

Further amended pursuant to the Order of Mr. Justice Masuhara pronounced December 6, 2019 and entered on January 14, 2020.
Further amended pursuant to the Order of Mr. Justice Masuhara pronounced November 1, 2016 and entered on December 1, 2016.
Consolidated pursuant to the order of Mr. Justice Masuhara of May 13, 2016 and entered on November 1, 2016

No. S-106462
Vancouver Registry

In the Supreme Court of British Columbia

Between **SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY**

NEIL GODFREY

JAN 14 2020

Plaintiffs

and



SONY CORPORATION, SONY OPTIARC, INC., SONY OPTIARC AMERICA INC., SONY OF CANADA LTD., SONY ELECTRONICS, INC., NEC CORPORATION, NEC CANADA INC., TOSHIBA CORPORATION, TOSHIBA SAMSUNG STORAGE TECHNOLOGY CORPORATION, TOSHIBA SAMSUNG STORAGE TECHNOLOGY KOREA CORPORATION, TOSHIBA OF CANADA LIMITED, TOSHIBA AMERICA INFORMATION SYSTEMS, INC., SAMSUNG ELECTRONICS CO., LTD., SAMSUNG ELECTRONICS CANADA INC., SAMSUNG ELECTRONICS AMERICA, INC., HITACHI-LG DATA STORAGE, INC., HITACHI-LG DATA STORAGE KOREA, INC., HITACHI LTD., LG ELECTRONICS, INC., LG ELECTRONICS CANADA, LG ELECTRONICS USA, INC., TEAC CORPORATION, TEAC AMERICA, INC., TEAC CANADA, LTD., KONINLIJKE PHILIPS ELECTRONICS N.V., LITE-ON IT CORPORATION OF TAIWAN, PHILIPS & LITE-ON DIGITAL SOLUTIONS CORPORATION, PHILIPS & LITE-ON DIGITAL SOLUTIONS USA, INC., PHILIPS ELECTRONICS LTD., QUANTA STORAGE, INC., QUANTA STORAGE AMERICA, INC., PANASONIC CORPORATION, PANASONIC CORPORATION OF NORTH AMERICA, PANASONIC CANADA INC., BENQ CORPORATION, BENQ AMERICA CORPORATION, BENQ CANADA CORP., PIONEER CORPORATION, PIONEER NORTH AMERICA, INC., PIONEER ELECTRONICS (USA) INC., PIONEER HIGH FIDELITY TAIWAN CO., LTD. AND PIONEER ELECTRONICS OF CANADA INC.

Defendants

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, R.S.B.C. 1996. c. 50

THIRD-FOURTH AMENDED NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (c) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (d) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or

- (d) if the time for response to civil claim has been set by order of the court, within that time.

PART 1: STATEMENT OF FACTS

THE REPRESENTATIVE PLAINTIFF

1. The plaintiff Neil Godfrey is a businessman resident in Whistler, British Columbia and a retail purchaser of a laptop computer and an Xbox 360 during the proposed Class Period (as defined below).

THE CLASS AND THE CLASS PERIOD

2. This action is brought on behalf of members of the following classes
- (a) all persons resident in ~~British Columbia-Canada~~ who purchased optical disc drives (“ODD”) manufactured or supplied by the defendants in this action, or products that contain ODD (“ODD Products”) in which the ODD was manufactured or supplied by the defendants in this action, in the period from January 1, 2004 through January 1, 2010, (the “Class Period”) (the “Non-Umbrella Purchaser Subclass Members”); and.
 - (b) all persons resident in ~~British Columbia-Canada~~ who purchased ODD that were not manufactured or supplied by the defendants in this action, or ODD Products in which the ODD was not manufactured or supplied by the defendants in this action, during the Class Period (the “Umbrella Purchaser Subclass”).
3. The “Class Members” or the “Class” means both the Umbrella Purchaser Subclass and the Non-Umbrella Purchaser Subclass.
4. ODDs means a device that reads and/or writes to CD-ROM, CD-R/RW, DVD-ROM, DVD-R/RW, Blu-Ray, Blu-Ray R/RW, and HD DVD. ODD Products mean computers ~~that contain ODDs~~, video game consoles ~~that contain ODDs~~ and ODDs that are designed to be attached externally to devices such as computers.

