or proceedings, excluding the Film Proceedings, relating to Released Claims commenced by a Settlement Class Member either before or after the Effective Date.
- (ii) **Party and Parties** means the Settling Defendants, the Plaintiffs, and, where necessary, the Settlement Class Members.
- (jj) **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.
- (kk) **Plaintiffs** means the Ontario Plaintiff, the BC Plaintiff and the Québec Electrolytic Plaintiff.

- (ll) **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.
- (mm) **Québec Electrolytic Proceeding** means proceeding commenced by the Québec Electrolytic Plaintiff before the Québec Court as identified in Schedule "A" to this Settlement Agreement.
- (nn) **Québec Counsel** means Belleau Lapointe s.e.n.c.r.l.
- (oo) **Québec Court** means the Superior Court of Québec.
- (pp) **Québec Electrolytic Plaintiff** means Option Consommateurs.
- (qq) **Recitals** means the recitals to this Settlement Agreement.
- (rr) **Released Claims** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees), 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 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, relating in any way to any conduct anywhere, from the beginning of time to the date hereof, in respect of the purchase, sale, pricing, discounting, marketing or distributing of, whether directly or indirectly, or compensation for, Film Capacitors in Canada, specifically including, without limitation, any Claims in any way related to Film Capacitors' prices or relating to any conduct alleged or which could have been alleged, directly or indirectly, in the Film Proceedings including,

without limitation, any Claims, whether in Canada or elsewhere, as a result of or in connection with an alleged conspiracy or other unlawful agreement or any other horizontal or vertical, or unilateral or coordinated, anti-competitive conduct (whether that conduct occurred in Canada or elsewhere) in connection with the purchase, sale, pricing, discounting, marketing or distributing of Film Capacitors in Canada, whether directly or indirectly, during the Class Period, including, without limitation, any claims for consequential, subsequent or follow on harm that arise after the date hereof in respect of any agreement or conduct that occurred prior to the date hereof. 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 similar claim between the Releasees and Releasers relating to Film Capacitors.

- (ss) **Releasees** means jointly and severally, individually and collectively, the Settling Defendants, and all of their present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated and all of their past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives, and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing, excluding always the Non-Settling Defendants and their affiliates.
- (tt) **Releasers** means jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members, on behalf of themselves and any Person or entity claiming by or through them as a present or former, direct or indirect, parent, subsidiary, affiliate, division or department, predecessor, successor, shareholder, partner, director, owner of any kind, agent, principal, employee, contractor, attorney, heir, executor, administrator, insurer, devisee, assignee, trustee, servant, contractor or representative of any kind.
- (uu) **Schedules** mean the schedules to this Settlement Agreement.

- (vv) **Settled Defendants** means all Defendants who have executed settlement agreements with the Plaintiffs and have subsequently received settlement approval orders from the Courts.
- (ww) **Settlement Agreement** means this agreement, including the Recitals and Schedules.
- (xx) **Settlement Amount** means the sum of two hundred and twenty-five thousand Canadian dollars (CDN \$225,000.00).
- (yy) **Settlement Class** means all Persons included in the national Ontario Settlement Class and the BC Settlement Class subject to the approval of the Settlement Agreement by the Courts.
- (zz) **Settlement Class Member(s)** means a member of a Settlement Class.
- (aaa) **Settling Defendants** means Shizuki Electric Co., Inc. and American Shizuki Corporation.
- (bbb) **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, 2020*, S.O. 2020, c. 36, Sched. 7) 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.
- (ccc) **U.S. Proceedings** means the direct and indirect purchaser class proceedings in the United States which pertain to film and aluminum and tantalum electrolytic capacitors which have been consolidated and are proceeding as class action 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 and without costs, of the Film Proceedings as against the Settling Defendants in the Film Proceedings.

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

- (1) Subject to subsection 2.2(2), the Plaintiffs shall bring motions before the Courts, as soon as practicable after the Execution Date, for orders approving the Notice of Certification and Settlement Approval Hearings, and certifying the Film Proceedings as class proceedings as against the Settling Defendants (for settlement purposes only). The Notice of Certification and Settlement Approval Hearings may be brought in concert with other settlement-related hearings to be conducted before the Courts concerning other Defendants in the Electrolytic Proceedings and/or the Film Proceedings for efficiency.
- (2) The order approving the Notice of Certification and of Approval Hearings described in subsection 2.2(1) and certifying the national Ontario Film Proceeding for settlement purposes shall be substantially in the form attached as Schedule "B". The form and content of the British Columbia order approving the Notice of Certification and of Approval Hearings described in subsection 2.2(1) and certifying the BC Film Proceeding for settlement purposes shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the Ontario order attached as Schedule "B".

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

- (1) As soon as practicable after the order referred to in subsection 2.2(1) has been granted and the Notice of Certification and of Approval Hearing has been published, and subject to subsection 2.3(2), the Plaintiffs shall bring motions before the Courts for orders approving this Settlement Agreement.

- (2) The order of the Ontario Court approving this Settlement Agreement shall be substantially in the form attached as Schedule "C". The form and content of the British Columbia order approving this Settlement Agreement shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the Ontario order attached as Schedule "B".
- (3) This Settlement Agreement shall only become final on the Effective Date.

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

- (1) Until the motions required by subsection 2.2 are brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior written 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.
- (2) Upon the Execution Date, Class Counsel may provide a copy of this Settlement Agreement to the Courts and Non-Settling Defendants.

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

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

- (1) 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 all-inclusive of all amounts, including interest and costs, and shall be paid 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, for any reason, pursuant to or in furtherance of this Settlement Agreement or the Film Proceedings.
- (4) Ontario Counsel or its duly appointed agent shall maintain the Trust Account as provided for in this Settlement Agreement.
- (5) Ontario Counsel or its duly appointed agent shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Courts obtained after notice to the Parties.

### **3.2 Taxes and Interest**

- (1) Except as hereinafter provided, all interest earned on the Settlement Amount shall accrue to the benefit of the Settlement Class and shall become and remain part of the Trust Account.
- (2) Subject to subsection 3.2(3), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account shall be the responsibility of the Settlement Class. Ontario Counsel or its duly appointed agent shall be solely responsible to fulfill all tax reporting and payment requirements arising from the monies in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned on the monies in the Trust Account shall be paid from the Trust Account.
- (3) The Settling Defendants shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned by the monies in the Trust Account or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is not approved, is terminated or otherwise fails to take effect, in which case the interest earned on the Settlement Amount in the Trust Account shall be paid to the Settling Defendants who, in such case, shall be responsible for the payment of

all taxes on such interest not previously paid by Ontario Counsel or its duly appointed agent.

## **SECTION 4 - COOPERATION**

### **4.1 Extent of Cooperation**

- (1) Within forty-five (45) days of the Effective Date, or at a time mutually agreed upon by the parties acting reasonably, the Settling Defendants shall provide to Class Counsel:
  - (a) an oral evidentiary proffer, not to exceed four (4) hours in length, through a meeting between Class Counsel and counsel for the Settling Defendants, including at the discretion of the Settling Defendants their legal counsel in the U.S. and/or Japan, which will set out the Settling Defendants' relevant and non-privileged information derived from their investigation and factual inquiries in respect of the matters at issue in the Film Proceedings, including information derived from business records, testimonial transcripts and employee or witness interviews (if applicable), including, to the extent known by the Settling Defendants, their knowledge in respect of the alleged conspiracy, if any, and how the alleged conspiracy, if any, was formed, implemented and enforced; and,
  - (b) subject to the terms of this Settlement Agreement, the method and meeting place of the oral evidentiary proffer shall be agreed upon between the Parties and may be conducted virtually through a secure virtual meeting platform. There will be no electronic recording or transcription of the meeting, but Class Counsel is free to take notes and retain their notes. Counsel for the Settling Defendants shall make themselves available for any reasonable follow-up questions by Class Counsel.
- (2) 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 described in subsection 4.1(1)(a)

above are privileged, will be kept strictly confidential, and may not be directly or indirectly disclosed to any other Person, unless disclosure is ordered by a Court. Further, absent a Court order, Class Counsel will not attribute any factual information obtained from the proffer to the Settling Defendants and/or counsel for the Settling Defendants and Class Counsel will not subpoena any counsel for the Settling Defendants related to the proffer. Notwithstanding the foregoing, Class Counsel may: (i) use information obtained from the proffer in the prosecution of the Film Proceedings or the Electrolytic Proceedings, including for the purpose of developing the Distribution Protocol or any other allocation plan relating to any settlement or judgment proceeds, except the prosecution of any claims against Releasees; and (ii) rely on such information to certify that, to the best of Class Counsel's knowledge, information and belief, such information has evidentiary support or will likely have evidentiary support after reasonable opportunity for further investigation or discovery, but, absent a Court order, the Plaintiffs shall not introduce any information from a proffer into the record in any legal proceeding.

- (3) Within forty-five (45) days after the Effective Date, or at a time mutually agreed upon by the Parties, the Settling Defendants shall make reasonable efforts to provide to Class Counsel:
  - (a) deposition transcripts for depositions of current or former employees, officers or directors of the Releasees produced by the Settling Defendants in the U.S. Proceedings, including exhibits thereto which originated from the Settling Defendants and are not subject to any ongoing sealing or protective orders or other confidentiality obligations, all to be provided in electronic form with any pre-existing translations of the foregoing, if available;
  - (b) electronic copies of any declarations or affidavits of current or former employees, officers or directors of the Releasees taken in the U.S. Proceedings and produced

by the Settling Defendants, including all exhibits thereto, that are not subject to any ongoing sealing or protective orders or other confidentiality obligations; and

- (c) the Settling Defendants' sales/transaction data concerning Canadian customers, including the names of those customers in respect of sales/transactions concerning Film Capacitors. 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. This would include;
  - (i) the best information that can be provided reasonably regarding the top fifteen (15) customers by monetary value of sales of the Settling Defendants, collectively, during the Class Period, specifically including OEMs who manufacture finished products; and
  - (ii) a list of the top fifteen (15) customers of the Settling Defendants, collectively, by monetary value of sales, broken out by OEMs and distributors, along with information, to the extent the Settling Defendants have it, that shows what types of products the customers make that incorporate the Settling Defendants' capacitors and, to the extent the Settling Defendants know, where such products are re-sold.
- (4) If requested by Class Counsel, within sixty (60) days after the Film Proceedings have been certified, other than for settlement purposes, as against the Non-Settling Defendants, the Settling Defendants agree to make available, upon reasonable notice and subject to any legal restrictions, one (1) current employee or representative of the Settling Defendants with relevant knowledge for a voluntary video or telephone interview with Class Counsel and/or experts retained by Class Counsel at a mutually convenient time, and in the presence of legal counsel for the Settling Defendants. The voluntary interview shall not exceed four (4) hours in duration, shall not be under oath or affirmation, and shall not be

recorded by electronic means, but Class Counsel is free to take notes of the interview and to retain their notes. Costs incurred by, and the expenses of, the employees of the Settling Defendants in relation to such interviews shall be the responsibility of the Settling Defendants. All other costs, including costs of an interpreter or expenses otherwise related to foreign language translation in connection with the interviews, shall be the responsibility of Class Counsel;

- (5) If requested by Class Counsel, the Settling Defendants agree to use reasonable efforts to:
- (a) authenticate any of their Documents or data produced in accordance with subsection 4.1(3) to the extent the Settling Defendants can establish their authenticity and that the Plaintiffs require authentication of the Settling Defendants for their admission and use at any point in the Film Proceedings; and
  - (b) make available one current employee or representative to provide an affidavit and/or to testify, if so requested by the Plaintiffs, at trial or on a summary judgment motion, or as the Parties may otherwise agree, and to support the submission into evidence of any information provided by the Settling Defendants pursuant to this Settlement Agreement and to provide authentication and foundation for documents to be used in connection with the prosecution of the case against the Non-Settling Defendants, but only to the extent that such evidence is required by the Plaintiffs to provide the necessary authentication or foundation and a current employee or representative of the Settling Defendants has the required knowledge to do so. The Parties agree to collaborate to minimize the costs, time or travel requirements incurred by, and the expenses of, the employee or representative of the Settling Defendants in relation to such testimony, including any translation costs, and Class Counsel shall assume all such costs.

- (6) Subject to the rules of evidence and any other provisions of this Settlement Agreement, the Settling Defendants agree to use reasonable efforts to authenticate for use at trial, discovery, summary judgment motions and/or certification/authorization motions, any of the Documents and information provided as cooperation pursuant to subsection 4.1 of this Settlement Agreement and, to the extent possible, any Documents produced by other Defendants in connection with the Film Proceedings that were received by or originated from the Settling Defendants, provided that the Plaintiffs will work to minimize any burden on the Settling Defendants pursuant to this obligation including by, *inter alia*, endeavouring to deal with authentication issues by consent among the parties who remain in the Film Proceedings so that this burden would not be imposed on the Settling Defendants unless, and only to the extent that, it is necessary.
- (7) 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 prepared by or for counsel for the Settling Defendants or to disclose or produce any Documents or information in breach of any order, regulatory directive, rule or law of this or any jurisdiction, or subject to solicitor-client privilege, litigation privilege, work product doctrine, common interest privilege, attorney-client privilege, joint defence privilege or any other privilege, or to disclose or produce any information or Documents the Settling Defendants obtained on a privileged or cooperative basis from any party to any action or proceeding who is not a Releasee. Moreover, 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 confidential Documents or information that the Settling Defendants hold under commercial arrangements where such disclosure or production would potentially result, in the reasonable judgment of the Settling Defendants and their counsel, in a breach of contract.

- (8) If any of the types of Documents referenced in subsection 4.1(8) are accidentally or inadvertently disclosed or produced by the Settling Defendants to the Plaintiffs or Class Counsel, 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.
- (9) The obligations of the Settling Defendants to cooperate as particularized in this subsection 4.1 shall not be affected by the release provisions contained in Section 6 of this Settlement Agreement. The obligations of the Settling Defendants to cooperate shall cease at the date of final judgment in the Film Proceedings as against all Defendants.
- (10) If the Settling Defendants materially breach this Section 4.1, the Plaintiffs may move before the Courts to enforce the terms of this Settlement Agreement or set aside the approval of the Settlement Agreement or a part thereof.
- (11) Subject to subsection 4.1(11), the provisions set forth in this subsection 4.1 are the exclusive means by which the Plaintiffs and Class Counsel may obtain discovery, information or Documents from the Settling Defendants and other Releasees or their current or former officers, directors or employees, 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 or former officers, directors, employees, agents, or counsel, whether in Canada or elsewhere and whether under the rules or laws of this or any other Canadian or foreign jurisdiction.
- (12) 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 and Class Counsel 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 and Class Counsel under this Settlement Agreement, shall be used only in connection with the prosecution of the claims in the Film Proceedings against the Non-Settling Defendants, and shall not be used directly or indirectly for any other purpose, except to the extent that the Documents or information are publicly available. The Plaintiffs and Class Counsel agree they will not disclose the Documents and information provided by the Settling Defendants except: (i) to experts, consultants or third-party service providers retained by them in connection with the Film 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 publicly available; (iii) as evidence in the Film Proceedings; or (iv) as otherwise required by law. Subject to the foregoing, 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 publicly available.
- (2) If, to the extent they are entitled to do so pursuant to the terms of this Settlement Agreement, the Plaintiffs or Class Counsel intend to produce for discovery or file in the Film Proceedings any Documents or other information provided by the Settling Defendants as cooperation under the Settlement Agreement, Class Counsel shall provide the Settling Defendants with an advance description of the Documents or other information sought to be produced or filed at least thirty (30) days in advance of the proposed production or



filing, in order that the Settling Defendants may move to obtain a sealing or confidentiality order or similar relief. If the Settling Defendants so move, the Plaintiffs, Settlement Class Members and Class Counsel shall not oppose the position taken by the Settling Defendants. 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.

- (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, Class Counsel shall notify the Settling Defendants of such application immediately upon becoming aware of it, and no later than five (5) days after such disclosure 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; and (ii) as ordered to do so by a Court.

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

- (1) The Settling Defendants and other Releasees shall not oppose any application that may be brought by or on behalf of the Plaintiffs to intervene in the U.S. Proceedings to gain access to discovery documents and other Documents and information, subject to any protective order, that are relevant to the Film Proceedings or Electrolytic Proceedings and is not otherwise inconsistent with the terms of this Settlement Agreement, including subsection 4.1(3). However, it is understood and agreed that neither the Settling

Defendants nor the other Releasees have any obligation to bring, consent to or otherwise participate in such an application.

