

Court File No.:
CV-16-564548-000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**SHERIDAN CHEVROLET CADILLAC LTD., THE PICKERING AUTO MALL LTD.,
FADY SAMAHA, and URLIN RENT A CAR LTD.**

Plaintiffs

- and -

TOYO DENSO CO., LTD. and WEASTEC, INC.

Defendants



Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6

**STATEMENT OF CLAIM
(Switches)**

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiffs' lawyers or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

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

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

If you wish to defend this proceeding but are unable to pay legal fees, legal aid may be available to you by contacting a local Legal Aid office.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: **NOV 22 2016**

Issued by:



Local Registrar

Address of Court Office:
Superior Court of Justice
393 University Ave., 10th Floor
Toronto, ON M5G 1E6

TO: TOYO DENSO CO., LTD.
2-10-4, Shinbashi
Minato-Ku, Tokyo 105-0004
Japan

AND TO: WEASTEC, Inc.
1600 North High Street
Hillsboro, Ohio 45133
USA

CLAIM

1. The plaintiffs claim on their own behalf and on behalf of other members of the Proposed Class (as defined in paragraph 8 below):

(a) A declaration that the defendants conspired and agreed with each other and other unknown co-conspirators to rig bids and fix, raise, maintain, or stabilize the price of Switches (as defined in paragraph 2 below) sold in North America and elsewhere during the Class Period (as defined in paragraph 8 below);

(b) A declaration that the defendants and their co-conspirators did, by agreement, threat, promise or like means, influence or attempt to influence upwards, or discourage or attempt to discourage the reduction of the price at which Switches were sold in North America and elsewhere during the Class Period;

(c) Damages or compensation in an amount not exceeding \$50,000,000:

(i) for loss and damage suffered as a result of conduct contrary to Part VI of the *Competition Act*, RSC 1985, c C-34 ("*Competition Act*");

(ii) for civil conspiracy;

(iii) for unjust enrichment; and

(iv) for waiver of tort;

(d) Punitive, exemplary and aggravated damages in the amount of \$5,000,000;

(e) Pre-judgment interest in accordance with section 128 of the *Courts of Justice Act*, RSO 1990, c C.43 ("*Courts of Justice Act*"), as amended;

- (f) Post-judgment interest in accordance with section 129 of the *Courts of Justice Act*;
- (g) Investigative costs and costs of this proceeding on a full-indemnity basis pursuant to section 36 of the *Competition Act*; and
- (h) Such further and other relief as this Honourable Court deems just.

Summary of Claim

2. This action arises from a conspiracy to fix, raise, maintain or stabilize prices, rig bids and allocate the market and customers in North America and elsewhere of steering wheel switches, turn switches, wiper switches, combination switches, door courtesy switches and power window switches used in automobiles and other light-duty vehicles (“**Switches**”). The unlawful conduct occurred from at least as early as January 1, 2003 and continued until at least February 28, 2013 and impacted prices for several years thereafter. The unlawful conduct was targeted at the automotive industry, raising prices to all members of the Proposed Class.

3. As a direct result of the unlawful conduct alleged herein, the plaintiffs and other members of the Proposed Class paid artificially inflated prices for Switches and/or new vehicles containing Switches manufactured, marketed, sold and/or distributed during the Class Period and have thereby suffered losses and damages.

The Plaintiffs

4. The plaintiff, Sheridan Chevrolet Cadillac Ltd. (“**Sheridan**”), was an automotive dealer in Pickering, Ontario pursuant to a Dealer Sales and Service Agreement with General Motors of Canada Limited (“**GMCL**”) from 1977 to 2009.

5. The plaintiff, The Pickering Auto Mall Ltd. (“**Pickering**”), was an automotive dealer in Pickering, Ontario pursuant to a Dealer Sales and Service Agreement with GMCL from 1989 to 2009.
6. The plaintiff, Fady Samaha, a resident of Newmarket, Ontario, purchased a new Honda Civic in 2009.
7. The plaintiff, Urlin Rent A Car Ltd. (“**Urlin**”), is a motor vehicle rental company located in London, Ontario that has been in operation since the early 1990s. In that time, Urlin purchased several Toyota, Nissan, Honda, Hyundai, Ford, GM and Chevrolet vehicles.
8. The plaintiffs seek to represent the following class (the “**Proposed Class**”):

All Persons in Canada who purchased Switches;^{1,2} or who purchased and/or leased a new Automotive Vehicle³ containing Switches during the Class Period.⁴ Excluded from the class are the defendants, their parent companies, subsidiaries, and affiliates.

