

AMENDED THIS OCT 22/13 PURSUANT TO
MONTÉE DE CONFORMÉMENT À

RULE/LA RÈGLE 26.02 (_____)

THE ORDER OF JUSTICE LAX
L'ORDONNANCE DU

DATED / DATE OCT. 18/13

Court File No. CV-13-483540-00CP

REGISTRAR SUPERIOR COURT OF JUSTICE
GREFFIER COUR SUPÉRIEURE DE JUSTICE

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

KHURRAM SHAH and ALPINA HOLDINGS INC.

Plaintiffs

and

**LG CHEM, LTD., LG CHEM AMERICA, INC., PANASONIC CORPORATION,
PANASONIC CORPORATION OF NORTH AMERICA, PANASONIC CANADA INC.,
SANYO ELECTRIC CO., LTD., SANYO NORTH AMERICA CORPORATION, SANYO
ENERGY (U.S.A.) CORPORATION, SONY CORPORATION, SONY ENERGY
DEVICES CORPORATION, SONY ELECTRONICS, INC., SONY OF CANADA LTD.,
SAMSUNG SDI CO., LTD., SAMSUNG SDI AMERICA, INC., SAMSUNG
ELECTRONICS CANADA INC., HITACHI, LTD., HITACHI MAXELL, LTD.,
MAXELL CORPORATION OF AMERICA, MAXELL CANADA, GS YUASA
CORPORATION, NEC CORPORATION, NEC TOKIN CORPORATION, NEC
CANADA, TOSHIBA CORPORATION, TOSHIBA AMERICA ELECTRONIC
COMPONENTS, INC., and TOSHIBA OF CANADA LIMITED**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

FRESH AS AMENDED CONSOLIDATED STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in this Statement of Claim served on you pursuant to Rule 17.02 and 17.04 the Ontario *Rules of Civil Procedure*.

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 plaintiff's lawyers or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this notice of action 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 (60) 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.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$25,000 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

Date: June 26, 2013

Issued by: _____

B. Monnell
Registrar

OCTOBER 22, 2013

Registrar

Address of Court Office:
Superior Court of Justice
393 University Ave, 10th Floor
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AND TO: LG CHEM AMERICA, INC.
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AND TO: PANASONIC CORPORATION
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AND TO: PANASONIC CORPORATION OF NORTH AMERICA
1 Panasonic Way
Secaucus, NJ 07094

AND TO: PANASONIC CANADA, INC.
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- AND TO: SANYO ELECTRIC CO., LTD.**
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- AND TO: SANYO NORTH AMERICA CORPORATION**
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- AND TO: SANYO ENERGY (U.S.A.) CORPORATION**
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- AND TO: SONY CORPORATION**
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- AND TO: SONY ENERGY DEVICES CORPORATION**
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- AND TO: SONY ELECTRONICS, INC.**
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- AND TO: MAXELL CORPORATION OF AMERICA**
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- AND TO: GS YUASA**
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- AND TO: NEC CORPORATION**
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- AND TO: NEC TOKIN CORPORATION**
7-1, Kohriyama 6-chome, Taihaku-ku, Sendai-shi,
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- AND TO: TOSHIBA CORPORATION**
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- AND TO: TOSHIBA AMERICA ELECTRONIC COMPONENTS, INC.**
19900 MacArthur Boulevard, Suite 400,
Irvine, California 92612
- AND TO: TOSHIBA OF CANADA LIMITED**
191 McNabb Street,
Markham, Ontario, L3R 8H2

