CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-000703-146

(Class Action)
SUPERIOR COURT

_____

Y. BADAMSHIN

Petitioner

-vs.-

PANASONIC CORPORATION, legal person duly constituted, having its principal place of business at 1006 Oaza Kadoma, City of Osaka, 571-8501, Japan

and

PANASONIC CORPORATION OF NORTH AMERICA, legal person duly constituted, having its principal place of business at 1 Panasonic Way, City of Secaucus, State of New Jersey, 07094, U.S.A.

and

PANASONIC CANADA INC., legal person duly constituted, having its principal place of business at 5770 Ambler Drive, City of Mississauga, Province of Ontario, L4W 2T3

and

SANYO ELECTRIC CO., LTD., legal person duly constituted, having its principal place of business at 5-5 Keihan-Hondori, 2-chome, Moriguchi, City of Osaka, 570-8677, Japan

and

SANYO NORTH AMERICA CORPORATION, legal person duly constituted, having its principal place of business at 2055 Sanyo Avenue, City of San Diego, State of California, 92154, U.S.A.

and

TAIYO YUDEN CO., LTD., legal person duly constituted, having its principal place of business at 6-16-20, Ueno, Taito-ku, Tokyo 110-0005, Japan

and

TAIYO YUDEN (U.S.A.) INC., legal person duly constituted, having its principal place of business at 10 North Martingale Road, Suite 575, City of Schaumburg, State of Illinois, 60173, U.S.A.

and

NEC TOKIN CORPORATION, legal person duly constituted, having its principal place of business at 7-1, Kohriyama 6-chome, Taihaku-ku, Sendai-shi, City of Miyagi, 982-8510, Japan

and

NEC TOKIN AMERICA INC., legal person duly constituted, having its principal place of business at 2460 North First Street, Suite 220, City of San Jose, State of California, 95131, U.S.A.

and

KEMET CORPORATION, legal person duly constituted, having its principal place of business at 2835 Kemet Way, City of Simpsonville, State of South Carolina, 29681, U.S.A.

and

KEMET ELECTRONICS CORPORATION, legal person duly constituted, having its principal place of business at 2835 Kemet Way, City of Simpsonville, State of South Carolina, 29681, U.S.A.

and

MATSUO ELECTRIC CO., LTD., legal person duly constituted, having its principal place of business at 3-5- Sennari-cho, Toyonaka-shi, Osaka 561-8558, Japan

and

MATSUO ELECTRONICS OF AMERICA, INC., legal person duly constituted, having its principal place of business at 2134 Main Street, Suite 200, City of Huntington Beach, State of California, 92648, U.S.A.

and

TOSHIN KOGYO CO., LTD., legal person duly constituted, having its principal place of business at Tsukasa Bldg. 2-15-4, Uchikanda Chiyoda-ku, Tokyo, 101-0047, Japan

and

VISHAY INTERTECHNOLOGY, INC., legal person duly constituted, having its principal place of business at 63 Lancaster Avenue, City of Malvern, State of Pennsylvania, 19355, U.S.A.

and

NICHICON CORPORATION, legal person duly constituted, having its principal place of business at Karasumadori Oike-agaru, Nakagyo-ku, Kyoto, 604-0845, Japan

and

NICHICON (AMERICA) CORPORATION, legal person duly constituted, having its principal place of business at 927 East State Parkway, City of Schaumburg, State of Illinois, 60173, U.S.A.

and

NIPPON CHEMI-CON CORPORATION, legal person duly constituted, having its principal place of business at 5-6-4, Osaki, Shinagawa-ku, Tokyo 141-8605, Japan

and

UNITED CHEMI-CON CORPORATION, legal person duly constituted, having its principal place of business at 9801 West Higgins Road, City of Rosemont, State of Illinois, 60018, U.S.A.

and

HITACHI CHEMICAL CO., LTD., legal person duly constituted, having its principal place of business at Grantokyo South Tower, 1-9-2, Marunouchi, Chiyoda-ku, Tokyo, 100-6606, Japan

and

HITACHI AIC INCORPORATED, legal person duly constituted, having its principal place of business at 1065, Kugeta, Moka-Shi Tochigi 321-4521, Japan

and

HITACHI CHEMICAL COMPANY AMERICA, LTD, legal person duly constituted, having its principal place of business at 10080 North Wolfe Road, Suite SW3-200, City of Cupertino, State of California, 95014, U.S.A.

and

RUBYCON CORPORATION, legal person duly constituted, having its principal place of business at 1938-1, Nishi-Minowa, Ina-City, Nagano 399-4593, Japan

and

RUBYCON AMERICA INC., legal person duly constituted, having its principal place of business at 4293 Lee Avenue, City of Gurnee, State of Illinois, 60031, U.S.A.

and

ELNA CO., LTD., legal person duly constituted, having its principal place of business at 3-8-11 Shin-Yokohama, Kohoku-ku, Yokohama, Kanagawa Prefecture, 222-0033, Japan

and

ELNA AMERICA INC., legal person duly constituted, having its principal place of business at 879 West 190th Street, Suite 100, City of Gardena, State of California, 90248, U.S.A.

and

TDK CORPORATION, legal person duly constituted, having its principal place of business at Shibaura Renasite Tower, 3-9-1 Shibaura, Minato-ku, Tokyo, 108-0023, Japan

and

TDK-EPC CORPORATION, legal person duly constituted, having its principal place of business at Shibaura Renasite Tower, 3-9-1 Shibaura, Minato-ku, Tokyo, 108-0023, Japan

and

TDK U.S.A. CORPORATION, legal person duly constituted, having its principal place of business at 525 RXR Plaza, City of

Uniondale, State of New York, 11556, U.S.A.

and

AVX CORPORATION, legal person duly constituted, having its principal place of business at One AVX Boulevard, City of Fountain Inn, State of South Carolina, 29644, U.S.A.

and

SAMSUNG ELECTRO-MECHANICS, legal person duly constituted, having its principal place of business at Gyeonggi-Do Suwon-Si Youngtong-Gu Maeyoung-Ro 150 (Maetan-Dong) 443-743, South Korea

and

SAMSUNG ELECTRO-MECHANICS AMERICA, INC., legal person duly constituted, having its principal place of business at 3333 Michelson Drive, Suite 500, City of Irvine, State of California, 92612, U.S.A.

and

ROHM CO., LTD., legal person duly constituted, having its principal place of business at 21 Saiin Mizosaki-cho, Ukyo-ku, Kyoto 615-8585, Japan

and

ROHM SEMICONDUCTOR U.S.A., LLC, legal person duly constituted, having its principal place of business at 2323 Owen Street, Suite 150, City of Santa Clara, State of California, 95054, U.S.A.

Respondents

MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION
&
TO ASCRIBE THE STATUS OF REPRESENTATIVE
(Art. 1002 C.C.P. and following)

TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR PETITIONER STATES AS FOLLOWS:

I. GENERAL PRESENTATION

A) The Action

1. Petitioner wishes to institute a class action on behalf of the following group, of which she is a member, namely:

    - all residents in Canada who purchased either an aluminum, tantalum and/or film capacitor (a "Capacitor") manufactured by a Respondent and/or a Capacitor Product containing a Capacitor manufactured by a Respondent, or from any predecessors, parents, subsidiaries, agents or affiliates thereof, at any time between January 1, 2005 and the present (the "Class Period"), or any other group to be determined by the Court;

    Alternately (or as a subclass)

    - all residents in Quebec who purchased either an aluminum, tantalum and/or film capacitor (a "Capacitor") manufactured by a Respondent and/or a Capacitor Product containing a Capacitor manufactured by a Respondent, or from any predecessors, parents, subsidiaries, agents or affiliates thereof, at any time between January 1, 2005 and the present (the "Class Period"), or any other group to be determined by the Court;

2. "Capacitor(s)" are electronic components that are primarily used to store an electrical charge and serve as a fundamental component of electrical circuits. Virtually every electrical circuit contains one or more capacitors;

3. "Capacitor Products" are products containing an aluminum, tantalum and/or film capacitor when purchased. These multifarious products (containing electrical circuits and thus, Capacitors) range from the cheapest household appliances to personal computers to multi-million dollar machinery and vehicles;

4. For decades, the Respondents have been the world's leading manufacturers and direct competitors within the global Capacitors industry and they have been using this monopolistic power to unlawfully fix, raise, maintain and/or to stabilize

prices of Capacitors and/or to reduce their market availability without adequate justification;

5. As further described below, competition authorities in at least United States, China, South Korea, Taiwan, and in Europe have been investigating a conspiracy in the market for Capacitors.

6. Many of the Respondents are well-acquainted with the unlawful conduct alleged in this action. The Respondents, their parents, subsidiaries and/or affiliates have orchestrated some of the largest global price-fixing schemes witnessed in the past decade –fixing the prices of key components for technology-related products and/or consumer electronic goods, in particular computers, televisions and cellular phones. These entities and, many of their executives, have pled guilty to price-fixing dynamic random access memory ("DRAM") chips, liquid crystal display ("LCD") screens, optical disc drives ("ODDS"), automotive parts and lithium ion battery cells;

7. By reason of this anti-competitive and unlawful conduct, the Petitioner and the members of the class have paid artificially inflated prices for Capacitors and/or Capacitor Products than they would have paid in a competitive market, causing damages upon which they wish to claim;

B) <u>The Respondents</u>

- **PANASONIC**

8. Respondent Panasonic Corporation ("Panasonic Corp.") is a Japanese corporation with its head office in Osaka. Up until approximately October 1, 2008, Panasonic Corp. operated under the name of Matsushita Electric Industrial Co., Ltd. Panasonic Corp. manufactures and sells Capacitors under the Panasonic name and also under the name of Respondent Sanyo Electric Co. Ltd. ("Sanyo") which is a wholly-owned subsidiary.;

9. Panasonic Corporation of North America ("Panasonic North America"), formerly known as Matsushita Electric Corporation of America, is a Delaware corporation with its head office in New Jersey. Panasonic North America is a wholly-owned subsidiary of Panasonic Corp.;

10. Respondent Panasonic Canada Inc.[1] ("Panasonic Canada") is a wholly-owned subsidiary of Panasonic Corp. Panasonic Canada does business throughout Canada, including within the province of Quebec, the whole as appears more fully from a copy of an extract from the *Registraire des enterprise*, produced herein as **Exhibit R-1**;

[1] Numéro d'entreprise du Québec (« NEQ »): 1146526885.

11. Respondent Sanyo is a Japanese corporation with its head office in Osaka. As of December 9, 2009, Sanyo became a wholly-owned subsidiary of Panasonic Corp.;

12. Respondent Sanyo North America Corporation ("Sanyo North America") is a Delaware corporation with its head office in California. It is a wholly-owned subsidiary of Sanyo;

13. During the Class Period, Respondents Panasonic Corp., Panasonic North America, Panasonic Canada, Sanyo and Sanyo North America (collectively, "Panasonic"), either directly or through a wholly-owned subsidiary, agent or affiliate, participated in the conspiracy alleged herein and manufactured, marketed, sold and distributed aluminum, tantalum and/or film capacitors throughout Canada, including within the province of Quebec;

14. Given the close ties between the Panasonic Respondents and considering the preceding, they are all solidarily liable for the acts and omissions of the other;

- **TAIYO YUDEN**

15. Respondent Taiyo Yuden Co., Ltd. ("Taiyo Yuden Co.") is a Japanese corporation with its head office in Tokyo;

16. Respondent Taiyo Yuden (USA) Inc. ("Taiyo Yuden USA") is an American corporation with its head office in Illinois;

17. During the Class Period, Respondents Taiyo Yuden and Taiyo Yuden USA (collectively, "Taiyo Yuden"), either directly or through a wholly-owned subsidiary, agent or affiliate, participated in the conspiracy alleged herein and manufactured, marketed, sold and distributed aluminum and/or tantalum electrolytic capacitors throughout Canada, including within the province of Quebec;

18. Given the close ties between the Taiyo Yuden Respondents and considering the preceding, they are all solidarily liable for the acts and omissions of the other;

- **NEC TOKIN**

19. Respondent NEC Tokin Corporation ("NEC Tokin") is a Japanese corporation with its head office in Miyagi. It is the parent company of NEC Tokin America Inc. ("NEC Tokin America"). On March 12, 2012, Respondent KEMET and NEC Tokin entered into an agreement whereby KEMET acquired 51% of NEC Tokin stock. Under the terms of the alliance, KEMET and NEC Tokin would cross-sell both companies· products, the whole as appears more fully from a copy of Respondent NEC Tokin's News Release entitled "KEMET Corporation and NEC TOKIN Start Alliance" dated February 1, 2013, produced herein as **Exhibit R-2**;

20. Respondent NEC Tokin America is an American corporation with its head office in California. It is a wholly-owned subsidiary of NEC Tokin Corp;

21. During the Class Period, Respondents NEC Tokin and NEC Tokin America (collectively, "NEC"), either directly or through a wholly-owned subsidiary, agent or affiliate, participated in the conspiracy alleged herein and manufactured, marketed, sold and distributed aluminum and/or tantalum electrolytic capacitors throughout Canada, including within the province of Quebec;

22. Given the close ties between the NEC Respondents and considering the preceding, they are all solidarily liable for the acts and omissions of the other;

- **KEMET**

23. Respondent KEMET Corporation ("KEMET Corp.") is a Delaware corporation with its head office in South Carolina;

24. On March 12, 2012, KEMET Corp. announced that it agreed to form a capital and business alliance with Respondent NEC Tokin because of their respective professed interests in increasing its tantalum electrolytic capacitor sales, reducing costs in areas such as procurement and production, sharing their technological knowledge, and benefiting financially through the cross-selling of each other's products (Exhibit R-2). As a result of this alliance, KEMET Corp. received 34% of the outstanding shares of NEC Tokin (the remainder being held by non-party NEC Corporation), which provided KEMET Corp. with 51% of the outstanding voting rights. KEMET Corp. currently holds the option to purchase NEC Corporation's shares in NEC Tokin, which would thereby effect a complete acquisition of NEC Tokin Corporation by KEMET Corp.;

25. Respondent KEMET Electronics Corporation ("KEMET Electronics") is a Delaware corporation with its head office in South Carolina;

26. During the Class Period, Respondents KEMET Corp. and KEMET Electronics (collectively, "KEMET"), either directly or through a wholly-owned subsidiary, agent or affiliate, participated in the conspiracy alleged herein and manufactured, marketed, sold and distributed aluminum, tantalum and/or film electrolytic capacitors throughout Canada, including within the province of Quebec;

27. Given the close ties between the KEMET Respondents and considering the preceding, they are all solidarily liable for the acts and omissions of the other;

- **MATSUO**

28. Respondent Matsuo Electric Co., Ltd. ("Matsuo") is a Japanese corporation with its head office in Osaka;

29. Respondent Matsuo Electronics of America, Inc. (“Matsuo America”) is an American corporation with its head office in Osaka;

30. During the Class Period, Respondents Matsuo and Matsuo America, either directly or through a wholly-owned subsidiary, agent or affiliate, participated in the conspiracy alleged herein and manufactured, marketed, sold and distributed aluminum, tantalum and/or film electrolytic capacitors throughout Canada, including within the province of Quebec;

- **TOSHIN KOGYO**

31. Respondent Toshin Kogyo Co., Ltd. (“Toshin Kogyo”) is a Japanese corporation with its head office in Tokyo;

32. During the Class Period, Respondent Toshin Kogyo, either directly or through a wholly-owned subsidiary, agent or affiliate, participated in the conspiracy alleged herein and manufactured, marketed, sold and distributed aluminum and tantalum electrolytic capacitors throughout Canada, including within the province of Quebec;

- **VISHAY**

33. Respondent Vishay Intertechnology Inc. (“Vishay”) is a Delaware corporation with its head office in Pennsylvania;

34. During the Class Period, Respondent Vishay, either directly or through a wholly-owned subsidiary, agent or affiliate, participated in the conspiracy alleged herein and manufactured, marketed, sold and distributed aluminum, tantalum and/or film capacitors throughout Canada, including within the province of Quebec;

- **NICHICON**

35. Respondent Nichicon Corporation (“Nichicon Corp.”) is a Japanese corporation with its head office in Kyoto. Nichicon Corp. designs, manufactures, and supplies capacitors and capacitor-related products on a global scale. It is primarily an aluminum capacitor producer, but it also produces plastic film capacitors. Nichicon also had a significant line of tantalum capacitors, the combination of its own operations and the former Tianjin factory of Matsushita Electric Industrial (Tantalum). However, in fiscal year 2013, Nichicon sold its tantalum operations to Respondent AVX and exited the tantalum market, the whole as appears more fully from a copy of Respondent Nichicon’s Press Release entitled “AVX agrees to acquire the Tantalum Division of Nichicon Corporation” dated February 15, 2013 and from a copy of Respondent AVX’s Press Release entitled “AVX agrees to acquire the Tantalum Division of Nichicon Corporation” produced herein *en liasse* as **Exhibit R-3**;

36. Respondent Nichicon (America) Corporation ("Nichicon America") is an American corporation with its head office in Illinois;

37. During the Class Period and until the company's sale of its tantalum capacitor production operations to Respondent AVX Corporation on or about February 6, 2013, Respondents Nichicon Corp. and Nichicon America (collectively, "Nichicon"), either directly or through a wholly-owned subsidiary, agent or affiliate, participated in the conspiracy alleged herein and manufactured, marketed, sold and distributed tantalum capacitors throughout Canada, including within the province of Quebec. During the entire Class Period, Nichicon either directly or through a wholly-owned subsidiary, agent or affiliate, participated in the conspiracy alleged herein and manufactured, marketed, sold and distributed aluminum and/or film capacitors throughout Canada, including within the province of Quebec;

38. Given the close ties between the Nichicon Respondents and considering the preceding, they are all solidarily liable for the acts and omissions of the other;

- **CHEMI-CON**

39. Respondent Nippon Chemi-Con Corporation ("Nippon Chemi-Con") is a Japanese corporation with its head office in Tokyo. It has maintained the number one global market share position for aluminum electrolytic capacitors for more than 20 years. It also sells film capacitors;

40. Respondent United Chemi-Con Corporation ("United Chemi-Con") is an American corporation with its head office in Illinois;

41. During the Class Period, Respondents Nippon Chemi-Con and United Chemi-Con (collectively, "Chemi-Con"), either directly or through a wholly-owned subsidiary, agent or affiliate, participated in the conspiracy alleged herein and manufactured, marketed, sold and distributed aluminum and/or film electrolytic capacitors throughout Canada, including within the province of Quebec;

42. Given the close ties between the Chemi-Con Respondents and considering the preceding, they are all solidarily liable for the acts and omissions of the other;

- **HITACHI CHEMICAL**

43. Respondent Hitachi Chemical Co., Ltd. ("Hitachi Chemical Co.") is a Japanese corporation with its head office in Tokyo;

44. Respondent Hitachi AIC Incorporation ("Hitachi AIC") is a Japanese corporation with its head office in Tochigi. It is a wholly-owned subsidiary of Hitachi Chemical Co.;

45. Respondent Hitachi Chemical Company America, Ltd. ("Hitachi Chemical America") is an American corporation with its head office in California. It is a wholly-owned subsidiary of Hitachi Chemical Co.;

46. During the Class Period, Respondents Hitachi Chemical Co., Hitachi AIC and Hitachi Chemical America (collectively, "Hitachi Chemical"), either directly or through a wholly-owned subsidiary, agent or affiliate, participated in the conspiracy alleged herein and manufactured, marketed, sold and distributed aluminum and/or film electrolytic capacitors throughout Canada, including within the province of Quebec;

47. Given the close ties between the Hitachi Chemical Respondents and considering the preceding, they are all solidarily liable for the acts and omissions of the other;

- **RUBYCON**

48. Respondent Rubycon Corporation ("Rubycon Corp.") is a Japanese corporation with its head office in Nagano;

49. Respondent Rubycon America Inc. ("Rubycon America") is an American corporation with its head office in Illinois;

50. During the Class Period, Respondents Rubycon Corp. and Rubycon America (collectively, "Rubycon"), either directly or through a wholly-owned subsidiary, agent or affiliate, participated in the conspiracy alleged herein and manufactured, marketed, sold and distributed aluminum and/or film capacitors throughout Canada, including within the province of Quebec;

51. Given the close ties between the Rubycon Respondents and considering the preceding, they are all solidarily liable for the acts and omissions of the other;

- **ELNA**

52. Respondent Elna Co., Ltd. ("Elna Co.") is a Japanese corporation with its head office in Yokohama;

53. Respondent Elna America Inc. ("Elna America") is an American corporation with its head office in California;

54. During the Class Period, Respondents Elna Co. and Elna America (collectively, "Elna"), either directly or through a wholly-owned subsidiary, agent or affiliate, participated in the conspiracy alleged herein and manufactured, marketed, sold and distributed aluminum and/or film electrolytic capacitors throughout Canada, including within the province of Quebec;

55. Given the close ties between the Elna Respondents and considering the preceding, they are all solidarily liable for the acts and omissions of the other;

- **TDK**

56. Respondent TDK Corporation ("TDK Corp.") is a Japanese corporation with its head office in Tokyo;

57. Respondent TDK-EPC Corporation ("TDK-EPC Corp.") is a Japanese corporation with its head office in Tokyo. It was founded on October 1, 2009 from the combination of the passive components business of Respondent TDK Corp. and EPCOS AG (In October, 2008, TDK Corp. made EPCOS AG a consolidated TDK Corp. subsidiary). TDK-EPC Corp. is responsible for the manufacture of TDK Corp.'s electronic components, modules and systems, the whole as appears more fully from a copy of an extract from Respondent TDK-EPC Corp.'s website at http://www.tdk-epc.us, produced herein as **Exhibit R-4**;

58. Respondent TDK U.S.A. Corporation ("TDK USA") is an American corporation with its head office in New York;

59. During the Class Period, Respondents TDK Corp., TDK-EPC Corp. and TDK USA (collectively, "TDK"), either directly or through a wholly-owned subsidiary, agent or affiliate, participated in the conspiracy alleged herein and manufactured, marketed, sold and distributed aluminum and/or film capacitors throughout Canada, including within the province of Quebec;

60. Given the close ties between the TDK Respondents and considering the preceding, they are all solidarily liable for the acts and omissions of the other;

- **AVX**

61. Respondent AVX Corporation ("AVX") is a Delaware corporation with its head office in South Carolina. It is a subsidiary of Kyocera Corporation, a Japanese corporation that owns approximately 72% of its outstanding common stock. AVX maintains a major global position in tantalum capacitors and a minor competitive position in film capacitors. On or about February 6, 2013, AVX acquired Respondent Nichicon's tantalum capacitor production facilities in Japan and in China, thereby expanding their global tantalum capacitor manufacturing operations (Exhibit R-3);

62. During the Class Period, AVX, either directly or through a wholly-owned subsidiary, agent or affiliate, participated in the conspiracy alleged herein and manufactured, marketed, sold and distributed tantalum and/or film electrolytic capacitors throughout Canada, including within the province of Quebec;

- **SAMSUNG EMCO**

63. Respondent Samsung Electro-Mechanics is a South Korean corporation with its head office in Suwon-Si. It is a wholly-owned subsidiary of Samsung Group, a South Korean *chaebol* (i.e. a business conglomerate);

64. Respondent Samsung Electro-Mechanics America Inc. ("Samsung America") is an American corporation with its head office in California;

65. During the Class Period, Respondents Samsung Electro-Mechanics and Samsung America (collectively, "Samsung EMCO"), either directly or through a wholly-owned subsidiary, agent or affiliate, participated in the conspiracy alleged herein and manufactured, marketed, sold and distributed tantalum electrolytic capacitors throughout Canada, including within the province of Quebec;

66. Given the close ties between the Samsung EMCO Respondents and considering the preceding, they are all solidarily liable for the acts and omissions of the other;

- **ROHM**

67. Respondent ROHM Co., Ltd. ("ROHM Co.") is a Japanese corporation with its head office in Kyoto;

68. Respondent ROHM Semiconductor U.S.A., LLC ("ROHM USA") is a Delaware limited liability corporation, with its head office in California. It is a subsidiary of ROHM Co.;

69. During the Class Period, Respondents ROHM Co. and ROHM USA (collectively, "ROHM"), either directly or through a wholly-owned subsidiary, agent or affiliate, participated in the conspiracy alleged herein and manufactured, marketed, sold and distributed tantalum electrolytic capacitors throughout Canada, including within the province of Quebec;

70. Given the close ties between the ROHM Respondents and considering the preceding, they are all solidarily liable for the acts and omissions of the other;

71. All Respondents and other co-conspirators (as yet unknown) agreed, combined and conspired to inflate, fix, raise, maintain, or artificially stabilize the prices of Capacitors;

72. During the Class Period, the Respondents comprised the main manufacturers, marketers, sellers and distributers of Capacitors, the whole as appears more fully from a copy of an abstract from the Global and China Passive Component Industry Report, 2012-2013 and from the TTI MarketEYE article entitled "Changing Market Strategies in the Global Capacitor Industry: FY2009 Vendor Rankings Reveal Shifts in Strategy" dated May 8, 2009, produced herein *en liasse* as **Exhibit R-5**;

Ranking of Leading Passive Component Producers Worldwide by Revenue, 2012 vs. 2013

	2012	2013
Murata	5,100	4,900
TDK	4,356	4,150
TAIYO YUDEN	1,910	2,080
SEMCO	1,685	1,990
AVX/KYOCERA	1,414	1,380
Panasonic	1,210	1,088
Vishay	1,071	1,080
Nippon Chemi-Con	897	872
YAGEO	794	808
Nichicon	808	780
KEMET	778	700
RUBYCON	600	620
WTC	434	440
KOA	386	320
LELON	191	208
FENGHUA	188	190
Holy Stone	151	160
Tai	120	140
Chilisin	119	138
JIANGHAI	120	130
Chinsan	101	102
Maglayer	83	88
INPAQ TECHNOLOGY	90	82
HITACHIAIC	91	80

Unit: USD mln

Source: RIC *Global and China Passive Component Industry Report, 2012-2013*

73. In fact, Respondents Panasonic, Chemi-con, Nichicon and Rubycon occupied a 64% global aluminum capacitor market share in 2013, the whole as appears more fully from a copy of the "Global and China Aluminum Electrolytic Capacitor Market Report, 2013-2016" dated June 2014, produced herein as **Exhibit R-6**;

AGENTS

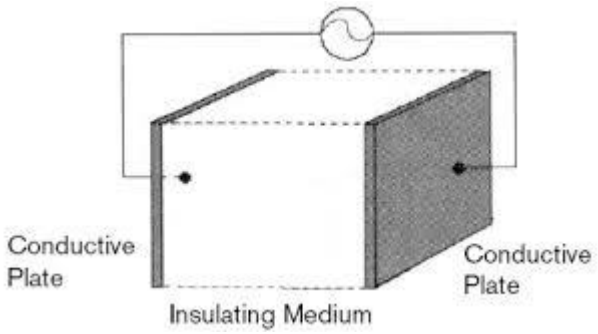
74. Respondents' conduct was authorized, ordered, or done by Respondents' officers, agents, employees, or representatives while actively engaged in the management and operations of the respective Respondents' businesses;

75. Each Respondent acted as the principal agent or joint venturer of or for the other Respondents with respect to the acts, violations and common course of conduct as alleged herein;

C) <u>The Situation</u>

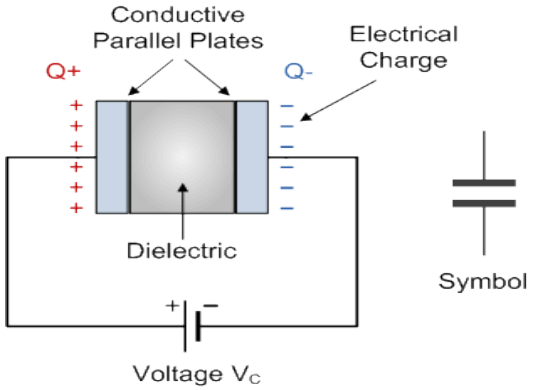
I. Capacitors and how they work

76. All electronic devices that we use today employ various electrical circuits which work in concert to perform the various tasks for which we use them. A capacitor (sometimes referred to as a condenser) is an electrical component that stores electric energy in an electric field. The forms, styles, and materials of capacitors vary widely, but all contain at least two parallel electrical conductors (called "plates") separated by a non-conductive, insulating layer (called the "dielectric");



77. Principal uses for capacitors include storing electrical charges, conducting alternating current (AC current), and blocking or separating different voltage levels of direct current (DC current) sources. Capacitors are differentiated based on their construction, with different materials providing unique characteristics;

78. When there is a potential difference across the conductors (e.g., when a capacitor is attached to a power source), an electric field develops across the dielectric, causing a positive charge to collect on one plate and a negative charge to collect on the other plate;

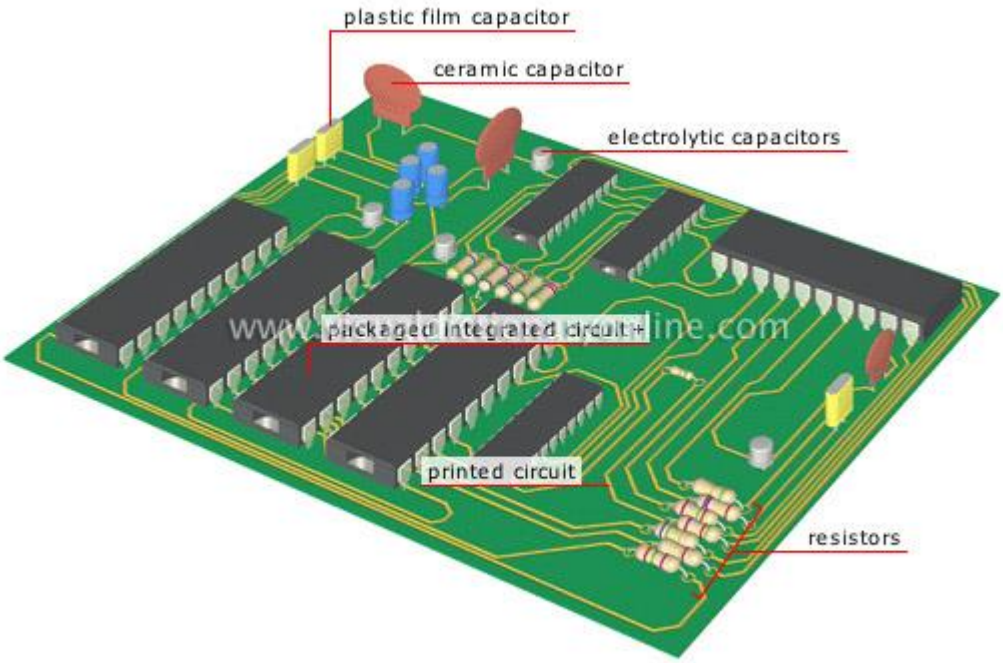


79. Generally, a capacitor is used in an electric circuit to store electrical charge. In this regard, it is distinguished from a battery in that a battery provides electrical charge to an electrical circuit;

80. Capacitors can store electrical charges for long periods of time, even when removed from an electric circuit and they can charge and discharge fully and

instantaneously when required to do so. The amount of charge the capacitor can hold at a given voltage defines its “capacitance”;

81. By electrical current flowing through a circuit, the path for which is usually defined by a printed circuit board (“PCB”) electronic signals can be amplified, simple and complex computations can be performed, data can be moved from one place to another and the myriad other tasks that make electronic devices perform can be executed;

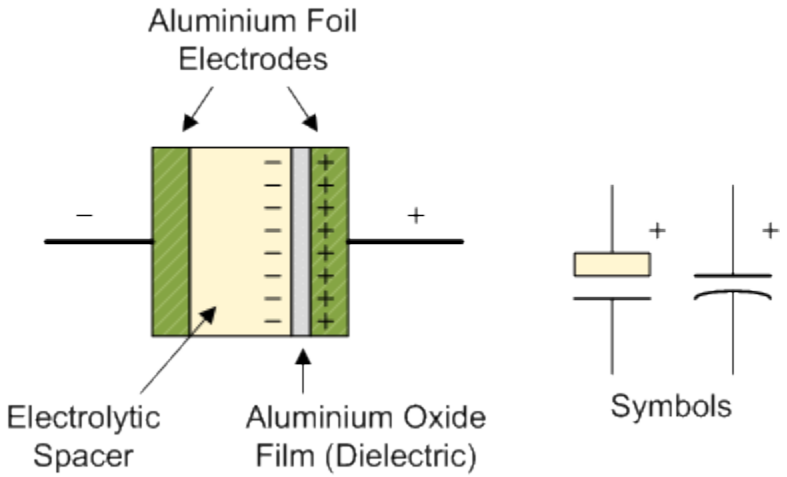


82. In the taxonomy of electrical components, capacitors are categorized as “passive” components. That is, capacitors do not require electrical power to operate. Instead, the physical properties of the materials that compose a passive component cause it to perform the task for which it is employed;

83. In its basic form, a capacitor consists of two or more parallel conductive metal plates that are neither connected to nor touching each other, but are electrically separated by some form of insulating material. The insulating layer between a capacitor’s plates is commonly called the dielectric. When a voltage is applied to the two plates, an electric field is created between them; positive charge will collect on one plate and negative charge on the other. The dielectric, a non-conductive material, does not permit the electric current to flow between the metal plates;

84. There are many types of capacitors available commercially with varying internal dielectrics, plate structure and device packaging. The most commonly used

dielectrics used in capacitors are composed of ceramics, aluminum, film or a rare metal called tantalum[2];



85. Without the flow of electrical current, circuit boards—as well as the devices that contain them— cannot work. Accordingly, circuits must not only have a source for current, but also means for storing and regulating the flow of that current. While either a battery or a connection to an external power supply typically provides current to a circuit, capacitors are integrated into electrical circuits primarily to store charge and govern its flow so that the tasks and applications we ask of our electrical devices have sufficiently available and immediately dischargeable electrical charge to perform when commanded to do so;

86. Capacitors are ubiquitous components in the electronic devices we use. Indeed, it is nearly impossible to think of a device that does not contain at least one capacitor. An average smartphone, for example, employs between 300 to 500 capacitors of varying capacitance (i.e., the potential amount of charge a capacitor can store), dielectric (i.e., the insulating material in the capacitor that allows it to hold a charge) and form factors (i.e., size and shape). Computers can contain anywhere between 100 and 700 capacitors mounted on and integrated into their motherboards and daughterboards. Most modern automobiles use hundreds of capacitors in their onboard electrical, navigation, entertainment and diagnostic systems;

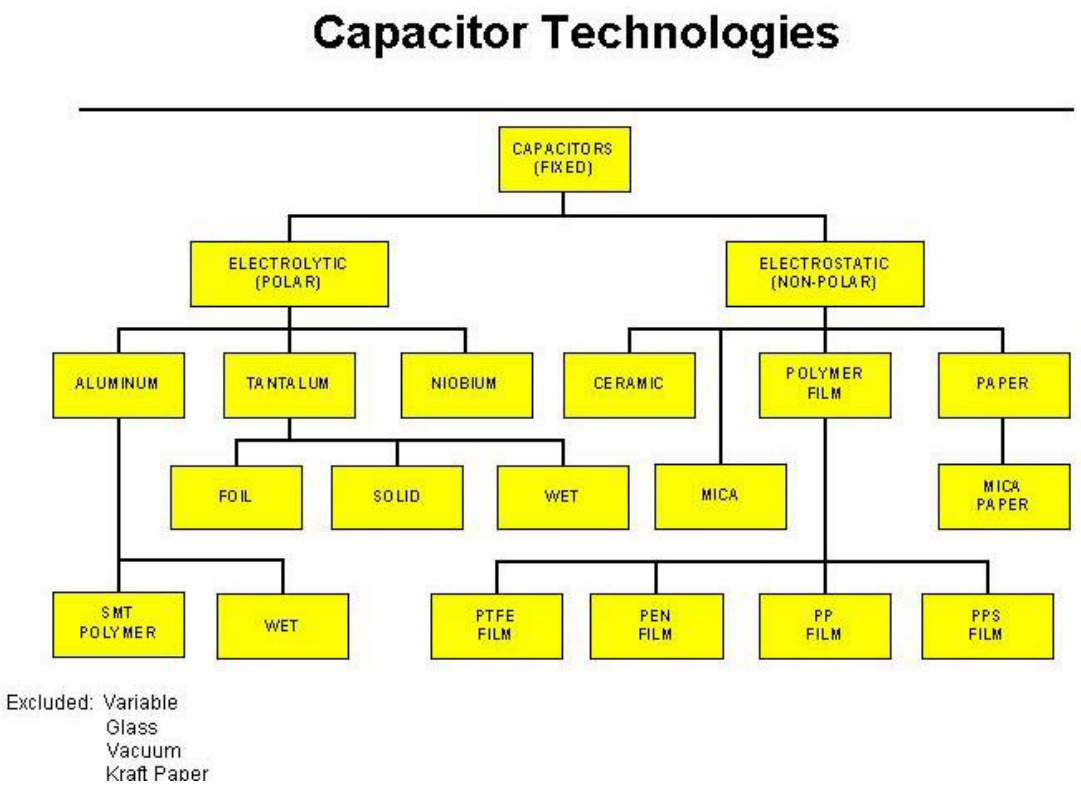
II. Types of Capacitors and their uses

87. Capacitors are usually distinguished from each other by whether they are electrolytic or electrostatic. Electrolytic capacitors are polarized, meaning that they have positive and negative leads that must be positioned the correct way in an electric circuit (i.e., the positive lead, the cathode, must go to the positive side of the power source, and the negative lead, or anode, must go to the negative side). In contrast, electrostatic capacitors are not polarized (i.e., they do not

[2] Tantalum is a greyish silver, heavy, and very hard metal.

have a positive and negative leads) and therefore can be installed in either direction with respect to the flow of current;

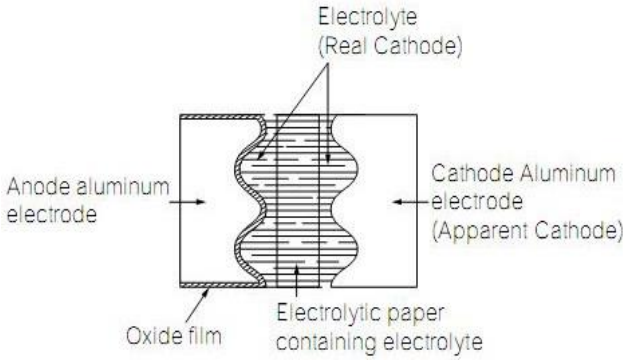
88. Electrolytic and electrostatic capacitors are further distinguished within these two categories by the material from which their dielectrics are made. Electrolytic capacitors use aluminum or tantalum dielectrics, whereas electrostatic capacitors use ceramic or film capacitors are electrostatic;



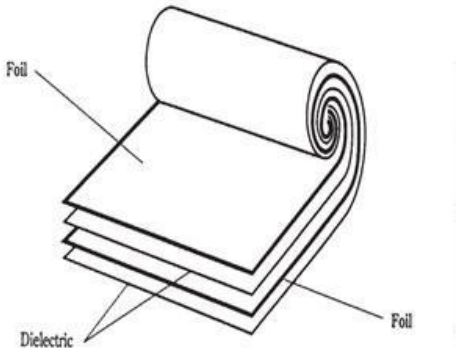
A. Electrolytic Capacitors

i. Aluminum Capacitors

89. Aluminum electrolytic capacitors are made of two aluminum foils and a paper spacer soaked in electrolyte. One of the two aluminum foils is covered with an oxide layer serving as the dielectric and that foil acts as the anode, while the uncoated foil acts as a cathode. The anode, electrolyte-soaked paper and cathode are stacked. The stack is then wound up, placed into a cylindrical enclosure usually made of aluminum and connected to an electric circuit through surface mounting on PCBs or attached by radial or axial pins;



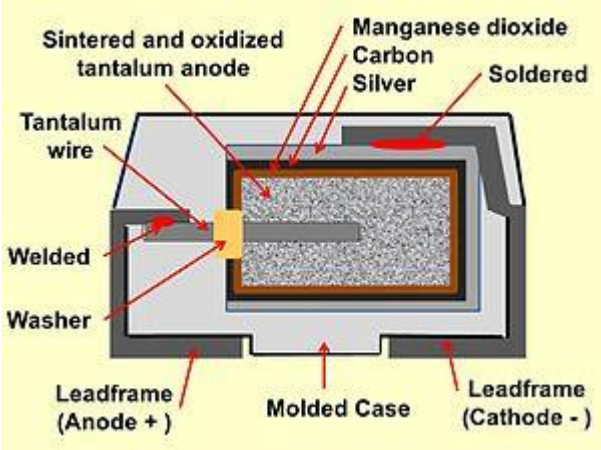
90. The thinness of the aluminum oxide layer dielectric allows for relatively high capacitance, though an aluminum capacitor's capacitance can only increase by increasing the surface area covered by the dielectric. This requires additional stacking and winding of the foil layers, thus increasing the capacitors' physical size. As a result, aluminum capacitors typically have lower volumetric efficiency than tantalum or certain types of ceramic capacitors. Further, aluminum capacitors have a higher propensity to leak the charge they hold as opposed to tantalum and certain types of ceramic capacitors;



91. Because of the greater size of aluminum capacitors, they are most frequently used in a variety of larger electronic devices, such as consumer audio and video devices, televisions, video game consoles, desktop and laptop computers, automotive electronics and power inverters;

ii. Tantalum Capacitors

92. Tantalum capacitors exploit the tendency of tantalum metal to form a non-conductive protective oxide surface layer. They consist of tantalum powder sintered (i.e., formed by high pressure) into a pellet shape—often called a "sponge"—as the negative plate of the capacitor, with the tantalum pentoxide forming on the pellet's surface serving as the dielectric, and an electrolytic solution or conductive solid serving as the positive plate. The dielectric layer thus can be very thin—thinner than the similar layer in, for instance, an aluminum electrolytic capacitor. Accordingly, a tantalum capacitor can have high capacitance in a small volume and thus can have high volumetric efficiency;



93. Tantalum capacitors are, however, susceptible to short-circuiting or catastrophic thermal runaway failure and destruction by fire if subject to inconsistent voltage or voltage spikes, as such inconsistencies can tax and break down the capacitor's extremely thin dielectric;

94. Aside from the risk of catastrophic failure, tantalum capacitors are generally reliable. They have high resistance to leaking charge and have lower equivalent series resistance (i.e., the speed at which electric charge is released from the capacitor) than aluminum electrolytic capacitors of the same capacitance rating. Accordingly, tantalum capacitors at times are used in complex electronic devices in which their small size and high capacitance are required, e.g., mobile phones, smart phones, personal computers, tablet devices and automotive electronics;

95. The Tantalum Capacitor Respondents have, at various times over the last decade, claimed that shortages of raw tantalum ore have caused the high prices for their capacitors and the longer lead times for their production. Specifically, the Respondents raised supply shock concerns to industry analysts and the investing public at various times in 1997, 2000, 2008, 2011 and 2012 based on concerns that certain tantalum mines were closing, other mines were not producing ore at the necessary levels, and the worry that tantalum's designation as a "conflict mineral" under Section 1502 of the 2010 American Securities and Exchange Commission's *Dodd-Frank Wall Street Reform and Consumer Protection Act* ("Dodd-Frank Act") and the accompanying annual reporting requirement would reduce their access to ore and/or would increase the market premium for conflict-free tantalum ore;

96. The availability and cost of tantalum ore, along with the numerous steps required to manufacture tantalum capacitors, has been explained by the Respondents and some industry analysts as the reason why these capacitors have historically been so expensive. As a result, the use of tantalum capacitors is usually limited to applications where the specific high capacitance they provide is required;

B. Electrostatic Capacitors

i. Film Capacitors (also known as Plastic Capacitors)

97. A film capacitor is an electrical capacitor with an insulating plastic film as the dielectric, sometimes combined with paper as a carrier of the electrodes. The dielectric films, depending on the desired dielectric strength, are drawn in a special process to an extremely thin thickness and are then provided with electrodes. The electrodes of film capacitors may be metalized aluminum or zinc applied directly to the surface of the plastic film or a separate metallic foil overlying the film. Two of these conductive layers are wound into a cylinder shaped winding, usually flattened to reduce mounting space requirements on a printed circuit board or layered as multiple single-layers stacked together, to form a capacitor body;

98. Film Capacitors are the most commonly available of all types of capacitors, consisting of a relatively large family of capacitors with the difference being in their dielectric properties;

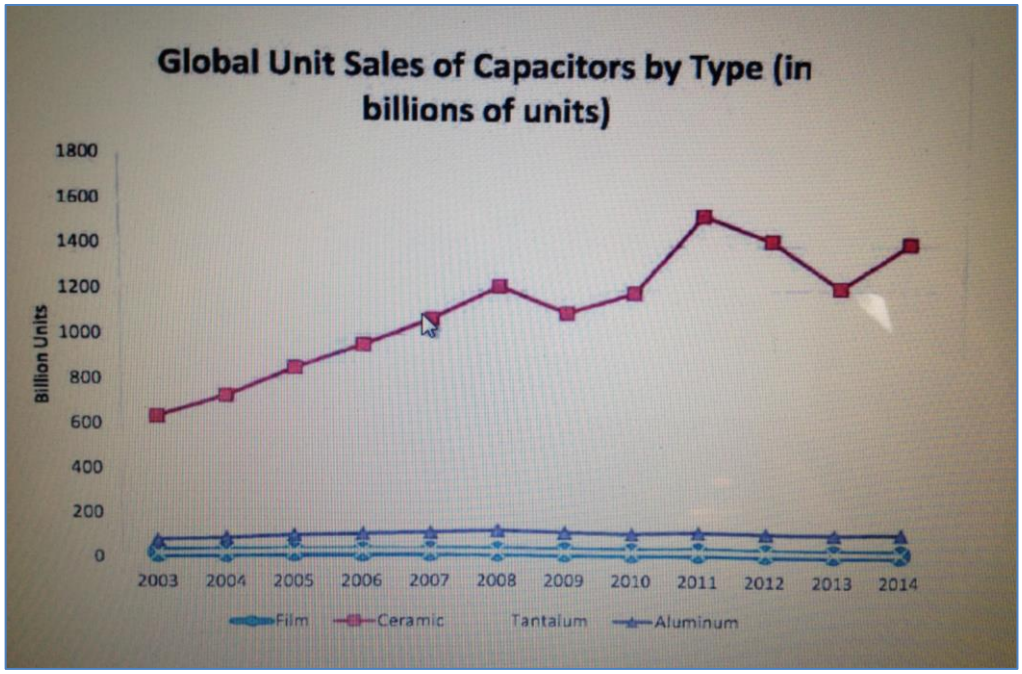
ii. Ceramic Capacitors

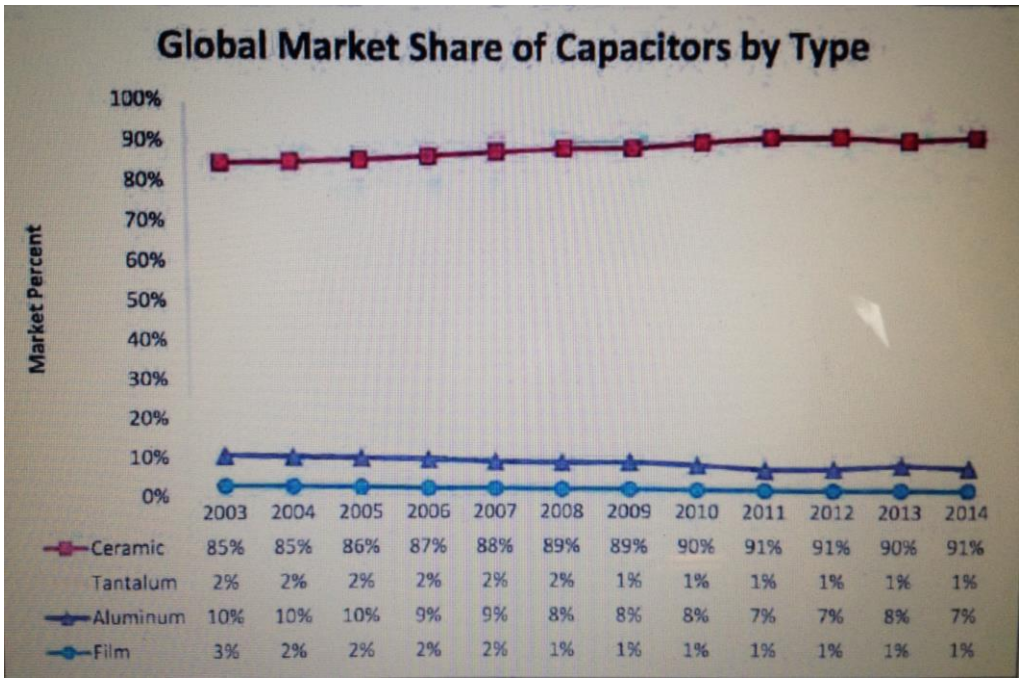
99. A ceramic capacitor is a non-polarized capacitor made out of two or more alternating layers of ceramic and metal in which the ceramic material acts as the dielectric and the metal acts as the electrodes. The ceramic dielectric is a mixture of finely ground granules of paraelectric or ferroelectric materials, modified by mixed oxides that are necessary to achieve the capacitor's desired characteristics. The great plasticity of ceramic raw material enables manufacturers to produce an enormous diversity of styles, shapes and dimensions of capacitors. Because the thickness of the ceramic dielectric layer can be easily controlled and produced by the desired application voltage, ceramic capacitors are available with rated voltages up to the 30 kV range. Currently, the smallest discrete ceramic capacitor is about the physical size of the head of a pin, though advances in materials science and refinement of manufacturing processes may eventually permit fabrication of even smaller components;

100. The most prevalent form of ceramic capacitor is known as a multilayer ceramic capacitor ("MLCC"). Industry analysts report that for fiscal year 2014, MLCCs are estimated to account for approximately 95% of the global ceramic market in terms of volume and approximately 94% in terms of value. MLCCs are constructed with alternating layers that result in single capacitors connected in parallel. This method, called "stacking" increases the component's capacitance because its surface area is increased by stacking up multiple layers of ceramic dielectric materials and metal electrode materials;

101. Technological and material advancements have permitted manufacturers to increase the number of layers in MLCCs while at the same time miniaturizing the components. The result of these improvements is that MLCCs tend to have higher greater volumetric efficiency than aluminum electrolytic capacitors, and can also compete with tantalum electrolytic capacitors in small form factor applications. Aluminum, tantalum and film capacitors; however, must increase in physical size to increase capacitance. The capacitance of aluminum electrolytic capacitors can be increased only through tightly winding aluminum metal foil, thereby increasing the surface area as well as the total size of the component. In similar fashion, capacitance in tantalum electrolytic capacitors is increased only by expanding the size of the tantalum pellet in the capacitor, which in turn increases the total size of the capacitor;

102. Currently, MLCCs typically cost only a fraction of aluminum or tantalum electrolytic capacitors. Ceramics, however, are not an easy cure for purchasers seeking to save costs on the electronic devices they produce that require high capacitance in a small form factor, e.g., mobile phones, smart phones and tablet computers. Because electric circuits are designed to accommodate specific types of active and passive components with specific technical and operational characteristics, ceramic capacitors cannot immediately be integrated into PCBs or other types of circuits that require either aluminum or tantalum electrolytic capacitors. Stated differently, capacitors with differing capacitance, dielectric and form factor are not interchangeable with each other. Redesigning and reengineering a product's electrical circuits is therefore required to accommodate any changes to the electrical components contained within them. This is a lengthy, resource-intensive effort that requires a product manufacturer essentially to redesign a product and change and redefine its supply chain resources, all while still working to meet ongoing demand for its finished products;





III. The market conditions in which the Respondents' collusive behaviour originated

103. As society's dependence on technology has grown, so too has the demand on electronic device manufacturers for the components necessary to produce the innovative products that people use on a daily basis. Given that capacitors are fundamental to the operation of practically all electronic devices, it is not surprising that the market for capacitors is big business. Indeed, recent reports

indicate that global revenues for all manufacturers in the capacitor industry in 2013 totaled approximately $16 billion based on the sales of trillions of capacitors, and industry analysts estimate that global revenues will reach over $18 billion for the fiscal year 2014 and over $20 billion by 2016. These numbers are extraordinary, especially when the average price per unit for capacitors over the last five years has been $0.01178, or $11.78 per thousand units;

104. The multi-billion dollar market for capacitors; however, is one susceptible to anticompetitive manipulation. Given the significantly high barriers to entering the already mature capacitors manufacturing industry and achieving the large volume of sales required to reach economies of scale and profitability, the global capacitors market is dominated by a limited number of large manufacturers. This is especially true in the market for aluminum, tantalum and film capacitors;

105. Generally, Capacitors are purchased by one of three categories of purchasers: (1) original equipment manufacturers ("OEMs") who install capacitors directly into their Capacitor Products; (2) electronic manufacturing service providers ("EMS Providers") who manufacture PCBs and other electric circuit products that contain capacitors and which are integrated into end-use Capacitor Products manufactured by others; and (3) third-party electronics distributors that sell Capacitors to various consumers;

106. The demand for capacitors over the last decade has been largely tied to the demand for consumer electronics, which currently accounts for approximately 90% of global unit demand. The computer end-use market segment historically has accounted for a significant portion of global capacitor consumption, but that segment has experienced decreasing sales of high-passive component content laptops and desktops in recent years. Industry analysts have indicated that declining demand for these products has negatively impacted the demand for tantalum and aluminum capacitors, which have historically derived close to 50% of their revenues from the computer market. In addition, the consumer audio-video segment, which has also historically accounted for a significant portion of global capacitor consumption, has also faced significant decreasing sales over the last decade due to portable music devices, tablets and smart phones meeting modern consumers' audio-visual needs. The fall off of the audio-visual market had a significant impact on the demand for aluminum electrolytic capacitors;

107. Over the past decade, ceramic electrostatic capacitors have outperformed the other primary capacitor dielectrics (specifically the tantalum, aluminum and film) in terms of volume of products globally consumed and the value of that demand. In terms of volume, industry data shows that unit consumption of ceramic capacitors over the last decade has increased 7%, from approximately 84% for fiscal year 2004 to an estimated 91% for 2014. During the same period, consumption of tantalum electrolytic capacitors dropped from approximately 2.5% of global volume for fiscal year 2004 to an estimated 1.1% for 2014, and

consumption of aluminum electrolytic capacitors dropped from approximately 9.9% for fiscal year 2004 to an estimated 6.8% for fiscal year 2014;

108. The value of the tantalum electrolytic capacitors sold over the last decade has declined from approximately 12.6% of the global value for fiscal year 2004 to an estimated 10.4% for 2014, while the global value of aluminum electrolytic capacitors has declined from approximately 33.1% for fiscal year 2004 to an estimated 22.6% for 2014;

109. The North and South American market for capacitors accounts for approximately $2.2 billion for fiscal year 2014, or roughly 12 percent of the global market. Ceramics account for approximately 47% of capacitor consumption in the Americas, followed by aluminum capacitors with approximately 17%, and tantalum capacitors with 14%;

110. Aluminum, tantalum and film capacitor manufacturers have faced stagnant and/or reduced demand over the last decade;

111. With specific regard to aluminum electrolytic capacitors, purchasers began to find them too volumetrically inefficient to be useful in many electronic devices sold today. Historically, most electronic devices have been larger physically than they are today. In the past, the larger footprint required by aluminum capacitors on PCBs found in devices such as televisions, stereo equipment, and personal computers was not problematic;

112. With the development of technologies and processes that allowed manufacturers to miniaturize certain types of capacitors while, at the same time, increasing their volumetric efficiency, manufacturers of electronic devices began to design and produce smaller, more portable and more functionally integrated products that met, if not surpassed, the complexity of predecessor devices that used aluminum capacitors. For many consumer-focused devices—e.g., smart phones, tablet computers, laptop computers, personal navigation devices—smaller capacitors with greater capacitance had to be used to execute the various complex tasks for which the devices were employed. Because many of these new electronic devices have essentially come to replace the devices that historically used bulky aluminum capacitors—e.g., tablets, smart phones and personal music devices replacing televisions, personal computers and stereos—the market for aluminum electrolytic capacitors had grown relatively stagnant as of late 2004, but noticeably declined starting in late 2007 to early 2008;

113. With specific regard to tantalum electrolytic capacitors, demand declined over the last decade in large part because they were often unavailable and, as a result, expensive. Though tantalum electrolytic capacitors have a high volumetric efficiency and other operational characteristics often desired by OEMs and EMS Providers for use in small form factor applications, many purchasers

over time came to expect that their demand for tantalum capacitors could not economically be met;

114. Manufacturing tantalum electrolytic capacitors is a labour- and resource-intensive process. Industry sources have noted there are over 70 steps required to be taken to manufacture a tantalum electrolytic capacitor. The manufacturing process for these capacitors is completely different from that required for making aluminum electrolytic or even ceramic capacitors, and it requires different raw materials, supply chains and fabrication operations. Further, the limited availability of tantalum ore, especially when compared to availability of raw materials required to make other capacitors, has been claimed by tantalum capacitor manufacturers as a cause for limited production and high costs;

115. Many capacitor purchasers make products that specifically require tantalum electrolytic capacitors and the electrical circuits incorporated in these products cannot be redesigned and reengineered to use any other capacitors. As a result, these purchasers have no choice but to weather the availability and cost issues attendant to using tantalum capacitors. Other purchaser's products, however, are not solely dependent on the specific performance tantalum capacitors provide the electric circuits they employ. In those instances, purchasers over time undertook the lengthy and resource-intensive effort to redesign and reengineer the electric circuits they employ in their manufactured products to incorporate more available and affordable capacitors containing dielectrics other than tantalum. This gradual process accounts for much of the decrease in demand for tantalum electrolytic capacitors over at least the last decade;

116. Tantalum capacitors have significantly better volumetric efficiency than aluminum capacitors because of tantalum's natural non-conductive properties and its thinner dielectric, as well as the ability of manufacturers to produce very small tantalum capacitors with high capacitance. However, making these capacitors is expensive; it is a labor- and resource-intensive process. Even without the Respondents' anticompetitive acts, tantalum electrolytic capacitors are significantly more expensive than other capacitors. Further, due to certain of their physical properties, tantalum capacitors can short circuit and catch fire if subjected to voltage spikes only slightly more than their rated capacitance value, at times destroying the devices in which they are installed;

117. Since at least early 2000s, the Respondents have been faced with declining demand for and profits from the sale of their capacitor product portfolios. Nonetheless, there remains a sizeable market for these capacitors. Industry analysts report that global revenues for Capacitors were approximately $5.74 billion for fiscal year 2013, though this was approximately a $570 million drop from 2012 and nearly a $1.1 billion drop from 2005. To slow any further decline in demand and to ensure that sales of their respective product portfolios would remain profitable, the Respondents agreed that price competition among themselves for their mutually interchangeable Capacitors had to artificially cease;

118. For at least the last nine and a half years, the Respondents colluded by directly and indirectly communicating with each other to effectuate a scheme to control market prices of aluminum, tantalum and film capacitors directed toward and sold into the Canadian market. Respondents also agreed to combine and perform the various acts necessary to achieve the anticompetitive purposes of this scheme;

119. This unlawful combination was furthered and facilitated by a course of anticompetitive conduct, including agreements and understandings among the Respondents to fix, raise, maintain and stabilize prices for Capacitors and to restrain their respective product output through extending product lead times based on pretextual explanations;

120. The decline in demand for aluminum, tantalum and film capacitors began in early 2000s, though it became more pronounced when the global economy crashed starting in late 2007[3]. The global financial crisis caused consumer demand at all levels—globally and domestically—to fall significantly. According to industry data, capacitor consumption dropped nearly 10% globally between fiscal year 2008 and 2009. Though economic stimulus packages orchestrated by the United States, China and EU countries caused some growth in the volume of capacitors consumed in fiscal year 2011, global consumption still dropped approximately 7% in 2012 and 14% in 2013;

121. By the close of fiscal year 2008, global consumption for aluminum electrolytic capacitors had already declined approximately 14% from 2005. This decline has continued to the present day, with consumption in 2014 estimated to be approximately 30% lower than it was in 2005. Similarly, by the close of fiscal year 2008, global consumption for tantalum capacitors dropped approximately 37% from 2005, and with consumption in 2014 estimated to be approximately 53% less than it was in 2005;

IV. The Respondents' collusive and anticompetitive behaviour

122. In the context of this marked decline in demand for aluminum, tantalum and film capacitors since at least the early 2000s, any price competition among the Respondents for the mutually interchangeable and substitutable components they produce would be sure to reduce any profitability they could hope to reap from these product markets. Specifically, given the significant costs related to running the Respondents' respective capacitor manufacturing operations, keeping abreast of technological change and innovation, as well as the ongoing variable costs of raw materials, labour and distribution chain operations, the Respondents' profit margins on Capacitors would, by the operation of basic

[3] The financial crisis of 2007–2008, also known as the Global Financial Crisis and 2008 financial crisis, is considered by many economists the worst financial crisis since the Great Depression of the 1930s.

principles of economics, grow thinner if they were required to compete against each other for sales;

123. The fact that these supposed competitors (specifically the Respondents named herein) sell mutually interchangeable commoditized products and adjust the prices and market availability of their products in concert indicate that true competition in the capacitors market has been foreclosed;

124. Generally speaking, capacitors of like capacitance, dielectric and form factor are mutually interchangeable. Price is thus the most obvious differentiation among these products for purchasers. Accordingly, any agreement among manufacturers to fix, raise, maintain or to stabilize prices of Capacitors or Capacitor Products or to reduce their market availability without justification, reduces or even negates competition to the detriment of purchasers;

125. The threat of anticompetitive manipulation in the Capacitors market is not a hypothetical concern. Rather, the threat has become reality due to the actions of the Respondents, who, as the leading global manufacturers of these types of capacitors, have collusively and concertedly manipulated price competition for capacitors directed to both Canadian and international purchasers over nearly a decade;

126. At least prior to the beginning of 2005, the Respondents each were aware of the significant market share each of them held, both individually and collectively, in the mature, yet declining market for aluminum, tantalum and film capacitors. Relatedly, Respondents each were also aware of the inability of other capacitor manufacturers with smaller market shares to successfully compete against them and to meet market demand due to their evident capacity and resource constraints;

127. Further, Respondents were also aware of how fundamentally necessary capacitors are to the function of electric circuits and of how other types of passive electrical components (*e.g.*, inductors and resistors) cannot serve as a substitute for or a functional equivalent to an aluminum, tantalum or film capacitor;

128. Finally, Respondents were aware and exploited the fact that that all types of purchasers—OEMs, EMS Providers and third-party distributors—were almost always committed to inflexible production or delivery deadlines to their respective customers and therefore would incur any price increases on the Capacitors they required to avoid the usually greater cost of production delays or customer dissatisfaction;

129. In their collective and individual consideration of the market conditions, Respondents agreed to operate as a cartel to foreclose competition and protect each of its members from price competition. By forming this cartel, Respondents

intended to wring as much profitability out of the Capacitors market as possible before their product portfolios for these capacitors become technologically obsolete or became consigned to the comparatively unprofitable niche market;

130. Respondents together reached an agreement to concertedly fix prices and reduce output on Capacitors some time before, and in any event no later than, January 1, 2005. This agreement was reached through both oral and written communication among executives, officers, sales representatives and employees of the Respondent companies. The exchanges of these communications occurred in person, through electronic or paper correspondence, text messaging or telephonic or video communications in the period preceding the beginning of the Class Period;

