

**LITHIUM ION BATTERIES CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

Made as of July 9, 2019

Between

**KHURRAM SHAH, ALPINA HOLDINGS INC. and
JONATHAN CRUZ**

(the “Plaintiffs”)

and

MAXELL HOLDINGS, LTD. and MAXELL CORPORATION OF AMERICA

(the “Settling Defendants”)

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RECITALS

A. WHEREAS the Proceedings have been commenced by the BC Plaintiff in British Columbia and the Ontario Plaintiffs in Ontario;

B. AND WHEREAS the Proceedings allege that the Settling Defendants and other Releasees who are named as Defendants, as applicable, participated in an unlawful conspiracy to fix, raise, maintain, and/or stabilize the price of Lithium Batteries and/or Lithium Battery Products from at least January 1, 2000 until at least January 1, 2012 (in the Ontario Proceeding until at least December 31, 2011), contrary to Part VI of the *Competition Act* and the common law;

C. AND WHEREAS by Order dated March 27, 2017, on a motion brought by Quebec Counsel, the Quebec Court approved the discontinuance of the Quebec Proceeding as against Hitachi Maxell, Ltd., Maxell Corporation of America, Hitachi, Ltd., and Hitachi Canada, Ltd.;

D. AND WHEREAS Maxell, Ltd. was established on April 25, 2017, and assumed the rights and obligations of the Defendant Hitachi Maxell, Ltd. on October 1, 2017;

E. AND WHEREAS the Defendant Hitachi Maxell, Ltd. changed its name to Maxell Holdings, Ltd. on October 1, 2017;

F. AND WHEREAS by Order dated March 27, 2018, a right to opt out was provided to Settlement Class Members and there were no opt-outs;

G. AND WHEREAS the Settling Defendants and Releasees do not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct alleged in the Proceedings, or in any Other Actions, and otherwise deny all liability and assert that they have complete defences in respect of the merits of the Proceedings and any Other Actions or otherwise;

H. AND WHEREAS despite their belief that they are not liable in respect of the claims as alleged or previously alleged in the Proceedings and any Other Actions and the Quebec Proceeding, and have good and reasonable defences in respect of jurisdiction and the merits, the

Settling Defendants are entering into this Settlement Agreement in order to achieve a final and nationwide resolution of all claims which have been asserted or which could have been asserted against the Releasees by the Plaintiffs and the Settlement Class Members in the Proceedings and any Other Actions and the Quebec Proceeding, and to avoid further expense, inconvenience, the distraction of burdensome and protracted litigation, and the risks associated with trials and appeals;

I. AND WHEREAS Counsel for the Settling Defendants and Class Counsel have engaged in arm's-length settlement discussions and negotiations, resulting in this Settlement Agreement with respect to the Proceedings;

J. AND WHEREAS Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, and having regard to the burdens and expense in prosecuting the Proceedings, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the Settlement Class they seek to represent;

K. AND WHEREAS the Plaintiffs, Class Counsel and the Settling Defendants agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the Releasees or evidence of the truth of any of the Plaintiffs' allegations against the Releasees, which allegations are expressly denied by the Releasees;

L. AND WHEREAS the Parties therefore wish to, and hereby do, finally resolve on a national basis, without admission of liability, all of the Proceedings and any Other Actions as against the Releasees;

M. AND WHEREAS the Parties wish to, and hereby do, finally resolve, without admission of liability, the claims that were previously made by Settlement Class Members against certain Releasees in the Quebec Proceeding;

N. AND WHEREAS the Ontario Plaintiffs assert that they are adequate class representatives for the Settlement Class and will seek to be appointed representative plaintiffs;

O. AND WHEREAS the Settling Defendants do not hereby attorn to the jurisdiction of the Court or any other court or tribunal in respect of any civil, criminal or administrative process except to the extent they have previously done so in the Proceedings and as is expressly provided in this Settlement Agreement with respect to the Proceedings;

P. AND WHEREAS the Parties consent to certification (i) of the Ontario Proceeding as a class proceeding, (ii) of the Settlement Class and (iii) of a Common Issue in respect of the Ontario Proceeding as against the Settling Defendants for the sole purpose of implementing this Settlement Agreement and contingent on approvals by the Court as provided for in this Settlement Agreement, on the express understanding that such certification shall not derogate from the respective rights of the Parties in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason; and

Q. AND WHEREAS as a result of their settlement discussions and negotiations, the Settling Defendants and the Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Settling Defendants and the Plaintiffs, both individually and on behalf of the Settlement Class the Ontario Plaintiffs seek to represent, subject to approval of the Court;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Ontario Proceeding and BC Proceeding be settled and dismissed as against the Settling Defendants and Releasees named as Defendants only, all without costs as to the Plaintiffs, the Settlement Class they seek to represent and the Settling Defendants, subject to the approval of the Court, on the following terms and conditions:

SECTION 1 – DEFINITIONS

For the purpose of this Settlement Agreement only, including the recitals and schedules hereto:

- (1) ***Administration Expenses*** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices and the costs of claims administration, but excluding Class Counsel Fees and Class Counsel Disbursements.
- (2) ***Approval Hearing*** means the hearing for the Court's approval of the settlement provided for in this Settlement Agreement.
- (3) ***BC Counsel*** means Camp Fiorante Matthews Mogerman.
- (4) ***BC Court*** means the Supreme Court of British Columbia.
- (5) ***BC Plaintiff*** means Jonathan Cruz.
- (6) ***BC Proceeding*** means the proceeding commenced by the BC Plaintiff before the BC Court that is identified in Schedule "A" to this Settlement Agreement.
- (7) ***Claims Administrator*** means the firm proposed by Class Counsel and appointed by the Court to administer the Settlement Amount in accordance with the provisions of this Settlement Agreement and the Distribution Protocol, and any employees of such firm.
- (8) ***Class Counsel*** means BC Counsel and Ontario Counsel.
- (9) ***Class Counsel Disbursements*** include the disbursements and applicable taxes incurred by Class Counsel in the prosecution of the Proceedings, as well as any adverse costs awards issued against the Plaintiffs in any of the Proceedings.
- (10) ***Class Counsel Fees*** means the fees of Class Counsel, and any applicable taxes or charges thereon, including any amounts payable as a result of the Settlement Agreement by Class Counsel or the Settlement Class Members to any other body or Person, in relation to legal fees.
- (11) ***Class Period*** means January 1, 2000 to December 31, 2011.

- (12) **Common Issue** means: Did the Settling Defendants conspire to fix, raise, maintain, and/or stabilize the price of Lithium Batteries and/or Lithium Battery Products directly or indirectly in Canada during the Class Period? If so, what damages, if any, did Settlement Class Members suffer?
- (13) **Counsel for the Settling Defendants** means DLA Piper (Canada) LLP.
- (14) **Court** means the Ontario Court.
- (15) **Defendants** means the entities named as defendants in any of the Proceedings as set out in Schedule "A" to this Settlement Agreement, and any Persons added as defendants in the Proceedings in the future. For greater certainty, Defendants includes, without limitation, the Settling Defendants, the other Releasees who are named as Defendants, and Settled Defendants.
- (16) **Discovery Plan** means the discovery plan in the Ontario Proceeding.
- (17) **Distribution Protocol** means the plan for distributing the Settlement Amount and accrued interest, in whole or in part, as proposed by Class Counsel and as approved by the Court.
- (18) **Documents** means all papers, computer or electronic records, or other materials within the scope of Rule 1.03(1) and Rule 30.01(1) of the Ontario *Rules of Civil Procedure* and any copies, reproductions or summaries of the foregoing, including microfilm copies and computer images.
- (19) **Effective Date** means the date when a Final Order has been received from the Court approving this Settlement Agreement.
- (20) **Execution Date** means the date on the cover page as of which the Parties have executed this Settlement Agreement.
- (21) **Excluded Person** means each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing.

- (22) **Final Order** means a final order made by the Court approving this Settlement Agreement that either (i) has not been appealed before the time to appeal such order has expired, if an appeal lies, or (ii) has been affirmed upon a final disposition of all appeals. For further certainty, any order made by the Court approving this Settlement Agreement will not become a Final Order until the time to appeal such an order has expired without any appeal having been taken or until the order has been affirmed upon a final disposition of all appeals.
- (23) **Lithium Batteries** means lithium-ion rechargeable batteries, including battery cells and battery cells that have been assembled into packs, but excluding lithium-ion rechargeable batteries designed for use in automobiles or other vehicles.
- (24) **Lithium Battery Products** means any products containing Lithium Batteries.
- (25) **Maxell Disclosure** means the following categories of Documents already produced by the Settling Defendants to the Ontario Plaintiffs pursuant to the Discovery Plan, and subject to the U.S. Protective Order:
- (a) the pre-existing Documents (including any transaction data) produced by the Settling Defendants in the U.S. Litigation including pursuant to any settlement agreement, in the form and format in which they were produced in the U.S. Litigation;
 - (b) transcripts, video and sound recordings (with respect to the recordings, to the extent these were ordered and copies are in the possession of the Settling Defendants) of depositions or sworn testimony of the Settling Defendants' current and former employees, directors and officers taken in the course of the U.S. Litigation, including any documents marked as exhibits or otherwise referred to in such depositions or sworn testimony; and
 - (c) transaction data for the Settling Defendants' purchases and/or sales of Lithium Batteries and/or Lithium Battery Products in Canada during the Class Period and for two years after the Class Period, on a per-customer basis.