CLAIM

1. The Plaintiffs claim on behalf of themselves and other members of the proposed class (as defined below):

- (a) an order, pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c C.6, certifying this action as a class proceeding and appointing the Plaintiffs as representative plaintiffs, on behalf of all persons in Canada who, at least as early as January 1, 2000 and continuing until at least December 31, 2011 (or until such time as the harmful effects resulting from the conspiracy ceased) (the “**conspiracy period**”), purchased lithium-ion rechargeable batteries (“**lithium batteries**”) and/or products containing lithium batteries (“**lithium battery products**”) (the “**proposed class**”);
- (b) a declaration that Defendants and their unnamed co-conspirators conspired with each other to raise, maintain, fix and/or stabilize the price of lithium batteries and lithium battery products sold in Canada during the conspiracy period;
- (c) general damages and special damages for conspiracy, intentional interference with economic relations, conduct that is contrary to Part VI of the *Competition Act*, RSC 1985, c C-34 (“*Competition Act*”), and unjust enrichment in the amount of \$75 million or such other sum as this Honourable Court finds appropriate;
- (d) punitive and/or exemplary damages in the amount of \$10 million or such other sum as this Honourable Court finds appropriate;

- (e) pre-judgment interest and post-judgment interest, compounded, or pursuant to ss. 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c C.43;
- (f) costs of investigation and prosecution of this action pursuant to s. 36(1) of the *Competition Act*; and
- (g) such further and other relief as this Honourable Court deems just.

THE NATURE OF THE ACTION

2. This action arises from a conspiracy between the Defendants and their unnamed co-conspirators to fix, raise, maintain, and/or stabilize the price of lithium batteries in North America and elsewhere. During the conspiracy period, the Defendants and their unnamed co-conspirators participated in illegal and secretive meetings and made agreements relating to the prices, market share divisions and production levels for lithium batteries. The Defendants and their unnamed co-conspirators were aware and intended that the alleged conspiracy would result in increased prices for lithium batteries and lithium battery products.

3. During the conspiracy period, some Defendants were vertically integrated and, pursuant to unlawful agreements with other co-defendants, sold at least some of their lithium batteries to related entities for use in lithium battery products. The conspiracy included an agreement on the prices at which vertically-integrated Defendants would sell lithium batteries to their related entities for use in the manufacturing of lithium battery products. The Defendants were aware and intended that, by keeping these intra-company prices high, the illegal overcharge applied on lithium batteries would be passed on to purchasers of lithium battery products.

PRODUCT DESCRIPTION

4. Batteries are manufactured cells that are developed and used as a source of energy to power numerous goods, devices, and machines.

5. Batteries can be further identified as primary or secondary. Secondary batteries are rechargeable batteries. Rechargeable batteries account for approximately 80% of all chemical batteries. There are, at least, four types of rechargeable batteries: (i) lithium-ion, (ii) lead-acid, (iii) nickel cadmium, and (iv) nickel-metal hydride. Lithion-ion are the most common rechargeable battery.

6. Lithium batteries are a family of rechargeable battery types in which lithium ions move from the negative electrode to the positive electrode during discharge, and back when charging.

7. Lithium batteries are sold separately or within consumer electronic products such as handheld power tools, mobile phones, MP3 players, digital cameras, and notebook computers. The most common applications are small consumer products, such as mobile phones and notebook computers.

8. Lithium batteries are available in the following formats:

- small cylindrical - solid body without terminals, such as those used in small consumer goods;
- large cylindrical - solid body with large threaded terminals, such as those used in power tools and larger consumer goods;
- pouch - soft, flat body, such as those used in cell phones;
- cube shaped - such as those used in digital cameras, mobile global positioning satellite systems and other consumer electronics; and
- rectangular - such as those used in notebook computers.

PLAINTIFFS

9. The plaintiff, Khurram Shah (“**Shah**”), is an individual resident in Ontario. During the conspiracy period, Shah purchased five mobile phones containing a lithium battery. Two of the mobile phones were manufactured by Sony Mobile Communications AB (formerly Sony Ericsson Mobile Communications AB), one was manufactured by Nokia Corporation, one was manufactured by HTC Corporation and one was manufactured by BlackBerry Limited (formerly Research in Motion).

10. The plaintiff, Alpina Holdings Inc. (“**Alpina**”), is incorporated under the laws of the Province of Ontario and formerly operated a “Mobicity” electronics retail business. During the conspiracy period, Alpina purchased various lithium batteries and lithium battery products for resale to consumers, including lithium batteries and lithium battery products manufactured by one or more of the defendants.

DEFENDANTS

11. Where a particular entity within a corporate family of Defendants engaged in anti-competitive conduct, it did so on behalf of all entities within that corporate family. The individual participants in the conspiratorial meetings and discussions entered into agreements on behalf of, and reported these meetings and discussions to, their respective corporate families. The Defendants named herein are jointly and severally liable for the actions of, and damages allocable to, all members of their respective corporate families.

LG Chem

12. LG Chem, Ltd. (“**LG Chem**”) has its principal place of business in Seoul, South Korea. During the conspiracy period, LG Chem manufactured, marketed, sold and/or distributed lithium

batteries and/or lithium battery products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

13. LG Chem America, Inc. (“**LG Chem America**”) has its principal place of business in Englewood Cliffs, New Jersey. LG Chem America is a subsidiary of LG Chem. During the conspiracy period, LG Chem America manufactured, marketed, sold and/or distributed lithium batteries and/or lithium battery products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

14. The business of each of LG Chem and LG Chem America is 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 lithium batteries and/or lithium battery products in Canada and for the purposes of the conspiracy described hereinafter.

Panasonic/SANYO

15. Panasonic Corporation (“**Panasonic**”) has its principal place of business in Osaka, Japan. Until October 1, 2008, Panasonic was known as Matsushita Electric Industrial Co., Ltd. During the conspiracy period, Panasonic manufactured, marketed, sold and/or distributed lithium batteries and/or lithium battery products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

16. Panasonic Corporation of North America (“**Panasonic NA**”), formerly known as Matsushita Electric Corporation of America, has its principal place of business in Secaucus, New Jersey. Panasonic NA is a wholly-owned subsidiary of Panasonic. During the conspiracy period, Panasonic NA manufactured, marketed, sold and/or distributed lithium batteries and/or

lithium battery products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

17. Panasonic Canada, Inc. (“**Panasonic Canada**”) has its principal place of business in Mississauga, Ontario. Panasonic Canada is a subsidiary of Panasonic Corporation of North America. During the conspiracy period, Panasonic Canada manufactured, marketed, sold and/or distributed lithium batteries and/or lithium battery products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

18. SANYO Electric Co., Ltd. (“**SANYO**”) has its principal place of business in Osaka, Japan. On or around December 21, 2009, Panasonic purchased a controlling share in SANYO and made SANYO a subsidiary of Panasonic. During the conspiracy period, SANYO manufactured, marketed, sold and/or distributed lithium batteries and/or lithium battery products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

19. SANYO North America Corporation (“**SANYO NA**”) has its principal place of business in San Diego, California. SANYO NA is a wholly-owned subsidiary of SANYO. During the conspiracy period, SANYO NA manufactured, marketed, sold and/or distributed lithium batteries and/or lithium battery products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

20. SANYO Energy (U.S.A.) Corporation (“**SANYO USA**”) has its principal place of business in Frisco, Texas. SANYO USA is a wholly-owned subsidiary of SANYO. During the conspiracy period, SANYO USA manufactured, marketed, sold and/or distributed lithium

batteries and/or lithium battery products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

21. The business of each of Panasonic, Panasonic NA, and Panasonic Canada is 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 lithium batteries and/or lithium battery products in Canada and for the purposes of the conspiracy described hereinafter.

22. During the conspiracy period, after December 21, 2009, the business of each of Panasonic, Panasonic NA, Panasonic Canada, SANYO, SANYO NA, and SANYO USA was 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 lithium batteries and/or lithium battery products in Canada and for the purposes of the conspiracy described hereinafter.

Sony

23. Sony Corporation (“**Sony**”) has its principal place of business in Tokyo, Japan. During the conspiracy period, Sony Corporation manufactured, marketed, sold and/or distributed lithium batteries and/or lithium battery products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

24. Sony Energy Devices Corporation (“**Sony Energy**”) has its principal place of business in Fukushima, Japan. Sony Energy is a subsidiary of Sony Corporation. During the conspiracy period, Sony Energy manufactured, marketed, sold and/or distributed lithium batteries and/or lithium battery products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

25. Sony Electronics, Inc. (“**Sony Electronics**”) has its principal place of business in San Diego, California. Sony Electronics is a wholly-owned subsidiary of Sony Corporation of America, which in turn is a wholly-owned subsidiary of Sony Americas Holding, Inc., a wholly-owned subsidiary of Sony Corporation. During the conspiracy period, Sony Electronics manufactured, marketed, sold and/or distributed lithium batteries and/or lithium battery products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

26. Sony of Canada Ltd. (“**Sony Canada**”) has its principal place of business in Toronto, Ontario. Sony Canada is a subsidiary of Sony Corporation. During the conspiracy period, Sony Canada manufactured, marketed, sold and/or distributed lithium batteries and/or lithium battery products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

27. The business of each of Sony, Sony Energy, Sony Electronics, and Sony Canada is 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 lithium batteries and/or lithium battery products in Canada and for the purposes of the conspiracy described hereinafter.

Samsung

28. Samsung SDI Co., Ltd. (“**Samsung SDI**”) has its principal place of business in Kyunggi-do, Korea. Samsung SDI is owned, in part, by Samsung Electronics Co. Ltd. During the conspiracy period, Samsung SDI manufactured, marketed, sold and/or distributed lithium batteries and/or lithium battery products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

29. Samsung SDI America, Inc. (“**Samsung SDI America**”) has its principal place of business in Irvine, California. Samsung SDI America is a subsidiary of Samsung SDI. During the conspiracy period, Samsung SDI America manufactured, marketed, sold and/or distributed lithium batteries and/or lithium battery products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

30. Samsung Electronics Canada Inc. (“**Samsung Canada**”) is a subsidiary of Samsung Electronics Co. Ltd. with its principal place of business in Mississauga, Ontario. During the Conspiracy Period, Samsung Electronics Canada Inc. manufactured, marketed, sold and/or distributed lithium batteries and/or lithium battery products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

31. The business of each of Samsung SDI, Samsung SDI America and Samsung Canada is 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 lithium batteries and/or lithium battery products in Canada and for the purposes of the conspiracy described hereinafter.

Hitachi/Maxell

32. Hitachi, Ltd. (“**Hitachi**”) has its principal place of business in Tokyo, Japan. During the conspiracy period, Hitachi manufactured, marketed, sold and/or distributed lithium batteries and/or lithium battery products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

33. Hitachi Maxell, Ltd. (“**Hitachi Maxell**”) has its principal place of business in Tokyo, Japan. Hitachi Maxell is a wholly-owned subsidiary of Hitachi. During the conspiracy period, Hitachi Maxell manufactured, marketed, sold and/or distributed lithium batteries and/or lithium

battery products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

34. Maxell Corporation of America (“**Maxell America**”) has its principal place of business in Woodland Park, New Jersey. Maxell America is a subsidiary of Hitachi Maxell. During the conspiracy period, Maxell America manufactured, marketed, sold and/or distributed lithium batteries and/or lithium battery products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

35. Maxell Canada has its principal place of business in Bolton, Ontario. Maxell Canada is a subsidiary of Hitachi Maxell. During the conspiracy period, Maxell Canada manufactured, marketed, sold and/or distributed lithium batteries and/or lithium battery products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

36. The business of each of Hitachi, Hitachi Maxell, Maxell America, and Maxell Canada is 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 lithium batteries and/or lithium battery products in Canada and for the purposes of the conspiracy described hereinafter.

GS Yuasa

37. GS Yuasa Corporation (“**GS Yuasa**”) has its principal place of business in Kyoto, Japan. GS Yuasa and Sanyo Electric Co., Ltd. were joint venture parents of GS Soft Energy, which was the successor-in-interest to GS-Melcotec Co. (“**GS-Melcotec**”). GS Soft Energy was a business entity organized under the laws of Japan, with its principal place of business in Kyoto, Japan. During the conspiracy period, GS Yuasa manufactured, marketed, sold and/or distributed lithium

batteries and/or lithium battery products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries including GS-Melcotec and GS Soft Energy.

