

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

500-06-000705-141

SUPERIOR COURT  
(Class Action)

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**MATHIEU HÉRARD,**

**Petitioner**

v.

**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, U.S.A., 070904;

and

**SANYO ELECTRIC GROUP, LTD.,** legal person duly constituted having its principal place of business at 15-5 Keihan-Hondori, 2-Chome, Moriguchi City, City of Osaka, 570-8677, Japan;

and

**SANYO ELECTRONIC DEVICE (U.S.A.) CORPORATION,** legal person duly constituted having its principal place of business at 2055 Sanyo Avenue, City of San Diego, State of California, U.S.A., 92154;

and



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

and

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

and

**NEC TOKIN CORPORATION**, legal person duly constituted having its principal place of business at 7-1 Kohriyama 6-chome, Taihaku-ku, Sendaishi, 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, U.S.A., 95131;

and

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

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, U.S.A., 29681;

and

**NIPPON CHEMI-CON CORPORATION**,  
legal person duly constituted having its  
principal place of business at 5-6-4  
Osaki, Shinagawa-ku, City of 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, U.S.A., 60018;

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, City of Tokyo, 100-6606,  
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, U.S.A., 95014;

and

**NICHICON CORPORATION**, legal  
person duly constituted having its  
principal place of business at  
Karasumadori Oike-agaru, Nakagyo-ku,  
City of 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, U.S.A., 60173;

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, U.S.A., 29644;

and

**RUBYCON CORPORATION**, legal person duly constituted having its principal place of business at 1938-1 Nishi-Minowa, Ina-city, City of 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, U.S.A., 60031;

and

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

and

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



and

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

and

**TOSHIN KOGYO CO., LTD.**, legal person duly constituted having its principal place of business at Tsukasa Bldg. 2-15-4, Uchikanda Chiyoda-ku, City of Tokyo, 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, U.S.A., 19355;

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, U.S.A., 92612;

and



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

and

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

**Respondents**

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**MOTION FOR THE AUTHORIZATION OF A CLASS ACTION  
AND FOR OBTAINING THE STATUS OF REPRESENTATIVE  
(Art. 1002 and following C.C.P.)**

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**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT OF  
QUEBEC, SITTING IN AND FOR THE DISTRICT OF MONTREAL, PETITIONER  
RESPECTFULLY SUBMITS AS FOLLOWS: :**

**I. INTRODUCTION**

1. The Petitioner addresses the Court for the purpose of obtaining authorization to institute a class action for and on behalf of the members of the Group (as hereinafter defined) against the Respondents in relation to the illegal anti-competitive activities engaged in by the Respondents of fixing the prices of aluminum and tantalum electrolyte capacitors ("Product" or "ATEC"), being a component of electronic circuit boards;

**II. DESCRIPTION OF THE GROUP**

2. The Petitioner wishes to institute a class action against the Respondents for and on behalf of the physical persons, legal persons established for a private interest, partnerships and/or associations forming part of the following group :

*"All physical persons and all legal persons, partnerships, and associations in Canada, excluding however any of same who are precluded from forming part of the group pursuant to*



*applicable legislation in their jurisdiction, who purchased any products including, without limitation, digital cameras, computers, televisions, tablets, power tools and other electronic devices and equipment containing aluminum and tantalum electrolyte capacitors ("ATEC") manufactured, distributed, sold or otherwise made available to such persons anywhere in Canada, whether directly or indirectly, at any time during the period commencing January 1<sup>st</sup> 2005 up to August 7<sup>th</sup>, 2014 (the "Class Period")"*

or such other group which the Court may designate (the "Principal Group");

3. The Petitioner also wishes to institute a class action against the Respondents based on the provisions of the Consumer Protection Act (Quebec) (RLRQ, c. P-40.1) (the "Consumer Protection Act") as well the laws of any Canadian province or territory of similar application for and on behalf of the following sub-group:

*"All physical persons in Canada, save for a merchant who has concluded a contract for the purpose of his commercial activity, who purchased from merchants any products including, without limitation, digital cameras, computers, televisions, tablets, power tools and/or other electronic devices and equipment containing aluminum or tantalum electrolyte capacitors manufactured, distributed, sold or otherwise made available to such persons anywhere in Canada, whether directly or indirectly, at any time during the Class Period"*

or such other sub-group which the Court may designate (the "Consumer Group");

4. The Principal Group and the Consumer Group are hereinafter sometimes collectively referred to as the "Group". It is, however, understood that the Consumer Group has been constituted for the purposes of applying the relevant provisions of the Consumer Protection Act as well as those of any other provincial or territorial law of similar application and that the members of the Consumer Group form an integral part of the Principal Group;
5. The Petitioner reserves the right, as the investigation evolves, to add additional entities as Respondents and to amend the descriptions of the Principal Group and Consumer Group, the Class Period as well as any other matter referred to in this motion;



**III. DESCRIPTION OF THE PARTIES**

**A) THE PETITIONER**

6. The Petitioner, Mathieu Hérard, brings this motion for the authorization of a class action on his own behalf and on behalf of the Group;
7. The Petitioner is a member of the Group on behalf of which he wishes to exercise a class action in light of the fact that during the Class Period, he purchased a television manufactured by the Respondent Panasonic Canada Inc., which contained ATEC, the whole as more fully established by a copy of the relevant invoice produced herewith as Exhibit P-1, and has suffered damages as a result of the Respondents' anti-competitive and unlawful activities;

**B) THE RESPONDENTS**

**Panasonic and Sanyo**

8. Respondent Panasonic Corporation is a Japanese corporation with its principal place of business at 1006, Oaza Kadoma, Kadoma-shi, Osaka 571-8501, Japan which prior to October 1, 2008, operated under the name of Matsushita Electric Industrial Co., Ltd.;
9. During the Class Period, Panasonic Corporation manufactured, sold and distributed aluminum and tantalum electrolytic capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Quebec and elsewhere in Canada;
10. Respondent Panasonic Corporation of North America, a wholly owned subsidiary of Panasonic Corporation, is a Delaware corporation with its principal place of business at Two Riverfront Plaza, Newark, New Jersey 07102 and which during the Class Period sold and distributed aluminum and tantalum electrolytic capacitors to customers throughout Quebec and elsewhere in Canada;
11. Respondent Sanyo Electric Group, Ltd., a Japanese corporation, is, as of December 2009, a wholly owned subsidiary of Panasonic Corporation, with its principal place of business at 15-5, Keihan-Hondori, 2-Chome, Moriguchi City, Osaka 570-8677, Japan and which during the Class Period manufactured, sold and distributed aluminum tantalum electrolytic capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Quebec and elsewhere in Canada;
12. Respondent Sanyo Electronic Device (U.S.A.) Corporation, a Delaware corporation, is a wholly owned subsidiary of Sanyo Electric Group, Ltd., with its principal place of business at 2055 Sanyo Avenue, San Diego, California





92154 and which during the Class Period sold and distributed tantalum electrolytic capacitors to customers throughout Quebec and elsewhere in Canada;

13. Respondents Panasonic Corporation, Panasonic Corporation of North America, Sanyo Electric Group, Ltd., and Sanyo Electronic Device (U.S.A.) Corporation are collectively referred to as "Panasonic";

**Taiyo Yuden**

14. Respondent Taiyo Yuden Co., Ltd., is a Japanese corporation with its principal place of business at 6-16-20, Ueno, Taito-ku, Tokyo 110-0005, Japan, and which during the Class Period manufactured, sold and distributed tantalum electrolytic capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Quebec and elsewhere in Canada;
15. Respondent Taiyo Yuden (USA) Inc., an Illinois corporation, is a wholly owned subsidiary of Taiyo Yuden Co., Ltd., with its principal place of business at 10 North Martingale Road, Suite 575, Schaumburg, Illinois 60173, and which during the Class Period sold and distributed aluminum and/or tantalum electrolytic capacitors to customers throughout Quebec and elsewhere in Canada;
16. Respondents Taiyo Yuden Co., Ltd. and Taiyo Yuden (USA) Inc. are hereinafter sometimes collectively referred to as "Taiyo Yuden";

**NEC Tokin**

- ~~17. Respondent NEC Tokin Corporation is a Japanese company with its principal place of business at 7-1, Kohriyama 6-chome, Taihaku-ku, Sendai-shi, Miyagi 982-8510, Japan, and which during the Class Period manufactured, sold, and distributed aluminum and/or tantalum electrolytic capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Quebec and elsewhere in Canada;~~
18. Respondent NEC Tokin America, Inc., a California Corporation, is a wholly owned subsidiary of NEC Tokin Corporation with its principal place of business at 2460 North First Street, Suite 220, San Jose, California 95131, and which during the Class Period sold and distributed aluminum and/or tantalum electrolytic capacitors to customers throughout Quebec and elsewhere in Canada;
19. Respondents NEC Tokin Corporation and NEC Tokin America, Inc. are hereinafter sometimes collectively referred to as "NEC Tokin";