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

### **5.1 Distribution Protocol**

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

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

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

- (1) The deadline to opt-out of the Film 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 Film Proceedings, and for other valuable consideration set forth in this Settlement Agreement, the Releasers forever and absolutely release and forever discharge the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have.
- (2) The Releasers are aware that they may hereafter discover claims or facts in addition to or different from those they now know or believe to be true with respect to the matters giving rise to the Released Claims. Nevertheless, it is the intention of the Releasers to fully, finally and forever settle and release the Released Claims. In furtherance of such intention, the

release given herein shall be and remain in effect as a full and complete release of all Released Claims, notwithstanding the discovery or existence of any additional or different claims or facts relative thereto.

## **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 Releasers 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**

- (1) The Releasers and Class Counsel shall not now or hereafter institute, continue, provide assistance for or maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee, or against any other Person who may claim contribution or indemnity or other claims of relief from any Releasee, in respect of any Released Claim, except for the continuation of the Film Proceedings against the Non-Settling Defendants or unnamed alleged co-conspirators that are not Releasees or, if the Film Proceedings are not certified or authorized, the continuation of the claims asserted in the Film Proceedings on an individual basis or otherwise against any Non-Settling Defendants or unnamed alleged co-conspirator that is not a Releasee. For the purposes of this subsection 7.3(1), Class Counsel includes anyone currently or hereafter employed by or a partner with Class Counsel.
- (2) Subsection 7.3 shall be inoperative to the extent that it requires any lawyer who is a member of the Law Society of British Columbia to breach his or her obligations under

section 3.2-10 of the Law Society of British Columbia's *Code of Professional Conduct for British Columbia* by refraining from participation or involvement in any claim or action in a British Columbia court.

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

- (1) Upon the Effective Date, the Film Proceedings shall be dismissed, with prejudice and without costs, as against the Settling Defendants in the Film Proceedings.

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

- (1) Upon the Effective Date, each member of the Settlement Class shall be deemed to irrevocably consent to the dismissal, without costs and with prejudice, of his, her or its Other Actions against the Releasees.
- (2) Upon the Effective Date, all Other Actions commenced in Ontario or British Columbia by, or on behalf of, any Settlement Class Member shall be dismissed against the Releasees, without costs and with prejudice.

### **SECTION 8 - BAR ORDER**

#### **8.1 Ontario Bar Order**

- (1) The Plaintiffs and the Settling Defendants agree that the orders approving this Settlement Agreement must include a bar order in respect of the Film Proceedings which includes the following terms:
  - (a) a provision that all claims for contribution, indemnity or other claims over, whether asserted, unasserted, or asserted in a representative capacity, inclusive of interest, taxes and costs relating to the Released Claims which were or could have been brought in the Film 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 Film Proceedings, by any Non-Settling Defendants, any named or

unnamed alleged co-conspirator that is not a Releasee, any Settled Defendant, or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Defendants, any named or unnamed alleged co-conspirator that is not a Releasee, any Settled Defendant, or any other Person or party, are barred, prohibited and enjoined in accordance with the terms of this subsection (unless such claim is made in respect of a claim by a Person who has validly opted-out of the Film 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) all claims for contribution, indemnity or other claims over, whether asserted, unasserted, or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Film Proceedings or otherwise, or could in the future be brought on the basis of the same events, actions and omissions underlying the Film Proceedings or otherwise, by any Non-Settling Defendant, any named or unnamed alleged co-conspirator that is not a Releasee or any other Person or party against a Releasee are barred, prohibited and enjoined in accordance with the terms of this subsection;
  - (ii) the Ontario or BC Plaintiffs, as applicable, and the Ontario or BC Settlement Class Members, as applicable, shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee, that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that

corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;

- (iii) the Ontario or BC Plaintiffs, as applicable, and the Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee to include, and shall be entitled to recover from the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee, only such claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, costs, and interest attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee to the Plaintiffs and the Ontario Settlement Class Members if any, and, for greater certainty, the Settlement Class Members shall be entitled to claim and recover such damages (including punitive damages, if any), restitutionary award, disgorgement of profits, costs, and interest on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee, to the extent provided by law; and,
- (iv) the Courts shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Film Proceedings, as applicable, whether or not the Releasees 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 Film Proceedings and any determination by the Courts in respect of the Proportionate Liability of the

Releasees shall only apply in the Film Proceedings and shall not be binding on the Releasees in any other proceeding.

- (c) A provision that if the Ontario Court or BC Court, as applicable, ultimately determines that the Non-Settling Defendants would not have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Releasees, then nothing in the orders approving this Settlement Agreement, as applicable, is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of damages, restitutionary award, disgorgement of profits or judgment against them in favour of members of the Ontario or BC Settlement Class, as applicable, in the Film Proceedings, as is applicable;
- (d) A provision that a Non-Settling Defendant may, on motion to the Ontario or BC Court, as applicable, and on at least ten (10) days' notice to counsel for the Settling Defendants, and not to be brought unless and until the Ontario Film Proceeding or BC Film Proceeding, as applicable, against the Non-Settling Defendants has been fully certified as a class proceeding (as opposed to being certified for settlement purposes) and all appeals or times to appeal have been exhausted, seek Orders for the following:
  - (i) documentary discovery and an affidavit of documents (list of documents in British Columbia) from the Settling Defendants in accordance with the relevant rules of civil procedure;
  - (ii) oral discovery of a representative of the Settling Defendants, the transcript of which may be read in at trial;

- (iii) leave to serve a request to admit (notice to admit in British Columbia) on the Settling Defendants in respect of factual matters; and/or,
  - (iv) the production of a representative of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
- (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 orders approving this Settlement Agreement, on any motion brought pursuant to subsection 8.1(1)(d), the Ontario or BC Court, as applicable, may make such orders as to costs and other terms as it considers appropriate.
- (f) A provision that a Non-Settling Defendant may serve the motion(s) referred to in subsection 8.1(1)(d) on the Settling Defendants by service on counsel for the Settling Defendants in the relevant Film Proceeding.

To the extent that such an order is granted pursuant to subsection 8.1(1)(d) and discovery is provided to the Non-Settling Defendants, a copy of all discovery provided, whether transcript of oral discovery or discovery of Documents, shall be provided by the Settling Defendants to the Plaintiffs and Class Counsel within ten (10) days of such discovery being provided to a Non-Settling Defendant(s).



## **8.2 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 Settlement Class Members against any Person other than the Releasees.

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

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

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

### **9.2 Agreement Not Evidence**

- (1) The Plaintiffs and the Settling Defendants agree whether or not it is not approved, is terminated or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, or to defend

against the assertion of Released Claims, or as otherwise required by law or as provided in this Settlement Agreement.

### **SECTION 10 - CERTIFICATION FOR SETTLEMENT ONLY**

- (1) The Parties agree that the Film Proceeding shall be certified as class proceedings as against the Settling Defendants solely for purposes of settlement of the Film Proceedings and the approval of this national Settlement Agreement by the Courts, and such certification shall not be used or relied on as against the Settling Defendants for any other purpose or in any other proceeding.
- (2) Unless the Parties otherwise agree, in the motion for Notice of Certification and Settlement Approval Hearings, the only common issue that the Ontario and BC Plaintiffs will seek to define is the Common Issue and subject to the approval of the Courts the class that they will assert will be the Settlement Class.
- (3) The Parties agree that the certification of the Film 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; and (ii) notice of termination (if the Settlement Agreement is terminated or otherwise fails to take effect after the motion required by subsection 2.2 is brought).

## **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 Ontario and BC 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 Ontario and BC Plaintiffs may determine the time of these motions in their full and complete discretion, after consultation with the Settling Defendants, and subject to subsection 2.2.

## **SECTION 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**

### **13.1 No Liability of Releasees**

- (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.

### **13.2 Payments from Trust Account**

- (1) Class Counsel shall pay the costs of the notices required by subsection 11.1 and any costs of translation required by subsection 15.13(1) from the Trust Account, as they become due.
- (2) Class Counsel may seek the Courts' approval to pay Class Counsel Fees contemporaneously with seeking approval of this Settlement Agreement. Class Counsel's court-approved fees shall be paid after the Effective Date.
- (3) 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 the Settlement Class, for settlement purposes only, as contemplated by this Settlement Agreement;
  - (b) any Court declines to dismiss the Film Proceedings, with prejudice and without costs, against the Settling Defendants;
  - (c) any Court declines to approve this Settlement Agreement or any material term, and the Parties agree that the releases, bar orders, waiver or renunciation of solidarity and covenants not to sue contemplated by this Settlement Agreement are all material terms;
  - (d) any Court approves this Settlement Agreement in a materially modified form;
  - (e) the Parties acting reasonably do not reach agreement on the form and content of any order required by this Settlement Agreement, or the order agreed by the Parties is approved by a Court in a materially modified form;

(f) any orders approving this Settlement Agreement made by the Courts do not become Final Orders; or,

(g) the Settlement Agreement otherwise fails to take effect for any reason,

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(s) described above. 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 civil, criminal or administrative action or proceeding.

(2) Any order, ruling or determination made by any Court with respect to Class Counsel Fees, or the Distribution Protocol, shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

#### **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 Film 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) any order certifying or authorizing a Film Proceeding as a class proceeding on the basis of the Settlement Agreement or approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and anyone shall be estopped from asserting otherwise;

- (c) any prior certification or authorization of a Film Proceeding as a class proceeding on the basis of this Settlement Agreement, including the definitions of the Settlement Class and the Common Issue pursuant to this Settlement Agreement, shall be without prejudice to any position that any of the Parties may later take on any issue in the Film Proceedings or any other litigation; and,
- (d) if the Settlement Agreement is terminated, Class Counsel shall, within ten (10) business days of the written notice advising that the Settlement Agreement has been terminated in accordance with its terms, 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 and, to the extent Class Counsel has disclosed any Documents or information provided by the Settling Defendants to any other Person, shall recover and destroy such Documents or information. Class Counsel shall provide counsel to the Settling Defendants with a written certification by Class Counsel of such destruction. Nothing contained in this subsection 14.2 shall be construed to require Class Counsel to destroy any of their work product. However, any Documents or information provided by the Settling Defendants or received from the Settling Defendants in connection with this Settlement Agreement, may not be disclosed to any Person in any manner or used, directly or indirectly, by Class Counsel or any other Person in any way for any reason, without the express prior written permission of the Settling Defendants. Class Counsel shall take appropriate steps and precautions to ensure and maintain the confidentiality of such Documents, information and any work product of Class Counsel derived from such Documents or information.