131. The specific date upon which Respondents' cartel and their collusive behaviour commenced (assuming it is even capable of determination given the secretive nature of conspiracies) is information known only to the Respondents. Petitioner will amend this class action complaint upon discovering sufficient evidence pointing to a specific start date for Respondents' collusion;

132. Respondents intended to artificially inflate prices of aluminum, tantalum and/or film capacitors primarily by:

a) Agreeing to end price competition amongst themselves as to their respective Capacitors product portfolios by concertedly fixing, raising, maintaining and/or stabilizing the prices for these products, thereby inflating the prices offered to purchasers from a competitive market;

b) Sharing with each other, either through correspondence or during in-person meetings, confidential and competitively sensitive information pertaining to their product pricing. By way of illustration and not limitation, Respondents shared, *inter alia*, information pertaining to the fixed and variable costs that impacted their product pricing. With knowledge of each other's competitively-sensitive information, Respondents were able to collectively determine and coordinate the pricing for the mutually interchangeable products in their respective capacitor portfolios; and

c) Agreeing to concertedly quote product lead times to purchasers in order to meter out the supply of their mutually interchangeable products available on the market, thereby keeping demand high and, at times, unmet;

133. Respondents were able to maintain the concerted pricing on their Capacitors through regular interaction with and communication among members of the cartel on the topic of pricing, and by publishing pricing information and cross-reference materials (i.e., charts or other materials that identify which capacitors of a given Respondent are mutually interchangeable for capacitors of another Respondent) and sharing them with both the public and Respondents' largest

third-party authorized distributors, most of whom distribute capacitors for a significant number of Respondents;

134. If, at any time, any of the Respondents priced any of its portfolio products outside the cartel's coordinated pricing strategy, the Respondent would become aware either through notice from its fellow cartel members or from its largest third party authorized distributors. The pricing for the product at issue would then adjust back to the price determined by the cartel's members;

135. Respondents' concerted pricing has gone unnoticed to date for many reasons, including, by way of example and without limitation: (1) the sheer number and variety of Capacitors in Respondents' respective product portfolios makes it difficult for purchasers to track market-wide movement in pricing, as well as the number and variety of Capacitor Products; (2) pricing for these capacitors changes frequently; and (3) noncompetitive pricing is masked at times by high volume sales of these commoditized products, in which bulk purchasers may receive volume discounts;

136. Respondents also agreed to restrain their output in an effort to curb the practice of certain purchasers who would buy large lots of products from Respondents when prices appeared to be low, but would abstain when prices were higher. Respondents intended their practice of quoting similar production lead times for their mutually interchangeable products to smooth out the inconsistent volume of purchases by these purchasers. At the same time, Respondents intended this practice to complement their efforts to artificially maintain and/or to inflate a non-competitive price for their products;

137. To achieve the cartel's goal of quoting uniform production lead times to purchasers, Respondents regularly interacted and communicated with other Respondents in the cartel on the topic of product lead times;

138. Respondents regularly provided to purchasers and to the public pretextual excuses for the increase of production lead times, such as problems obtaining raw materials (e.g., tantalum ore) necessary for production, shipping delays, and production delays caused by natural disasters (e.g., the 2011 Tohoku earthquake and tsunami, typhoons in Asia, flooding in Thailand and other countries where Respondents' capacitor manufacturing facilities are located). Because the justifications Respondents provided for long production lead times were credible, Class Members were lulled into believing them, despite Respondents collusion. Respondents concertedly coordinated to lengthen these production lead times unjustifiably in order to foster the cartel's scheme to maintain noncompetitive prices for the Respondents' Capacitors;

139. The effects of Respondents' concerted and collusive actions were significant and were completely counter to what the market would normally expect given the comparative and continual decline in demand for Capacitors that began in the

early 2000s. Notably, industry and government data suggests that per unit prices for aluminum, tantalum and film capacitors began to stabilize in 2005;

140. From 2005 to present, industry data shows that per unit prices for tantalum electrolytic capacitors have increased approximately $0.008, or $8.82 per thousand;

141. In 2005, aluminum electrolytic capacitors began to stop their price decline from approximately $55.06 per thousand in 2003. In 2005, industry data shows that the price per unit for aluminum electrolytic capacitors was $46.76 per thousand units, and their per unit price hovered between approximately $40.00 and $46.00 per thousand until 2013. In effect, Respondents' collusion permitted manufacturers of aluminum electrolytic capacitors (the Respondents herein) to slow the market-driven decline in price for their products, and to fix prices at supracompetitive levels;

142. Simply put, the Respondents formed, maintained, enforced and concealed a global cartel. The Respondents took these unlawful steps because demand for their Capacitor product lines began to wane in the early 2000s. While aluminum electrolytic capacitors have been relied upon by electronics manufacturers for decades and used in products such as televisions, stereos, and desktop computers, they tend to be bulky in size and shape relative to other capacitors and are limited in the amount of capacitance they can provide at smaller sizes. In other words, they lack "volumetric efficiency." As technology has advanced in the last decade toward smaller, more portable and multifunctional devices—e.g., from desktop computers to tablets and smartphones, or from stereos to personal music devices—many electronics manufacturers could no longer afford to provide aluminum electrolytic capacitors in their streamlined and compact products;

143. The collusion was facilitated by the cartelized nature of the Capacitor industry, which is dominated by and consists primarily of the Respondents, who held and continue to hold secret discussions, and who made agreements between and amongst themselves to exchange non-public and commercially-sensitive information concerning pricing, production capacity, costs, raw materials, and distribution. From the inception of the conspiracy to date, the Respondents have actively concealed their anticompetitive and unlawful conduct from the public, including the Petitioner and the members of the Class, in furtherance of the conspiracy;

144. The Respondents' cartel has been successful in achieving the anticompetitive and unlawful ends for which it was formed. Through their concerted actions, the Respondents created the market conditions that made it economically feasible for all cartel members to fix, raise, maintain or to stabilize artificially high prices on the Capacitors they sold during the Class Period to purchasers in Canada and elsewhere. The Respondents were effective in moderating—and even

negating—the normal downward pressures on prices for capacitors caused by price competition, oversupply, reduction of demand and technological change;

145. The Respondents' anticompetitive and unlawful conduct resulted in the increase and/or slowed the decrease of Capacitor prices for products sold in Canada during the Class Period. As a result, the Petitioner and the members of the Class paid artificially inflated prices for the Capacitors purchased from the Respondents and Capacitor Products purchased from the Respondents and/or a third-party. By paying these inflated prices, which exceeded the amount Petitioner and the members of the Class would have paid for the Capacitors and/or Capacitor Products they purchased if pricing for the Capacitors had been determined by a competitive market, Petitioner and the members of the Class have been injured in their business and property and continue to suffer such injuries to date as a result of the Respondents' actions;

146. Indeed, after many years of active concealment, the Respondents' anticompetitive acts recently have drawn the attention of law enforcement and regulatory agencies in the United States, China, Japan, South Korea, Taiwan and in Europe, all of which opened investigations earlier this year. At least one capacitor manufacturer, believed to be Respondent Panasonic, has self-reported its unlawful price fixing and is cooperating with authorities in at least the United States and China in exchange for amnesty from prosecution, and has disclosed background details regarding the cartel's membership and the scope of the conspiracy;

V. The structure and characteristics of the Capacitor market render the collusion even more plausible as they are conducive to anti-competitive price fixing

147. For at least as long as the Class Period, the Capacitor industry has demonstrated numerous characteristics that have served to facilitate Respondents' unlawful collusion. By way of illustration and not limitation, the industry has exhibited (1) market concentration among a limited number of participants; (2) high barriers to entry for new market participants; (3) mutual interchangeability of Respondents' products; (4) inelasticity of demand; (5) commoditization; (6) weak demand in a mature market; (7) a large number of purchasers with limited purchasing power; and (8) ease of information sharing among the Respondents;

A. The market for Capacitors is highly concentrated

148. Simply put, market concentration facilitates collusion as the fewer firms that dominate the market, the more power they maintain. If an industry is divided into a large number of small firms, the current gain from cheating on a cartel (profits from sales captured from other cartel members through undercutting of the cartel-fixed price in the current time period, which risks causing the cartel to fall

apart in the future) is large relative to the firm's possible gains from the cartel's continuing future success (the firm's future share of the total cartel profits if collusion were to continue successfully). Conversely, with a more concentrated industry, a greater share for a colluding firm in future cartel profits tips the balance in favor of continued collusion, and away from any short-term, transitory bump in profits that could be achieved by undercutting the cartel price and gaining a transitory increase in market share;

149. Despite the ascendency of ceramic capacitors as the dominant product in the global capacitors market, the market for aluminum, tantalum and film capacitors remains quite significant. In 2004, the global volume of aluminum, tantalum and film capacitors consumed was over 12% of the market. Consumption for 2014 is estimated to be over 8% of global volume. The revenues for these sales—given the higher per unit price of aluminum, tantalum and film capacitors relative to ceramic capacitors—approximate an estimated over $6 billion for fiscal year 2014 alone. Industry data show that aluminum and tantalum capacitors together currently account for approximately 31% of North and South American capacitor consumption (most of which are presumably consumed in North America), which is valued at approximately $680 million;

150. Market power in the Capacitor manufacturing industry itself is highly concentrated—a fact that is conducive to the type of collusive activity alleged herein;

151. Though there are a relatively large number of companies that produce aluminum capacitors and sell them into the global and U.S. markets, significant market power is concentrated in the Respondents.;

152. The five largest Japanese aluminum capacitor manufacturers account for approximately 60% of the global market for aluminum capacitors. Respondent Chemi-Con has a 19% share of the global market, Respondent Nichicon has a 16% share, Respondent Rubycon has a 13% share, Respondent Panasonic has an 8% share, and Respondent Elna has a 3% share;

153. Given the relatively small market share (i.e., mostly 3% or less) and capacity constraints of the other non-Respondent companies selling products in the global aluminum electrolytic capacitors market, the Respondents' concerted actions have impacted pricing and output in the aluminum capacitor market during the Class Period. There was no reasonable threat that manufacturers who were not members of the cartel could undercut the cartel's concerted pricing and meet all or a significant part of market demand for mutually interchangeable aluminum capacitors at more competitive prices;

154. The five largest Respondents collectively control more than 76% of the global market for tantalum capacitors. Respondent KEMET has a 23% share of the global market, Respondent AVX has a 21% share, Respondent NEC Tokin has

an 11% share, Respondent Vishay has an 11% share and Respondent Panasonic has a 10% share. Additionally, Respondent Hitachi has a 6% share, Respondent Nichicon has a 4% share and Respondent ROHM has a 4% share. Combined, these eight Respondents control approximately 90% of the global market;

155. Given the relatively small market share (i.e., mostly 3% or less) and capacity constraints of the other companies selling products in the global tantalum electrolytic capacitors market, the Respondents' concerted actions have impacted pricing and output in the tantalum capacitor market during the Class Period. Similar to the aluminum electrolytic capacitor market, there was no reasonable threat that manufacturers who were not included in the cartel could undercut the cartel's concerted pricing and meet all or a significant part of market demand for mutually interchangeable capacitors at more competitive prices;

156. Respondents collectively also control a significant share of the market for film capacitors. Respondent Panasonic has a 9% share of the global market, Respondent KEMET has an 8% share, Respondent TDK has a 7% share, Respondent Vishay has a 5% share and Respondent AVX has a 3% share. In addition, Respondents Chemi-Con, Nichicon, Rubycon, Hitachi, Matsuo and Elna also sell significant quantities of film capacitors worldwide. These eleven Respondents control well over 50% of the Canadian market for film capacitors and by virtue of the overlap in sales of Capacitor Products and the marketing power derived therefrom, their market power is substantially stronger;

157. Given the relatively small market share (i.e., mostly 3% or less) and capacity constraints of the other companies selling products in the global film capacitors market, the Respondents' concerted actions have impacted pricing and output in the film capacitor market during the Class Period. Similar to the aluminum and tantalum capacitor markets, there was no reasonable threat that manufacturers who were not included in the cartel could undercut the cartel's concerted pricing and meet all or a significant part of market demand for mutually interchangeable capacitors at more competitive prices;

B. High barriers to entry for new suppliers

158. A collusive agreement that raises product prices above competitive levels would, under basic economic principles, attract new entrants seeking to benefit from the supracompetitive pricing. Where, however, there are significant barriers to entry, new entrants are less likely. Thus barriers to entry help to facilitate the formation and maintenance of a cartel;

159. Companies seeking to manufacture and sell Capacitors without having any prior involvement in the capacitors market face various significant barriers to their entry;

160. The Capacitors manufacturing industry is a mature one dominated by established corporations, each having diverse product portfolios, multinational operations and global market reach. These companies have significant experience in the global capacitors industry and have established reputations with both sellers of raw materials and purchasers of finished capacitors. These companies typically have access to significant financial resources that not only allow them to commit the capital necessary to bring online new fabrication operations and facilities or to expand/retrofit existing ones to meet market demand and adjust to technological changes, but also to establish and to secure necessary supply chain commitments for all raw materials they require. Respondent are all established manufacturers in the capacitors industry;

161. For a prospective capacitor manufacturer, setting up competitive manufacturing operations and supply chain operations is a significant financial and logistic hurdle to market entry. A new entrant seeking to build capacitors fabrication operations and facilities faces not only the sizeable start-up cost of building fabrication plants, but also the costs of acquiring the necessary production technology, hiring and retaining skilled and knowledgeable labour, and securing the raw materials and supply chain relationships necessary to manufacture competitive products. These costs would exceed hundreds of millions of dollars. Many of the Respondent manufacturers have developed internal processing capabilities for raw materials and have established relationships with raw materials producers that all but insure that their requirements will be met;

162. These hurdles, however, are not the only barriers a new market entrant faces. For a new market entrant consistently to products and sell competitively and to create and sustain a diverse product portfolio, it must invest in substantial research and development operations. Additionally, the new entrant must create and maintain global sales and marketing operations so that its products can be attractive to capacitor purchasers and disrupt their existing relationships with the established electrolytic capacitor manufacturers;

163. Moreover some of the necessary raw materials to manufacture capacitors, such as niobium, platinum, palladium, and tantalum are produced in only a limited number of regions around the world or available from only a limited number of suppliers. For example, tantalum is the principal feedstock used to make tantalum capacitors. Conversely, fabrication of tantalum capacitors accounts for a majority of tantalum demand in Canada. Tantalum is only mined in a few regions in the world, principally South America (Brazil), central Africa (the Democratic Republic of Congo), and Australia. However, although the Congo is rich in ores containing tantalum, rebels there illegally mine the ore and then sell it to finance their bloody civil war. As a result, the U.S. passed the Dodd-Frank Act designating tantalum as a "conflict mineral" and requiring that companies using tantalum ensure that their tantalum is not sourced from a conflict region such as the Congo. These restrictions have resulted in additional

supply shortages and price shocks. Accordingly, potential new tantalum capacitor manufacturers would likely have difficulty securing adequate supplies of tantalum;

164. The plastic film used to make film capacitors may also be difficult for a new entrant to source. The dielectric grade resins used to make film capacitors come from a limited number of suppliers in the world, principally DuPont, Teijin, Toray, Mitsui, and Borealis. These manufacturers make dielectric grade resins in large batches only a few times a year. Likewise, the converters who apply special conductive coatings to the resin usually only run large batches a few times a year. For some specialty film coatings, batches are usually run only once a year. Accordingly, potential new film capacitor manufacturers will also have difficulty securing the necessary adequate raw material inputs;

165. Ultimately, to be competitive, a new market entrant has to commit to significant financial and operational undertakings to establish itself in an industry where—in the absence of any price manipulation—profit margins are not large and economies of scale must be achieved in order to reach profitability. Moreover, because the global demand for capacitors has shifted significantly in favor of ceramics over the last decade, a new market entrant's commitment of the necessary financing and resources to establish itself in the electrolytic capacitors market would be fraught with risk;