¹ Switches refers to a variety of switches used within a vehicle including, but not limited to, steering wheel switches, turn switches, wiper switches, combination switches, door courtesy switches and power window switches.

² Switches purchased for repair or replacement in an Automotive Vehicle are excluded from the Class.

³ Automotive Vehicle means passenger cars, SUVs, vans, and light trucks (up to 10,000 lbs)

⁴ Class Period means between January 1, 2003 and February 28, 2013 and/or during the subsequent period during which prices were affected by the alleged conspiracy.

The Defendants

Toyo Defendants

9. The defendant, Toyo Denso Co, Ltd. (“**Toyo Denso**”) is a Japanese corporation with its principal place of business in Tokyo, Japan. During the Class Period, Toyo Denso manufactured,

marketed, sold, and/or distributed Switches to customers throughout Canada or for inclusion in vehicles sold in Canada, either directly or indirectly, through the control of its predecessors, affiliates and subsidiaries, including the defendant Weastec, Inc. (“**Weastec**”).

10. Weastec is an American corporation with its principal place of business in Hillsboro, Ohio. During the Class Period, Weastec manufactured, marketed, sold, and/or distributed Switches to customers throughout Canada or for inclusion in vehicles sold in Canada, either directly or indirectly, through the control of its predecessors, affiliates and/or subsidiaries. Weastec is owned and controlled by Toyo Denso.

11. The business of each of Toyo Denso and Weastec are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, market, sale, and/or distribution of Switches in Canada or for inclusion in vehicles sold in Canada and for the purposes of the conspiracy described hereinafter. Toyo Denso and Weastec are collectively referred to herein as “**Toyo**”.

Unnamed Co-Conspirators

12. Various persons, partnerships, sole proprietors, firms, corporations and individuals not named as defendants in this lawsuit, including, but not limited to Panasonic Corporation, Panasonic Corporation of North America, Panasonic Canada, Inc., Tokai Rika Co., Ltd., TRAM, Inc., TRMI, Inc., TRIN, Inc., TRQSS, Inc., Omron Corporation, Omron Automotive Electronics Co. Ltd., Omron Automotive Electronics, Inc. and Omron Automotive Technologies, Inc., may have participated as co-conspirators with the defendants in the unlawful conspiracy alleged in this statement of claim, and have performed acts and made statements in furtherance of the unlawful conduct. Other persons, partnerships, sole proprietors, firms, corporations and individuals not named as defendants in this lawsuit, the identities of which are not presently

known, may have participated as co-conspirators with the defendants in the unlawful conspiracy alleged in this statement of claim, and have performed acts and made statements in furtherance of the unlawful conduct.

Joint and Several Liability

13. The defendants are jointly and severally liable for the actions of and damages allocable to all co-conspirators.

14. Whenever reference is made herein to any act, deed or transaction of any corporation, the allegation means that the corporation or limited liability entity engaged in the act, deed or transaction by or through its officers, directors, agents, employees or representatives while they were actively engaged in the management, direction, control or transaction of the corporation's business or affairs.

The Switches Industry

15. A steering wheel switch is a switch installed in the steering wheel of a vehicle. The steering wheel switch is used by the driver of the vehicle to control various functions within the vehicle. The functions controlled by the steering wheel switch vary from vehicle to vehicle, as they are specified by the original equipment manufacturer ("OEM"), but may include radio/sound system control, cruise control, climate control, and/or phone answering.

16. A turn switch is a lever switch installed behind the steering wheel of a vehicle. The turn switch is used by the driver of a vehicle to signal a left or right turn and control high/low beam selection.

17. A wiper switch is a lever switch installed behind the steering wheel of a vehicle. The wiper switch is used by the driver of a vehicle to activate the vehicle's windshield wipers.