OPTICAL DISC DRIVES

5. An ODD is a memory storage device that uses laser light or electromagnetic waves near the light spectrum to read and/or record data on optical discs. Some ODD can only read from discs, but many newer drives can both read and record. ODDs that record are commonly referred to as “burners” or “writers”. Compact discs, DVDs and Blu-ray discs are common types of optical media which can be read and recorded by ODD.

THE DEFENDANTS

6. Various persons and/or firms involved in the manufacturing, marketing, selling and/or distribution of ODD to customers throughout Canada, not named as defendants herein, participated as co-conspirators in the violations alleged herein and may have performed acts and made agreements in furtherance thereof. The named defendants are jointly and severally liable for the actions of, and damages allocable to, the co-conspirators.

Sony / Optiarc

7. Sony Corporation has its principal place of business in Tokyo, Japan. During the Class Period, Sony Corporation manufactured, marketed sold and/or distributed ODD and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates or subsidiaries.
8. Sony of Canada Ltd. ("Sony Canada") has its principal place of business in Toronto, Ontario. Sony Canada is a subsidiary of Sony Corporation. During the Class Period, Sony Canada manufactured, marketed, sold and/or distributed ODD and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates or subsidiaries.
9. Sony Electronics, Inc. ("Sony Electronics") has its principal place of business in New York, New York. Sony Electronics is a wholly-owned subsidiary of Sony Corporation of America, which in turn is a wholly-owned subsidiary of Sony Americas Holding, Inc., a wholly-owned subsidiary of Sony Corporation. During

the Conspiracy Period, Sony Electronics manufactured, marketed, sold and/or distributed ODD and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

10. The business of each of Sony Corporation, Sony Canada and Sony Electronics is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, market, sale and/or distribution of ODD and ODD Products in Canada and for the purposes of the conspiracy described hereinafter.

NEC

11. NEC Corporation ("NEC") is a Japanese company with its principal place of business at 7-1 Shiba, 5-chome, Minato-Ku, Tokyo, 108-8001, Japan. Prior to 2008, NEC owned 45 percent of Defendant Sony Optiarc, Inc. During the Class Period, NEC Corporation manufactured, marketed, sold and/or distributed ODD and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates or subsidiaries.
12. NEC Canada, Inc. ("NEC Canada") has its business address at 100 King Street West, Toronto, Ontario, Canada M5X 1B8. NEC Canada is a subsidiary of NEC. During the Class Period, NEC Canada manufactured, marketed, sold and/or distributed ODD and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates or subsidiaries.
13. The business of each of NEC and NEC Canada is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, market, sale and/or distribution of ODD and ODD Products in Canada and for the purposes of the conspiracy described hereinafter.

Sony/NEC Joint Venture

14. Sony Optiarc Inc. has its principle place of business in Kanagawa, Japan. Sony Optiarc Inc., formerly known as Sony NEC Optiarc Inc. was established on April 3, 2006 as a joint venture between Sony Corporation (55% interest) and NEC Corporation (45% interest). On September 11, 2008, Sony Corporation announced that it had entered into an agreement with NEC Corporation, pursuant to which NEC Corporation would transfer its 45% interest of Sony NEC Optiarc Inc. to Sony Corporation, making Sony NEC Optiarc Inc. a wholly owned subsidiary of Sony Corporation. As a result of this agreement, Sony NEC Optiarc Inc. changed its name to Sony Optiarc Inc. During the Class Period, Sony Optiarc Inc. manufactured, marketed, sold and/or distributed ODD and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates or subsidiaries.
15. Sony Optiarc America Inc. ("Sony Optiarc America") has its principle place of business in San Jose, California. Sony Optiarc America is a wholly owned subsidiary of Sony Optiarc Inc. During the Class Period, Sony Optiarc America manufactured, marketed, sold and/or distributed ODD and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates or subsidiaries.
16. The business of each of Sony Corporation, Sony Optiarc Inc. and Sony Optiarc America is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, market, sale and/or distribution of ODD and ODD Products in Canada and for the purposes of the conspiracy described hereinafter.
17. During the Conspiracy Period, between April 3, 2006 and September 11, 2008, the business of each of NEC Corporation, Sony Optiarc Inc. and Sony Optiarc America was inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, market, sale and/or distribution

of ODD and ODD Products in Canada and for the purposes of the conspiracy described hereinafter.