166. Finally, the structure of the Capacitor Products market would make it difficult for a new entrant who did not have its own funds to obtain lender financing. The demand for Capacitor Products has been impacted by the industry-wide move toward the use of ceramic capacitors. Therefore, a new entrant seeking financing would need to convince lenders to loan it hundreds of millions of dollars to enter a market for low-profit-margin products where profitability depends on achieving large economies of scale despite waning demand;

167. The fact that no new manufacturers have begun producing exclusively aluminum, tantalum or film capacitors in well over a decade—other than through acquisition of companies or business units already producing specific electrolytic capacitor products—strongly suggests that the electrolytic capacitors market is foreclosed to new competition;

C. Mutual interchangeability of Respondents' Capacitors

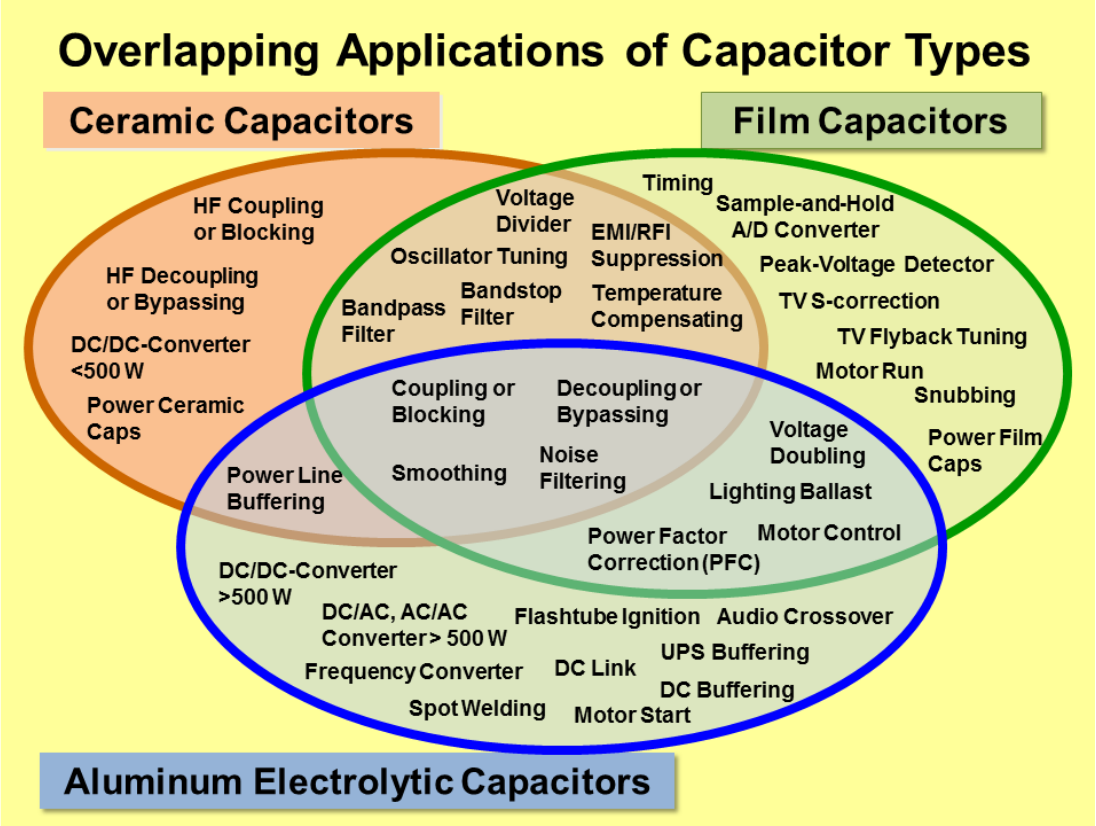
168. As noted earlier, capacitors of like capacitance, dielectric, and form factor are mutually interchangeable. A specific aluminum, tantalum or film capacitor manufactured by one of the Respondents therefore can be exchanged for a product of another Respondent with the same technical and operational specifications. There are no other defining physical characteristics that differentiate Respondents' various Capacitor products from each other;

169. Respondents are aware of the fungibility of their specific products. Indeed, Respondents have made product cross-reference materials available through their respective web sites, product catalogues, and/or other materials distributed to capacitor purchasers. These cross-reference materials identify a specific Respondents' capacitor product by either product number or technical and operational specifications, and it identifies specific mutually interchangeable products manufactured by competitor Respondents;

170. In addition to many of Respondents' products being directly interchangeable, products with differing capacitance, dielectric and form factor—depending on circuit design and certain technical requirements—can be interchangeable for each other. There are a number of general rules recognized in the capacitors industry that govern such interchangeability, for example: (1) using a capacitor with a higher capacitance value than the circuit requires is sometimes acceptable; (2) a capacitor with a better capacitance tolerance can replace a looser tolerance component; (3) a capacitor with a higher voltage rating may be used in place of, or as a substitute for, a lower voltage rated component; (4) a physically smaller capacitor may be acceptable if lead spacing is the same and electrical specifications differences are acceptable; (5) a capacitor with a better temperature rating can replace a lower temperature rated component; (6) a capacitor with a more stable temperature coefficient can replace a component with a less stable temperature coefficient; (7) a capacitor with a lower dissipation factor can replace one with a higher dissipation factor; (8) a capacitor with a lower ESR can replace one with a higher ESR; (9) a capacitor with a higher ripple current rating can replace one with a lower ripple current rating; and (10) a capacitor with a lower leakage current rating can replace one with a higher leakage current rating;

171. In addition to the ability to substitute capacitors with identical specifications, there are guidelines allowing for substitution among capacitors with different form factor, dielectric, or specifications so that, for example, a tantalum capacitor can be replaced with an aluminum capacitor provided that certain guidelines are met. In many cases: increasing to a higher capacitance is acceptable; a component with a tighter (better) tolerance can replace a capacitor with a lower tolerance; a capacitor with a higher voltage rating may be used in place of or as a substitute for one with a lower rating; a capacitor with a higher (better) temperature rating can replace one with a lower rating; and in many instances, electrostatic capacitors such as film, can be considered as replacements for electrolytic capacitors such as aluminum and tantalum;

172. There is also significant overlap among the different applications calling for capacitors so that manufacturers can often choose among the competing Capacitor Products when engineering their products. The below diagram illustrates some of the numerous overlapping applications between ceramic, film and aluminum capacitors;



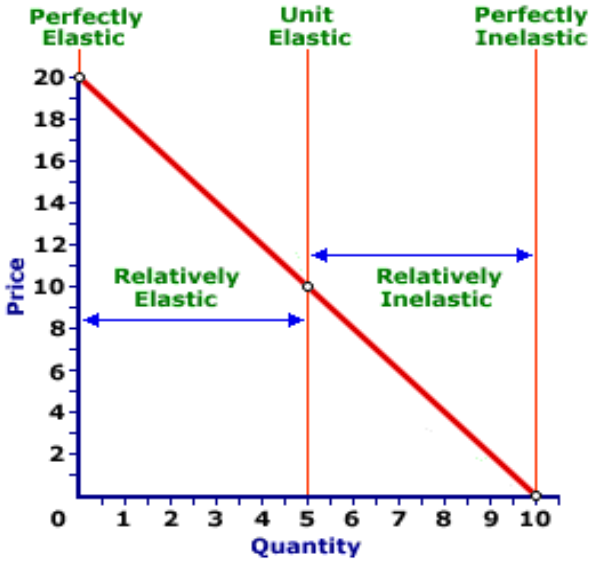
173. Because purchasers are aware of the mutual interchangeability of Respondents' respective capacitor products of like capacitance, dielectric and form factor, along with the possibility that certain products that are not directly fungible can still replace each other, Respondents present purchasers a broad portfolio of product choices that can meet their needs. Accordingly, but-for Respondents' noncompetitive maintenance of pricing, price would be the primary means of competition among Respondents in the Capacitor market;

D. Inelastic Demand

174. "Elasticity" is a term used to describe the sensitivity of supply and demand to changes in one or the other. Demand is said to be inelastic where customers have nowhere to turn to for an alternative, cheaper product of similar quality and must continue to purchase an item despite a price increase. Because of the lack of substitute products, the Capacitors market should not see a large decrease in demand as prices rise. The market is inelastic in that an increase in prices does not result in a drop in revenue or demand;

175. In other words, inelastic demand means that increases in price result in limited declines in quantity sold in the market. For a cartel to profit from raising prices above competitive levels, demand must be inelastic at competitive prices such that cartel members are able to raise prices without triggering a decline in sales revenue that would make the price increase unprofitable. In simple terms,

demand is inelastic when the loss in volume arising from a price increase is small relative to the magnitude of the increase in price, allowing higher prices to increase revenues and profits;



176. Because the demand for Capacitors is inelastic, it is a market favourable for collusive activity. When there are few or no substitutes for a product, purchasers have little choice other than to pay higher prices in order to produce their product. As set forth above, capacitors serve as a fundamental component in the electric circuits employed to make functional a wide variety of products within different end-markets. No other type of passive electrical component (e.g., inductors, resistors) can serve as a substitute or a functional equivalent to a capacitor in an electric circuit. Accordingly, a purchaser that is either an OEM or an EMS Provider simply cannot design an electric circuit to bypass its need for a capacitor with a certain capacitance, dielectric and form factor;

177. Demand for Capacitors is highly inelastic as there are no close substitutes and customers must purchase Capacitors as an essential part of their electronic devices, even if prices are kept at a supracompetitive level;

178. Capacitors are also often a comparatively inexpensive cost input in electrical devices, so a purchaser facing higher prices for capacitors would generally pay that increased price rather than forgo its opportunity to sell the device that includes the capacitors;

179. Though the specific capacitors that the Respondents manufacture are either mutually interchangeable for each other when a specific electric circuit is designed to incorporate them, this does not demonstrate price elasticity. Rather, this fact affirms the pervasive need for capacitance in electric circuits and the inability of purchasers of capacitors to relinquish their use in their products or find a cost-effective, functional substitute for them;

180. Indeed, demand inelasticity for capacitors is particularly acute when a given electric circuit or an electronic device requires not just a capacitor, but one with a specific capacitance, dielectric and form factor. In that instance, a purchaser has no choice but to buy a specific capacitor with the required technical and operational characteristics;

E. Commoditization

181. When a product is characterized as a commodity, market participants typically compete on the basis of price rather than other attributes such as product quality or customer service. Where competition occurs principally on the basis of price, it is easier to implement and monitor a cartel because price is more often objectively measurable and observable than non-price factors such as service;

182. Because Capacitors are mass-produced products generally sold by Respondents in lots of 1,000 pieces that have relatively standardized technical and operational characteristics for the various mutually interchangeable models manufactured and sold by the Respondents, the electrolytic capacitor products at issue are largely commoditized;

183. Respondents recognize that their Capacitors are commoditized products. Based on the type of electrolytic capacitor they produce, Respondents face relatively similar raw materials and production costs. Accordingly, even without Respondents' sharing of confidential and competitively sensitive information as part of their price-fixing conspiracy, Respondents would have approximate knowledge of each other's costs and the bases for their respective prices. However, by having access to their co-conspirators' pricing information, Respondents can more easily implement their scheme to maintain noncompetitive prices for Capacitors;

F. Weak Demand

184. Static or declining demand is one factor which makes the formation of a collusive arrangement more likely. Under normal business conditions, when faced with weak demand conditions, firms will attempt to increase sales by taking market share from competitors by decreasing prices. For this reason, firms faced with static or declining demand have a greater incentive to collude to avoid price competition with competitors in order to ballast their declining business;

185. As alleged herein, the overall demand for aluminum, tantalum and film capacitors has declined significantly since the early 2000s. Demand for these capacitors is closely tied to the demand for consumer electronics. Over the past decade, declining sales of desktop computers and television sets have weakened demand for passive electronic components and capacitors in

particular. In 2012, for example, sales of televisions and desktop computers declined roughly 10% from the previous year, whereas demand for laptop computers declined only 2%. The impact of this decline in consumer electronic demand on capacitor demand is evident in the static growth observed by the overall market and the negative growth trends reported in some segments by certain Respondents;

186. For instance, Respondent Nichicon's 2013 Annual Report states that the company's 21.7% decrease in capacitor sales "is attributed to declining demand for digital home electronics and inverter equipment", the whole as appears more fully from a copy of Respondent Nichicon Corp.'s 2013 Annual Report, produced herein as **Exhibit R-7**;

187. Similarly, Respondent Taiyo Yuden's 2013 Annual Report notes that "[t]he electronics industry, to which [Taiyo Yuden] belongs, has seen continued growth from the smartphone and tablet device markets. In contrast to this, the PC and television markets remain sluggish. Overall this has caused weaker demand for electronic components", the whole as appears more fully from a copy of Respondent Taiyo Yuden's 2013 Annual Report, produced herein as **Exhibit R-8**;

188. Respondent AVX made the same observation in both its 2013 and 2014 Annual Reports stating, "[o]verall sales prices for our commodity component products declined during 2013 as lower immediate delivery demand in the marketplace led to increased sales price pressure compared to the prior year", the whole as appears more fully from a copy of Respondent AVX's 2014 Annual Report, produced herein as **Exhibit R-9**;

G. Large Number of Purchasers With Limited Purchasing Power

189. In a market with many purchasers, each of whom forms a small share of the total marketplace, there is less incentive for cartel members to cheat on collusive pricing arrangements, since each potential sale is small while the risk of disrupting the collusive pricing agreement carries large penalties;

190. In the market for Capacitors, the Respondents each have historically sold and currently sell to a wide number of purchasers around the globe, the vast majority of whom during the Class Period make up no more than 10% of each Respondent's respective annual net sales, year over year;

191. Respondents therefore had many reasons during the Class Period to coordinate pricing and market supply availability with each other within the auspices of their cartel;

192. Respondents concertedly priced their respective capacitor products during the Class Period, and also provided lockstep quotation of production lead times to purchasers;

H. Opportunities and ease of information sharing among Respondents

193. Because of their common membership in trade associations and interrelated business relationships between certain executives, officers, and employees of the Respondents, there were many opportunities both before and during the Class Period for the Respondents to collude by discussing competitive information regarding their respective Capacitor products. The ease of communication was facilitated by the use of meetings, telephone conversations, e-mail messages, written correspondence and text messaging. Respondents took advantage of these opportunities to discuss and to agree upon their pricing for the various types of capacitors that they produce;

194. Industry trade associations actually make a market more susceptible to collusive behaviour because they can provide a pretext under which conspirators can exchange sensitive company information such as pricing and market allocation;

195. A number of industry trade associations exist in the capacitor industry. One of the largest trade associations for the industry, the Electronic Components Industry Association (the "ECIA"), claims Respondents AVX, KEMET and Panasonic as members. According the ECIA, its members are granted access to "industry peers and executive networking," and events where they can be "face-to-face with leaders of the authorized electronic components industry", the whole as appears more fully from a copy of the ECIA website at www.eciaonline.org entitled "Benefits of Membership", produced herein as **Exhibit R-10**;

196. Another trade association of which many of the Respondents are members is the Power Sources Manufacturers Association ("PSMA"). Additionally, Respondents regularly attend the yearly Applied Power Electronics Conference and Exposition ("APEC"), which has been held yearly since 1986 and is co-sponsored by other organizations, including the PSMA;

197. Likewise, the European Passive Components Industry Association (the "EPCIA") provides similar networking opportunities, and it includes Respondents Nichicon, AVX and Panasonic among its members;

198. Aside from these formalized means of exchanging information amongst themselves, the Respondents have numerous informal links between their former and current colleagues, co-venturers, and/or partners employed by other Respondent companies. These links provided them with the means and opportunity to exchange competitively-sensitive information. Despite the billions

of dollars of revenue generated by the capacitors industry worldwide, it is still a narrow segment of the overall electronic components industry and the key decision-makers for the major producers had personal access to each other both directly and indirectly;

199. Further, the Respondents can easily procure relatively detailed competitive information from industry analysts. The capacitor industry is analyzed by a limited number of market research firms that deal in detailed industry data. Each of these firms offers, for a fee, market data on pricing, supply, and other key indicators of market activity as well as market projections. The capacity and pricing information procured by these analysts is provided directly from industry participants, including certain of Respondents. Given the limited number of analysts that cover the capacitors industry, those that do are often provided highly-detailed information and direct access to decision-makers for the capacitors manufacturers, including the Respondents;

200. The Respondents' illegal activities alleged herein artificially stabilized and raised the prices of Capacitors during the Class Period. Had there been no conspiracy, the prices of Capacitors would not have been so inflated;

VI. Current international government investigations

201. The Respondents' conspiracy to artificially fix, raise, maintain and/or to stabilize prices for Capacitors and/or Capacitor Products, as well as to restrict the output of such capacitors, has only very recently been discovered by law enforcement and regulatory authorities;

202. Currently, globally-coordinated antitrust investigations are taking place in at least the United States, China, South Korea, Taiwan and in Europe, aimed at manufacturers of Capacitors;

203. In April 2014, the Antitrust Division of the United States Department of Justice (the "USDOJ") confirmed to industry sources that the government has opened an investigation into price fixing in the capacitors industry. The USDOJ investigation is focused on tantalum capacitors, aluminum capacitors, plastic film capacitors, and carbon capacitors, the whole as appears more fully from a copy of the TTI MarketEYE article entitled "The U.S. Department of Justice is Conducting an Ongoing Investigation into the Capacitor Industry" dated June 6, 2014 and from a copy of the Forbes article entitled "Here Comes Tougher International Antitrust Enforcement" dated June 9, 2014, produced herein *en liasse* as **Exhibit R-11**;

204. This investigation has been ongoing for quite some time and the USDOJ has been coordinating its efforts to investigate the capacitors industry with the People's Republic of China's National Development and Reform Commission ("NDRC"), an agency entrusted with regulating price-related anticompetitive

activity by the Chinese State Council. During March 2014, the NDRC conducted several raids on Chinese operations of Japanese capacitors manufacturers;

205. Media and industry sources indicate that a member of the cartel—believed to be Respondent Panasonic– approached U.S. and Chinese authorities to self-report its involvement in the conspiracy and to request prosecutorial leniency and amnesty;

206. The U.S. Antitrust Criminal Penalty Enhancement and Reform Act of 2004 ("ACPERA") provides leniency benefits for a participant in a price-fixing conspiracy that voluntarily discloses its conduct to the USDOJ. A November 19, 2008 presentation on the DOJ's website explains that "[a conditional leniency] applicant must admit its participation in a criminal antitrust violation involving price fixing…before it will receive a conditional leniency letter." One of the leniency benefits for a conspirator that is accepted into the ACPERA program is that the applicant is not charged with a criminal offense and is not required to plead guilty to criminal charges, the whole as appears more fully from a copy of the USDOJ presentation entitled "Frequently asked questions regarding the Antitrust Division's Leniency Program and Model Leniency Letters (November 19, 2008)" available on its website at www.justice.gov, produced herein as **Exhibit R-12**;

207. By applying for leniency through ACPERA, the cartel member believed to be Respondent Panasonic had to have admitted to price fixing in the capacitors industry;

208. On or about July 2, 2014, the NDRC publicly confirmed its investigation into the capacitors industry both verbally and through a report published in the China Price Supervision and Antitrust Journal and written by Xu Kunlin, Director-General of the NDRC's Price Supervision and Antimonopoly Bureau. Xu Kunlin revealed that one Japanese capacitor company had self-reported its cartel activity in March 2014 through a leniency application, and that this company and other Japanese capacitor manufacturers held regular conferences to exchange market information related to their products. Xu Kunlin affirmed that the Japanese manufacturer seeking amnesty would receive complete leniency, the whole as appears more fully from a copy of the PaRR Special Report entitled "ABA Antitrust in Asia" dated May 21-23, 2014, produced herein as **Exhibit R-13**;

209. The United States and the People's Republic of China; however, are not the only countries investigating price fixing in the capacitors industry;

210. The Japan Fair Trade Commission ("JFTC") has been investigating price fixing of aluminum and tantalum electrolytic capacitors for some time now. On or about June 24, 2014, the JFTC conducted raids of approximately eight (8) or nine (9) Capacitors manufacturers believed to be members of the cartel,

including Respondents Panasonic Corp., Sanyo, Nippon Chemi-Con, Hitachi Chemical Co., Nichicon, and NEC Tokin. Sales executives and other officials from the raided companies discussed and decided on price increases for capacitors for at least several years. It is reported that the JFTC suspects that the raided companies formed a cartel in order to boost profits after they had suffered financial setbacks following the global financial crisis stemming from the collapse of Lehman Brothers in 2008 and the 2011 Tohoku earthquake and tsunami in Eastern Japan, the whole as appears more fully from a copy of the Mainichi article entitled "Japan Fair Trade Commission inspects electronic parts companies over alleged cartel" dated August 4, 2014 and from a copy of the Record article entitled "Electronic parts makers inspected in cartel probe" dated June 24, 2014, produced herein *en liasse* as **Exhibit R-14**;

211. Since the beginning of 2014, investigations into the capacitors industry also have been opened by the South Korean Fair Trade Commission, the Taiwanese Fair Trade Commission, and the European Commission's competition authority;

212. To date, few of the Respondents have commented about their being subject to these raids (Exhibit R-13):

a) Respondent Panasonic Corp. has confirmed that it was raided by both the JFTC and South Korean authorities;

b) Respondent Taiyo Yuden has admitted to having been raided by the NDRC and has stated that it is cooperating with Chinese authorities;

c) Respondent NEC Tokin has confirmed that it has been contacted or raided by American, Chinese and European authorities and has stated that it is cooperating with authorities; and

d) Respondent Toshin Kogyo has confirmed that it has been contacted by Japanese, Chinese and Taiwanese authorities;

VII. Several Respondents have a history of collusive and anticompetitive behaviour

213. Many of the Respondents and/or their predecessors, parents, subsidiaries, agents or affiliates —especially Panasonic, Sanyo, Hitachi and Samsung— have a long history of criminal collusion and are either currently involved in worldwide investigations into other technology-related products or have been convicted of participating in price-fixing cartels involving technology-related products. Further, much of the illegal conduct which the Respondents or their affiliates have admitted to took place during the Class Period identified in this class action;

214. In short, this is not the first time they have been scrutinized by law enforcement and competition authorities for anticompetitive behaviour. These Respondents have a documented history of cartel behaviour and antitrust price-fixing recidivism;

215. Both Respondents Panasonic and Sanyo have been investigated by the USDOJ within the last several years for participating in price-fixing conspiracies involving automotive parts and lithium ion battery cells;

216. Most recently, Respondent Panasonic pled guilty for its role in a nearly six and a half year-long conspiracy to fix prices of switches, steering angle sensors, and automotive high intensity discharge ballasts installed in cars sold in the United States and elsewhere, the whole as appears more fully from a copy of the Information dated July 18, 2013, from a copy of the Plea Agreement dated August 5, 2013, from a copy of the Press Release entitled “Panasonic and its Subsidiary Sanyo Agree to Plead Guilty in Separate Price-Fixing Conspiracies involving Automotive Parts and Battery Cells” dated July 18, 2013, and from a copy of Respondent Panasonic’s Press Release entitled “Panasonic Announces Plea Agreements with the United States Department of Justice Regarding Certain Automotive Components and Cylindrical Lithium Ion Battery Cells used in Notebook Computer Battery Packs” dated July 19, 2013, produced herein *en liasse* as **Exhibit R-15**;

217. Respondent Panasonic agreed to pay a $45.8 million criminal fine, and a number of its executives pled guilty in exchange for limited fines and imprisonment (Exhibit R-14);

218. Respondent Sanyo agreed to plead guilty for its role in a year and a half long conspiracy to fix prices on cylindrical lithium ion battery cells sold worldwide for use in notebook computer battery packs and agreed to pay a $10.731 million criminal fine (Exhibit R-13), the whole as appears more fully from a copy of the Information dated July 18, 2013, produced herein as **Exhibit R-16**;

VIII. The Collusion

219. Capacitors are generally considered to be commodity products to the extent that similarly-rated capacitors can be substituted for each other. However, Japanese and U.S. manufactured capacitors have been able to demand a premium over Chinese and Taiwanese capacitors because of their superior quality;

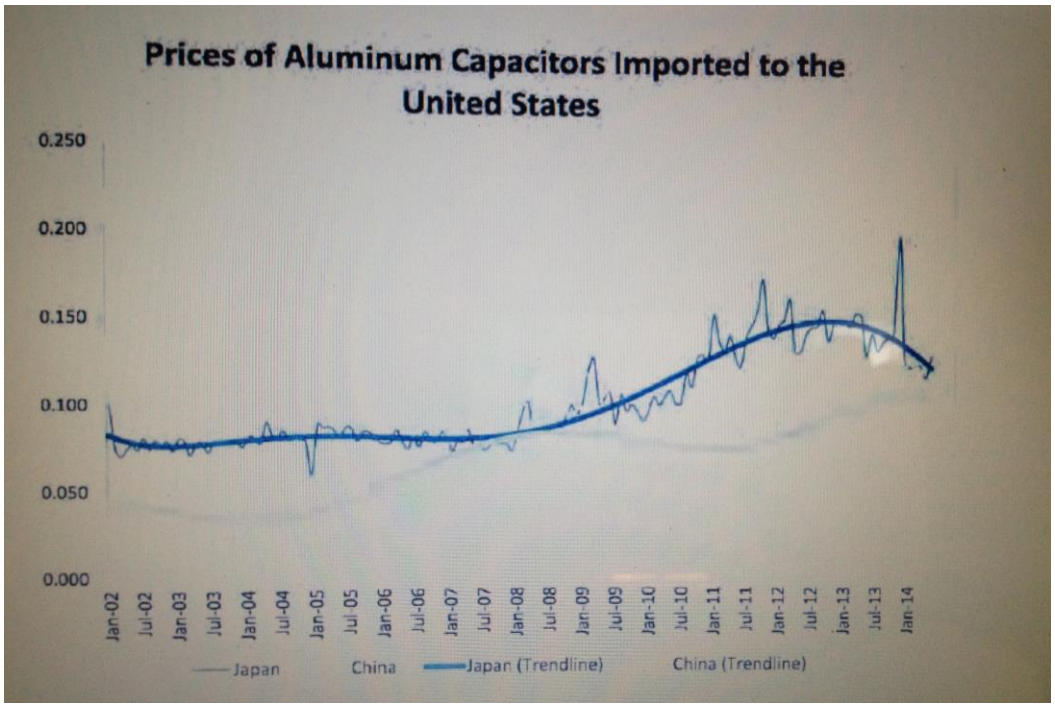
220. Historically, the two main problems with aluminum capacitors have been the use of a bad sealing (the seal that holds the wrapped foil/electrolyte in the canister) and the use of a bad electrolyte (the dielectric gel that separates the foils). Bad sealing will allow the electrolyte to leak or evaporate. A bad electrolyte can vaporize prematurely. When the electrolyte vaporizes, the

capacitor will fail and may even explode. Once the capacitor fails, the product incorporating the capacitor will stop working or in some instances will self-destruct. For example, a computer power supply is designed to ensure that constant low voltages are supplied to the components in a computer. When a power supply capacitor fails, the result may be that voltages with huge fluctuations are passed on to the computer which can burn out motherboards, hard disk drives and other components;

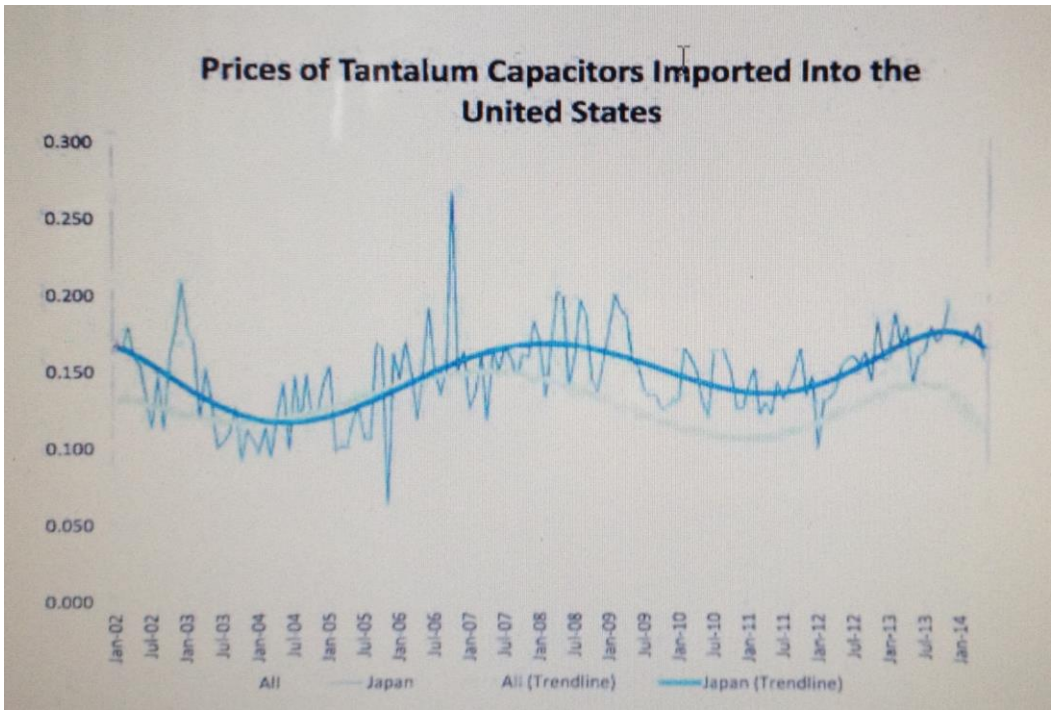
221. Around October, 2002, mainstream electronics journals began reporting widespread failures of capacitors sourced from Taiwan. The problem of low cost capacitors failing became known as “capacitor plague” and over the next several years such failures spread throughout the electronics industry. However, while Chinese and Taiwanese capacitors became infamous for using inferior electrolytes and inferior sealing, leading to premature failure, Japanese and U.S. capacitors earned a reputation for above-average quality (good electrolytes and good sealing) and long product life;

222. North American demand for capacitors is different from demand in Asia to the extent that U.S. manufacturers focus on producing high cost durable products. Accordingly, their purchasers are less price sensitive than Asian purchasers because capacitor failures in their products can result in significant repair costs. For example, by 2005, Dell spent approximately $420 million to fix problems caused by faulty capacitors it had installed in a three year period in over II million computers. Considering that capacitors are a comparatively small cost, U.S. manufacturers have been willing to pay a premium in order to protect their reputations and ensure product longevity;

223. While Japanese and U.S. manufacturers had enjoyed a price premium over their Chinese counterparts, their ability to charge a premium began to falter in the wake of the 2007 economic downturn. As a result, the Japanese and U.S. manufacturers sought to take advantage of their market position by agreeing among themselves to raise the prices of their capacitors;



224. A similar price gap occurred with respect to the spread between Japanese sourced tantalum capacitors and capacitors sourced from other foreign manufacturers;



225. Because of the correlation in pricing among tantalum capacitors and film capacitors, by no later than 2009, Respondents were also able to impose supra-competitive prices for their film Capacitor Products;

IX. Concealment

226. Petitioner and members of the Class did not discover and could not have discovered through the exercise of reasonable diligence, the existence of the collusion and/or conspiracy alleged herein until in or about March 2014, when investigations by the USDOJ and competition and law enforcement authorities in the People's Republic of China, Japan, Taiwan, South Korea and the European Commission were made public;

227. Respondents engaged in a secret conspiracy that did not give rise to facts that would put Petitioner or the Class on inquiry notice that there was an agreement or collusion among capacitor manufacturers to artificially fix, raise, maintain and/or to stabilize prices for aluminum, tantalum or film capacitors, as well as to restrict their respective output by unjustifiably extending production lead times. In fact, Respondents had secret discussions about price and output and, in furtherance of the conspiracy, they agreed not to discuss publicly the nature of the scheme. As discussed above, Respondents also gave pretextual justifications for the pricing changes and the reductions in output that occurred during the Class Period;

228. Indeed, Respondents relied on a variety of market-based explanations for pricing changes and reductions in output through extension of production lead times in order to conceal the conspiracy;

