

IS Feb. 2, 2016 PURSUANT TO  
MODIFIED CONFORMÉMENT A

RULE/LA RÉGLE 26.02 ( )

Court File No.: CV-14-506680-00CP

THE ORDER OF MR. JUSTICE BÉLOÛSABA  
L'ORDONNANCE DU

DATED / FAIT LE December 9, 2015

ONTARIO  
SUPERIOR COURT OF JUSTICE

[Signature]  
REGISTRAR / GREFFIER  
SUPERIOR COURT OF JUSTICE / COUR SUPÉRIEURE DE JUSTICE

SHERIDAN CHEVROLET CADILLAC LTD.,  
THE PICKERING AUTO MALL LTD., and FADY SAMAHA

Plaintiffs

- and -

PANASONIC CORPORATION, PANASONIC CORPORATION OF NORTH AMERICA, PANASONIC CANADA INC., STANLEY ELECTRIC CO., LTD., STANLEY ELECTRIC U.S. CO., INC., II STANLEY CO., INC., DENSO CORPORATION, DENSO INTERNATIONAL AMERICA INC., DENSO MANUFACTURING CANADA, INC., DENSO SALES CANADA, INC., MITSUBISHI ELECTRIC CORPORATION, MITSUBISHI ELECTRIC AUTOMOTIVE AMERICA, INC., MITSUBISHI ELECTRIC SALES CANADA INC., KOITO MANUFACTURING CO. LTD., NORTH AMERICAN LIGHTING, INC., and ICHIKOH INDUSTRIES, LTD.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

CONSOLIDATED SECOND FRESH AS AMENDED STATEMENT OF CLAIM  
(High Intensity Discharge Ballasts)

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.

*June 18, 2014*  
Date: ~~December~~, 2015

Issued by: Y. Grant  
Local Registrar

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

**TO:** PANASONIC CORPORATION  
1006, Oaza Kadoma,  
Kadoma-shi, Osaka 571-8501, Japan

**AND TO:** PANASONIC CORPORATION OF NORTH AMERICA  
One Panasonic Way,  
Secaucus, New Jersey 07094, USA

**AND TO:** PANASONIC CANADA INC.  
5770 Ambler Drive,  
Mississauga, Ontario L4W 2T3, Canada

**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: DENSO CORPORATION**  
1-1, Showa-cho,  
Kariya, Aichi 448-8661, Japan
- AND TO: DENSO INTERNATIONAL AMERICA INC.**  
24777 Denso Drive, P.O. Box 5047,  
Southfield, Michigan 48086-5047, U.S.A.
- AND TO: DENSO MANUFACTURING CANADA, INC.**  
900 Southgate Drive,  
Guelph, Ontario N1L 1K1, Canada
- AND TO: DENSO SALES CANADA, INC.**  
195 Brunel Road,  
Mississauga, Ontario L4Z 1X3, Canada
- AND TO: MITSUBISHI ELECTRIC CORPORATION**  
2-7-3, Marunouchi,  
Chiyoda-ku, Tokyo 100-8310, Japan
- AND TO: MITSUBISHI ELECTRIC AUTOMOTIVE AMERICA, INC.**  
4773 Bethany Road  
Mason, Ohio 45040, USA
- AND TO: MITSUBISHI ELECTRIC SALES CANADA, INC.**  
4299 14<sup>th</sup> Avenue  
Markham, Ontario L3R 0J2, Canada
- AND 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

## 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 HID Ballasts (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 HID Ballasts 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 high intensity discharge ballasts used in automobiles and other light-duty vehicles (“HID Ballasts”). A HID Ballast is an electrical device that limits the amount of electrical current flowing to a high intensity discharge headlamp, which would otherwise rise to destructive levels due to the high intensity discharge headlamp’s negative resistance. The unlawful conduct occurred from at least as early as July 1, 1998 and continued until at least March 1, 2010, 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 HID Ballasts and/or new vehicles containing HID Ballasts 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 plaintiffs seek to represent the following class (the “**Proposed Class**”):

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

<sup>1</sup>HID Ballasts means electrical devices that limit the amount of electrical current flowing to a high intensity discharge headlamp, which would otherwise rise to destructive levels due to the high intensity discharge headlamp’s negative resistance.

<sup>2</sup>HID Ballasts 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 July 1, 1998 and March 1, 2010 and/or during the subsequent period during which prices were affected by the alleged conspiracy.

## The Defendants

### *Panasonic Defendants*

8. The defendant, Panasonic Corporation, is a Japanese corporation with its principal place of business in Osaka, Japan. During the Class Period, Panasonic Corporation manufactured, marketed, sold, and/or distributed HID Ballasts to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries, including the defendants Panasonic Corporation of North America (“**Panasonic US**”) and Panasonic Canada Inc. (“**Panasonic Canada**”).

9. Panasonic US is an American corporation with its principal place of business in Secaucus, New Jersey. During the Class Period, Panasonic US manufactured, marketed, sold, and/or distributed HID Ballasts to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Panasonic US is owned and controlled by Panasonic Corporation.

10. Panasonic Canada is a Canadian corporation with its principal place of business in Mississauga, Ontario. During the Class Period, Panasonic Canada manufactured, marketed, sold, and/or distributed HID Ballasts to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Panasonic Canada is owned and controlled by Panasonic Corporation.

11. The business of each of Panasonic Corporation, Panasonic US, 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 HID Ballasts throughout Canada and for the purposes of the conspiracy described herein. Panasonic Corporation, Panasonic US, and Panasonic Canada are collectively referred to herein as “**Panasonic**.”

*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, Japan. During the Class Period, Stanley Electric Co. manufactured, marketed, sold, and/or distributed HID Ballasts to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or 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 HID Ballasts 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 HID Ballasts 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 manufacture, market, sale, and/or distribution of HID Ballasts throughout Canada and for the purposes of the conspiracy described herein. Stanley Electric Co., Stanley US, and II Stanley are collectively referred to herein as “Stanley Electric.”

*Denso Defendants*

16. The defendant, Denso Corporation, is a Japanese corporation with its principal place of business in Aichi, Japan. During the Class Period, Denso Corporation manufactured, marketed, sold, and/or distributed HID Ballasts to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries, including the defendants Denso International America Inc. (“Denso US”), Denso Manufacturing Canada, Inc. (“Denso Manufacturing Canada”), and Denso Sales Canada, Inc. (“Denso Sales Canada”).

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

18. Denso Manufacturing Canada is a Canadian corporation with its principal place of business in Guelph, Ontario. During the Class Period, Denso Manufacturing Canada manufactured, marketed, sold, and/or distributed HID Ballasts to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Denso Manufacturing Canada is owned and controlled by Denso Corporation.

19. Denso Sales Canada is a Canadian corporation with its principal place of business in Mississauga, Ontario. During the Class Period, Denso Sales Canada manufactured, marketed, sold, and/or distributed HID Ballasts to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Denso Sales Canada is owned and controlled by Denso Corporation.

20. The business of each of Denso Corporation, Denso US, Denso Manufacturing Canada, and Denso Sales 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 HID Ballasts in Canada and for the purposes of the conspiracy described hereinafter. Denso Corporation, Denso US, Denso Manufacturing Canada, and Denso Sales Canada are collectively referred to herein as “Denso.”

*Mitsubishi Electric Defendants*

21. The defendant, Mitsubishi Electric Corporation, is a Japanese corporation with its principal place of business in Tokyo, Japan. During the Class Period, Mitsubishi Electric Corporation manufactured, marketed, sold, and/or distributed HID Ballasts to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries, including the defendants Mitsubishi Electric Automotive America, Inc. (“Mitsubishi Automotive”), and Mitsubishi Electric Sales Canada Inc. (“Mitsubishi Canada”).

22. Mitsubishi Automotive is an American corporation with its principal place of business in Mason, Ohio. During the Class Period, Mitsubishi Automotive manufactured, marketed, sold, and/or distributed HID Ballasts to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Mitsubishi Automotive is owned and controlled by Mitsubishi Electric Corporation.

23. Mitsubishi Canada is a Canadian corporation with its principal place of business in Markham, Ontario. During the Class Period, Mitsubishi Canada manufactured, marketed, sold, and/or distributed HID Ballasts to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Mitsubishi Canada is owned and controlled by Mitsubishi Electric Corporation.

24. The business of each of Mitsubishi Electric Corporation, Mitsubishi Automotive, and Mitsubishi 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 HID Ballasts in Canada and for the purposes of the conspiracy described hereinafter. Mitsubishi Electric Corporation, Mitsubishi Automotive, and Mitsubishi Canada are collectively referred to herein as “**Mitsubishi Electric.**”

*Koito Defendants*

25. 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 HID Ballasts 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**”).

26. 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 HID Ballasts 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.

27. 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 manufacture, market, sale, and/or distribution of HID Ballasts throughout Canada and for the purposes of the conspiracy described herein. Koito Manufacturing and NAL are collectively referred to herein as “**Koito.**”

*Ichikoh Industries, Ltd.*

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

*Unnamed Co-Conspirators*

29. 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*

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

31. 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 HID Ballast Industry**

32. A HID Ballast is an electrical device that limits the amount of electrical current flowing to a high intensity discharge headlamp, which would otherwise rise to destructive levels due to the high intensity discharge headlamp's negative resistance.

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

34. For new vehicles, the OEMs – mostly large automotive manufacturers such as General Motors, Honda, Chrysler, Toyota and others – purchase HID Ballasts directly from the defendants. HID Ballasts 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 HID Ballasts directly to an OEM.