Toshiba

18. Toshiba Corporation has its principal place of business in Tokyo, Japan. During the Class Period, Toshiba Corporation manufactured, marketed, sold or distributed ODD and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates or subsidiaries.
19. Toshiba of Canada Limited ("Toshiba Canada") has its principal place of business in Markham, Ontario. Toshiba Canada is a subsidiary of Toshiba Corporation. During the Class Period, Toshiba Canada manufactured, marketed, sold and/or distributed ODD and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates or subsidiaries.
20. Toshiba America Information Systems, Inc. ("TAIS") has its principal place of business in Irvine, California. TAIS is a wholly-owned and controlled subsidiary of Toshiba America, Inc., which is in turn a wholly-owned subsidiary of Toshiba Corporation. During the Conspiracy Period, TAIS manufactured, marketed, sold and/or distributed ODD and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates or subsidiaries.
21. The business of each of Toshiba Corporation, Toshiba Canada, and TAIS is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, market, sale and/or distribution of ODD and ODD Products in Canada and for the purposes of the conspiracy described hereinafter.

Samsung

22. Samsung Electronics Co., Ltd. ("Samsung Electronics") has its principal place of business in Seoul, Korea. During the Conspiracy Period, Samsung Electronics manufactured, marketed, sold and/or distributed ODD and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
23. Samsung Electronics Canada Inc. ("Samsung Canada") has its principal place of business in Markham, Ontario. Samsung Canada is a subsidiary of Samsung Electronics. During the Conspiracy Period, Samsung Canada manufactured, marketed, sold and/or distributed ODD and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
24. Samsung Electronics America, Inc. ("Samsung America") has its principal place of business in Ridgefield Park, New Jersey. Samsung America is a subsidiary of Samsung Electronics. During the Conspiracy Period, Samsung America manufactured, marketed, sold and/or distributed ODD and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
25. The business of each of Samsung Electronics, Samsung Canada, and Samsung America is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, market, sale and/or distribution of ODD and ODD Products in Canada and for the purposes of the conspiracy described hereinafter.

Toshiba/Samsung Joint Venture

26. Toshiba Samsung Storage Technology Corporation ("TSST") has its principal place of business in Tokyo, Japan. TSST was established on April 1, 2004 as a joint venture between Toshiba Corporation (51% interest) and Samsung Electronics (49% interest). During the Conspiracy Period, TSST manufactured,

marketed, sold and/or distributed ODD and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

27. Toshiba Samsung Storage Technology Korea Corporation ("TSST Korea") has its principal place of business in Gyonggi-do, South Korea. TSST Korea is a wholly-owned subsidiary of Toshiba Corporation and/or Samsung Electronics. During the Conspiracy Period, TSST Korea manufactured, marketed, sold and/or distributed ODD and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
28. Throughout the Conspiracy Period, the business of each of Toshiba Corporation, TSST and TSST Korea was inextricably interwoven with that of the other and each was the agent of the other for the purposes of the manufacture, market, sale and/or distribution of ODD and ODD Products in Canada and for the purposes of the conspiracy described hereinafter.
29. Throughout the Conspiracy Period, the business of each of Samsung Corporation, TSST and TSST Korea was inextricably interwoven with that of the other and each was the agent of the other for the purposes of the manufacture, market, sale and/or distribution of ODD and ODD Products in Canada and for the purposes of the conspiracy described hereinafter.

Hitachi

30. Hitachi Ltd. ("Hitachi") has its principal place of business in Tokyo, Japan. During the Class Period, Hitachi manufactured, marketed, sold or distributed ODD and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates or subsidiaries.

LG

31. LG Electronics Inc. ("LG Electronics") has its principal place of business in Seoul, South Korea. During the Class Period, LG Electronics manufactured, marketed,

sold and/or distributed ODD and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates or subsidiaries.