18. A combination switch is a combination of the turn and wiper switches sold as one unit.
19. A door courtesy switch is a switch installed in the door frame of a vehicle that activates the courtesy lamp inside the vehicle when the vehicle door opens.
20. A power window switch is a switch installed in the door of a vehicle that when pressed or pulled raises or lowers the vehicle's power windows.
21. Switches are installed by OEMs in new vehicles as part of the automotive manufacturing process.
22. For new vehicles, the OEMs – mostly large automotive manufacturers such as General Motors, Honda, Chrysler, Toyota and others – purchase Switches directly from the defendants. Switches may also be purchased by component manufacturers who then supply such systems to OEMs. These component manufacturers are also called “**Tier I Manufacturers**” in the industry. A Tier I Manufacturer supplies Switches directly to an OEM.
23. When purchasing Switches, OEMs issue Requests for Quotation (“**RFQs**”) to automotive parts suppliers on a model-by-model basis for model-specific parts. In at least some circumstances, the RFQ is sought from pre-qualified suppliers of the product. Typically, the RFQ would be made when there has been a major design change on a model-by-model basis. Automotive parts suppliers submit quotations, or bids, to OEMs in response to RFQs. The OEMs usually award the business to the selected automotive parts supplier for a fixed number of years consistent with the estimated production life of the parts program. Typically, the production life of the parts program is between two and five years. Typically, the bidding process begins approximately three years before the start of production of a new model. Once

production has begun, OEMs issue annual price reduction requests (“APRs”) to automotive parts suppliers to account for efficiencies gained in the production process. OEMs procure parts for North American manufactured vehicles in Japan, the United States, Canada and elsewhere.

24. During the Class Period, the defendants and their co-conspirators supplied Switches to OEMs for installation in vehicles manufactured and sold in North America and elsewhere. The defendants and their co-conspirators manufactured Switches: (a) in North America for installation in vehicles manufactured in North America and sold in Canada, (b) outside North America for export to North America and installation in vehicles manufactured in North America and sold in Canada, and (c) outside North America for installation in vehicles manufactured outside North America for export to and sale in Canada.

25. The defendants and their co-conspirators intended as a result of their unlawful conspiracy to inflate the prices for Switches and new vehicles containing Switches sold in North America and elsewhere.

26. The defendants and their co-conspirators unlawfully conspired to agree and manipulate prices for Switches and conceal their anti-competitive behaviour from OEMs and other industry participants. The defendants and their co-conspirators knew that their unlawful scheme and conspiracy would unlawfully increase the price at which Switches would be sold from the price that would otherwise be charged on a competitive basis. The defendants and their co-conspirators were aware that, by unlawfully increasing the prices of Switches, the prices of new vehicles containing Switches would also be artificially inflated. The defendants and their co-conspirators knew that their unlawful scheme and conspiracy would injure purchasers of Switches and purchasers and lessees of new vehicles containing Switches. The defendants’

conduct impacted not only multiple bids submitted to OEMs, but also the price paid by all other purchasers of Switches.

27. By virtue of their market shares, the defendants and their co-conspirators are the dominant manufacturers and suppliers of Switches in Canada and the world. Their customers include Honda, Mazda, Nissan and Toyota.

28. The automotive industry in Canada and the United States is an integrated industry. Automobiles manufactured on both sides of the border are sold in Canada. The unlawful conspiracy affected prices of Switches in the United States and Canada, including Ontario.

Investigations into International Cartel and Resulting Fines

Canada

29. The Canadian Competition Bureau is conducting an investigation into potential collusion in the Switches industry.

30. Panasonic Corporation has agreed to plead guilty in Canada and pay a \$4.7 million criminal fine for bid-rigging relating to certain types of switches supplied to Toyota for the 2008.5 Toyota Corolla, the 2008.5 Toyota Matrix, the 2008 Toyota RAV4 and the 2009 Lexus RX 350 models manufactured in Canada, namely turn switches, wiper switches, and steering wheel switches.

The United States

31. In the United States, Panasonic Corporation agreed to plead guilty and pay a fine of US\$45.8 million in respect of its role in the alleged conspiracy to fix the prices of Switches, as well as two other automotive parts, sold to Toyota from as early as September 2003 and continuing until at least February 2010.

32. In the United States, Tokai Rika Co. Ltd. agreed to plead guilty and pay a fine of US\$17.7 million in respect of its role in the alleged conspiracy to fix prices of heater control panels. As part of its plea agreement, Tokai Rika Co. Ltd. is required to provide cooperation regarding the alleged conspiracy to fix prices of steering wheel switches.

33. In the United States, Omron Automotive Electronics Co. Ltd. agreed to plead guilty and pay a fine of US\$4.55 million in respect of its role in the alleged conspiracy to fix the prices of power window switches sold to Honda from as early as June 2003 and continuing until at least February 2013.

Plaintiffs Purchased New Vehicles Containing Switches

34. During the Class Period, Sheridan purchased for resale the following brands of Automotive Vehicles manufactured by GMCL or its affiliates: Chevrolet, Oldsmobile, and Cadillac.