- (26) ***Non-Settling Defendant*** means a Defendant that is not: (i) a Settling Defendant; (ii) a Releasee named as a Defendant; (iii) a Settled Defendant; or (iv) a Defendant against whom the Proceedings have been dismissed or discontinued, either before or after the Date of Execution, and includes any Defendant that terminates its own settlement agreement in accordance with its terms or whose settlement otherwise fails to take effect for any reason, whether or not such settlement agreement is in existence at the Execution Date.
- (27) ***Notice of Hearing*** means the form or forms of notice, agreed to by the Plaintiffs and the Settling Defendants, or such other form or forms of notice as may be approved by the Court, which informs the Settlement Class of: (i) the certification of the Ontario Proceeding as a class proceeding for settlement purposes; (ii) the date and location of the Approval Hearing; (iii) the principal elements of the Settlement Agreement; and (iv) the process by which Settlement Class Members may object to the settlement.
- (28) ***Ontario Counsel*** means Siskinds LLP and Sotos LLP.
- (29) ***Ontario Court*** means the Ontario Superior Court of Justice.
- (30) ***Ontario Plaintiffs*** means Khurram Shah and Alpina Holdings Inc.
- (31) ***Ontario Proceeding*** means the proceeding commenced by the Ontario Plaintiffs before the Court as identified in Schedule "A" to this Settlement Agreement.
- (32) ***Other Actions*** means actions or proceedings, other than the Proceedings, relating to the Released Claims commenced by a Settlement Class Member either before or after the Effective Date.
- (33) ***Party or Parties*** means the Plaintiffs, Settlement Class Members (where appropriate) or the Settling Defendants.
- (34) ***Person*** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political

subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.

- (35) ***Plaintiffs*** means the BC Plaintiff and the Ontario Plaintiffs.
- (36) ***Proceedings*** means the BC Proceeding and the Ontario Proceeding as defined in Schedule “A” to this Settlement Agreement.
- (37) ***Proportionate Liability*** means that proportion of any judgment that, had the Settling Defendants not settled, the Court would have apportioned to the Releasees.
- (38) ***Quebec Counsel*** means Belleau Lapointe, LLP.
- (39) ***Quebec Court*** means the Superior Court of Quebec.
- (40) ***Quebec Plaintiff*** means Option consommateurs.
- (41) ***Quebec Proceeding*** means the action commenced by the Quebec Plaintiff in the Superior Court of Quebec under court file number 500-06-000632-121.
- (42) ***Released Claims*** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, including without limitation any claims for consequential, subsequent or follow-on harm that arises after the Class Period including after the date hereof, damages of any kind (including compensatory, punitive or other damages) whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers’ fees (including Class Counsel Fees and Class Counsel Disbursements), known or unknown, suspected or unsuspected, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, that any of the Releasors ever had, now have or hereafter can, shall or may have arising from or relating in any way to an alleged unlawful conspiracy to fix, raise, maintain, and/or stabilize the price of Lithium Batteries and/or Lithium Battery Products, in Canada during the Class Period, or relating to any conduct alleged or which was previously or could have been alleged in the Proceedings or the Quebec Proceeding. However, nothing herein shall be construed to release: (a) any claims involving any

negligence, personal injury, breach of contract, bailment, failure to deliver lost goods, damaged or delayed goods, product defect, securities, or other similar claim relating to Lithium Batteries and/or Lithium Battery Products but not relating to alleged anti-competitive conduct; and (b) claims brought (whether before or after the Effective Date) relating to purchases of Lithium Batteries and/or Lithium Battery Products outside of Canada.

- (43) ***Releasees*** means, jointly and severally, solidarily, individually and collectively, the Settling Defendants, Hitachi, Ltd., Hitachi Canada, Ltd., Maxell, Ltd., Maxell Canada, Hitachi Maxell, Ltd., and all of their respective present and former, direct and indirect, parents, owners, subsidiaries, divisions, branches, affiliates, associates (as defined in the *Canada Business Corporations Act*, RSC 1985, c. C-44), partners, joint ventures, franchisees, dealers, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, agents, mandataries, shareholders, attorneys, trustees, servants and representatives, members and managers, and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing, excluding always the Non-Settling Defendants and any affiliates of the Non-Settling Defendants.
- (44) ***Releasors*** means, jointly and severally, solidarily, individually and collectively, the Plaintiffs and the Settlement Class Members and all of their present and former direct and indirect parents, owners, subsidiaries, divisions, affiliates, associates (as defined in the *Canada Business Corporations Act*, RSC 1985, c C-44), partners, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, shareholders, attorneys, trustees, servants, agents, mandataries and representatives, members, managers and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.

- (45) ***Settled Defendants*** means:
- (a) NEC Corporation, NEC Tokin Corporation, Samsung SDI Co., Ltd., Samsung SDI America, Inc., Sony Corporation, Sony Energy Devices Corporation, Sony Electronics, Inc. and Sony of Canada Ltd.; and
 - (b) any Defendant that executes its own settlement agreement whether before or after the execution of this Settlement Agreement, which settlement agreement is finally approved by the necessary courts and becomes effective in accordance with its terms.
- (46) ***Settlement Agreement*** means this agreement, including the recitals and schedules.
- (47) ***Settlement Amount*** means the sum of three hundred thousand U.S. dollars (USD \$300,000.00).
- (48) ***Settlement Class*** means all Persons in Canada who purchased Lithium Batteries and/or Lithium Battery Products in Canada during the Class Period, except the Excluded Persons.
- (49) ***Settlement Class Member*** means a member of a Settlement Class.
- (50) ***Settling Defendants*** means Maxell Holdings, Ltd. and Maxell Corporation of America.
- (51) ***Trust Account*** means a guaranteed investment vehicle, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, SC 1991, c 46) held at a Canadian financial institution under the control of Siskinds LLP or the Claims Administrator, once appointed, for the benefit of the Settlement Class Members or the Settling Defendants, as provided for in this Settlement Agreement.
- (52) ***U.S. Litigation*** means the class action proceeding pending in the United States District Court for the Northern District of California, under the caption *In Re: Lithium Ion Batteries Antitrust Litigation*, 13-MDL-2420, and includes all actions transferred by the

Judicial Panel for Multidistrict Litigation for coordination, all actions pending such transfer, and all actions that may be transferred in the future.

- (53) ***U.S. Protective Order*** means the Stipulated Protective Order governing the production and exchange of confidential information issued in the U.S. Litigation on May 17, 2013.
- (54) ***U.S. Settlement Agreements*** means any settlement reached with the Settling Defendants in the U.S. Litigation.

SECTION 2 – SETTLEMENT APPROVAL

2.1 Best Efforts

- (1) The Parties shall use their best efforts to implement this settlement across Canada and to secure the prompt, complete and final dismissal with prejudice of the Proceedings as against the Settling Defendants and other Releasees who are named as Defendants, as applicable.

2.2 Motions for Approval

- (1) As soon as practical after the Settlement Agreement is executed, the Ontario Plaintiffs shall bring motions before the Court for orders approving the Notice of Hearing, certifying the Ontario Proceeding as a class proceeding (for settlement purposes) as against the Settling Defendants, and approving this Settlement Agreement.
- (2) The Ontario order approving the notices described in section 10.1(1) shall be substantially in the form attached as Schedule B.
- (3) The Ontario Plaintiffs shall make best efforts to file a motion before the Court for an order approving this Settlement Agreement as soon as practicable after:
 - (a) the order referred to in section 2.2(2) has been granted; and
 - (b) the notices described in section 10.1(1) have been published.
- (4) The Ontario order approving this Settlement Agreement and certifying the Ontario Proceeding for settlement purposes as against the Settling Defendants shall be substantially in the form attached as Schedule C.

(5) This Settlement Agreement shall only become final on the Effective Date.

(6) As soon as practicable after the order referred-to in section 2.2(4) has been granted, the BC Plaintiff shall seek the dismissal of the BC Proceeding as against the Settling Defendants and other Releasees who are named as Defendants in the BC Proceeding, and shall seek to register the order referred-to in section 2.2(4) with the British Columbia Supreme Court, pursuant to the *Enforcement of Canadian Judgments and Decrees Act*, S.B.C. 2003, c.29.

2.3 Pre-Motion Confidentiality

(1) Until the first of the motions required by section 2.2 is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior consent of Counsel for the Settling Defendants or Class Counsel, as the case may be, except as required for the purposes of financial reporting or the preparation of financial records (including tax returns and financial statements), as otherwise required by law, or as otherwise required to give effect to the terms of this Settlement Agreement.

SECTION 3 – SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

(1) Within thirty (30) days of the Execution Date, the Settling Defendants shall pay the Settlement Amount to Siskinds LLP for deposit into the Trust Account. The Settlement Amount shall be converted into Canadian currency upon deposit into the Trust Account.

(2) The Settling Defendants shall deposit the Settlement Amount into the Trust Account by wire transfer. Siskinds LLP shall provide the necessary wire transfer information to Counsel for the Settling Defendants with reasonable advance notice so that the Settling Defendants have a reasonable period of time to comply with section 3.1(1) of this Settlement Agreement.

(3) The Settlement Amount and other consideration to be provided in accordance with the terms of this Settlement Agreement shall be provided in full satisfaction of the Released Claims against the Releasees.

(4) The Settlement Amount shall be all-inclusive of all amounts, including without limitation, interest, costs, Class Counsel Fees and Class Counsel Disbursements.

(5) The Releasees shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement or the Proceedings or any Other Actions.

(6) Once a Claims Administrator has been appointed, Siskinds LLP shall transfer control of the Trust Account to the Claims Administrator.

(7) Siskinds LLP and the Claims Administrator shall maintain the Trust Account as provided for in this Settlement Agreement. While in control of the Trust Account, Siskinds LLP and the Claims Administrator shall not pay out all or part of the monies in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Court obtained after notice to the Parties.

3.2 Taxes and Interest

(1) Except as hereinafter provided, all interest earned on the Settlement Amount in the Trust Account shall accrue to the benefit of the Settlement Class and shall become and remain part of the Trust Account.

(2) Subject to section 3.2(3), all Canadian taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be paid from the Trust Account. Class Counsel or the Claims Administrator shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Trust Account.

(3) The Settling Defendants shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned by the Settlement Amount or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, in which case the interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to the Settling Defendants who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by Class Counsel or the Claims Administrator.

3.3 Intervention in the U.S. Litigation

(1) The Settling Defendants shall not oppose any application that may be brought by or on behalf of the Plaintiffs (or any of them) to intervene in the U.S. Litigation in order to gain access to discovery Documents produced, deposition or other transcripts, or other Documents that might be filed in the U.S. Litigation, including any discovery that may be subject to a protective order that are relevant to the Proceedings. However, it is understood and agreed that neither the Settling Defendants nor the other Releasees have any obligation to bring or otherwise participate in such an application.

SECTION 4 – COOPERATION

4.1 Extent of Cooperation

(1) Within sixty (60) days of the Effective Date, or at a time mutually agreed upon by the Parties, and subject to any confidentiality order in the Proceedings and the other provisions of this Settlement Agreement, the Settling Defendants shall, insofar as such production has not already been made and production is not prohibited by law, use reasonable efforts to Produce the Maxell Disclosure, and this shall be a continuing obligation to the extent additional Documents are produced or become available in the U.S. Litigation.

(2) The Settling Defendants shall provide reasonable assistance to Class Counsel in understanding the transactional data produced by the Settling Defendants as part of the Maxell Disclosure and/or in accordance with this Settlement Agreement, including a reasonable number of written and/or telephonic communications with Class Counsel and/or the Plaintiffs' experts and between technical personnel.

(3) To the extent that additional productions are made pursuant to 4.1(1), the Settling Defendants make no representation regarding and shall bear no liability with respect to the accuracy of such productions, nor do they make any representation that they have, can or will produce a complete set of any of the Documents described in section 4.1(1), and the failure to do so shall not constitute a breach or violation of this Settlement Agreement.

(4) Any additional production made to Class Counsel in accordance with section 4.1(1) shall, to the extent possible, be provided in the format agreed upon in the Discovery Plan implemented in the Ontario Proceeding.

(5) Subject to the rules of evidence, any court order with regard to confidentiality and the other provisions of this Settlement Agreement, the Settling Defendants agree to use reasonable efforts (which shall not include disciplining or terminating an employee) to provide affidavits for use at trial or otherwise in the Ontario Proceeding for the purpose of supporting the submission into evidence in the Ontario Proceeding of any information, transactional data and/or Documents provided by the Settling Defendants in the Maxell Disclosure and/or in accordance with this Settlement Agreement and for the prosecution of the Ontario Proceeding. If, and only if, the Court should determine that affidavits are inadequate for the purpose of submitting into evidence such information, transactional data and/or Documents produced by the Settling Defendants, the Settling Defendants agree to use reasonable efforts (which shall not include disciplining or terminating an employee) to make available for testimony at trial or otherwise appropriate current and/or former employees of the Settling Defendants, as is reasonably necessary for the prosecution of the Ontario Proceeding and, specifically, for the purpose of admitting into evidence such information, transactional data and/or Documents provided by the Settling Defendants in the Maxell Disclosure and/or in accordance with this Settlement Agreement. The Plaintiffs will work to minimize any burden on the Settling Defendants pursuant to this section.

(6) Nothing in this Settlement Agreement shall require or be construed to require the Settling Defendants, or any of their present, former or future officers, directors or employees, to perform any act, including the transmittal or disclosure of any information, which would violate the law of this or any other jurisdiction, or any court order (including the U.S. Protective Order).

(7) Nothing in this Settlement Agreement shall require, or shall be construed to require, the Settling Defendants or any representative or employee of the Settling Defendants to disclose or produce any Documents or information prepared by or for Counsel for the Settling Defendants, or that is not within the possession, custody or control of the Settling Defendants, or to disclose or produce any Documents or information in breach of any order, regulatory directive, rule or law of this or any jurisdiction, or subject to solicitor-client privilege, litigation privilege, joint

defence privilege, or any other privilege, or to disclose or produce any information or Documents they obtained on a privileged or co-operative basis from any party to any action or proceeding who is not a Releasee.

(8) If any Documents protected by any privilege and/or any privacy law or other order, regulatory directive, rule or law of this or any applicable jurisdiction including but not limited to Canada and the United States were accidentally or inadvertently produced in the Maxell Disclosure or in accordance with this Settlement Agreement, such Documents shall be promptly returned to the Settling Defendants and the Documents and the information contained therein shall not be disclosed or used directly or indirectly, except with the express written permission of the Settling Defendants, and the production of such Documents shall in no way be construed to have waived in any manner any privilege or protection attached to such Documents.

(9) The Settling Defendants' obligations to cooperate as particularized in this section shall not be affected by the release provisions in section 6 of this Settlement Agreement. Unless this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the Settling Defendants' obligations to cooperate shall cease at the date of the Plaintiffs' settlement with all Non-Settling Defendants, or final judgment in the Ontario Proceeding against all Non-Settling Defendants.

(10) In the event that the Settling Defendants materially breach this section 4.1, the Ontario Plaintiff may move before the Court to enforce the terms of this Settlement Agreement and/or seek an order setting aside section 4.1(13) and allowing the Plaintiffs to obtain discovery or information from the Settling Defendants as if the Settling Defendants remained parties to the Ontario Proceeding.

(11) The Plaintiffs may exercise any rights they have to seek to obtain discovery in the Proceedings as against the officers, directors and/or employees of the Settling Defendants put forward to provide evidence at trial or otherwise, if the current or former officer, director or employee of the Settling Defendants fails to cooperate in accordance with the provisions of this Settlement Agreement.

(12) The Settlement Agreement does not abrogate any subpoena rights that the Plaintiffs have in respect of the current or former officers, directors and/or employees of the Settling Defendants.

(13) Subject to sections 4.1(11) and (12), the provisions set forth in this section 4.1 are the exclusive means by which the Plaintiffs, the Settlement Class Members and Class Counsel may obtain discovery, information, or Documents from the Releasees. The Plaintiffs, the Settlement Class Members and Class Counsel agree that they shall not pursue any other means of discovery against, or seek to compel the evidence of, the Releasees, whether in Canada or elsewhere and whether under the rules or laws of this or any other Canadian or foreign jurisdiction.