**KEMET**

20. Respondent KEMET Corporation is a Delaware corporation with its principal place of business at 2835 Kemet Way, Simpsonville, South Carolina 29681, and which during the Class Period manufactured, sold and distributed aluminum and tantalum electrolytic capacitors directly or through its subsidiaries, agents or affiliates to customers throughout Quebec and elsewhere in Canada;
21. Respondent KEMET Electronics Corporation, a Delaware corporation, is a wholly owned subsidiary of KEMET Corporation with its principal place of business at 2835 Kemet Way, Simpsonville, South Carolina 29681, and which during the Class Period manufactured, sold and distributed aluminum and tantalum electrolytic capacitors directly or through its subsidiaries, agents or affiliates to customers throughout Quebec and elsewhere in Canada;
22. Respondents KEMET Corporation and KEMET Electronics Corporation are hereinafter sometimes collectively referred to as "KEMET." The KEMET-NEC Tokin alliance shall be referred to herein as "KEMET-NEC Tokin.";

**Nippon Chemi-Con**

23. Respondent Nippon Chemi-Con Corporation is a Japanese corporation with its principal place of business at 5-6-4, Osaki, Shinagawa-ku, Tokyo 141-8605, Japan, and which during the Class Period manufactured, sold, and distributed aluminum electrolytic capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Quebec and elsewhere in Canada;
24. Respondent ~~United Chemi-Con Corporation, an Illinois Corporation, is a~~ wholly owned subsidiary of Nippon Chemi-Con Corporation with its principal place of business at 9801 West Higgins Road, Rosemont, Illinois 60018, and which during the Class Period manufactured, sold and distributed aluminum electrolytic capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Quebec and elsewhere in Canada;
25. Respondents Nippon Chemi-Con Corporation and United Chemi-Con Corporation are hereinafter sometimes collectively referred to as "Nippon Chemi-Con";

**Hitachi Chemical**

26. Respondent Hitachi Chemical Co., Ltd., is a Japanese corporation with its principal place of business at Grantokyo South Tower, 1-9-2, Marunouchi, Chiyoda-ku, Tokyo, 100-6606, Japan, and which during the Class Period manufactured, sold, and distributed aluminum electrolytic capacitors either



directly or through its subsidiaries, agents or affiliates to customers throughout Quebec and elsewhere in Canada;

27. Respondents Hitachi Chemical Company America, Ltd., a New York corporation, is a wholly owned subsidiary of Hitachi Chemical Co., Ltd. with its principal place of business at 10080 North Wolfe Road, Suite SW3-200, Cupertino, California 95014, and which during the Class Period sold and distributed aluminum electrolytic capacitors to customers throughout Quebec and elsewhere in Canada;
28. Respondents Hitachi Chemical Co., Ltd. and Hitachi Chemical Company America, Ltd. are hereinafter sometimes collectively referred to as "Hitachi";

**Nichicon**

29. Respondent Nichicon Corporation is a Japanese corporation with its principal place of business at Karasumadori Oike-agaru, Nakagyo-ku, Kyoto, 604-0845 Japan, and which during the Class Period and until the company's sale of its tantalum capacitor production operations to AVX Corporation in February 2013, manufactured, sold, and distributed tantalum electrolytic capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Quebec and elsewhere in Canada;
30. Respondent Nichicon (America) Corporation, an Illinois corporation, is a wholly owned subsidiary of Nichicon Corporation with its principal place of business at 927 East State Parkway, Schaumburg, Illinois 60173, and which during the Class Period and until Nichicon Corporation's sale of its tantalum capacitor production operations to AVX Corporation in February 2013, sold, and distributed tantalum electrolytic capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Quebec and elsewhere in Canada;
31. Respondents Nichicon Corporation and Nichicon (America) Corporation are hereinafter sometimes collectively referred to as "Nichicon";

**AVX**

32. Respondent AVX Corporation is a Delaware Corporation with its principal place of business at One AVX Boulevard, Fountain Inn, South Carolina 29644;
33. It is a subsidiary of Kyocera Corporation, a Japanese corporation that owns approximately 72% of the outstanding common stock in AVX Corporation;
34. In or about February 2013, AVX acquired Nichicon's tantalum capacitor production facilities in Japan and China, thereby expanding their global tantalum capacitor manufacturing operations;



35. During the Class Period, AVX Corporation manufactured, sold and distributed tantalum electrolytic capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Quebec and elsewhere in Canada;

36. Respondent AVX Corporation is referred to herein as "AVX.";

**Rubycon**

37. Respondent Rubycon Corporation is a Japanese corporation with its principal place of business at 1938-1, Nishi-Minowa, Ina-City, Nagano 399-4593, Japan, and which during the Class Period manufactured, sold, and distributed aluminum electrolytic capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Quebec and elsewhere in Canada;

38. Respondent Rubycon America Inc., an Illinois corporation, is a wholly owned subsidiary of Rubycon Corporation with its principal place of business at 4293 Lee Avenue, Gurnee, Illinois 60031, and which during the Class Period sold and distributed aluminum electrolytic capacitors to customers throughout Quebec and elsewhere in Canada;

39. Respondents Rubycon Corporation and Rubycon America Inc. are hereinafter sometimes collectively referred to herein as "Rubycon";

**Elna**

40. Respondent Elna Co., Ltd., is a Japanese corporation with its principal place of business at 3-8-11 Shin-Yokohama, Kohoku-ku, Yokohama, Kanagawa Prefecture, 222-0033, Japan, and which during the Class Period manufactured, sold, and distributed aluminum electrolytic capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Quebec and elsewhere in Canada;

41. Respondent Elna America Inc., a California corporation, is a wholly owned subsidiary of Elna Co., Ltd., with its principal place of business at 879 West 190th Street, Suite 100, Gardena, California 90248, and which during the Class Period, sold and distributed aluminum electrolytic capacitors to customers throughout Quebec and elsewhere in Canada;

42. Respondents Elna Co., Ltd., and Elna America Inc. are hereinafter sometimes collectively referred to herein as "Elna";



**Matsuo**

43. Respondent Matsuo Electric Co., Ltd., is a Japanese corporation with its principal place of business at 3-5- Sennari-cho, Toyonaka-shi, Osaka 561-8558, Japan, and which during the Class Period manufactured, sold and distributed aluminum and tantalum electrolytic capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Quebec and elsewhere in Canada;
44. Matsuo Electric Co., Ltd., is hereinafter sometimes referred to as "Matsuo";

**Toshin Kogyo**

45. Respondent Toshin Kogyo Co., Ltd., is a Japanese corporation with its principal place of business at Tsukasa Bldg. 2-15-4, Uchikanda Chiyoda-ku, Tokyo, Japan, and which during the Class Period manufactured, sold, and distributed aluminum and tantalum electrolytic capacitor products either directly or through its subsidiaries or affiliates throughout Quebec and elsewhere in Canada;
46. Toshin Kogyo Co., Ltd., is hereinafter sometimes referred to as "Toshin Kogyo";

**Vishay**

47. Respondent Vishay Intertechnology, Inc., is a Delaware corporation with its principal place of business at 63 Lancaster Avenue, Malvern, Pennsylvania 19355, and which during the Class Period manufactured, sold, and distributed aluminum and tantalum electrolytic capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout the Canada and Quebec;
48. Vishay Intertechnology, Inc., is hereinafter sometimes referred to as "Vishay";

**SEMCO**

49. Respondent Samsung Electro-Mechanics is a South Korean corporation with its principal place of business at Gyeonggi-Do Suwon-Si Youngtong-Gu Maeyoung-Ro 150 (Maetan-Dong) 443-743, South Korea;
50. It is a wholly-owned subsidiary of Samsung Group, a South Korean chaebol (i.e., a business conglomerate);
51. During the Class Period, Samsung Electro-Mechanics manufactured, sold, and distributed tantalum electrolytic capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Quebec and elsewhere in Canada;



52. Respondent Samsung Electro-Mechanics America, Inc., a California corporation, is a subsidiary of Samsung Electro-Mechanics with its principal place of business at 3333 Michelson Drive, Suite 500, Irvine, California 92612, and which during the Class Period sold and distributed tantalum electrolytic capacitors to customers throughout Quebec and elsewhere in Canada;
53. Respondents Samsung Electro-Mechanics and Samsung Electro-Mechanics America, Inc., are hereinafter sometimes collectively referred to as "SEMCO.";

**ROHM**

54. Respondent ROHM Co., Ltd., is a Japanese corporation with its principal place of business at 21 Saiin Mizosaki-cho, Ukyo-ku, Kyoto 615-8585 Japan, and which during the Class Period manufactured, sold, and distributed tantalum electrolytic capacitors either directly or through its subsidiaries, agents or affiliates to customers throughout Quebec and elsewhere in Canada;
55. Respondent ROHM Semiconductor U.S.A., LLC, a Delaware limited liability corporation, is a subsidiary of ROHM Co., Ltd. with its principal place of business at 2323 Owen Street, Suite 150, Santa Clara, California 95054, and which during the Class Period sold and distributed tantalum electrolytic capacitors to customers throughout Quebec and elsewhere in Canada;
56. Respondents ROHM Co., Ltd., and ROHM Semiconductor U.S.A., LLC, are hereinafter sometimes collectively referred to as "ROHM.";

57. The entities named in paragraphs 8 to 56 are herein collectively referred to as the "Respondents";

**C) THE PRODUCT**

58. The Product or ATEC is a fundamental component of electrical circuits which, in turn, are employed by and are essential to all electronic devices commonly used in items such as household appliances, personal computers, smart phones, sophisticated machinery and vehicles;
59. In other words, the Product, though not seen, is omnipresent and is essential to the functioning of these electronic devices;



**IV. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER**

60. The Petitioner is a member of the Group as a result of his purchase in the province of Quebec during the Class Period of an electronic device containing ATEC, namely a Panasonic television, the whole as more fully set out in Exhibit P-1;
61. Due to the Respondents' anticompetitive illegal activities, Petitioner was deprived of the benefit of a competitive market and therefore paid a higher price for his Panasonic;
62. The Petitioner has suffered damages equal to the difference between the artificially inflated price that he paid and the price that he should have paid in a competitive market system;
63. The conduct of the Respondents was kept a secret and was not known to the Petitioner at the time that he purchased the television nor could it have been known, even through the exercise of reasonable diligence;
64. The Petitioner has since discovered that this situation is being assessed by different justice departments worldwide and that several class actions have been instituted in the United States concerning this matter, the whole as more fully set out in the documents produced herewith en liasse as Exhibit P-2;
65. The Petitioner's damages are a direct result of the Respondents' anticompetitive and illegal price-fixing activities and with respect to which Petitioner is justified in claiming damages;

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

66. Each member of the Group has purchased an electronic device containing ATEC in Canada at one point during the Class Period;
67. Each member of the Group has paid an artificially inflated price for an item containing ATEC as a result of the anticompetitive, collusive activities engaged in by the Respondents;
68. Each member of the Group has suffered damages equivalent to the difference between the artificially inflated price paid for the item containing ATEC and the price that should have been paid in a competitive market system;
69. The damages suffered by the members of the Group are directly attributable to the Respondents' anti-competitive and illegal price-fixing activities and with



respect to which each member of the Group is justified in claiming damages;

**VI. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION**

**A) THE QUESTIONS OF LAW OR FACT THAT ARE IDENTICAL, SIMILAR OR RELATED, AND WHICH ARE APPLICABLE TO THE MEMBERS OF THE PRINCIPAL GROUP AND, AS THE CASE MAY BE, THE CONSUMER GROUP AND WHICH THE PETITIONER INTENDS TO HAVE THE COURT DETERMINE ARE THE FOLLOWING:**

70. Did the Respondents conspire, agree or arrange to fix, maintain, increase or stabilize the price for the Product in Canada at any point during the Class Period, whether directly or indirectly, through any affiliates or any other entity in Canada whose policies are directed or influenced by any of the Respondents?
71. Did the Respondents commit one or more faults which entails their responsibility?
72. Did the illegal activities attributed to the Respondents cause damages to the members of the Group?
73. Are the Respondents responsible for the damages suffered by the members of the Group and such other additional amount that this Court may allow not exceeding the full cost of any investigation in connection with this matter and of proceedings instituted pursuant to Section 36 of the Competition Act, R.S.C., 1985, c. C-34 (the "Competition Act") for an offence under Section 45 thereof ?
74. Are the Respondents responsible for damages suffered by the members of the Group pursuant to the provisions of the Civil Code of Quebec including, without limitation, Articles 6 and 1457 thereof;
75. Did the Respondents intentionally violate the rights of the members of the Group protected by Article 6 of the Quebec Charter of Human Rights and Freedoms?
76. Are the Respondents liable for punitive or exemplary damages and, if so, what is the amount of these damages?
77. Are the Respondents liable on a solidarity basis to the members of the Group for the damages suffered by them;
78. The questions of law or fact that are identical, similar or related for the members of the Consumer Group are:





- Are the Respondents liable to the members of the Consumer Group for the damages suffered by them pursuant to Section 272 of the Consumer Protection Act by virtue of the illegal business practices engaged in by them?
- Are the Respondents similarly liable to members of the Consumer Group in the provinces or territories of Canada other than the Province of Quebec pursuant to the applicable consumer protection legislation of such province or territory?

**B) THE FACTS ALLEGED JUSTIFY THE CONCLUSIONS SOUGHT**

79. The facts alleged in this motion establish the existence of a fault, namely the existence of anticompetitive price-fixing activities engaged in by the Respondents either directly or indirectly in Canada through their affiliates or other entities whose policies are directed or influenced by the Respondents;
80. The facts alleged are sufficient to establish the liability of the Respondents towards the members of the Group;
81. The members of the Group have suffered a prejudice as a result of the illegal, anticompetitive price-fixing activities engaged by the Respondents;
82. The conclusions which are sought seek to hold the Respondents liable for the damages suffered by the members of the Group which moreover are causally connected to the illegal activities of the Respondents;

**C) THE COMPOSITION OF THE GROUP MAKES THE APPLICATION OF ARTICLE 59 OR 67 C.C.P. DIFFICULT OR IMPRACTICABLE**

83. Products containing ATEC that are manufactured, sold, distributed or otherwise made available by the Respondents are widespread in Quebec and elsewhere in Canada;
84. The Petitioner is unaware of the specific number, names and addresses of the persons who purchased products containing ATEC, however, it is safe to estimate that it is in the tens of thousands (if not hundreds of thousands);
85. The potential number of members of the Group is quite significant and it is extremely difficult to identify and locate the persons who may be affected by the illegal activities engaged in by the Respondents for the purpose of obtaining mandates to act for them or for joinder of actions;
86. In these circumstances, a class action is the only appropriate procedure for all of the members of the Group to effectively pursue their respective rights and have access to justice;



87. The facts set out in paragraphs 83 to 86 render the application of Article 59 or 67 C.C.P. difficult or impracticable;

**D) THE MEMBER REQUESTING THE STATUS OF REPRESENTATIVE IS IN A POSITION TO ADEQUATELY REPRESENT THE MEMBERS**

88. The Petitioner is a member of the Group;

89. The Petitioner is ready and available to manage and direct the present class action in the interest of the members of the Group and is determined to lead the present matter until final resolution, and to collaborate with his attorneys, the whole for the benefit of the Group;

90. The Petitioner has the capacity and interest to fairly and adequately protect and represent the interests of the members of the Group;

91. The Petitioner has given the mandate to his attorneys to obtain all relevant information with respect to the present motion and intends to keep himself informed of all developments;

92. The Petitioner, with the assistance of his attorneys, is ready and available to dedicate the time necessary for this motion and to collaborate with other members of the Group and to keep them informed;

93. The Petitioner is in good faith and has filed this motion with the sole objective of having his rights, as well as the rights of other members of the Group, recognized and protected so that he and they may be compensated for the damages suffered as a consequence of the Respondents' conduct;

~~94. The Petitioner understands the nature of the class action;~~

95. The Petitioner's interests are not in conflict with those of the other members of the Group;

**VII. NATIONAL CLASS**

96. Petitioner submits that for the following reasons this Court should authorize this class action on a Canada-wide basis:

- A significant number of members of the Group reside in the Province of Quebec;
- Faults were committed in Quebec and a significant portion of the damages attributable to the illegal activities engaged in by the Respondents were suffered by members of the Group in the Province of Quebec;



- The damages suffered by the members of the Group are attributable to the same basic fault which is based on a federal statute, similar consumer protection legislation applied throughout Canada and the general principles of civil liability and tort law;

**VIII. NATURE OF THE RECOURSE AND CONCLUSIONS SOUGHT**

**A) NATURE OF THE RECOURSE**

97. The Petitioner wishes to exercise for and on behalf of the members of the Group a claim in damages, exemplary and punitive damages;

**B) CONCLUSIONS SOUGHT**

98. The conclusions sought are the following:

- **GRANT** the present motion;
- **AUTHORIZE** the class action on behalf of all members of the Group;
- **CONDEMN** the Respondents to pay, on a solidary basis, to each member of the Group including the Petitioner, the amount of \$1.00, subject to adjustment, as damages for the overpayment made by the members of the Group, together with interest at the legal rate and the additional indemnity as of the date of the payment of these amounts and **ORDER** the collective recovery of these sums;
- **CONDEMN** the Respondents to pay, on a solidary basis, to each member of the Group including the Petitioner, the amount of \$50.00 as damages for trouble and inconvenience, together with interest at the legal rate and the additional indemnity as of the date of the filing of the motion and **ORDER** the collective recovery of these sums;
- **CONDEMN** the Respondents to pay, on a solidary basis, to each member of the Group including the Petitioner, the amount of \$100.00 as punitive damages together with interest at the legal rate and the additional indemnity as of the date of the judgment to be pronounced and **ORDER** the collective recovery of same;
- **CONDEMN** the Respondents to pay, on a solidary basis, to the members of the Group including the Petitioner, the full costs of any investigation in connection with the matter and of the proceedings under Section 36 of the Competition Act;



- **THE WHOLE** with costs, including all experts costs and the costs of publication of notices to members;
- This motion is well-founded in fact and in law;

**FOR THESE REASONS, MAY IT PLEASE THE COURT TO :**

**GRANT** the present motion;

**AUTHORIZE** the institution of a class action in the form of an action in damages, exemplary and punitive damages;

**ASCRIBE** to the Petitioner the status of representative for the members of the Group described as follows:

*"All physical persons and all legal persons, partnerships, and associations in Canada, excluding however any of same who are precluded from forming part of the group pursuant to applicable legislation in their jurisdiction who purchased any products including, without limitation, digital cameras, computers, televisions, tablets, power tools and other electronic devices and equipment containing aluminum and tantalum electrolyte capacitors ("ATEC") manufactured, distributed, sold or otherwise made available to such persons anywhere in Canada, whether directly or indirectly, at any time during the period commencing January 1<sup>st</sup> 2005 up to August 7<sup>th</sup>, 2014 (the "Class Period")"*

or such other group which the Court may designate (the "Principal Group");

