

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE PERELL

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THURSDAY, THE 15th DAY
OF JANUARY, 2021

BETWEEN:

KHURRAM SHAH and ALPINA HOLDINGS INC.

Plaintiffs

- and -

**PANASONIC CORPORATION, PANASONIC CORPORATION OF NORTH
AMERICA, PANASONIC CANADA INC., SANYO ELECTRIC CO., LTD., SANYO
NORTH AMERICA CORPORATION, SANYO ENERGY (U.S.A.) CORPORATION**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ORDER
(Panasonic Settlement and Distribution Protocol Approval)**

THIS MOTION made by the Plaintiffs for an Order approving the Settlement Agreement entered into with Panasonic Corporation, Panasonic Corporation of North America, Panasonic Canada Inc., and Sanyo Electric Co., Ltd (the "Settling Defendants"), dismissing this action against the Settling Defendants and Releasees named as Defendants and approving the Distribution Protocol was heard virtually via videoconference this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

AND ON BEING ADVISED that the deadline for opting out has passed and there were no opt-outs;

AND ON BEING ADVISED that the deadline for objecting to the Settlement Agreement has passed and there have been no objections to the Settlement Agreement;

AND ON BEING ADVISED that the Plaintiffs and the Settling Defendants consent to this Order:

ON READING the materials filed, including the settlement agreement attached to this Order as **Schedule “A”** (the “**Settlement Agreement**”), the Distribution Protocol attached to this Order as **Schedule “B”** and on hearing the submissions of counsel for the Plaintiffs and counsel for the Settling Defendants:

1. **THIS COURT ORDERS** that, in addition to the definitions used elsewhere in this Order, for the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each Ontario Settlement Class Member including those Persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the Rules of Civil Procedure are dispensed with in respect of the Ontario Proceeding.

4. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Ontario Settlement Class.
5. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.
6. **THIS COURT ORDERS** that, upon the Effective Date, each Ontario Settlement Class Member shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice.
7. **THIS COURT ORDERS** that, upon the Effective Date, each Other Action commenced in Ontario by any Ontario Settlement Class Member shall be and is hereby dismissed against the Releasees, without costs and with prejudice.
8. **THIS COURT ORDERS** that, upon the Effective Date, subject to paragraph 10, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
9. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, cause of action, claim or demand against any Releasee or any other Person who may claim contribution or indemnity, or other claims over relief, from any

Releasee, whether pursuant to the *Negligence Act*, RSO 1990, c. N. 1 or other legislation or at common law or equity in respect of any Released Claim or any matter related thereto.

10. **THIS COURT ORDERS** that the use of the terms “Releasors” and “Released Claims” in this Order does not constitute a release of claims by those Ontario Settlement Class Members who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.
11. **THIS COURT ORDERS** that, upon the Effective Date, each Ontario Settlement Class Member who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way nor to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.
12. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceedings or any Other Actions or otherwise, by any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant or any other Person or party against a Releasee, or by a Releasee against any named or unnamed co-conspirator that is not a Releasee, any Settled Defendant, or any other Person or party, are barred, prohibited and enjoined in accordance with the terms of this Order.

13. **THIS COURT ORDERS** that if this Court ultimately determines that a claim for contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise is a legally recognized claim:

- (a) the Ontario Plaintiffs and Ontario Settlement Class Members shall not be entitled to claim or recover from the named or unnamed coconspirators and/or any other Person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;
- (b) the Ontario Plaintiffs and Ontario Settlement Class Members shall limit their claims against the named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to include only, and shall only seek to recover from the named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, those claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest, and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) attributable to the aggregate of the several liability of the named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to the Ontario Plaintiffs and Ontario Settlement Class Members, if any, and, for greater certainty, the Ontario Settlement

Class Members shall be entitled to claim and seek to recover on a joint and several basis as between the named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, if permitted by law; and

- (c) this Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Ontario Proceeding, whether or not the Releasees remain in the Ontario Proceeding or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Ontario Proceeding and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in the Ontario Proceeding and shall not be binding on the Releasees in any other proceeding.

14. **THIS COURT ORDERS** that for purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Settling Defendants attorn to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.

15. **THIS COURT ORDERS** that no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement; to administration, investment, or distribution of the Trust Account; or to the Distribution Protocol.