(14) A material factor influencing the Settling Defendants' decision to execute this Settlement Agreement is their desire to limit the burden and expense of this litigation. Accordingly, the Plaintiffs and Class Counsel agree to exercise good faith in seeking cooperation from the Settling Defendants, agree not to seek information that is unnecessary, cumulative or duplicative and agree otherwise to avoid imposing undue, unreasonable or disproportionate burden or expense on the Settling Defendants.

(15) The scope of the Settling Defendants' cooperation under this Settlement Agreement shall be limited to the allegations asserted in the Proceedings as presently filed, subject to the requirements of section 4.1.

4.2 Limits on Use of Documents

(1) It is understood and agreed that all Documents and information made available or provided by the Settling Defendants to the Plaintiffs and Class Counsel under this Settlement Agreement and/or produced previously in the Proceedings shall be used only in connection with the prosecution of the claims in the Proceedings against the Non-Settling Defendants and unnamed alleged co-conspirators that are not Releasees, and shall not be used directly or indirectly for any other purpose, except to the extent that the Documents or information are or become publicly available. The Plaintiffs and Class Counsel agree they will not disclose the Documents and information provided by the Settling Defendants beyond what is reasonably necessary for the prosecution of the Proceedings or as otherwise required by law, except to the extent that the Documents or information were, are or become publicly available. Further, until

such time as a confidentiality order is in place in the Ontario Proceeding that applies to the Documents and information provided in the Maxell Disclosure or as cooperation by the Settling Defendants, the Plaintiffs and Class Counsel agree that they will not disclose the Documents and information provided by the Settling Defendants to any third party unless the third party first agrees to abide by the confidentiality requirements outlined in this Settlement Agreement. Subject to the foregoing, Class Counsel shall take reasonable precautions to ensure and maintain the confidentiality of such Documents and information, and of any work product of Class Counsel that discloses such Documents and information.

(2) If the Plaintiffs intend to produce or file in the Proceedings any Documents or other information provided by the Settling Defendants in the Maxell Disclosure or as cooperation under the Settlement Agreement (and such disclosure is not otherwise prohibited by the Settlement Agreement) which were designated as Confidential or Highly Confidential under the U.S. Protective Order or which, at the time of being provided, were marked or designated by the Settling Defendants as “Confidential — Subject to Procedure Under Section 4.2(2) of the Settlement Agreement,” and there is not already a confidentiality order issued in the Proceedings that applies to the Documents and information provided as cooperation by the Settling Defendants, Class Counsel shall provide the Settling Defendants with an advance description of the Documents or other information sought to be produced or filed at least thirty (30) days in advance of the proposed production or filing, in order that the Settling Defendants may intervene for the purposes of obtaining a sealing or confidentiality order or similar relief. If the Settling Defendants intervene for this purpose, the Plaintiffs and Class Counsel shall not oppose the Settling Defendants’ ability to intervene. The Plaintiffs and Class Counsel shall not produce or file the confidential information or Documents until the Settling Defendants’ motion has been decided and all applicable appeal periods have expired except, so as not to delay prosecution of the Proceedings, Class Counsel may provide, on an interim basis, Documents or information to counsel for the Non-Settling Defendants provided that counsel for the Non-Settling Defendants agree and give assurances that they will keep the Documents or information on an external-counsel only basis until the Settling Defendants’ motion has been decided and all applicable appeal periods have expired.

(3) In the event that a Person requests disclosure of Documents or information provided by the Settling Defendants as cooperation under this Settlement Agreement or in the Maxell Disclosure which were designated as Confidential or Highly Confidential under the U.S. Protective Order or which, at the time of being provided, were marked or designated by the Settling Defendants as “Confidential — Subject to Procedure Under Section 4.2(2) of the Settlement Agreement”, whether or not the Person applies for an order requiring the Plaintiffs to disclose or produce any Documents or other information, and there is not already a confidentiality order issued in the Proceedings that applies to the Documents and information provided by the Settling Defendants, Class Counsel shall provide notice to the Settling Defendants promptly upon becoming aware of it in order that the Settling Defendants may intervene to oppose such disclosure or production. In no circumstances shall the Plaintiffs or Class Counsel apply for or consent to such an application for disclosure or production. The Plaintiffs and Class Counsel shall not disclose the confidential information or Documents until the Settling Defendants’ motion has been decided and all applicable appeal periods have expired, except: (i) to the extent such information or Documents were, are or become otherwise publicly available; (ii) as ordered to do so by the Court; or (iii) in the event that the Person making the request is a Non-Settling Defendant, so as not to delay prosecution of the Proceedings, Class Counsel may provide, on an interim basis, Documents or information to counsel for the Non-Settling Defendant provided that counsel for the Non-Settling Defendant agrees and give assurances that it will keep the Documents or information on an external-counsel only basis until the Settling Defendants’ motion has been decided and all applicable appeal periods have expired.

(4) Subject to section 4.2(5), upon the final termination of the Proceedings, including the expiry of all rights of appeal, Class Counsel shall destroy the Documents and information produced in the Maxell Disclosure or as cooperation by the Settling Defendants, including all copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of the Maxell Production. However, Class Counsel is entitled to retain archival copies of all pleadings, motion papers, exhibits, transcripts, legal memoranda, correspondence or lawyer work product, even if such materials contains information provided in the Maxell Disclosure.

(5) Notwithstanding any other provision of this Settlement Agreement, until such time as a confidentiality order is in place in the Ontario Proceeding that applies to the Documents and

information provided in the Maxell Disclosure or as cooperation by the Settling Defendants, Class Counsel shall treat any Documents received from the Settling Defendants and designated as Confidential or Highly Confidential in accordance with the provisions of the U.S. Protective Order. Once a confidentiality order(s) is issued in the Ontario Proceeding, that order(s) shall govern any Documents and information received from the Settling Defendants, including the destruction of Documents.

(6) Notwithstanding any other provision of this Settlement Agreement and the terms of any confidentiality order(s) issued in the Ontario Proceedings, Class Counsel shall not disclose any Documents and information provided in the Maxell Disclosure or as cooperation by the Settling Defendants to any counsel or law firm that aids Class Counsel's continued prosecution of the Ontario Proceedings, unless such counsel or law firm agrees in writing in advance to abide by section 8.3 of this Settlement Agreement and any other confidentiality obligations contained in this Settlement Agreement and any confidentiality order(s) issued in the Ontario Proceedings.

SECTION 5 – NON-APPROVAL OR TERMINATION OF SETTLEMENT AGREEMENT

5.1 Right of Termination

- (1) In the event that:
 - (a) the Court declines to certify the Ontario Proceeding for settlement purposes as against the Settling Defendants or does so in a materially modified form;
 - (b) the Court or BC Court declines to dismiss the Ontario or BC Proceeding, as applicable, against the Settling Defendants and Releasees named as Defendants;
 - (c) the Court declines to approve this Settlement Agreement or any material part hereof;
 - (d) the Court approves this Settlement Agreement in a materially modified form;
 - (e) the Court issues a settlement approval order that is materially inconsistent with the terms of the Settlement Agreement or not substantially in the form attached to this Settlement Agreement as Schedule C;

- (f) the order approving this Settlement Agreement made by the Court does not become a Final Order;
- (g) Class Counsel receive an objection to the Settlement Agreement from Quebec Counsel or the Quebec Plaintiff at any time before the Settlement Agreement is approved by the Court; or
- (h) the Settlement Amount is not paid in accordance with section 3.1(1).

the Plaintiffs and the Settling Defendants shall each have the right to terminate this Settlement Agreement (except that only the Settling Defendants shall have the right to terminate under subsections (b) and (g) above and only the Plaintiffs shall have the right to terminate under subsection (h) above) by delivering a written notice pursuant to section 13.17, within thirty (30) days following an event described above.

(2) Except as provided for in section 5.3, if the Settling Defendants or the Plaintiffs exercise their right to terminate, the Settlement Agreement shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation or in any other way for any reason.