**AND**

*"All physical persons in Canada, save for a merchant who has concluded a contract for the purpose of his commercial activity, who purchased from merchants any products including, without limitation, digital cameras, computers, televisions, tablets, power tools and/or other electronic devices and equipment containing aluminum or tantalum electrolyte capacitors manufactured, distributed, sold or otherwise made available to such persons anywhere in Canada, whether directly or indirectly, at any time during the Class Period"*

or such other sub-group which the Court may designate (the "Consumer Group");



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

- a) Did the Respondents conspire, agree or arrange to fix, maintain, increase or stabilize the price for the Product in Canada at any point during the Class Period, whether directly or indirectly, through any affiliates or any other entity in Canada whose policies are directed or influenced by any of the Respondents?
- b) Did the Respondents commit one or more faults which entails their responsibility?
- c) Did the illegal activities attributed to the Respondents cause damages to the members of the Group?
- d) Are the Respondents responsible for the damages suffered by the members of the Group and such other additional amount that this Court may allow not exceeding the full cost of any investigation in connection with this matter and of proceedings instituted pursuant to Section 36 of the Competition Act, R.S.C., 1985, c. C-34 (the "Competition Act") for an offence under Section 45 thereof ?
- e) Are the Respondents responsible for damages suffered by the members of the Group pursuant to the provisions of the Civil Code of Quebec including, without limitation, Articles 6 and 1457 thereof;
- f) Did the Respondents intentionally violate the rights of the members of the Group protected by Article 6 of the Quebec Charter of Human Rights and Freedoms?
- ~~g) Are the Respondents liable for punitive or exemplary damages and, if so, what is the amount of these damages?~~
- h) Are the Respondents liable on a solidarity basis to the members of the Group for the damages suffered by them;
- i) The questions of law or fact that are identical, similar or related for the members of the Consumer Group are:
  - Are the Respondents liable to the members of the Consumer Group for the damages suffered by them pursuant to Section 272 of the Consumer Protection Act by virtue of the illegal business practices engaged in by them?
  - Are the Respondents similarly liable to members of the Consumer Group in the provinces or territories of Canada other than the Province of Quebec pursuant to the applicable consumer protection legislation of such province or territory?



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

- **GRANT** the present motion;
- **AUTHORIZE** the class action on behalf of all members of the Group;
- **CONDEMN** the Respondents to pay, on a solidary basis, to each member of the Group including the Petitioner, the amount of \$1.00, subject to adjustment, as damages for the overpayment made by the members of the Group, together with interest at the legal rate and the additional indemnity as of the date of the payment of these amounts and **ORDER** the collective recovery of these sums;
- **CONDEMN** the Respondents to pay, on a solidarity basis, to each member of the Group including the Petitioner, the amount of \$50.00 as damages for trouble and inconvenience, together with interest at the legal rate and the additional indemnity as of the date of the filing of the motion and **ORDER** the collective recovery of these sums;
- **CONDEMN** the Respondents to pay, on a solidarity basis, to each member of the Group including the Petitioner, the amount of \$100.00 as punitive damages together with interest at the legal rate and the additional indemnity as of the date of the judgment to be pronounced and **ORDER** the collective recovery of same;
- **CONDEMN** the Respondents to pay, on a solidarity basis, to the members of the Group including the Petitioner, the full costs of any investigation in connection with the matter and of the proceedings under Section 36 of the Competition Act;
- **DECLARE** that save for any member requesting exclusion, the members of the Group are bound by any final judgment to follow, the whole in the manner provided for by law;
- **FIX** the delay for requesting exclusion to thirty (30) days following the Notice to members, following which the members of the Group who have not requested exclusion will be bound by any final judgment to follow;
- **ORDER** the publication no later than thirty (30) days following the date of a judgment to follow, of Notices in appropriate newspapers and with sufficient detail;
- **ORDER** such other matters as this Court may find just and reasonable;



- **THE WHOLE** with costs, including all experts' costs and the costs of Notices to members of the Group;  
This motion is well-founded in fact and in law.

**MONTREAL, August 7<sup>th</sup> 2014**

**(S) PAQUETTE GADLER INC.**  
**PAQUETTE GADLER INC.**  
Counsel for the Petitioner

**TRUE COPY**

*Paquette Gadler Inc.*  
**PAQUETTE GADLER INC.**



CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No :

S U P E R I O R C O U R T  
(Class Action)

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**MATHIEU HÉRARD**, person residing at 1319, Eden St, City of SAINT-LIN-LAURENTIDES, judicial district of Joliette, Province of Quebec, Canada, J5M 2R3;

**Petitioner**

v.