35. When purchasing HID Ballasts, 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.

36. During the Class Period, the defendants and their unnamed co-conspirators supplied HID Ballasts to OEMs for installation in vehicles manufactured and sold in Canada and elsewhere. The defendants and their unnamed co-conspirators manufactured HID Ballasts: (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.

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

38. The defendants and their unnamed co-conspirators unlawfully conspired to agree and manipulate prices for HID Ballasts 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 HID Ballasts 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 HID Ballasts, the prices of new vehicles containing HID Ballasts would also be artificially inflated. The defendants and their unnamed co-conspirators knew that their unlawful scheme and conspiracy would injure purchasers of HID Ballasts and purchasers and lessees of new vehicles containing HID Ballasts. The defendants' conduct impacted not only multiple bids submitted to OEMs, but also the price paid by all other purchasers of HID Ballasts.

39. By virtue of their market shares, the defendants are the dominant manufacturers and suppliers of HID Ballasts in Canada and the world. Their customers include Ford, General

Motors, Honda, Nissan, Toyota, Chrysler, BMW, Mercedes-Benz, Subaru, Mazda, Mitsubishi, Suzuki, Hyundai and Volvo.

40. 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 HID Ballasts in the United States and Canada, including Ontario.

#### **Investigations into International Cartel and Resulting Fines**

41. In the United States, three of the defendants have agreed to plead guilty and pay fines for their alleged involvement in price-fixing schemes related to HID Ballasts.

42. The defendant Panasonic Corporation has 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 HID Ballasts as well as two other automotive parts sold to Honda, Mazda, and Nissan from as early as July 1998 and continuing until at least February 2010.

43. The defendant Stanley Electric Co., Ltd. has agreed to plead guilty and pay a fine of US \$1.44 million for its alleged participation in a conspiracy to fix the prices of HID Ballasts sold in the United States and elsewhere.

44. The defendant Koito Manufacturing Co. Ltd. has agreed to plead guilty and pay a fine of US \$56.6 million for its alleged participating in a conspiracy to fix the prices of HID Ballasts and automobile lighting fixtures sold in the United States and elsewhere.

#### ***Japan***

45. Japan's Fair Trade Commission fined Ichikoh ¥1,250,100,000 (US \$13.2 million) in March 2013 for its alleged participation in a conspiracy to fix prices of HID Ballasts sold to

Nissan Motor Co. Ltd., Fuji Heavy Industries Ltd., Mitsubishi Motor Corp., and Mazda Motor Corp. from as early as 2003.

#### **Plaintiffs Purchased New Vehicles Containing HID Ballasts**

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

47. 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.

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

49. 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.

50. 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.

51. Sheridan and Pickering purchased new vehicles containing HID Ballasts.

52. Fady Samaha purchased a new Honda Civic in 2009, which contained HID Ballasts.

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

53. From at least as early as July 1, 1998 until at least March 1, 2010, 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 HID Ballasts sold to customers in North America and elsewhere. The defendants and their unnamed co-conspirators conspired to enhance unreasonably the prices of HID Ballasts and/or to lessen unduly competition in the production, manufacture, sale and/or distribution of HID Ballasts in North America and elsewhere. The conspiracy was intended to, and did, affect prices of HID Ballasts and new vehicles containing HID Ballasts.

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

55. 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 HID Ballasts and/or new vehicles containing HID Ballasts.

56. 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**

57. 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**

58. 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 HID Ballasts 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.

59. In furtherance of the conspiracy, the defendants, their servants, agents and unnamed co-conspirators carried out the acts described in paragraph 54 above.

60. 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 HID Ballasts, and to illegally increase their profits on the sale of HID Ballasts.

61. 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**

62. HID Ballasts are not exempt from competition regulation and thus, the plaintiffs reasonably considered the HID Ballasts 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 HID Ballasts.

63. 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**

64. 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 unnamed 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.

65. The defendants' anti-competitive conspiracy was self-concealing. As detailed in paragraph 54 above, the defendants took active, deliberate and wrongful steps to conceal their participation in the alleged conspiracy.

66. 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 HID Ballasts and new vehicles containing HID Ballasts.

#### **Unjust Enrichment**

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

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

69. 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**

70. 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.

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

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

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

73. HID Ballasts are identifiable, discrete physical products that remain essentially unchanged when incorporated into a vehicle. As a result, HID Ballasts 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 HID Ballasts can be traced through the distribution chain.

74. 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 HID Ballasts and/or new vehicles containing HID Ballasts 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**

75. 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 HID Ballasts. 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.

76. 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

77. 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.

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

Date: December , 2015

**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  
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*

CONSOLIDATED SECOND FRESH AS AMENDED STATEMENT OF CLAIM  
(HID Ballasts)

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  
Linda Visser LSUC #521581  
Kerry McGladdery Dent LSUC #59685G

Tel: (519) 672-2121  
Fax: (519) 672-6065