(3) Any order, ruling or determination made (or rejected) by the Court with respect to:

- (a) Class Counsel Fees or Class Counsel Disbursements; or
- (b) Document confidentiality

shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

5.2 If Settlement Agreement is Terminated

(1) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason:

- (a) no motion to certify the Ontario Proceeding as a class proceeding on the basis of this Settlement Agreement, or to approve this Settlement Agreement, which has not been decided, shall proceed;
- (b) the Parties will cooperate in seeking to have any issued order certifying the Ontario Proceeding as a class proceeding on the basis of the Settlement Agreement or approving this Settlement Agreement set aside and declared null and void and of no force or effect, and any Party (including the Settlement Class Members) shall be estopped from asserting otherwise;
- (c) any prior certification of the Ontario Proceeding as a class proceeding on the basis of this Settlement Agreement, including the definitions of the Settlement Class and the Common Issue pursuant to this Settlement Agreement, shall be without prejudice to any position that any of the Parties or Releasees may later take on any issue in the Proceedings or any Other Actions or other litigation; and
- (d) within ten (10) days of such termination having occurred, Class Counsel shall destroy all Documents and other materials provided by the Settling Defendants and/or Counsel for the Settling Defendants under this Settlement Agreement or containing or reflecting information derived from such Documents or other materials received from the Settling Defendants and/or Counsel for the Settling Defendants under this Settlement Agreement and, to the extent Class Counsel has disclosed any Documents or information provided by the Settling Defendants and/or Counsel for the Settling Defendants to any other Person, shall endeavor to recover and destroy such Documents or information. Class Counsel shall provide Counsel for the Settling Defendants with a written certification by Class Counsel of such destruction. Nothing contained in this section 5.2 shall be construed to require Class Counsel to destroy any of their work product or any Documents produced by the Settling Defendants under the Discovery Plan. However, any Documents or information provided by the Settling Defendants and/or Counsel for the Settling Defendants, or received from the Settling Defendants and/or Counsel for the Settling Defendants in connection with this Settlement

Agreement, may not be disclosed to any Person in any manner or used, directly or indirectly, by Class Counsel or any other Person in any way for any reason, without the express prior written permission of the Settling Defendants. Class Counsel shall take appropriate steps and precautions to ensure and maintain the confidentiality of such Documents, information and any work product of Class Counsel derived from such Documents or information.

(2) If the Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, Siskinds LLP shall, within thirty (30) business days of the written notice advising that the Settlement Agreement has been terminated in accordance with its terms, return to the Settling Defendants the Settlement Amount, plus all accrued interest thereon, less taxes paid on interest, and less the Settling Defendants' proportional share of the costs of notices actually incurred or payable under section 10.1 up to a maximum of \$30,000.

5.3 Survival of Provisions After Non-Approval of Settlement Agreement

(1) If this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the provisions of sections 3.2(3), 5.1(2), 5.2, 8.1, 8.2, 10.1, 11.1(2), 11.3(3)(a) and 11.3(4), and the definitions and schedules applicable thereto shall survive the termination and continue in full force and effect. The definitions and schedules shall survive only for the limited purpose of the interpretation of sections 3.2(3), 5.1(2), 5.2, 8.1, 8.2, 10.1, 11.1(2), 11.3(3)(a) and 11.3(4) within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

SECTION 6 – RELEASES AND DISMISSALS

6.1 Release of Releasees

(1) Upon the Effective Date, subject to section 6.3 and in consideration of payment of the Settlement Amount, and for other valuable consideration set forth in the Settlement Agreement, the Releasors forever and absolutely release the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have.

(2) The Plaintiffs and Settlement Class Members acknowledge that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true regarding the subject matter of the Settlement Agreement, and it is their intention to release fully, finally and forever all Released Claims and, in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of different facts.

(3) Notwithstanding the foregoing, the releases granted pursuant to the present section shall be deemed partial for the purposes of article 1687 and following of the *Civil Code of Quebec*, shall enure only to the benefit of the Releasees and shall not preclude, foreclose or otherwise limit the rights of the Settlement Class Members resident in Quebec as against the Non-Settling Defendants or unnamed alleged co-conspirators that are not Releasees.

6.2 Release by Releasees

(1) Upon the Effective Date, each Releasee forever and absolutely releases each of the other Releasees from any and all claims for contribution or indemnity with respect to the Released Claims.

6.3 Covenant Not To Sue

(1) Notwithstanding section 6.1, upon the Effective Date, for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasers do not release the Releasees, but instead covenant and undertake not to make any claim in any way or 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. For greater certainty, section 6.1(3) continues to apply to residents of Quebec.

6.4 No Further Claims

(1) Upon the Effective Date, each Releaser 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, except for the continuation of the Proceedings and the Quebec Proceeding against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees or, if the BC Proceeding is not certified, the Ontario Proceeding is decertified, or the Quebec Proceeding ceases to be authorized with respect to the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees, the continuation of the claims asserted in the Proceedings or the Quebec Proceeding on an individual basis or otherwise against any Non-Settling Defendant or named or unnamed co-conspirator that is not a Releasee. For greater certainty and without limiting the generality of the foregoing, the Releasors shall not assert or pursue a Released Claim, against any Releasee under the laws of Quebec or any foreign jurisdiction.

6.5 Dismissal of the Proceedings

(1) Upon the Effective Date, the Proceedings shall be dismissed, with prejudice and without costs, as against the Settling Defendants and other Releasees who are named as Defendants, as applicable.

6.6 Dismissal of Other Actions

(1) Upon the Effective Date, each Settlement Class Member shall be deemed to irrevocably consent to the dismissal, without costs, with prejudice and without reservation, of his, her or its Other Actions against the Releasees.

(2) Upon the Effective Date, all Other Actions commenced by any Settlement Class Member in Ontario shall be dismissed against the Releasees, without costs, with prejudice and without reservation.

(3) If any Settlement Class Member commences, continues or in any way participates in any proceeding in Quebec against the Releasees in respect of or in relation to the Released Claims, whether as a class member or in any other capacity, Class Counsel will, at their own expense, take the reasonably necessary steps to seek an order from the Quebec Court finally staying or dismissing or otherwise finally resolving the Settlement Class Member's claims as against the Releasees.

6.7 Claims Against Other Entities Reserved

(1) Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by Settlement Class Members against any Person other than the Releasees.

6.8 Material Term

(1) For the avoidance of doubt and without in any way limiting the ability of the Parties to assert that other terms in this Settlement Agreement are material terms (subject to section 5.1(3)), the releases, covenants, dismissals, granting of consent, and reservations of rights contemplated in this section 6 shall be considered a material term of the Settlement Agreement and the failure of the Court to approve the releases, covenants, dismissals, granting of consent, and reservations of rights contemplated herein shall give rise to a right of termination pursuant to section 5.1 of the Settlement Agreement.

SECTION 7 – BAR ORDER

7.1 Bar Order and Waiver or Renunciation of Solidarity

- (1) Class Counsel shall seek a bar order from the Court providing for the following:
- (a) 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, the Quebec Proceeding or any Other Actions, or otherwise, by any Non-Settling Defendant, 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 Non-Settling Defendant, 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 section;
 - (b) if the 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 Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators 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 Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or 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 Non-Settling Defendants and/or 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 Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to the Ontario Plaintiffs and Settlement Class Members, if any, and for greater certainty, the Settlement Class Members shall be entitled to claim and seek to recover on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, if permitted by law; and
- (C) the 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 the 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;

- (c) for the purposes of sections 7.1(1)(d)-(i)(h), “Non-Settling Defendants” refers to the Non-Settling Defendants that are named as Defendants in the Ontario Proceeding;
- (d) a Non-Settling Defendant may, on application to the Court determined as if the Settling Defendants remained parties to the Ontario Proceeding, and on at least twenty (20) days’ notice to Counsel for the Settling Defendants, and not to be brought until after all appeals or times to appeal certification have been exhausted, seek orders for the following:
 - (A) documentary discovery and an affidavit of documents from the Settling Defendants in accordance with the Ontario *Rules of Civil Procedure*;
 - (B) oral discovery of a representative of the Settling Defendants, the transcript of which may be read in at trial;
 - (C) leave to serve a request to admit on the Settling Defendants in respect of factual matters; and/or
 - (D) the production of a representative of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
- (e) the Settling Defendants retain all rights to oppose any application brought pursuant to section 7.1(1)(d), including any such application brought at trial seeking an order requiring the Settling Defendants to produce a representative to

testify at trial. Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of Documents to be produced and/or for information obtained from discovery in accordance with section 7.1(1)(d);

- (f) on any application brought pursuant to section 7.1(1)(d), the Court may make such orders as to costs and other terms as it considers appropriate;
- (g) to the extent that such an order is granted and discovery is provided to a Non-Settling Defendant, a copy of all discovery provided, whether oral or documentary in nature, shall be provided by the Settling Defendants to Class Counsel within ten (10) days of such discovery being provided to a Non-Settling Defendant;
- (h) the Court will retain an ongoing supervisory role over the discovery process and the Settling Defendants will attorn to the jurisdiction of the Court for this purpose; and
- (i) a Non-Settling Defendant may effect service of the application(s) referred to in section 7.1(1)(d) on a Settling Defendant by service on Counsel for the Settling Defendants.

(2) Notwithstanding the foregoing, Settlement Class Members residing in Quebec also hereby grant a waiver or renunciation of solidarity, as follows:

- (a) the Settlement Class Members residing in Quebec expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants or any other Person with respect to the facts, deeds or other conduct of the Releasees relating to the Released Claims;
- (b) the Settlement Class Members residing in Quebec shall henceforth only be able to claim and recover damages, including punitive damages, interest and costs (including without limitation, judicial fees pursuant to the *Code of Civil Procedure*, and investigative costs claimed pursuant to section 36 of the

Competition Act) attributable to the conduct of the Non-Settling Defendants, the sales by the Non-Settling Defendants, and/or other applicable measure of proportionate liability of the Non-Settling Defendants; and

- (c) the Settlement Class Members residing in Quebec are deemed to irrevocably consent to a declaration that any claims in warranty or any other claim or joinder of parties to obtain any contribution or indemnity from the Releasees or relating to the Released Claims shall be inadmissible and void in the context of the Quebec Proceeding or any Other Action commenced in Quebec as a result of the foregoing.

7.2 Material Term

- (1) For the avoidance of doubt and without in any way limiting the ability of the Parties to assert that other terms in this Settlement Agreement are material terms (subject to section 5.1(3)), the Parties acknowledge that the bar order contemplated herein shall be considered a material term of the Settlement Agreement and the failure of the Court to approve the bar order contemplated herein shall give rise to a right to termination pursuant to section 5.1 of the Settlement Agreement.

SECTION 8 – EFFECT OF SETTLEMENT

8.1 No Admission of Liability

- (1) The Plaintiffs and the Releasees expressly reserve all of their rights if this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason. Further, whether or not this Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Releasees, or of the truth of any of the claims or allegations contained in the Proceedings or any Other Actions or any other pleading filed by the Plaintiffs or on behalf of Settlement Class Members.

8.2 Agreement Not Evidence

(1) The Parties agree that, whether or not it is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, or to defend against the assertion of Released Claims, as necessary in any insurance-related proceeding, or as otherwise required by law or as provided in this Settlement Agreement.

8.3 No Further Litigation

(1) No Class Counsel, nor anyone currently or hereafter employed by, or a partner of Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person against the Settling Defendants or the Releasees named as Defendants that relates to or arises from the Released Claims, except in relation to the continued prosecution of the Proceedings or Quebec Proceeding against any Non-Settling Defendant or unnamed co-conspirators that are not Releasees or, if the BC Proceeding is not certified, the Ontario Proceeding is decertified, or the Quebec Proceeding ceases to be authorized, the continuation of the claims asserted in the Proceedings or the Quebec Proceeding on an individual basis or otherwise against any Non-Settling Defendant or unnamed co-conspirator that is not a Releasee. Moreover, neither Class Counsel, nor anyone currently or hereafter employed by, or a partner of Class Counsel, may divulge to anyone for any purpose, or use for any purpose, any information obtained in the course of the Proceedings or the negotiation and preparation of this Settlement Agreement, except to the extent that such information was, is or becomes otherwise publicly available or unless ordered to do so by a court in Canada, or in the case of information obtained in the course of the Proceedings, for the purposes of the continued prosecution of the Proceedings against any Non-Settling Defendant or unnamed co-conspirators that are not Releasees or, if the BC Proceeding is not certified or the Ontario Proceeding is decertified, the continuation of the claims asserted in the Proceedings on an

individual basis or otherwise against any Non-Settling Defendant or unnamed co-conspirator that is not a Releasee.

(2) For greater certainty, section 8.3(1) shall be inoperative to the extent that it requires any lawyer who is a member of the Law Society of British Columbia to breach his or her obligations under section 3.2-10 of the Law Society of British Columbia's *Code of Professional Conduct for British Columbia* by refraining from participation or involvement in any claim or action in a British Columbia court.

SECTION 9 – CERTIFICATION FOR SETTLEMENT ONLY

9.1 Settlement Class and Common Issue

(1) The Parties agree that the Ontario Proceeding shall be certified as a class proceeding as against the Settling Defendants solely for purposes of settlement of the Proceedings and the approval of this Settlement Agreement by the Court.

(2) The Plaintiffs agree that, in the motion for certification of the Ontario Proceeding as a class proceeding for settlement purposes and for the approval of this Settlement Agreement, the only common issue that they will seek to define is the Common Issue and the only class that they will assert is the Settlement Class.

(3) The Parties agree that the certification of the Ontario Proceeding as against the Settling Defendants for the purpose of implementing the Settlement Agreement, shall not derogate in any way from the rights of the Plaintiffs as against the Non-Settling Defendants or any other Person that is not a Releasee, except as expressly set out in this Settlement Agreement.

SECTION 10 – NOTICE TO SETTLEMENT CLASS

10.1 Notices Required

(1) The proposed Settlement Class shall be given the following notices: (i) the Notice of Hearing; (ii) notice if this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect; and (iii) such further notice as may be directed by the Court.

(2) The notices referred to in section 10.1(1) shall be given to Quebec Counsel and the Quebec Plaintiff at the same time as the Settlement Class.

10.2 Form and Distribution of Notices

(1) The form of notices referred to in section 10.1 and the manner and extent of publication and distribution shall be as agreed to by the Plaintiffs and Settling Defendants or in such form or manner as approved by the Court. The notices shall provide that Settlement Class Members wishing to object to the Settlement Agreement be permitted to file objections to the Court in writing and in French if they so choose (in which case Class Counsel agree to make available an unofficial translation for use by the Court), and be invited to contact Class Counsel to discuss ways to have their objections heard orally before the Court in French if they so choose.

SECTION 11 – ADMINISTRATION AND IMPLEMENTATION

11.1 Mechanics of Administration

(1) Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement and the Distribution Protocol shall be determined by the Court on motions brought by Class Counsel.

(2) The Releasees shall not have any responsibility, financial obligations or liability whatsoever with respect to the investment, distribution or administration of monies in the Trust Account including, but not limited to, Administration Expenses and Class Counsel Fees.

11.2 Distribution Protocol

(1) After the Effective Date, at a time wholly within the discretion of Class Counsel, but on notice to the Settling Defendants, Class Counsel will make an application seeking an order from the Court approving the Distribution Protocol.

(2) The Distribution Protocol shall require Settlement Class Members seeking compensation to give credit for any compensation received through other proceedings or in private out-of-class settlements, unless by such proceedings or private out-of-class settlements the Settlement Class Member's claim was released in its entirety, in which case the Settlement Class Member shall be deemed ineligible for any further compensation.

(3) In addition, the Distribution Protocol shall treat Settlement Class Members resident in Quebec in the equivalent manner to Settlement Class Members resident elsewhere in Canada.

The Distribution Protocol must comply with the requirements of Quebec law, including in respect of remittances to the Fonds d'Aide aux actions collectives and in case of any remaining balance to be allocated *cy pres* to one or more recipients to be approved by the Court, *The Act Respecting the Fonds d'aide aux actions collectives*, CQLR c F-3.2.0.1.1 will apply to the portion of any remaining balance, if any, attributable to Settlement Class Members resident in Quebec.

11.3 Information and Assistance

(1) The Settling Defendants will make reasonable efforts to compile a list of the names and addresses (including any relevant email addresses) of those Persons in Canada who received delivery of Lithium Batteries and/or Lithium Battery Products from them during the Class Period, to the extent such information is reasonably available. The information shall be delivered in Microsoft Excel or such other format as may be agreed upon by Counsel for the Settling Defendants and Class Counsel.

(2) The name and address information required by section 11.3(1) shall be delivered to Class Counsel within thirty (30) days of the Execution Date or at a time mutually agreed upon by the Parties.

(3) Class Counsel may use the information provided under section 11.3(1):

- (a) to facilitate the dissemination of the notices required in section 10.1(1);
- (b) to advise Persons in Canada who received delivery of Lithium Batteries and/or Lithium Battery Products from the Settling Defendants during the Class Period of any subsequent settlement agreement reached in the Proceedings, any related approval hearings, and any other major steps in the Proceedings;
- (c) to facilitate the claims administration process with respect to this Settlement Agreement and any other settlement agreement and/or court award achieved in the Proceedings; and
- (d) as otherwise authorized in section 4.

(4) All information provided by the Settling Defendants pursuant to section 11.3(1) shall be dealt with in accordance with section 4, except that Class Counsel may disclose all information provided by the Settling Defendants pursuant to section 11.3(1) to any Court-appointed notice provider and/or the Claims Administrator, to the extent reasonably necessary for the purposes enumerated in section 11.3(3). Any Court-appointed notice provider and/or the Claims Administrator shall be bound by the same confidentiality obligations set out in section 4. If this Settlement Agreement is terminated, all information provided by the Settling Defendants pursuant to section 11.3(1) shall be dealt with in accordance with section 5.2(1)(d) and no record of the information so provided shall be retained by Class Counsel in any form whatsoever.