NEC

38. NEC Corporation has its principal place of business in Tokyo, Japan. During the conspiracy period, NEC Corporation manufactured, marketed, sold and/or distributed lithium batteries and/or lithium battery products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

39. NEC Tokin Corporation (“**NEC Tokin**”) has its principal place of business in Miyagi, Japan. During the conspiracy period, NEC Tokin manufactured, marketed, sold and/or distributed lithium batteries and/or lithium battery products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

40. NEC Canada, Inc. (“**NEC Canada**”) has its principal place of business in Mississauga, Ontario. During the conspiracy period, NEC Canada manufactured, marketed, sold and/or distributed lithium batteries and/or lithium battery products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

41. The business of each of NEC Corporation, NEC Tokin and NEC Canada is 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 lithium batteries and/or lithium battery products in Canada and for the purposes of the conspiracy described hereinafter.

Toshiba

42. Toshiba Corporation has its principal place of business in Tokyo, Japan. During the conspiracy period, Toshiba Corporation manufactured, marketed, sold and/or distributed lithium batteries and/or lithium battery products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

43. Toshiba America Electronic Components, Inc. (“TAEC”) has its principal place of business in Irvine, California. TAEC is an indirect wholly-owned subsidiary of Toshiba Corporation. During the conspiracy period, TAEC manufactured, marketed, sold and/or distributed lithium batteries and/or lithium battery products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

44. Toshiba of Canada Limited (“Toshiba Canada”) has its principal place of business in Markham, Ontario. Toshiba Canada is a subsidiary of Toshiba Corporation. During the conspiracy period, Toshiba Canada manufactured, marketed, sold and/or distributed lithium batteries and/or lithium battery products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

45. The business of each of Toshiba Corporation, TAEC and Toshiba Canada is 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 lithium batteries and/or lithium battery products in Canada and for the purposes of the conspiracy described hereinafter.

Co-Conspirators

46. Various persons and/or firms involved in the manufacturing, marketing, selling and/or distribution of lithium batteries and/or lithium battery products to customers throughout Canada,

not named as Defendants herein, may have participated as co-conspirators in the violations alleged herein and may have performed acts and made statements in furtherance thereof.

47. The Defendants named herein are jointly and severally liable for the actions of, and damages allocable to, their co-conspirators, including the other named Defendants and any unnamed co-conspirator.

THE LITHIUM BATTERY MARKET

48. Between 2004 and 2008, the approximate annual lithium batteries sales in Canada were \$64 million (2004), \$68 million (2005), \$74 million (2006), \$83 million (2007), and \$92 million (2008).

49. The lithium battery industry has characteristics that served to facilitate the price-fixing conspiracy alleged herein.

Market Concentration

50. During the conspiracy period, there was substantial consolidation in the lithium battery industry between the world's largest lithium battery manufacturers, including the Defendants' acquisition of rivals. For example, in 2009, Panasonic purchased SANYO, making Panasonic one of the world's largest producers of lithium batteries.

51. During the conspiracy period, the Defendants controlled a significant share of the lithium battery market, both in Canada and internationally. In 2008, the Defendants controlled approximately 70% of the global lithium batteries market: SANYO 22%, Samsung SDI 15%, Sony 15%, Panasonic 6%, LG Chem 7%, and Hitachi Maxell 5%. In Canada, the Defendants' market shares were higher.

52. In 2011, the same Defendants controlled 75% of the market. Defendants LG Chem, Samsung SDI, and Sony controlled approximately 43% of the lithium batteries global market measured by output. Panasonic (including SANYO) enjoyed over 30% of the lithium batteries global market at the same period.

Barriers to Entry

53. The market for the manufacture and sale of lithium batteries is subject to high barriers to entry. Defendants themselves acknowledge the substantial costs of entering the market. Efficient lithium battery fabrication plants are large and expensive. In order to compete in the lithium battery industry, companies have to spend hundreds of millions of dollars in research and development, licensing, and manufacturing costs. These barriers to entry make it less likely that new competitors will enter the lithium battery market and undercut the Defendants' cartel prices.

54. In addition to the barriers identified above, given the nature of the materials used in lithium batteries, new entrants would also be required to comply with various environmental regulations. Compliance with such regulations would require extensive testing and government approvals. This process could take up to several years.

Inelastic Demand

55. Lithium batteries are a fungible, commodity-like product such that one Defendant's product is interchangeable for another. International standard-setting organizations, such as the International Electrotechnical Commission or the Institute of Electrical and Electronics Engineers, develop standards to be followed by manufacturers of lithium batteries, so that manufacturers of lithium battery products can develop a product that will accommodate a particular lithium battery.

56. Price is the primary factor driving customer choice between different lithium battery manufacturers.

LITHIUM BATTERY PRICES DURING THE CONSPIRACY PERIOD

57. The Defendants and their co-conspirators' unlawful conduct resulted in artificially increased prices for lithium batteries. This was accomplished by preventing the decline of lithium battery prices, stabilizing lithium battery prices, and increasing lithium battery prices. It was also accomplished by reducing the supply of lithium batteries.

58. Lithium batteries are a relatively new technology. They were first commercially produced by Sony in or around 1991. In a typical market for a new technology, prices would start high and would decrease as production increases and there are greater economies of scale. This did not occur in the lithium batteries market.

59. During the 1990s, the market for lithium batteries was dominated by Japanese manufacturers, Sony and Panasonic. During that period, prices were stable.

60. In or around 1999, Korean companies began to enter the market. LG Chem was the first Korean company to enter into the market, followed by Samsung SDI. Thereafter, prices for lithium batteries decreased considerably despite a strong increase in demand for lithium batteries used in devices, such as mobile telephones and notebook computers. By 2003, LG Chem and Samsung SDI held 20% of the global market.

61. To stem the decline in lithium battery prices, the Defendants entered into a conspiracy to fix prices of lithium batteries by sharing confidential and competitively sensitive information regarding supply and demand, market trends, capacity, sales forecasts and pricing for lithium

batteries among Korean and Japanese manufacturers. During the period from January 2002 to July 2008, the decline of prices had ceased completely and prices in fact increased during this period.

62. As a result of the economic crisis in or around 2007 and the corresponding decrease in demand for lithium batteries and lithium battery products, beginning in or around January 2008, the prices for lithium batteries decreased. This decrease continued until in or around January 2009. During 2008, the Defendants dramatically decreased their production and prices stabilized by the end of 2009. After prices stabilized, the Defendants increased production and kept the higher stabilized prices.

63. Prices remained stable until mid-2011, when the U.S. Department of Justice and European Commission commenced their investigations. In the three months following, prices fell approximately 10%.

THE CONSPIRACY

64. The Plaintiffs allege that during the conspiracy period, the Defendants and unnamed co-conspirators conspired and/or agreed with each other to enhance unreasonably the prices of lithium batteries and lithium battery prices and/or to lessen unduly competition in the production, manufacture, sale and/or supply of lithium batteries and lithium battery products in North America and elsewhere. The Defendants' conspiracy was intended to, and did, moderate the downward pressure on the prices of lithium batteries and lithium battery products.

65. During the conspiracy period, senior executives and employees of the Defendants and unnamed co-conspirators, acting in their capacities as agents for the Defendants and unnamed co-conspirators, engaged in communications, conversations and regularly attended meetings with

each other at times and places, some of which are unknown to the Plaintiffs. As a result of the communications and meetings, the Defendants and unnamed co-conspirators unlawfully conspired and/or agreed to:

- (a) enhance unreasonably the prices of lithium batteries in North America and elsewhere (including pricing for intra-company sales);
- (b) participate in meetings, conversations and communications with respect to the price of lithium batteries;
- (c) exchange information in order to monitor and enforce the agreed-upon prices for lithium batteries;
- (d) allocate market share, customers and/or set specific sales volumes of lithium batteries that each Defendant or co-conspirator would supply in North America and elsewhere;
- (e) lessen unduly competition in the production, manufacture, sale and/or supply of lithium batteries in North American and elsewhere;
- (f) not to discuss publicly or otherwise reveal the nature and substance of the agreements; and
- (g) conceal the acts and agreements from their customers, the authorities and the public.

66. In furtherance of the conspiracy, during the conspiracy period, the following acts were done by the Defendants, the unnamed co-conspirators and their servants and agents:

- (a) they met over the course of at least 110 illicit meetings that began in 2000 and lasted until December 2011 with the purpose of enhancing unreasonably the prices of lithium batteries in North America and elsewhere, including the prices of lithium batteries sold to Defendants' subsidiaries and/or affiliates involved in manufacturing lithium battery products;
- (b) they agreed on bottom line or floor prices for lithium batteries;
- (c) to the extent that information was shared or agreements made through bilateral meetings, the information gleaned through the conspiratorial discussions were shared with other co-conspirators;
- (d) they allocated the volumes of sales of, and customers and markets for lithium batteries among themselves;
- (e) they reduced the production, manufacture and supply of lithium batteries in North American and elsewhere;
- (f) they intended that the conspiracy would enhance unreasonably the price of lithium battery products, and they monitored the price of lithium battery products to determine whether an increase in the price of lithium batteries would be passed on to their customers, in whole or in part, and/or would be reflected in the prices paid by purchasers of lithium battery products;
- (g) they communicated secretly, in person, by telephone and otherwise, to discuss and fix prices and volumes of sales of lithium batteries;

- (h) they used code words like “safety” to communicate about lithium battery pricing;
- (i) they arranged clandestine meetings in restaurants, coffee shops and other places to discuss methods to implement the conspiracy;
- (j) they proposed to “minimize damages caused by unnecessary competition in dealing with customers” by agreeing to communicate with each other;
- (k) they discussed and agreed to restrict communications about the conspiracy regarding lithium batteries by agreeing to not forward sensitive e-mails;
- (l) they discussed and agreed on multiple occasions to delete or erase correspondence relating to the lithium battery conspiracy;
- (m) they discussed and agreed to avoid creating correspondence relating to the lithium battery conspiracy;
- (n) they discussed and agreed on strategies for ensuring that falling prices in raw goods used to manufacture lithium ion batteries would not erode the collusive price of lithium ion batteries;
- (o) they exchanged information regarding the prices and volumes of sales of lithium batteries for the purposes of monitoring and enforcing adherence to the agreed-upon prices, volumes of sales and markets;
- (p) they refrained from submitting truly competitive bids for lithium batteries in North America and elsewhere;

- (q) they agreed to refrain from extending capacity in order to restrict supplies of lithium batteries;
- (r) they agreed on price increases to customers and encouraged others to likewise agree on price increases to encourage the profitable growth of the lithium battery industry;
- (s) they submitted collusive, non-competitive and rigged bids for lithium batteries in North America and elsewhere;
- (t) they took active steps to, and did, conceal the unlawful conspiracy from their customers, the authorities and the public; and
- (u) they disciplined any corporation which failed to comply with the conspiracy.

67. The Defendants and unnamed co-conspirators were motivated to conspire and their predominant purposes and predominant concerns were:

- (a) to harm the Plaintiffs and other members of the proposed class by requiring them to pay artificially high prices for lithium batteries and lithium battery products; and
- (b) to illegally increase their profits on the sale of lithium batteries and lithium battery products.

68. The Defendants and unnamed co-conspirators were aware and intended that the conspiracy described herein would result in increased prices for lithium battery products. Some of the Defendants were vertically integrated and sold some or all of their lithium batteries to

related entities involved in the manufacturing of lithium battery products. It was intended that these Defendants would be able to benefit from the conspiracy by passing on the artificially high prices to the related entities' direct purchaser customers of lithium battery products.

69. The Canadian subsidiaries of the foreign Defendants and unnamed co-conspirators participated in and furthered the objectives of the conspiracy by knowingly modifying their competitive behaviour in accordance with instructions received from their respective parent companies and thereby acted as agents in carrying out the conspiracy and are liable for such acts.

70. The acts particularized above were unlawful because they are in breach of Part VI of the *Competition Act*, and render the Defendants liable to pay the damages pursuant to s. 36 of the *Competition Act*.

71. Further, or alternatively, the acts particularized above were unlawful acts directed towards the Plaintiffs and other members of the proposed class, which unlawful acts the Defendants knew in the circumstances were likely to cause injury to the Plaintiffs and other members of the proposed class, rendering the Defendants liable for the tort of civil conspiracy.

72. Further, or alternatively, the acts particularized above were unlawful acts intended to cause the Plaintiffs and other members of the proposed class economic loss and constituted tortious interference with economic interests of the Plaintiffs and other members of the proposed class, rendering the Defendants liable to pay the resulting damages.

UNJUST ENRICHMENT

73. As a result of their conduct, the Defendants benefited from a significant enhancement of their sales revenue. All members of the proposed class have suffered a corresponding

deprivation as a result of being forced to pay inflated prices for lithium batteries and lithium battery products. There is no juristic reason or justification for the Defendants' enrichment, as such conduct is unlawful under the *Competition Act* and similar laws of other countries in which the unlawful acts took place and is tortious and unjustifiable.

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

75. The Plaintiffs and the other members of the proposed class are entitled to the amount of the Defendants' ill-gotten gains resulting from their unlawful and inequitable conduct.

DAMAGES

76. The Plaintiffs and other members of the proposed class have suffered damages as a result of the conspiracy alleged herein. The Defendants' conspiracy had the following effects, among others:

- (a) price competition has been restrained or eliminated with respect to lithium batteries 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 lithium batteries 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;
- (c) the Plaintiffs and other members of the proposed class paid more for lithium batteries and lithium battery products than they would have paid in the absence of the conspiracy; and

- (d) competition has been unduly restrained and the Plaintiffs and other members of the proposed class have been deprived of free and open competition in lithium batteries in Ontario and the rest of Canada.

77. The Plaintiffs assert that their damages, along with those of other members of the proposed class, are capable of being quantified on an aggregate basis as the difference between the amounts actually paid to the Defendants for the lithium batteries and lithium battery products and the amounts which would have been paid in the absence of the conspiracy.

78. The Plaintiffs and other members of the proposed class suffered damages in the Province of Ontario and elsewhere in Canada.

PUNITIVE DAMAGES

79. The conduct of the Defendants was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful and motivated solely by economic considerations. Such conduct renders the Defendants liable to pay punitive damages.

RELEVANT LEGISLATION

80. Plaintiffs plead and rely upon the *Class Proceedings Act, 1992*, S.O. 1992, c C.6 and sections 36, 45 and 46 of the *Competition Act*, R.S.C. 1985, c C-34.

REAL AND SUBSTANTIAL CONNECTION WITH ONTARIO

81. The Plaintiffs plead and rely on sections 17 (g), (h), (o) and (p) of the *Rules of Civil Procedure*, allowing for service *ex juris* of the foreign defendants. Specifically, this originating process may be served without court order outside Ontario on the basis that the claim is:

- (a) in respect of a tort committed in Ontario (rule 17.02(g));

- (b) in respect of damages sustained in Ontario arising from a tort or breach of contract wherever committed (rule 17.02(h));
- (c) against a person outside Ontario who is a necessary and proper party to this proceeding properly brought against another person served in Ontario (rule 17.02(o)); and
- (d) against a person carrying on business in Ontario (rule 17.02(p)).

82. The Plaintiffs are representative of persons in Canada who purchased lithium batteries and lithium battery products in Canada during the conspiracy period.

June 26, 2013

Oct 22/13

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v. LG CHEM, LTD et al.

Defendants

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT TORONTO

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

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