229. With regard to aluminum electrolytic capacitors, Respondents often attributed price changes and increased production lead times to difficulties procuring the necessary raw materials to manufacturer their products;

230. For example, in 2010, Respondents Nichicon, Chemi-Con, and Panasonic each made a number public statements to industry and technology media in which they attributed supply limitations and price quote adjustments to shortages of aluminum foil and increasing costs for other raw materials required for manufacturing;

231. These explanations are belied by industry reports and data that characterize aluminum foil as a widely available raw material, and aluminum electrolytic capacitors as being the product least susceptible to raw material price shocks;

232. With regard to tantalum electrolytic capacitors, Respondents often attributed price changes and increased production lead times to difficulties procuring the necessary tantalum to manufacturer their products;

233. For example, in 2010 and 2011, Respondents Vishay and Panasonic each made a number public statements to industry and technology media attributing supply limitations and pricing adjustments for their tantalum electrolytic capacitors to raw materials supply issues;

234. These explanations are belied by industry and other media reports that criticize the lack of true visibility into the market for tantalum, highlight tantalum capacitor manufacturers' close ties and business arrangements with tantalum mining operations, and recognize manufacturers' efforts to process certain raw materials in-house;

235. Additionally, these explanations are belied by certain other Respondents, such as KEMET, which noted in a 2010 "Tantalum Market Update" letter in that:

> "[T]he tantalum capacitor industry is running at or near capacity, as witnessed by the increased lead times. This immediate issue is not the result of raw material availability but due to the lack of investment in capacity over the last 10 years—a consequence of industry pricing pressures which have driven margins to a point where we have been unable to realize reinvestment economics. We expect these capacity constraints to continue into the foreseeable future; therefore to protect you, our valued customer, we are implementing controlled order entry"

The whole as appear more fully from a copy of Respondent KEMET's Letter dated June 1, 2010, produced herein as **Exhibit R-17**;

236. Aside from the product-specific explanations noted above, Respondents, at various times during the Class Period, also issued a multitude of other non-market excuses for pricing changes and reductions in output, such as labor shortages and shipping delays due to weather in Asia;

237. More specifically, from 2011 to 2013, Respondents Hitachi Chemical, Chemi-Con, Nichicon, Rubycon and Elna attributed some degree of production delays to the lasting effects of the 2011 Tohoku earthquake and tsunami in eastern Japan;

238. Further, in 2011, Respondents NEC Tokin and ROHM attributed production delays to flooding in Thailand;

239. Even if the explanations that the Respondents provided could be grounded in these events, Respondents still unjustifiably and disproportionately manipulated prices or extended production lead times beyond any reasonably justifiable adjustments necessary to account for any actual pricing impact or lead time increases. Indeed, the excuses given by Respondents for their price changes and extended production lead times were always misleading (if not outright false), because they lulled the Petitioner and members of the Class into believing

that the price changes and extended production lead times were the normal result of competitive and economic market forces, rather than the product of collusive, unlawful efforts. As alleged herein, Respondents and their co-conspirators made statements in the media in support of price changes that were presumed to be true and were designed to convince members of the Class to pay purportedly legitimate prices;

240. Respondents' explanations for price changes and extended lead times were pretextual and materially false and/or misleading and served only to cover up Respondents' anticompetitive conduct. As a result of Respondents' concealment, the running of any statute of limitations/ prescriptive period has been tolled/ suspended with respect to any claims that Petitioner and the Class members have as a result of the anticompetitive and unlawful conduct alleged herein;

D) <u>The Fault</u>

241. To formalize their agreement, combination, collusion, and/or conspiracy, Respondents:

(a) Participated in meetings, conversations and communications in the United States, in Japan, in China, in South Korea and/or elsewhere to discuss prices of Capacitors to be submitted in Canada and elsewhere;

(b) Agreed, during those meetings, conversations and communications, prices for Capacitors sold in Canada and elsewhere;

(c) Agreed, during those meetings, conversations and communications, to depress the supply of Capacitors;

(d) Agreed, during those meetings, conversations and communications, to coordinate prices for Capacitors sold in Canada and elsewhere;

(e) Sold Capacitors in Canada and elsewhere at collusive and non-competitive prices;

(f) Accepted payment for Capacitors at collusive and non-competitive prices;

(g) Engaged in meetings, conversations and communications in Canada and elsewhere for the purpose of monitoring and enforcing adherence to the agreed-upon price-fixing scheme; and

(h) Employed measures to keep their conduct secret;

242. The predominate purpose of the Respondents' conduct was:

(i) To harm the Petitioner and members of the class by requiring them to pay artificially high prices for Capacitors and Capacitor Products; and

(ii) To unlawfully increase their profits on the sale of Capacitors;

243. As a result of the Respondents' price-fixing conspiracy:

(a) Price competition has been restrained or eliminated with respect to Capacitors and/or Capacitor Products;

(b) The prices of Capacitors have been fixed, raised, maintained, or stabilized at artificially inflated and non-competitive levels;

(c) The supply of Respondents' Capacitors available for sale during the Class Period to purchasers in Quebec and in Canada has been artificially and unjustifiably restrained;

(d) Direct and Indirect purchasers of Capacitors have been deprived of the benefits of free and open competition; and

(e) Competition between and among the Respondents and their co-conspirators in the sale of Capacitors has been unreasonably restrained;

244. Just like these other criminal conspiracies, the Respondents' conspiracy here successfully targeted yet again another key component of consumer electronic goods by raising prices for Capacitors, and in turn, the prices of Capacitor Products;

245. By reason of the alleged violations, the Petitioner and the members of the Classes have sustained economic loss having paid higher prices for Capacitors and/or Capacitor Products than they would have paid in the absence of the Respondents' illegal contract, combination, or conspiracy, and, as a result, have suffered damages in an amount presently undetermined;

246. The Respondents, when committing the acts as alleged herein, knew or ought to have known that Capacitors would be sold in Canada, including within the province of Quebec;

247. The Respondents conduct as alleged herein was intended to, and did in fact, cause the members of the class to suffer a prejudice in Canada, including in the province of Quebec, by means of having to pay artificially inflated prices for Capacitors and Capacitor Products;

248. Petitioner contends that the Respondents failed in their duties, both legal and statutory, notably with respect to sections 45, 46 (1), 47 and 61 (from the period of January 1, 2005 to March 11, 2009), of the *Competition Act* (R.S.C., 1985, c.

C-34) ("*Competition Act*"), thereby rendering them liable to pay damages under section 36 of same;

249. In addition, Petitioner alleges that the Respondents failed in their obligations as provided for in the *Civil Code of Québec*, LRQ, c C-1991 ("C.C.Q."), more specifically with respect to the duty to act in good faith at article 7 of the C.C.Q. and to not cause damage to others at article 1457 of the C.C.Q.;

E) <u>The Foreign Procedures</u>

250. Numerous class actions have been instituted in the United States based on the Respondents' conduct, the whole as appears more fully from a copy of said Complaints, produced herein *en liasse* as **Exhibit R-18**;

II. <u>FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER</u>

251. Petitioner purchased in Quebec over the last few years numerous Capacitor Products, including, but not limited to: an Apple iPhone 5s, an Apple Macbook Pro, Apple iPads, an HP Notebook computer, an Insignia television, a Conair blow-dryer, a Conair hair straightener, a Hamilton Beach toaster, a Black and Decker blender, a Sylvania microwave, a Proctor-Silex Iron, a Dirt-Devil vacuum cleaner, and a Tracer projector;

252. Due to the Respondents' conduct, Petitioner was deprived of the benefit of free market competition, and because of this, she were charged a higher price for the products that she purchased;

253. Petitioner has suffered damages in the amount of the difference between the artificially inflated price that she paid for said products and the price that she would have paid in a competitive market;

254. The conduct of the Respondents was kept a secret and was not known to the Petitioner at the time that she purchased said products nor could it have been discovered, even through the exercise of reasonable diligence;

255. Petitioner has since discovered that this situation is being investigated by the USDOJ and that several class actions have been instituted in the United States (Exhibit R-18);

256. Petitioner's damages are a direct and proximate result of the Respondents' conduct;

257. In consequence of the foregoing, Petitioner is justified in claiming damages;

III. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP

258. Every member of the class has purchased a Capacitor and/or a Capacitor Product;

259. Each member of the class has paid an artificially inflated price for their Capacitors or Capacitor Products due to the collusion by the Respondents and the impact of that collusion on competition;

260. Every member of the class has suffered damages equivalent to the difference between the artificially inflated price that they paid for a Capacitor and/or a Capacitor Product and the price that they would have paid in a competitive market;

261. All of the damages to the class members are a direct and proximate result of the Respondents' conduct;

262. In consequence of the foregoing, members of the class are justified in claiming damages;

IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

A) The composition of the class renders the application of articles 59 or 67 C.C.P. difficult or impractical

263. Capacitors and Capacitor Products are widespread in Quebec and Canada;

264. Petitioner is unaware of the specific number of persons who purchased Capacitors and/or Capacitor Products; however, it is safe to estimate that it is in the hundreds of thousands. The Respondents, on the other hand, should have sales figures as well as information on direct purchasers readily available to them;

265. Class members are numerous and are scattered across the entire province and country;

266. In addition, given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Respondent. Even if the class members themselves could afford such individual litigation, it would place an unjustifiable burden on the court system. Further, individual litigation of the factual and legal issues raised by the conduct of the Respondent would increase delay and expense to all parties and to the court system;

267. Also, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having contradictory judgments on questions of fact and law that are similar or related to all members of the class;

268. These facts demonstrate that it would be impractical, if not impossible, to contact each and every member of the class to obtain mandates and to join them in one action;

269. In these circumstances, a class action is the only appropriate procedure for all of the members of the class to effectively pursue their respective rights and have access to justice;

B) <u>The questions of fact and law which are identical, similar, or related with respect to each of the class members with regard to the Respondents and that which the Petitioner wishes to have adjudicated upon by this class action</u>

270. Individual questions, if any, pale by comparison to the numerous common questions that predominate;

271. The damages sustained by the class members flow, in each instance, from a common nucleus of operative facts, namely, Respondents' misconduct;

272. The recourses of the members raise identical, similar or related questions of fact or law, namely:

a) Did the Respondents engage in an agreement, combination, collusion, and/or conspiracy to fix, raise, maintain, or stabilize the prices of Capacitors and/or Capacitor Products?

b) Did the Respondents take any actions to conceal this unlawful agreement, combination, collusion, and/or conspiracy?

c) Did the Respondents' conduct cause the prices of Capacitors and/or Capacitor Products to be sold at artificially inflated and supra-competitive levels?

d) Were members of the class prejudiced by the Respondents' conduct, and, if so, what is the appropriate measure of these damages?

e) Are members of the class entitled to, among other remedies, injunctive relief, and, if so, what is the nature and extent of such injunctive relief?

f) Are the Respondents liable to pay compensatory, moral, punitive and/or exemplary damages to member of the class, and, if so, in what amount?

273. The interests of justice favour that this motion be granted in accordance with its conclusions;

V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

274. The action that the Petitioner wishes to institute on behalf of the members of the class is an action in damages, injunctive relief and declaratory judgment;

275. The conclusions that the Petitioner wishes to introduce by way of a motion to institute proceedings are:

GRANT the class action of the Petitioner and each of the members of the class;

DECLARE the Defendants have engaged in an agreement, combination, collusion, and/or conspiracy to fix, raise, maintain, or stabilize the prices of Capacitors;

ORDER the Defendants to permanently cease from continuing or maintaining the agreement, combination, collusion, and/or conspiracy alleged herein;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioner and each of the members of the class;

CONDEMN the Defendants to pay to each member of the class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

ORDER the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

A) <u>The Petitioner requests that she be attributed the status of representative of the Class</u>

276. Petitioner is a member of the class;

277. Petitioner is ready and available to manage and direct the present action in the interest of the members of the class that she wishes to represent and is determined to lead the present dossier until a final resolution of the matter, the whole for the benefit of the class, as well as, to dedicate the time necessary for the present action before the Courts of Quebec and the *Fonds d'aide aux recours collectifs*, as the case may be, and to collaborate with her attorneys;

278. Petitioner has the capacity and interest to fairly and adequately protect and represent the interest of the members of the class;

279. Petitioner has given the mandate to her attorneys to obtain all relevant information with respect to the present action and intend to keep informed of all developments;

280. Petitioner, with the assistance of her attorneys, is ready and available to dedicate the time necessary for this action and to collaborate with other members of the class and to keep them informed;

281. Petitioner is acting in good faith and has instituted this action for the sole goal of having her rights, as well as the rights of other class members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of the Respondents' conduct;

282. Petitioner understands the nature of the action;

283. Petitioner's interests are not antagonistic to those of other members of the class;

B) <u>The Petitioner suggests that this class action be exercised before the Superior Court of justice in the district of Montreal</u>

284. A great number of the members of the class reside in the judicial district of Montreal and in the appeal district of Montreal;

285. The Petitioner's attorneys practice their profession in the judicial district of Montreal;

286. The present motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present motion;

AUTHORIZE the bringing of a class action in the form of a motion to institute proceedings in damages, injunctive relief and declaratory judgment;

ASCRIBE the Petitioner the status of representative of the persons included in the class herein described as:

- all residents in Canada who purchased either an aluminum, tantalum and/or film capacitor (a "Capacitor") manufactured by a Respondent and/or a Capacitor Product containing a Capacitor manufactured by a Respondent, or from any predecessors, parents, subsidiaries, agents or affiliates thereof, at any time between January 1, 2005 and the present (the "Class Period"), or any other group to be determined by the Court;

Alternately (or as a subclass)

- all residents in Quebec who purchased either an aluminum, tantalum and/or film capacitor (a "Capacitor") manufactured by a Respondent and/or a Capacitor Product containing a Capacitor manufactured by a Respondent, or from any predecessors, parents, subsidiaries, agents or affiliates thereof, at any time between January 1, 2005 and the present (the "Class Period"), or any other group to be determined by the Court;

IDENTIFY the principle questions of fact and law to be treated collectively as the following:

a) Did the Respondents engage in an agreement, combination, collusion, and/or conspiracy to fix, raise, maintain, or stabilize the prices of Capacitors and/or Capacitor Products?

b) Did the Respondents take any actions to conceal this unlawful agreement, combination, collusion, and/or conspiracy?

c) Did the Respondents' conduct cause the prices of Capacitors and/or Capacitor Products to be sold at artificially inflated and supra-competitive levels?

d) Were members of the class prejudiced by the Respondents' conduct, and, if so, what is the appropriate measure of these damages?

e) Are members of the class entitled to, among other remedies, injunctive relief, and, if so, what is the nature and extent of such injunctive relief?

f) Are the Respondents liable to pay compensatory, moral, punitive and/or exemplary damages to member of the class, and, if so, in what amount?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

GRANT the class action of the Petitioner and each of the members of the class;

DECLARE the Defendants have engaged in an agreement, combination, collusion, and/or conspiracy to fix, raise, maintain, or stabilize the prices of Capacitors;

ORDER the Defendants to permanently cease from continuing or maintaining the agreement, combination, collusion, and/or conspiracy alleged herein;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioner and each of the members of the class;

CONDEMN the Defendants to pay to each member of the class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

ORDER the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

DECLARE that all members of the class that have not requested their exclusion, be bound by any judgment to be rendered on the class action to be instituted in the manner provided for by the law;

FIX the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the class that have not exercised their means of exclusion will be bound by any judgment to be rendered herein;

ORDER the publication of a notice to the members of the group in accordance with article 1006 C.C.P. within sixty (60) days from the judgment to be rendered herein in LA PRESSE and the NATIONAL POST;

ORDER that said notice be available on the Respondent's website with a link stating "Notice to purchasers of Capacitors and Capacitor Products including, but not limited to consumer electronics and household appliances";

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

THE WHOLE with costs, including all publication fees.

Montreal, August 6, 2014

(S) Jeff Orenstein

_____

CONSUMER LAW GROUP INC.
Per: Me Jeff Orenstein
Attorneys for the Petitioner