16. **THIS COURT ORDERS** that the Settlement Amount shall be held in the Trust Account by Siskinds LLP for the benefit of Settlement Class Members pending further orders of the Courts.
17. **THIS COURT ORDERS** that the approval of the Settlement Agreement is contingent upon approval by the Quebec Court and the terms of this Order shall not be effective unless and until the Settlement Agreement is approved by the Quebec Court and the Quebec Proceeding has been dismissed with prejudice and without costs as against the Settling Defendants by the Quebec Court. If such orders are not secured in Quebec, this Order shall be null and void and without prejudice to the rights of the Parties to proceed with the Ontario Proceeding and any agreement between the parties incorporated in this Order shall be deemed in any subsequent proceedings to have been made without prejudice.
18. **THIS COURT ORDERS** that the terms of this Order shall not be effective unless and until the BC Proceeding has been dismissed with prejudice and without costs as against the Settling Defendants and Releasees named as Defendants by the BC Court. If such relief is not secured in British Columbia, this Order shall be null and void and without prejudice to the rights of the Parties to proceed with the Ontario Proceeding and any agreement between the parties incorporated in this Order shall be deemed in any subsequent proceedings to have been made without prejudice.
19. **THIS COURT ORDERS** that this Order shall be declared null and void and of no force or effect without the need for any further order of this Court but with notice to the Ontario

Settlement Class Members in the event that the Settlement Agreement is terminated in accordance with its terms or otherwise fails to take effect for any reason.

20. **THIS COURT ORDERS** that, upon the Effective Date, the Ontario Proceeding is hereby dismissed against the Settling Defendants and Releasees named as Defendants, without costs and with prejudice.

Distribution Approval

21. **THIS COURT ORDERS** that the Distribution Protocol attached hereto as **Schedule “B”** is hereby approved.
22. **THIS COURT ORDERS** that Ricepoint Administration Inc. is appointed as Claims Administrator.
23. **THIS COURT ORDERS** that the Distribution Protocol shall govern the administration of the settlement agreements entered into with the following Defendants:
- (a) NEC Corporation and NEC Tokin Corporation;
 - (b) Samsung SDI Co., Ltd. and Samsung SDI America, Inc.;
 - (c) Sony Corporation, Sony Energy Devices Corporation, Sony Electronics, Inc. and Sony of Canada Ltd.;
 - (d) LG Chem, Ltd. and LG Chem America, Inc.;

- (e) Toshiba Corporation, Toshiba America Electronic Components, Inc. and Toshiba of Canada Limited;
- (f) Maxell Holdings, Ltd. and Maxell Corporation of America.; and
- (g) Panasonic Corporation, Panasonic Corporation of North America, Panasonic Canada Inc., and Sanyo Electric Co., Ltd.

(collectively the “**Settlement Agreements**”).

24. **THIS COURT ORDERS** that the settlement amounts paid in accordance with the Settlement Agreements shall be distributed by the Claims Administrator in accordance with the Distribution Protocol.

25. **THIS COURT ORDERS** that in the event the Net Settlement Fund, as defined in the Distribution Protocol, is not paid out due to uncashed cheques, residual interest or otherwise, a balance will be created. Such balance shall be distributed in the following manner:

- (a) if the amount is equal or less than \$10,000.00, the monies shall be paid to Pro Bono Canada, less any amounts payable to the Quebec Fonds d’aide aux actions collectives, pursuant the *Act respecting the Fonds d'aide aux actions collectives*, CQLR c. F-3.2.0.1.1 and calculated in accordance with the *Regulation respecting*

the percentage withheld by the Fonds d'aide aux actions collectives, R.S.Q. c. F-3.2.0.1.1, r. 2.

- (b) if the amount is greater than \$10,000, further direction shall be sought from the Ontario Court and the Quebec Court.
- 26. **THIS COURT ORDERS** that Marc Beauchemin is appointed as the Arbitrator to determine any appeals of decisions by the Claims Administrator.
- 27. **THIS COURT ORDERS** that the publication, short-form and long-form Claims Notice are approved substantially in the form attached hereto as **Schedules “C”, “D” and “E”**.
- 28. **THIS COURT ORDERS** that the Claims Notice Plan is hereby approved in the form attached hereto as **Schedule “F”**.
- 29. **THIS COURT ORDERS** that the Claims Notice shall be disseminated in accordance with the Claims Notice Plan.
- 30. **THIS COURT ORDERS** that the Claim Form is hereby approved substantially in the form attached hereto as **Schedule “G”**.
- 31. **THIS COURT ORDERS** that all information provided by claimants as part of the claims process is collected, used and retained by the Claims Administrator, Class Counsel and their agents pursuant to the applicable privacy laws for the purposes of administering the Settlement Agreements, including evaluating the claimant’s eligibility status under the

Settlement Agreements. The information provided by the claimant shall be treated as private and confidential and shall not be disclosed without the express written consent of the claimant, except in accordance with the Settlement Agreements, Distribution Protocol and/or an order of the Ontario or Quebec Court.

32. **THIS COURT ORDERS** no proceeding, cause of action, claim or demand may be brought against Class Counsel and/or the Claims Administrator concerning the implementation of the Distribution Protocol without leave from the Ontario Court.
33. **THIS COURT ORDERS** that the approval of the Distribution Protocol is contingent upon the issuance of an order by the Quebec Court approving the Distribution Protocol.

Perell, J.

THE HONOURABLE JUSTICE PERELL

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JAN 20 2021

PER / PAR:

