

AMENDED THIS Sept. 16/15 PURSUANT TO  
MODIFIÉ CE A CONFORMÉMENT À  
☒ RULE/LA RÈGLE 26.02 ( A )

☐ THE ORDER OF  
L'ORDONNANCE DU  
DATED / FAIT LE Y. Grant

Court File No.: CV-13-478642-00CP

REGISTRAR  
SUPERIOR COURT OF JUSTICE  
GREFFIER  
COUR SUPÉRIEURE DE JUSTICE  
ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN: **Y. Grant**  
**Registrar**  
**SHERIDAN CHEVROLET CADILLAC LTD.,**  
**PICKERING AUTO MALL LTD., and FADY SAMAHA**

Plaintiffs

- and -

**KOITO MANUFACTURING CO., LTD., NORTH AMERICAN LIGHTING, INC.,**  
**ICHIKOH INDUSTRIES, LTD., STANLEY ELECTRIC CO., LTD., STANLEY**  
**ELECTRIC U.S. CO., INC., II STANLEY CO., INC., MITSUBA CORPORATION and**  
**AMERICAN MITSUBA CORPORATION**

Defendants

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

**FOURTH FRESH AS AMENDED CONSOLIDATED STATEMENT OF CLAIM**  
**(Autolights)**

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: April 18, 2013

Issued by: C. Irwin  
Local Registrar

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

**TO: KOITO MANUFACTURING CO., LTD.**  
4-8-3, Takanawa Minato-ku,  
Tokyo 108-8711, Japan

**AND TO: NORTH AMERICAN LIGHTING, INC.**  
2275 South Main Street,  
Paris, Illinois 61944, USA

**AND TO: ICHIKOH INDUSTRIES, LTD.**  
80 Itado, Isehara-shi,  
Kanagawa-ken 259-1192, Japan

**AND TO: STANLEY ELECTRIC CO., LTD.**  
2-9-13 Nakameguro, Meguro-ku,  
Tokyo 153-8636, Japan

**AND TO: STANLEY ELECTRIC U.S. CO., INC.**  
420 E. High St.  
London, Ohio 43140, USA

**AND TO: II STANLEY CO., INC.**  
1500 Hill-Brady Road,  
Battle Creek, Michigan 49037, USA

**AND TO: MITSUBA CORPORATION**  
1-2681 Hirosawa-cho,  
Kiryu, Gunma Pref. 376-8555, Japan

**AND TO: AMERICAN MITSUBA CORPORATION**  
2945 Three Leaves Drive  
Mt. Pleasant, Michigan 48858, USA

## CLAIM

1. The plaintiffs claim on their own behalf and on behalf of other members of the Proposed Class (as defined in paragraph 7 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 Autolights (as defined in paragraph 2 below) sold in North America and elsewhere during the Class Period (as defined in paragraph 7 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 Autolights 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 for headlights and rear combination lights used in automobiles and other light-duty vehicles (“Autolights”). A headlight is an automotive light installed in the front of an automobile, and may include a headlight, clearance light and/or turn signal. A rear combination light is an automotive light installed in the rear of an automobile, and may include a back-up light, tail light, stop light and/or turn signal. The unlawful conduct occurred from at least as early as June 1, 1997 and continued until at least August 1, 2011 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 Autolights and/or new vehicles containing Autolights 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, 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 plaintiffs seek to represent the following class (the “**Proposed Class**”):

All Persons in Canada who purchased Autolights;<sup>1,2</sup> or who purchased and/or leased a new Automotive Vehicle<sup>3</sup> containing Autolights during the Class Period.<sup>4</sup> Excluded from the class are the defendants, their parent companies, subsidiaries, and affiliates.

<sup>1</sup> Autolights means headlights and rear combination lights. A headlight is an automotive light installed in the front of an automobile, and may include a headlight, clearance light and/or turn signal. A rear combination light is an automotive light installed in the rear of an automobile, and may include a back-up light, tail light, stop light and/or turn signal.

<sup>2</sup> Autolights purchased for repair or replacement in an Automotive Vehicle are excluded from the Class.

<sup>3</sup> Automotive Vehicle means passenger cars, SUVs, vans, and light trucks (up to 10,000 lbs).

<sup>4</sup> Class Period means between June 1, 1997 and August 1, 2011 and/or during the subsequent period during which prices were affected by the alleged conspiracy.

## **The Defendants**

### ***Koito Defendants***

8. The defendant, Koito Manufacturing Co., Ltd. (“**Koito Manufacturing**”), is a Japanese corporation with its principal place of business in Tokyo, Japan. During the Class Period, Koito Manufacturing manufactured, marketed, sold, and/or distributed Autolights to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and subsidiaries, including the defendant, North American Lighting, Inc. (“**NAL**”).

9. NAL is an American corporation with its principal place of business in Paris, Illinois. During the Class Period, NAL manufactured, marketed, sold, and/or distributed Autolights to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. NAL is owned and controlled by Koito Manufacturing.

10. The business of each of Koito Manufacturing and NAL is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacturing, marketing, sale, and/or distribution of Autolights in Canada and for the purposes of the conspiracy described hereinafter. Koito Manufacturing and NAL are collectively referred to herein as “**Koito.**”

### ***Ichikoh Defendant***

11. The defendant, Ichikoh Industries Ltd. (“**Ichikoh**”), is a Japanese corporation with its principal place of business in Kanagawa, Japan. During the Class Period, Ichikoh manufactured, marketed, sold, and/or distributed Autolights to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and subsidiaries.

***Stanley Electric Defendants***

12. The defendant, Stanley Electric Co., Ltd. (“**Stanley Electric Co.**”), is a Japanese corporation with its principal place of business in Tokyo. During the Class Period, Stanley Electric Co. manufactured, marketed, sold, and/or distributed Autolights to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and subsidiaries, including the defendants, Stanley Electric U.S. Co. (“**Stanley US**”) and II Stanley Co., Inc. (“**II Stanley**”).

13. Stanley US is an American corporation with its principal place of business in London, Ohio. During the Class Period, Stanley US manufactured, marketed, sold, and/or distributed Autolights to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. Stanley US is owned and controlled by Stanley Electric Co.

14. II Stanley is an American corporation with its principal place of business in Battle Creek, Michigan. During the Class Period, II Stanley manufactured, marketed, sold, and/or distributed Autolights to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. II Stanley is owned and controlled by Stanley Electric Co.

15. The business of each of Stanley Electric Co., Stanley US, and II Stanley is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacturing, marketing, sale, and/or distribution of Autolights in Canada and for the purposes



of the conspiracy described hereinafter. Stanley Electric Co., Stanley US, and II Stanley are collectively referred to herein as “**Stanley Electric.**”

***Mitsuba Defendants***

16. The defendant, Mitsuba Corporation, is a Japanese corporation with its principal place of business in Kiryu, Japan. During the Class Period, Mitsuba Corporation manufactured, marketed, sold, and/or distributed Autolights to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and subsidiaries, including the defendant, American Mitsuba Corporation (“**Mitsuba US**”).

17. Mitsuba US is an American corporation with its principal place of business in Mt. Pleasant, Michigan. During the Class Period, Mitsuba US manufactured, marketed, sold, and/or distributed Autolights to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. Mitsuba US is owned and controlled by Mitsuba Corporation.

18. The business of each of Mitsuba Corporation and Mitsuba US is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacturing, marketing, sale, and/or distribution of Autolights in Canada and for the purposes of the conspiracy described hereinafter. Mitsuba Corporation and Mitsuba US are collectively referred to herein as “**Mitsuba.**”

***Unnamed Co-Conspirators***

19. Various 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***

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

21. 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 Autolights Industry**

22. A headlight is an automotive light installed in the front of an automobile, and may include a headlight, clearance light and/or turn signal. A rear combination light is an automotive light installed in the rear of an automobile, and may include a back-up light, tail light, stop light and/or turn signal.

23. Autolights are installed by automobile original equipment manufacturers ("OEMs") in new vehicles as part of the automotive manufacturing process.

24. For new vehicles, the OEMs – mostly large automotive manufacturers such as Nissan, Toyota, Mitsubishi, Mazda and others – purchase Autolights directly from the defendants.

Autolights 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 Autolights directly to an OEM.

25. When purchasing Autolights, 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.

26. During the Class Period, the defendants and their unnamed co-conspirators supplied Autolights to OEMs for installation in vehicles manufactured and sold in North America and elsewhere. The defendants and their unnamed co-conspirators manufactured Autolights: (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.

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

28. The defendants and their unnamed co-conspirators unlawfully conspired to agree and manipulate prices for Autolights and conceal their anti-competitive behaviour from OEMs and other industry participants. The defendants and their unnamed co-conspirators knew that their unlawful scheme and conspiracy would unlawfully increase the price at which Autolights would be sold from the price that would otherwise be charged on a competitive basis. The defendants and their unnamed co-conspirators were aware that, by unlawfully increasing the prices of Autolights, the prices of new vehicles containing Autolights would also be artificially inflated. The defendants and their unnamed co-conspirators knew that their unlawful scheme and conspiracy would injure purchasers of Autolights and purchasers and lessees of new vehicles containing Autolights. The defendants' conduct impacted not only multiple bids submitted to OEMs, but also the price paid by all other purchasers of Autolights.

29. By virtue of their market shares, the defendants are the dominant manufacturers and suppliers of Autolights in Canada and the world. In 2010, the top three suppliers of Autolights (Koito, Mitsuba, and Stanley, respectively) controlled approximately seventy percent of the global market. Their customers include Subaru, Honda, Mazda, Mitsubishi, Nissan, and Toyota.

30. 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 Autolights in the United States and Canada, including Ontario.

**Investigations into International Cartel and Resulting Fines**

31. Several automobile parts suppliers have been the subject of information requests or search warrants by competition authorities in Canada, Japan, Europe, the United States of America or elsewhere in relation to the international investigation.

32. The Japan Fair Trade Commission has issued cease and desist orders and “surcharge payment orders” against Koito Manufacturing Co., Ltd., Ichikoh Industries, Ltd., and Stanley Electric Co., Ltd. in relation to the conspiracy alleged herein.

33. In the United States, Koito Manufacturing Co. Ltd agreed to plead guilty and pay a fine of US\$56.6 million in respect of its role in the alleged conspiracy to fix prices of Autolights and high intensity-discharge lamp ballasts.

34. In the United States, Mitsuba Corporation agreed to plead guilty and pay a fine of US\$135 million in respect of its role in the alleged conspiracy to fix prices of certain automotive parts (windshield washer systems, windshield wiper systems, starters, power window motors, and fan motors). As part of its plea agreement, Mitsuba Corporation is required to provide cooperation regarding the alleged conspiracy to fix prices of Autolights.

**Plaintiffs Purchased New Vehicles Containing Autolights**

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

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

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

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

39. The vehicles purchased by Sheridan and Pickering 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 and Pickering purchased new vehicles containing Autolights.

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

**Breaches of Part VI of *Competition Act***

42. From at least as early as June 1, 1997 until at least August 1, 2011, the defendants and their unnamed co-conspirators engaged in a conspiracy to rig bids for and to fix, maintain, increase, or control the prices of Autolights sold to customers in North America and elsewhere. The defendants and their unnamed co-conspirators conspired to enhance unreasonably the prices of Autolights and/or to lessen unduly competition in the production, manufacture, sale, and/or

distribution of Autolights in North America and elsewhere. The conspiracy was intended to, and did, affect prices of Autolights and new vehicles containing Autolights.

43. The defendants and their unnamed 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 Autolights 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 Autolights 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 Autolights sold in North America and elsewhere;
- (h) selling Autolights to OEMs in North America and elsewhere for the agreed-upon prices, controlling discounts and otherwise fixing, increasing, maintaining or stabilizing prices for Autolights in North America and elsewhere;
- (i) allocating the supply of Autolights sold to OEMs in North America and elsewhere on a model-by-model basis;
- (j) accepting payment for Autolights 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 Autolights.

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 Autolights and/or new vehicles containing Autolights.



45. The conduct described above constitutes offences under Part VI of the *Competition Act*, in particular, sections 45(1), 46(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.

### **Breach of Foreign Law**

46. The defendants and their unnamed 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**

47. The defendants and their unnamed 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 Autolights 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.

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

49. The defendants and their unnamed 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 Autolights, and to illegally increase their profits on the sale of Autolights.

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

### **Discoverability**

51. Autolights are not exempt from competition regulation and thus, the plaintiffs reasonably considered the Autolights 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 Autolights.

52. 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**

53. 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.

54. The defendants' 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.

55. 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 Autolights and/or new vehicles containing Autolights.

### **Unjust Enrichment**

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

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

58. 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**

59. 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 as a result of their unlawful conspiracy.

60. As a direct, proximate, and foreseeable result of the defendants’ wrongful conduct, the plaintiffs and other members of the Proposed Class overpaid for Autolights. As a result of the unlawful conspiracy, the defendants profited from the sale of Autolights 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**

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

- (a) price competition has been restrained or eliminated with respect to Autolights 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 Autolights 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 Autolights in Ontario and the rest of Canada.

62. Autolights are identifiable, discrete physical products that remain essentially unchanged when incorporated into a vehicle. As a result, Autolights follow a traceable chain of distribution from the defendants 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 Autolights can be traced through the distribution chain.

63. 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 Autolights and/or new vehicles containing Autolights than they would have paid in the absence of the illegal conduct of the defendants and their unnamed 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**

64. The defendants and their unnamed co-conspirators used their market dominance, illegality and deception in furtherance of a conspiracy to illegally profit from the sale of Autolights. 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 unnamed co-conspirators was high-handed, reckless, without care, deliberate, and in disregard of the plaintiffs' and Proposed Class members' rights.

65. 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**

66. 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;
- (b) Rule 17.02 (h) – the claim relates to damage sustained in Ontario arising from a tort; and
- (c) Rule 17.02 (o) – the defendants residing outside of Ontario are necessary and proper parties to this proceeding.

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

DATE: April 18, 2013

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Lawyers for the Plaintiffs

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**FOURTH FRESH AS AMENDED CONSOLIDATED STATEMENT OF  
CLAIM  
(Autolights)**

**SOTOS LLP**

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