**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, U.S.A., 070904

and

**SANYO ELECTRIC GROUP, LTD.**, legal person duly constituted having its principal place of business at 15-5, Keihan-Hondori, 2-Chome, Moriguchi City, City of Osaka, 570-8677, Japan

and

**SANYO ELECTRONIC DEVICE (U.S.A.) CORPORATION**, legal person duly constituted having its principal place of business at 2055 Sanyo Avenue, City of San Diego, State of California, U.S.A., 92154





and

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

and

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

and

**NEC TOKIN CORPORATION**, legal person duly constituted having its principal place of business at 7-1, Kohriyama 6-chome, Taihaku-ku, Sendaishi, 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, U.S.A., 95131

and

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

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, U.S.A., 29681

and

**NIPPON CHEMI-CON CORPORATION**,  
legal person duly constituted having its  
principal place of business at 5-6-4,  
Osaki, Shinagawa-ku, City of 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, U.S.A., 60018

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, City of Tokyo, 100-6606,  
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, U.S.A., 95014

and

**NICHICON CORPORATION**, legal  
person duly constituted having its  
principal place of business at  
Karasumadori Oike-agaru, Nakagyo-ku,  
City of 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, U.S.A., 60173

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, U.S.A., 29644

and

**RUBYCON CORPORATION**, legal person duly constituted having its principal place of 1938-1, Nishi-Minowa, Ina-city, City of 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, U.S.A., 60031

and

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

and

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



and

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

and

**TOSHIN KOGYO CO., LTD.**, legal person duly constituted having its principal place of business at Tsukasa Bldg. 2-15-4, Uchikanda Chiyoda-ku, City of Tokyo, 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, U.S.A., 19355

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, U.S.A., 92612

and

**ROHM CO. LTD.** , legal person duly constituted having its principal place of



business at 21 Saiin Mizosaki-cho,  
Ukyo-ku, City of Kyoto, 615-8585, Japan

and

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

**Respondents**

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**NOTICE OF PRESENTATION**

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**TO: ALL THE RESPONDENTS**

**TAKE NOTICE** that the present *Motion for the Authorization of a Class Action and for Obtaining the Status of Representative* will be presentable before a Judge of the Superior Court, Class Action Division, at the Montréal Courthouse located at 1 Notre-Dame Street East, MONTREAL, Quebec, on a date and time to be determined by the Superior Court.

**MONTREAL, August 7<sup>th</sup> 2014**

**(S) PAQUETTE GADLER INC.**  
**PAQUETTE GADLER INC.**  
Counsel for the Petitioner

TRUE COPY

*Paquette Gadler Inc.*  

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**PAQUETTE GADLER INC.**



500-06-000705-141

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**SUPERIOR COURT  
(Class Action)**

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**MATHIEU HÉRARD**

Petitioner

v.

PANASONIC CORPORATION; PANASONIC CORPORATION OF NORTH AMERICA; SANYO ELECTRIC GROUP LTD.; SANYO ELECTRONIC DEVICE (U.S.A.) CORPORATION; TAIYO YUDEN CO., LTD.; TAIYO YUDEN (USA) INC.; NEC TOKIN CORPORATION; NEC TOKIN AMERICA INC.; KEMET CORPORATION; KEMET ELECTRONICS CORPORATION; NIPPON CHEMI-CON CORPORATION; UNITED CHEMI-CON CORPORATION; HITACHI CHEMICAL CO., LTD.; HITACHI CHEMICAL COMPANY AMERICA LTD.; NICHICON CORPORATION; NICHICON (AMERICA) CORPORATION; AVX CORPORATION; RUBYCON CORPORATION; RUBYCON AMERICA INC.; ELNA CO., LTD.; ELNA AMERICA INC.; MATSUO ELECTRIC CO. LTD.; TOSHIN KOGYO CO., LTD.; VISHAY INTERTECHNOLOGY INC.; SAMSUNG ELECTRO-MECHANICS; SAMSUNG ELECTRO-MECHANICS AMERICA INC.; RHOM CO. LTD.; RHOM SEMICONDUCTOR USA, LLC;

Respondents

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**MOTION FOR THE AUTHORIZATION OF A CLASS ACTION  
AND FOR OBTAINING THE STATUS OF REPRESENTATIVE  
(Art. 1002 and following C.c.p.)**

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**COPY FOR THE COURT**

*JPg*  
**PAQUETTE GADLER INC.**  
AVOCATS  
BARRISTERS AND SOLICITORS

300, PLACE D'YOUVILLE, BUREAU B-10, MONTRÉAL (QUÉBEC) H2Y 2B6

TÉLÉPHONE: 514-849-0771 • TÉLÉCOPIEUR 514-849-4817

WWW.PAQUETTEGADLER.COM

*BP 2161*

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**Me Guy Paquette – Our File : 2194.001**

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