(5) The Settling Defendants will make themselves reasonably available to respond to questions respecting the information provided pursuant to section 11.3(1) from Class Counsel or any Court-appointed notice provider and/or the Claims Administrator. The Settling Defendants' obligations to make themselves reasonably available to respond to questions as particularized in this section shall not be affected by the release provisions contained in section 6 of this Settlement Agreement. Unless this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the Settling Defendants' obligations to cooperate pursuant to this section 11.3 shall cease when the Proceedings are resolved as against all Defendants and all settlement funds or court awards have been distributed.

(6) The Settling Defendants shall bear no liability with respect to the completeness or accuracy of the information provided pursuant to this section 11.3.

SECTION 12 – CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES

12.1 Court Approval for Class Counsel Fees and Disbursements

(1) Class Counsel may seek the Court's approval to pay Class Counsel Disbursements and Class Counsel Fees contemporaneous with seeking approval of this Settlement Agreement. Class Counsel Disbursements and Class Counsel Fees shall be reimbursed and paid solely out of the Trust Account after the Effective Date.

(2) In the event that some of the funds remain in the Trust Account after payment of Class Counsel Disbursements, Class Counsel Fees, Administrative Expenses, and implementation of

the Distribution Protocol, Class Counsel shall seek direction from the Court regarding the distribution of the remaining funds.

(3) Class Counsel reserve the right to bring motions to the Court for reimbursement out of the Trust Account for any future Class Counsel Disbursements.

12.2 Responsibility for Fees, Disbursements and Taxes

(1) The Settling Defendants shall not be liable for any Class Counsel Fees, Class Counsel Disbursements or taxes of any of the lawyers, experts, advisors, agents, or representatives retained by Class Counsel, the Plaintiffs or the Settlement Class Members, any amounts to which the Fonds d'aide aux actions collectives in Quebec may be entitled, or any lien of any Person on any payment to any Settlement Class Member from the Settlement Amount.

12.3 Administration Expenses

(1) Except as provided herein, Administration Expenses may only be paid out of the Trust Account after the Effective Date.

(2) Notwithstanding section 12.3(1), Class Counsel shall pay the costs of the notices required by section 10.1(1) from the Trust Account, as they become due. Subject to section 5.2(2), the Settling Defendants shall not have any responsibility for the costs of the notices.

SECTION 13 – MISCELLANEOUS

13.1 Application of Settlement Terms in BC Proceeding

(1) In the event that the BC Proceeding is certified as a class proceeding on a contested basis as against the Non-Settling Defendants (or any of them), the terms of this Settlement Agreement shall be interpreted such that the cooperation and confidentiality obligations pursuant to section 4 and the bar order contained in section 7.1 (subject to the necessary amendments to reflect the BC *Supreme Court Rules*) apply in respect of the BC Proceeding.

13.2 Motions for Directions

- (1) Class Counsel or the Settling Defendants may apply to the Court as may be required for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.
- (2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

13.3 Headings, etc.

- (1) In this Settlement Agreement:
 - (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
 - (b) the terms “this Settlement Agreement”, “hereof”, “hereunder”, “herein”, and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

13.4 Computation of Time

- (1) In the computation of time in this Settlement Agreement, except where a contrary intention appears,
 - (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
 - (b) only in the case where the time for doing an act expires on a holiday as “holiday” is defined in the *Rules of Civil Procedure*, RRO 1990, Reg 194, the act may be done on the next day that is not a holiday.

13.5 Ongoing Jurisdiction

- (1) The Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement, and the Plaintiffs,

Settlement Class Members, Settling Defendants, and Releasees named as Defendants attorn to the jurisdiction of the Court for such purposes. Issues related to the administration of the Settlement Agreement, and the Trust Account shall be determined by the Court.

13.6 Governing Law

(1) This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

13.7 Entire Agreement

(1) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

13.8 Amendments

(1) This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto, and any such modification or amendment must be approved by the Court with jurisdiction over the matter to which the amendment relates.

13.9 Binding Effect

(1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Settling Defendants, the Settlement Class Members, the Releasors, the Releasees and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasors and each and every covenant and agreement made herein by the Settling Defendants shall be binding upon all of the Releasees.

13.10 Counterparts

(1) This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or electronic/PDF

signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

13.11 Negotiated Agreement

(1) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

13.12 Transaction

(1) This Settlement Agreement constitutes a transaction in accordance with Articles 2631 and following of the *Civil Code of Quebec*, and the Parties are hereby renouncing any errors of fact, of law and/or of calculation.

13.13 Recitals

(1) The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

13.14 Schedules

(1) The schedules annexed hereto form part of this Settlement Agreement.

13.15 Acknowledgements

(1) Each of the Parties hereby affirms and acknowledges that:

- (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;

- (c) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of this Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

13.16 Authorized Signatures

- (1) Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties identified above their respective signatures and their law firms.

13.17 Notice

- (1) Where this Settlement Agreement requires a Party to provide notice or any other communication or Document to another, such notice, communication or Document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiffs and for Class Counsel in the Proceedings:

Charles M. Wright and Linda Visser
Siskinds LLP
Barristers and Solicitors
680 Waterloo Street
London, ON N6A 3V8

Telephone: 519-672-2121
Facsimile: 519-660-7701
Email: charles.wright@siskinds.com
linda.visser@siskinds.com

David Sterns and Jean Marc Leclerc
Sotos LLP
Barristers and Solicitors
180 Dundas Street West, Suite 1250
Toronto, ON M5G 1Z8

Telephone: 416-977-0007
Facsimile: 416-977-0717
Email: dsterns@sotosllp.com
jleclerc@sotosllp.com

Reidar Mogerman and David Jones
Camp Fiorante Matthews Mogerman
Barristers and Solicitors
#400-856 Homer Street
Vancouver, BC V6B 2W5

Telephone: 604-689-7555
Facsimile: 604-689-7554
Email: rmogerman@cfmlawyers.ca
djones@cfmlawyers.ca

For Settling Defendants:

Kevin Wright
DLA PIPER (CANADA) LLP
Suite 2800, Park Place
666 Burrard Street
Vancouver, BC V6C 2Z7
Telephone: 604-643-6461
Facsimile: 604-605-3577
Email: kevin.wright@dlapiper.com

13.18 Date of Execution

(1) The Parties have executed this Settlement Agreement as of the date on the cover page.

KHURRAM SHAH and ALPINA HOLDINGS INC., on their own behalf and on behalf of the Settlement Class, by their counsel

Name of Authorized Signatory:

Linda Visser

Signature of Authorized Signatory:



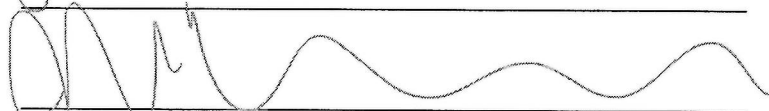
Siskinds LLP

Ontario Counsel

Name of Authorized Signatory:

Jean-Marc Leclerc

Signature of Authorized Signatory:



Solos LLP

Ontario Counsel

JONATHAN CRUZ, by his counsel

Name of Authorized Signatory:

David Jones

Signature of Authorized Signatory:

[Signature]

Camp Fiorante Matthews Mogerman

BC Counsel

MAXELL HOLDINGS, LTD. and MAXELL CORPORATION OF AMERICA, by their counsel

Name of Authorized Signatory:

Signature of Authorized Signatory:

DLA Piper (Canada) LLP

JONATHAN CRUZ, by his counsel

Name of Authorized Signatory: _____

Signature of Authorized Signatory: _____

Camp Fiorante Matthews Mogerman
BC Counsel

MAXELL HOLDINGS, LTD. and MAXELL CORPORATION OF AMERICA, by their counsel

Name of Authorized Signatory: _____

J. Kevin Wright

Signature of Authorized Signatory: _____

J. Kevin Wright
DLA Piper (Canada) LLP

SCHEDULE A – PROCEEDINGS

Proceeding	Plaintiffs	Defendants
Ontario Superior Court of Justice Court File No. CV-13-483540-00CP (the “Ontario Proceeding”)	Khurram Shah and Alpina Holdings Inc.	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
British Columbia Supreme Court File No. VLC-S-S-128141 (Vancouver Registry) (the “BC Proceeding”)	Jonathan Cruz	LG Chem Ltd., LG Chem America, Inc., Panasonic Corp., Panasonic Corporation of North America, Sanyo Electric Co., Ltd., Sanyo North America Corporation, Panasonic Canada Inc., Samsung SDI Co. Ltd., Samsung SDI America, Inc., Samsung SDI Mexico, S.A. de C.V., Samsung SDI (Hong Kong) Ltd., Tianjin Samsung SDI Co., Ltd., Shanghai Samsung SVA Electronic Devices Co., Ltd., Samsung Electronics Canada Inc., Sony Corporation, Sony Energy Devices Corporation, Sony Electronics Inc., Sony of Canada Ltd., Hitachi, Ltd., Hitachi Canada, Ltd., Hitachi-Maxell Ltd., Maxell Corporation of America and Maxell Canada