35. During the Class Period, Sheridan also purchased for resale Automotive Vehicles manufactured by the following other automotive manufacturers: Suzuki Canada Inc., CAMI Automotive Inc., GM Daewoo Auto & Technology Company, and Daewoo Motor Co.

36. During the Class Period, Pickering purchased for resale the following brands of Automotive Vehicles manufactured by GMCL or its affiliates: Isuzu, Saab, and Saturn.

37. During the Class Period, Pickering also purchased for resale Automotive Vehicles manufactured by the following other automotive manufacturers: Isuzu Motors Ltd., Adam Opel AG, and Subaru Canada Inc.

38. During the Class Period, Urlin purchased for use, as part of its fleet of rental vehicles, the following brands of Automotive Vehicles: Toyota, Ford, General Motors, Chevrolet, Mazda, Dodge, Jeep, Mercedes, Nissan, Volkswagen, and Hyundai.

39. The Automotive Vehicles purchased by Sheridan, Pickering, and Urlin were manufactured in whole or in part at various times in Ontario or other parts of Canada, the United States, Japan, and other parts of the world.

40. Sheridan, Pickering, and Urlin purchased new Automotive Vehicles containing Switches.

41. Fady Samaha purchased a new Honda Civic in 2009, which contained Switches.

Breaches of Part VI of *Competition Act*

42. From at least as early as January 1, 2003 until at least February 28, 2013, the defendants and their co-conspirators engaged in a conspiracy (or possibly separate related or unrelated conspiracies) to rig bids for and to fix, maintain, increase or control the prices of Switches sold to customers in North America and elsewhere. The defendants and their co-conspirators conspired to enhance unreasonably the prices of Switches and/or to lessen unduly competition in the production, manufacture, sale and/or distribution of Switches in North America and elsewhere. The conspiracy was intended to, and did, affect prices of Switches and new vehicles containing Switches.

43. The defendants and their co-conspirators carried out the conspiracy by:

- (a) participating in meetings, conversations, and communications in the United States, Japan, Europe and elsewhere to discuss the bids (including RFQs) and price

quotations to be submitted to OEMs selling automobiles in North America and elsewhere;

(b) agreeing, during those meetings, conversations and communications, on bids (including RFQs) and price quotations (including APRs) to be submitted to OEMs in North America and elsewhere (including agreeing that certain defendants or co-conspirators would win the RFQs for certain models);

(c) agreeing on the prices to be charged and to control discounts (including APRs) for Switches in North America and elsewhere and to otherwise fix, increase, maintain or stabilize those prices;

(d) agreeing, during those meetings, conversations and communications, to allocate the supply of Switches sold to OEMs in North America and elsewhere on a model-by-model basis;

(e) agreeing, during those meetings, conversations and communications, to coordinate price adjustments in North America and elsewhere;

(f) submitting bids (including RFQs), price quotations and price adjustments (including APRs) to OEMs in North America and elsewhere in accordance with the agreements reached;

(g) enhancing unreasonably the prices of Switches sold in North America and elsewhere;

- (h) selling Switches to OEMs in North America and elsewhere for the agreed-upon prices, controlling discounts and otherwise fixing, increasing, maintaining or stabilizing prices for Switches in North America and elsewhere;
- (i) allocating the supply of Switches sold to OEMs in North America and elsewhere on a model-by-model basis;
- (j) accepting payment for Switches sold to OEMs in North America and elsewhere at collusive and supra-competitive prices;
- (k) engaging in meetings, conversations and communications in the United States, Japan and elsewhere for the purpose of monitoring and enforcing adherence to the agreed-upon bid-rigging and price-fixing scheme;
- (l) actively and deliberately employing steps to keep their conduct secret and to conceal and hide facts, including but not limited to using code names, following security rules to prevent “paper trails”, abusing confidences, communicating by telephone and meeting in locations where they were unlikely to be discovered by other competitors and industry participants; and
- (m) preventing or lessening, unduly, competition in the market in North America and elsewhere for the production, manufacture, sale or distribution of Switches.

44. As a result of the unlawful conduct alleged herein, the plaintiffs and other members of the Proposed Class paid unreasonably enhanced/supra-competitive prices for Switches and/or new vehicles containing Switches.

45. The conduct described above constitutes offences under Part VI of the *Competition Act*, in particular, sections 45(1) and 47(1) of the *Competition Act*. The plaintiffs claim loss and damage under section 36(1) of the *Competition Act* in respect of such unlawful conduct.