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

- (1) Subject to subsection 14.3(2), if the Settlement Agreement is terminated, Ontario Counsel shall, within thirty (30) business days of the written notice advising that the Settlement Agreement has been terminated in accordance with its terms, return to the Settling Defendants the Settlement Amount, plus all accrued interest thereon and less any taxes paid on interest, and any costs incurred with respect to the notices required by subsection 11.1.
- (2) The amount retained by Ontario Counsel for costs incurred with respect to the notices required by subsection 11.1 shall be no greater than the Settling Defendants' pro-rata share of CDN \$100,000 (plus applicable taxes) in notice costs. The Settling Defendants' pro-rata share shall reflect their percentage contribution to the total amount of all settlements announced in the notices.

#### **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 3.2(3), 9.1, 9.2, 11.1 (as to notice of termination only), 11.2(1), 14.2, 14.3 and this subsection 14.4, and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of subsections 3.2(3), 9.1, 9.2, 11.1, 11.2, 14.2, 14.3 and this subsection 14.4, 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 Ontario Court as may be required for directions in respect of the interpretation, implementation and administration of this Settlement Agreement. Unless the Ontario Court orders otherwise, motions for directions that do not relate specifically to matters affecting the BC Film Proceeding shall be determined by the Ontario Court.
- (2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

### **15.2 Class Counsel to Advise Settling Defendants of Status of Proceedings**

- (1) Class Counsel agrees to provide information in response to reasonable requests made by the Settling Defendants from time to time as to the status of the Film Proceedings. Upon reasonable request, Class Counsel will promptly provide counsel for the Settling Defendants with electronic copies of all affidavit material and facta publicly filed in the Film Proceedings, unless precluded from doing so by court order.

### **15.3 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.

### **15.4 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;



- (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; and
- (c) words importing the singular number only shall include the plural and vice versa and words importing the use of any gender shall include any other gender, the word “or” is not exclusive and the word “including” is not limiting whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto.

### **15.5 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, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and,
  - (b) only in the case where the time for doing an act expires on a holiday as “holiday” is defined in the *Rules of Civil Procedure*, RRO 1990, Reg 194, the act may be done on the next day that is not a holiday.

### **15.6 Ongoing Jurisdiction**

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

- (3) Notwithstanding subsections 15.6(1) and 15.6(2) the Ontario Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement. Issues related to the administration of this Settlement Agreement, the Trust Account, and other matters not specifically related to the BC Settlement Class Members in the BC Film Proceeding shall be determined by the Ontario Court.

#### **15.7 Governing Law**

- (1) This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

#### **15.8 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.

#### **15.9 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.

#### **15.10 Binding Effect**

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

each and every covenant and agreement made by the Plaintiffs shall be binding upon all Releasors and every covenant and agreement made by the Settling Defendants shall be binding upon all of the Releasees.

#### **15.11 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 PDF signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

#### **15.12 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.

#### **15.13 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 Trust Account. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

#### **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:

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

Tel: (519) 914-1175  
Fax: (226) 884-5340  
E-mail: [jforeman@foremancompany](mailto:jforeman@foremancompany)

David G.A. Jones  
Camp Fiorante Matthews Mogerman <sup>LLP</sup>  
Suite 400  
856 Homer St.  
Vancouver, BC V6B 2W5

Tel.: (604) 689-7555  
Fax: (604) 689-7554  
E-mail: [djones@cfmlawyers.ca](mailto:djones@cfmlawyers.ca)

Maxime Nasr  
Belleau Lapointe s.e.n.c.r.l.  
300 Place d'Youville  
Office B-10  
Montreal, QC H2Y 2B6

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

#### FOR THE SETTLING DEFENDANTS:

Nicholas Hooge  
Farris <sup>LLP</sup>  
PO Box 10026, Pacific Centre South  
25th Floor, 700 W Georgia St  
Vancouver, BC V7Y 1B3

Tel: (604) 684-9151  
Fax: (604) 661-9349  
E-mail: [nhooge@farris.com](mailto:nhooge@farris.com)

**15.19 Date of Execution**

The Parties have executed this Settlement Agreement as of the date on the cover page.

**Sean Allott**, by his counsel

Name of Authorized Signatory: Jonathan Foreman

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

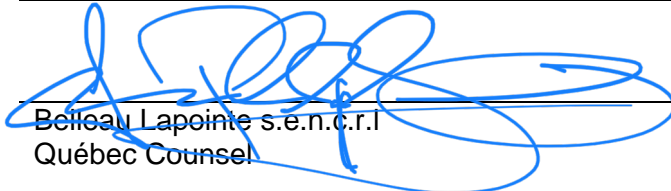
**Sara Ramsay**, by her counsel

Name of Authorized Signatory: Michelle Segal

Signature of Authorized Signatory: p.p.   
Camp Fiorante Matthews Mogerman LLP  
BC Counsel

**Option Consommateurs**, by its counsel

Name of Authorized Signatory: JEAN-PHILIPPE LINCOURT

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

**Shizuki Electric Co., Inc. and American Shizuki Corporation** by their counsel

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

Signature of Authorized Signatory: \_\_\_\_\_  
Farris LLP  
Counsel for the Settling Defendants

**15.19 Date of Execution**

The Parties have executed this Settlement Agreement as of the date on the cover page.

**Sean Allott**, by his counsel

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

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: \_\_\_\_\_

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

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

**Shizuki Electric Co., Inc. and American Shizuki Corporation** by their counsel

Name of Authorized Signatory Nicholas Hooge, Partner Farris LLP

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

Farris <sup>LLP</sup>  
Counsel for the Settling Defendants

**SCHEDULE "A"**  
**FILM PROCEEDINGS**

<b>Proceeding</b>	<b>Plaintiff(s)</b>	<b>Defendants</b>	<b>Settlement Class</b>
Ontario Superior Court of Justice (London) Court File No. 1272/16 CP (the "Ontario Film Proceeding")	Sean Allott	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 Enterprises Co., Ltd.; Milestone Global Technology Inc. d/b/a Holystone International; Vishay Polytech Co., Ltd. f/k/a/ Holystone Polytech Co., Ltd.	All Persons in Canada who purchased Film Capacitors or a product containing a Film Capacitor during the Class Period .