SCHEDULE “B”

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) , THE DAY
JUSTICE PERELL) OF , 2019

B E T W E E N :

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*

**ORDER
(Maxell Notice Approval)**

THIS MOTION made by the Plaintiffs for an Order approving the publication, short-form and long-form notices of settlement approval hearing (“Notice of Hearing”) and the plan of dissemination of said notices (the “Plan of Dissemination”) was heard by teleconference this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON READING the materials filed, including the settlement agreement dated ●, 2019 attached to this Order as Schedule “A” (the “Settlement Agreement”), and on hearing the submissions of counsel for the Plaintiffs and counsel for the Settling Defendants;

AND ON BEING ADVISED that the deadline for opting out of the Proceedings has passed, and that there were ● opt-outs;

AND ON BEING ADVISED that the Plaintiffs and the Settling Defendants consent to this Order and that the Non-Settling Defendants take no position on this motion:

1. **THIS COURT ORDERS** that, for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that the publication, short-form and long-form of the Notice of Hearing are hereby approved substantially in the form attached hereto as Schedules “B” to “D”, respectively.
3. **THIS COURT ORDERS** that the Plan of Dissemination is hereby approved in the form attached hereto as Schedule “E”.
4. **THIS COURT ORDERS** that the Notice of Hearing shall be disseminated in accordance with the Plan of Dissemination.

The Honourable Justice Perell

SCHEDULE "C"

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) _____, THE _____ DAY
JUSTICE PERELL) OF _____, 2019

B E T W E E N :

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*

**ORDER
(Maxell Settlement Approval)**

THIS MOTION made by the Plaintiffs for an Order certifying this action as a class proceeding for settlement purposes as against Maxell Holdings, Ltd. and Maxell Corporation of America (collectively the "Settling Defendants"), approving the Settlement Agreement entered into with the Settling Defendants, and dismissing this action against the Settling Defendants and Releasees named as Defendants was heard 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

- opt-outs;

AND ON BEING ADVISED that the deadline for objecting to the Settlement Agreement has passed and there have been ● objections to the Settlement Agreement;

AND ON BEING ADVISED that the Plaintiffs and the Settling Defendants consent to this Order and that the Non-Settling Defendants take no position on this motion:

ON READING the materials filed, including the settlement agreement attached to this Order as Schedule “A” (the “Settlement Agreement”), 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 the Ontario Proceeding be certified as a class proceeding as against the Settling Defendants for settlement purposes only.
4. **THIS COURT ORDERS** that the “Settlement Class” be defined as:

All Persons in Canada who purchased Lithium Batteries and/or Lithium Battery Products in Canada during the Class Period, except the Excluded Persons.

5. **THIS COURT ORDERS** that Khurram Shah and Alpina Holdings Inc. are appointed as the representative plaintiffs for the Settlement Class.
6. **THIS COURT ORDERS** that the following issue is common to Settlement Class Members:

Did the Settling Defendants conspire to fix, raise, maintain, and/or stabilize the price of Lithium Batteries and/or Lithium Battery Products directly or indirectly in Canada during the Class Period? If so, what damages, if any, did Settlement Class Members suffer?

7. **THIS COURT ORDERS** that paragraphs 3 to 6 of this Order, including the certification of the Ontario Proceeding as against the Settling Defendants for settlement purposes and the definitions of the Settlement Class and the Common Issue, and any reasons given by the Court in connection with paragraphs 3 to 6 of this Order, are without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Ontario Proceeding and, without restricting the generality of the foregoing, may not be relied on by any Person to establish jurisdiction, the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the Ontario Proceeding, as against the Non-Settling Defendants.
8. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class.
9. **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.
10. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each 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.
11. **THIS COURT ORDERS** that, upon the Effective Date, each 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.
12. **THIS COURT ORDERS** that, upon the Effective Date, each Other Action commenced in Ontario by any Settlement Class Member shall be and is hereby dismissed against the Releasees, without costs and with prejudice.
13. **THIS COURT ORDERS** that, upon the Effective Date, subject to paragraph 15, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.

14. **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, except for the continuation of the Proceedings and the Quebec Proceeding against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees or, if the BC Proceeding is not certified, the Ontario Proceeding is decertified, or the Quebec Proceeding ceases to be authorized with respect to the Non-Settling Defendants, the continuation of the claims asserted in the Proceedings or Quebec Proceeding on an individual basis or otherwise against any Non-Settling Defendant or named or unnamed co-conspirator that is not a Releasee.
15. **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 Settlement Class Members who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.
16. **THIS COURT ORDERS** that, upon the Effective Date, each 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.
17. **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, the Quebec Proceeding or any Other Actions or otherwise, by any Non-Settling Defendant, any Settled Defendant, any named or unnamed co-conspirator that is not a Releasee or any other Person or party, against a Releasee, or by a Releasee against any Non-Settling Defendant, any Settled Defendant, any named or

unnamed co-conspirator that is not a Releasee or any other Person or party, are barred, prohibited and enjoined in accordance with the terms of this Order.

18. **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 Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators 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 Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or 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 Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, only 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 Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to the Ontario Plaintiffs and Settlement Class Members, if any, and, for greater certainty, Settlement Class Members shall be entitled to claim and seek to recover on a joint and several basis as between the Non-Settling Defendants and/or 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

- 19. **THIS COURT ORDERS** that nothing in this Order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of 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*) or judgment against them in favour of Settlement Class Members in the Ontario Proceeding or the rights of the Ontario Plaintiffs and Settlement Class Members to oppose or resist any such arguments, except as provided for in this Order.
- 20. **THIS COURT ORDERS** that a Non-Settling Defendant may, on motion to this Court determined as if the Settling Defendants remained parties to the Ontario Proceeding and on at least twenty (20) days' notice to Counsel for the Settling Defendants, and not to be brought unless and until the Ontario Proceeding against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek orders for the following:
 - (a) documentary discovery and an affidavit of documents from the Settling Defendants in accordance with the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;
 - (b) oral discovery of a representative of the Settling Defendants, the transcript of which may be read in at trial;
 - (c) leave to serve a request to admit on the Settling Defendants in respect of factual matters; and/or

- (d) the production of a representative of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
21. **THIS COURT ORDERS** that the Settling Defendants retain all rights to oppose such motion(s) brought under paragraph 20. Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of Documents to be produced and/or for information obtained from discovery in accordance with paragraph 20. Notwithstanding any provision in this Order, on any motion brought pursuant to paragraph 20, the Court may make such orders as to costs and other terms as it considers appropriate.
22. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 20 above by service on Counsel for the Settling Defendants.
23. **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.
24. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any Settlement Class Member has or may have in the Ontario Proceeding against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees.
25. **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.
26. **THIS COURT ORDERS** that the Settlement Amount shall be held in the Trust Account by Siskinds LLP for the benefit of Settlement Class Members and after the Effective Date the Settlement Amount may be used to pay Class Counsel Disbursements incurred for the

benefit of the Settlement Class in the continued prosecution of the litigation against the Non-Settling Defendants. This paragraph shall not be interpreted as affecting the rights of the Plaintiffs or the Settlement Class to claim such Class Counsel Disbursements in the context of a future costs award in their favour against the Non-Settling Defendants, or the rights of the Non-Settling Defendants to oppose and resist any such claim.

27. **THIS COURT ORDERS** that in the event that some of the Settlement Amount remains in the Trust Account after payment of Class Counsel Disbursements, Class Counsel Fees and Administrative Expenses, Class Counsel shall seek direction from this Court regarding the distribution of the remaining funds.
28. **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.
29. **THIS COURT ORDERS** that this Order shall be declared null and void on subsequent motion made on notice in the event that the Settlement Agreement is terminated in accordance with its terms.
30. **THIS COURT ORDERS** that the Ontario Proceeding be and is hereby dismissed against the Settling Defendants and Releasees named as Defendants, without costs and with prejudice.
31. **THIS COURT ORDERS** that the approval of the Settlement Agreement and any reasons given by the Court in relation thereto, except any reasons given in connection with paragraphs 17-22 of this Order, are without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Ontario Proceeding and, without restricting the generality of the foregoing, may not be relied on by any Person to establish jurisdiction, the criteria for certification (including class definition) or the

existence or elements of the causes of action asserted in the Ontario Proceeding as against the Non-Settling Defendants.

THE HONOURABLE JUSTICE PERELL