46. Further or alternatively, the Canadian defendants, Panasonic Canada, Inc., TRQSS, Inc., Omron Automotive Technologies, Inc., implemented a directive, instruction, intimation of policy or other communication from their related entities identified herein, which communication was for the purpose of giving effect to a conspiracy, combination, agreement or arrangement entered into outside Canada that, if entered into in Canada, would have been in contravention of section 45, and therefore acted in contravention of section 46(1) of the *Competition Act* and are liable to the Plaintiffs and other class members pursuant to section 36 of the *Competition Act*.

Breach of Foreign Law

47. The defendants and their co-conspirators' conduct, particularized in this statement of claim, took place in, among other places, the United States, Japan and Europe, where it was illegal and contrary to the competition laws of the United States, Japan and Europe.

Civil Conspiracy

48. The defendants and their co-conspirators voluntarily entered into agreements with each other to use unlawful means which resulted in loss and damage, including special damages, to the plaintiffs and other members of the Proposed Class. The unlawful means include the following:

- (a) entering into agreements to rig bids and fix, maintain, increase or control prices of Switches sold to customers in North America and elsewhere in contravention of sections 45(1), 46(1), and 47(1) of the *Competition Act*; and

(b) aiding, abetting and counselling the commission of the above offences, contrary to sections 21 and 22 of the *Criminal Code*, RSC 1985, c C-46.

49. In furtherance of the conspiracy, the defendants, their servants, agents and co-conspirators carried out the acts described in paragraph 43 above.

50. The acts particularized in paragraph 43 were unlawful acts directed towards purchasers of Switches and/or vehicles containing Switches, including the Plaintiffs, which unlawful acts the Defendants and their co-conspirators knew in the circumstances would likely cause injury to those purchasers and Plaintiffs and the Defendants are liable for the tort of civil conspiracy.

51. The defendants and their co-conspirators were motivated to conspire. Their predominant purposes and concerns were to harm the plaintiffs and other members of the Proposed Class by requiring them to pay artificially high prices for Switches, and to illegally increase their profits on the sale of Switches.

52. The defendants and their co-conspirators intended to cause economic loss to the plaintiffs and other members of the Proposed Class. In the alternative, the defendants and their co-conspirators knew, in the circumstances, that their unlawful acts would likely cause injury.

Discoverability

53. Switches are not exempt from competition regulation and thus, the plaintiffs reasonably considered the Switches industry to be a competitive industry. A reasonable person under the circumstances would not have been alerted to investigate the legitimacy of the defendants' prices for Switches.

54. Accordingly, the plaintiffs and other members of the Proposed Class did not discover, and could not discover through the exercise of reasonable diligence, the existence of the alleged conspiracy during the Class Period.

Fraudulent Concealment

55. The defendants and their co-conspirators actively, intentionally and fraudulently concealed the existence of the combination and conspiracy from the public, including the plaintiffs and other members of the Proposed Class. The defendants and their co-conspirators represented to customers and others that their pricing and bidding activities were unilateral, thereby misleading the plaintiffs. The affirmative acts of the defendants alleged herein, including acts in furtherance of the conspiracy, were fraudulently concealed and carried out in a manner that precluded detection.

56. The defendants' and their co-conspirators' anti-competitive conspiracy was self-concealing. As detailed in paragraph 43 above, the defendants took active, deliberate and wrongful steps to conceal their participation in the alleged conspiracy.

57. Because the defendants' agreements, understandings and conspiracies were kept secret, plaintiffs and other members of the Proposed Class were unaware of the defendants' unlawful conduct during the Class Period, and they did not know, at the time, that they were paying supra-competitive prices for Switches and/or new vehicles containing Switches.

Unjust Enrichment

58. As a result of their conduct, the defendants benefited from a significant enhancement of their revenues on the sale of Switches. All members of the Proposed Class have suffered a corresponding deprivation as a result of being forced to pay inflated prices for Switches and/or

new vehicles containing Switches. There is no juristic reason or justification for the defendants' enrichment, as such conduct is tortious, unjustifiable and unlawful under the *Competition Act* and similar laws of other countries in which the unlawful acts took place.

59. It would be inequitable for the defendants to be permitted to retain any of the ill-gotten gains resulting from their unlawful conspiracy.

60. The plaintiffs and other members of the Proposed Class are entitled to the amount of the defendants' ill-gotten gains resulting from their unlawful and inequitable conduct.

Waiver of Tort

61. In the alternative to damages, in all of the circumstances, the plaintiffs plead an entitlement to "waive the tort" of civil conspiracy and claim an accounting or other such restitutionary remedy for disgorgement of the revenues generated by the defendants and their co-conspirators as a result of their unlawful conspiracy.

62. As a direct, proximate and foreseeable result of the defendants' wrongful conduct, the plaintiffs and other members of the Proposed Class overpaid for Switches. As a result of the unlawful conspiracy, the defendants profited from the sale of Switches at artificially inflated prices and were accordingly unjustly enriched. The defendants accepted and retained the unlawful overcharge. It would be unconscionable for the defendants to retain the unlawful overcharge obtained as a result of the alleged conspiracy.

Damages

63. The conspiracy had the following effects, among others:

- (a) price competition has been restrained or eliminated with respect to Switches sold directly or indirectly to the plaintiffs and other members of the Proposed Class in Ontario and the rest of Canada;
- (b) the prices of Switches sold directly or indirectly to the plaintiffs and other members of the Proposed Class in Ontario and the rest of Canada have been fixed, maintained, increased or controlled at artificially inflated levels; and
- (c) the plaintiffs and other members of the Proposed Class have been deprived of free and open competition for Switches in Ontario and the rest of Canada.

64. Switches are identifiable, discrete physical products that remain essentially unchanged when incorporated into a vehicle. As a result, Switches follow a traceable chain of distribution from the defendants and their co-conspirators to the OEMs (or alternatively to the Tier I Manufacturers and then to OEMs) and from the OEMs to automotive dealers to consumers or other end-user purchasers. Costs attributable to Switches can be traced through the distribution chain.

65. By reason of the wrongful conduct alleged herein, the plaintiffs and the members of the Proposed Class have sustained losses by virtue of having paid higher prices for Switches and/or new vehicles containing Switches than they would have paid in the absence of the illegal conduct of the defendants and their co-conspirators. As a result, the plaintiffs and other members of the Proposed Class have suffered loss and damage in an amount not yet known but to be determined. Full particulars of the loss and damage will be provided before trial.

Punitive, Aggravated and Exemplary Damages

66. The defendants and their co-conspirators used their market dominance, illegality and deception in furtherance of a conspiracy to illegally profit from the sale of Switches. They were, at all times, aware that their actions would have a significant adverse impact on all members of the Proposed Class. The conduct of the defendants and their co-conspirators was high-handed, reckless, without care, deliberate and in disregard of the plaintiffs' and Proposed Class members' rights.

67. Accordingly, the plaintiffs request substantial punitive, exemplary and aggravated damages in favour of each member of the Proposed Class.

Service of Statement of Claim Outside Ontario

68. The plaintiffs are entitled to serve this statement of claim outside Ontario without a court order pursuant to the following rules of the *Rules of Civil Procedure*, RRO 1990, Reg 194 because:

- (a) Rule 17.02 (g) – the claim relates to a tort committed in Ontario; and
- (b) Rule 17.02 (p) – the claim relates to a person ordinarily resident or carrying on business in Ontario.

69. The plaintiffs propose that this action be tried at Toronto, Ontario.

Date: November 22, 2016

SOTOS LLP

Barristers and Solicitors
180 Dundas Street West, Suite 1200
Toronto, ON M5G 1Z8

David Sterns LSUC # 36274J
Jean-Marc Leclerc LSUC # 43974F
Rory McGovern LSUC # 65633H
Tel: (416) 977-0007
Fax: (416) 977-0717

SISKINDS LLP

Barristers and Solicitors
680 Waterloo Street
London, ON N6A 3V8

Charles M. Wright LSUC # 36599Q
Andrea L. DeKay LSUC # 43818M
Linda Visser LSUC # 52158I
Kerry McGladdery Dent LSUC # 59685G
Tel: (519) 672-2121
Fax: (519) 672-6065

Lawyers for the Plaintiffs

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM
(Switches)

SOTOS LLP

Barristers and Solicitors
180 Dundas Street West, Suite 1200
Toronto, ON M5G 1Z8

David Sterns LSUC # 36274J
Jean-Marc Leclerc LSUC # 43974F
Rory McGovern LSUC # 65633H
Tel: (416) 977-0007
Fax: (416) 977-0717

Lawyers for the Plaintiffs

SISKINDS LLP

Barristers and Solicitors
680 Waterloo Street
P.O. Box 2520
London, ON N6A 3V8

Charles M. Wright LSUC # 36599Q
Andrea L. DeKay LSUC # 43818M
Linda Visser LSUC # 52158I
Kerry McGladdery Dent LSUC # 59685G
Tel: (519) 672-2121
Fax: (519) 672-6065