<b>Proceeding</b>	<b>Plaintiff(s)</b>	<b>Defendants</b>	<b>Settlement Class</b>
British Columbia Supreme Court (Vancouver Registry) Court File No. S-156006 (the "BC Film Proceeding")	Sara Ramsay	Okaya Electric Industries Co., Ltd.; Okaya Electric America Inc.; Taitso Corporation; Taitso America, Inc.; Shinyei Kaisha; Shinyei Technology Co., Ltd.; Shinyei Capacitor Co., Ltd.; Shinyei Corporation of America, Inc.; Nitsuko Electronics Corporation; Nissei Electric Co. Ltd.; Soshin Electric Co., Ltd.; Soshin Electronics of America Inc.; Shizuki Electric Co., Ltd.; American Shizuki Corporation; Toshin Kogyo Co., Ltd.	All Persons in British Columbia who purchased Film Capacitors or a product containing a Film Capacitor during the Class Period

**ONTARIO, BC AND QUÉBEC ELECTROLYTIC PROCEEDINGS AND**

<b>Proceeding</b>	<b>Plaintiff(s)</b>	<b>Defendants</b>	<b>Settlement Class</b>
Ontario Superior Court of Justice Court File No. 3795/14 CP (the "Ontario Electrolytic Proceeding")	Cygnus Electronics Corporation and Sean Allott	Panasonic Corporation; Panasonic Corporation of North America; Panasonic Canada Inc.; Sanyo Electric Co., Ltd.; NEC Tokin Corporation; NEC Tokin America Inc.; KEMET Corporation; KEMET Electronics Corporation; Nippon Chemi-Con Corporation; United Chemi-Con Corporation; Hitachi Chemical Co., Ltd.; Hitachi Chemical Company America, Ltd.; Hitachi Canada; Nichicon Corporation; Nichicon (America) Corporation; AVX Corporation; Rubycon Corporation; Rubycon America Inc.; Elna Co., Ltd.; Elna America Inc.; Matsuo Electric Co., Ltd.; Toshin Kogyo Co., Ltd.; Samsung Electro-Mechanics; Samsung Electro-Mechanics America Inc.; Samsung Electronics Canada Inc.; ROHM Co., Ltd.; ROHM Semiconductor U.S.A., LLC; Hitachi AIC Inc.; Hitachi Chemical Electronics Co., Ltd.; FPCAP Electronics (Suzhou) Co., Ltd.; Fujitsu Ltd.; Fujitsu Canada, Inc.; Holy Stone Enterprise Co., Ltd.; Vishay Polytech Co., Ltd. f/k/a Holystone Polytech Co., Ltd.; Milestone Global Technology, Inc.	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.  Electrolytic Capacitor means: aluminum and tantalum electrolytic capacitors; and,  Electrolytic Class Period means: September 1, 1997 to December 31, 2014.

Proceeding	Plaintiff(s)	Defendants	Settlement Class
		d/b/a Holystone International; and Holy Stone Holdings Co., Ltd.	
Québec Superior Court (District of Montreal), File No. 500-06-000704-144 (the “Québec Electrolytic Proceeding”)	Option consommateurs	Panasonic Corporation; Sanyo Electric Group Ltd.; NEC Tokin Corporation; Nippon Chemi-Con Corporation; Hitachi Chemical Co. Ltd.; Nichicon Corporation; Hitachi AIC Inc.; Elna Co. Ltd.; Holy Stone Enterprise Co., Ltd.; Holy Stone Holdings Co., Ltd; Matsuo Electric Co., Ltd.; Rohm Co., Ltd.; Rubycon Corporation; Toshin Kogyo Co., Ltd.	All Persons who purchased in Québec at least one Electrolytic Capacitor or a product containing at least one Electrolytic Capacitor during the Electrolytic Class Period, except Excluded Persons.
British Columbia Supreme Court (Vancouver Registry) Court File No. S-146293 (the “BC Electrolytic Proceeding”)	Sara Ramsay	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	All Persons in British Columbia who purchased Electrolytic Capacitors or a product containing an Electrolytic Capacitor during the Electrolytic Class Period except Excluded Persons.  Electrolytic Capacitor means: aluminum and tantalum electrolytic capacitors; and,  Electrolytic Class Period means: September 1, 1997 to December 31, 2014.

**SCHEDULE "B"**

Court File No. 1272/16 CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE \_\_\_\_\_ ) , THE DAY  
 ) OF , 2023

**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  
(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 Shizuki Electric Co., Inc. and American Shizuki Corporation (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 ●, 2023 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 Proceeding;

**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 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 Proceeding is certified as a class proceeding as against the Settling Defendants for settlement purposes only.
3. **THIS COURT ORDERS** that the "Ontario Settlement Class" is certified as follows:

All Persons in Canada who purchased Film Capacitors or a product containing a Film Capacitor during the Film Class Period, other than all BC Settlement Class Members;

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 Proceeding is certified on the basis of the following issue which is common to the Ontario Settlement Class:

Did the Settling Defendants conspire to fix, raise, maintain or stabilize the price of, or allocate markets and customers of, 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 Settlement Class.
6. **THIS COURT ORDERS** that this Order, including but not limited to the certification of this action against the Settling Defendants for settlement purposes and the definitions of the Ontario Settlement Class, Class Period and Common Issue, and any reasons given by the Court in connection with this Order, is without prejudice to the rights and defences of the Non-Settling Defendants in connection with the Proceedings 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 Proceedings, as against the Non-Settling Defendants.
7. **THIS COURT ORDERS** that the national 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, 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 a parallel order being made by the BC Court and the terms of this Order shall not be effective unless and until such order is made by the BC Court.
9. **THIS COURT ORDERS** that the Notices of Certification and Settlement Approval Hearing are hereby approved substantially in the form attached hereto as Schedules "B" and "C".

10. **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 “D” and that the Notices shall be disseminated in accordance with the Plan of Dissemination.
11. **THIS COURT ORDERS** that RicePoint Administration Inc. is appointed to disseminate the Notices in accordance with the terms of this Order.
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, 8, 9, 10 and 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

v.

AVX CORPORATION, et al.

Court File No. 1272/16 CP

Plaintiff

Defendants

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the *Class Proceedings Act, 1992*

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**ORDER  
(Certification and Notice Approval)**

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

**Jonathan J. Foreman (LSO# 45087H)**  
**Sarah A. Bowden (LSO# 56835D)**  
Tel: (519) 914-1175  
Fax: (226) 884-5340  
E-mail: [jforeman@foremancompany.com](mailto:jforeman@foremancompany.com)  
[sbowden@foremancompany.com](mailto:sbowden@foremancompany.com)

Lawyers for the Plaintiff

**SCHEDULE "C"**

Court File No. 1272/16 CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE \_\_\_\_\_ ) , THE DAY  
 ) OF , 2023

**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  
(Settlement Approval)**

**THIS MOTION** made by the Plaintiff for an Order approving the settlement agreement entered into with Shizuki Electric Co., Inc. and American Shizuki Corporation (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.



**ON READING** the materials filed, including the settlement agreement dated ●, 2023 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 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 Defendants take no position on this motion:

1. **THIS COURT ORDERS** that, for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that, in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Ontario Settlement Class.
4. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to section 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.
5. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each member of the Ontario Settlement Class including those Persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of the Ontario Film Proceeding.
6. **THIS COURT ORDERS** that upon the Effective Date, each Ontario 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 Settlement Class Member who has not validly opted-out shall be and is hereby dismissed in respect of Released 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 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 Claims.
9. **THIS COURT ORDERS** that, upon the Effective Date, each 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 Claims, except for the continuation of the Proceedings against the Non-Settling Defendants or unnamed co-conspirators that are not Releasees or, if the Film Proceedings are not certified, the continuation of the claims asserted in the Film 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 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 “Releasors” and “Released Claims” in this Order does not constitute a release of claims by those members of the Ontario

Settlement Class who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.

11. **THIS COURT ORDERS** that, upon the Effective Date, each member of the Ontario Settlement Class who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way or to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.
12. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted, unasserted, or asserted in a representative capacity, inclusive of interest, taxes and costs relating to the Released Claims, which were or could have been brought in the Proceedings or 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 or any Other Actions, by any Non-Settling Defendants, any named or unnamed alleged co-conspirator that is not a Releasee, any Settled Defendant, or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Defendants, any named or unnamed alleged co-conspirator that is not a Releasee, any Settled Defendant, or any other Person or party, are barred, prohibited and enjoined in accordance with the terms of this paragraph (unless such claim is made in respect of a claim by a Person who has validly opted-out of the Film 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 Plaintiff and Ontario Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee

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

- (b) the Ontario Plaintiff and Ontario Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee, to include, and shall only seek to recover from the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee, only such claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigation costs claimed pursuant to section 36 of the *Competition Act*), attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed alleged co-conspirators and/or any other Person or party that is not a Releasee, to the Ontario Plaintiff and Ontario Settlement Class Members, if any, and, for greater certainty, the Ontario Settlement Class Members shall be entitled to seek to recover such damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigation costs claimed pursuant to section 36 of the *Competition Act*) on a joint and several basis as between the Non-Settling 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

14. **THIS COURT ORDERS** that nothing in this Order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigation

costs claimed pursuant to section 36 of the *Competition Act*) or judgment against them in favour of members of the Ontario Settlement Class in the Ontario Film Proceeding or the rights of the Ontario Plaintiff and Ontario Settlement Class Members to oppose or resist any such arguments, except as provided for in this Order.

15. **THIS COURT ORDERS** that a Non-Settling Defendant may, subject always to the direction of the trial judge, on motion to this Court, brought on at least ten (10) days' notice to Counsel for the Settling Defendants and not to be brought until the Ontario Film Proceeding against the Non-Settling Defendants has been certified as a class proceeding (but not including any certification for settlement purposes), seek orders for the following:
  - (a) documentary discovery and 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 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 Proceeding.
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 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 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 Plaintiff or the Ontario 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 Proceeding 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 a parallel order for approval being made by the BC 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 BC Film Proceeding has been dismissed with prejudice and without costs as against the Settling Defendants in the relevant proceeding by the Courts. If such order is not secured in British Columbia, this Order shall be null and void and without prejudice to the rights of the parties to proceed with the Ontario Film Proceeding 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 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 Ontario Film Proceeding 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 Settlement Class as against the Non-Settling Defendants.

Date:

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The Honourable Mr. Justice R. Raikes

SEAN ALLOTT

v.

AVX CORPORATION, et al.

Court File No. 1272/16 CP

Plaintiff

Defendants

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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  
(Settlement Approval)**

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