32. LG Electronics Canada ("LG Canada") has its principal place of business in Mississauga, Ontario. LG Canada is a subsidiary of LG Electronics. During the Class Period, LG Canada manufactured, marketed, sold and/or distributed ODD and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
33. LG Electronics USA, Inc. ("LG USA") has its principal place of business in Englewood Cliffs, New Jersey. LG USA is a wholly-owned subsidiary of LG Electronics. During the Conspiracy Period, LG USA manufactured, marketed, sold and/or distributed ODD and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
34. The business of each of LG Electronics, LG Canada and LG USA is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, market, sale and/or distribution of ODD and ODD Products in Canada and for the purposes of the conspiracy described hereinafter.

Hitachi/LG Joint Venture

35. Hitachi-LG Data Storage Inc. ("Hitachi-LG Data") has its principal place of business in Tokyo, Japan. Hitachi-LG Data was established in November 2000 as a joint venture between Hitachi (51% interest) and LG Electronics (49% interest). During the Conspiracy Period, Hitachi-LG Data manufactured, marketed, sold and/or distributed ODD and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

36. Hitachi-LG Data Storage Korea, Inc. (“Hitachi-LG Data Korea”) has its principal place of business in Seoul, South Korea. Hitachi-LG Data Korea a subsidiary of Hitachi-LG Data Storage Inc. During the Conspiracy Period, Hitachi-LG Data Korea manufactured, marketed, sold and/or distributed ODD and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
37. Throughout the Conspiracy Period, the business of each of Hitachi, Hitachi-LG Data and Hitachi-LG Data Korea was inextricably interwoven with that of the other and each was the agent of the other for the purposes of the manufacture, market, sale and/or distribution of ODD and ODD Products in Canada and for the purposes of the conspiracy described hereinafter.
38. Throughout the Conspiracy Period, the business of each of LG Electronics, Hitachi-LG Data and Hitachi-LG Data Korea was inextricably interwoven with that of the other and each was the agent of the other for the purposes of the manufacture, market, sale and/or distribution of ODD and ODD Products in Canada and for the purposes of the conspiracy described hereinafter.

TEAC

39. TEAC Corporation has its principal place of business in Tokyo, Japan. During the Class Period, TEAC Corporation manufactured, marketed, sold and/or distributed ODD and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates or subsidiaries.
40. TEAC America, Inc. (“TEAC America”) has its principal place of business in Montebello, California. TEAC America is a subsidiary of TEAC Corporation. During the Class Period, TEAC America manufactured, marketed, sold and/or distributed ODD and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates or subsidiaries.

41. TEAC Canada, Ltd. ("TEAC Canada") has its principal place of business at 165 Matheson Blvd., East, Unit 7, Mississauga, Ontario L4Z 3K2, Canada. TEAC Canada is a subsidiary of TEAC Corporation. During the Class Period, TEAC Canada manufactured, marketed, sold and/or distributed ODD and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates or subsidiaries.
42. The business of each of TEAC Corporation, TEAC America and TEAC Canada is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, market, sale and/or distribution of ODD and ODD Products in Canada and for the purposes of the conspiracy described hereinafter.

Philips

43. Koninklijke Philips Electronics N.V. ("Philips") has its principal place of business in Eindhoven, The Netherlands. During the Class Period, Philips manufactured, marketed, sold and/or distributed ODD and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates or subsidiaries.

44. Philips Electronics Ltd. ("Philips Canada") has its principal place of business in Markham, Ontario. Philips Canada is a subsidiary of Philips. During the Class Period, Philips Canada manufactured, marketed, sold and/or distributed ODD and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates or subsidiaries.
45. The business of each of Philips and Philips Canada is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, market, sale and/or distribution of ODD and ODD Products in Canada and for the purposes of the conspiracy described hereinafter.

Lite-On

46. Lite-On IT Corporation of Taiwan ("Lite-On") has its principal place of business at 12F, 392, Ruey Kuang Road, Neihu, Taipei 114, Taiwan. During the Class Period, Lite-On manufactured, marketed, sold or distributed ODD and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates or subsidiaries.

Quanta

47. Quanta Storage Inc. ("Quanta Storage") is a Taiwanese entity with its principal place of business at 3F, No. 188, Wenhua 2nd Rd., Guishan Shiang, Taoyuan County 333, Taiwan. Quanta Storage was incorporated on February 10, 1999 in Taoyuan County, Taiwan. Quanta Storage manufactured ODDs and ODD Products during the class period. During the Class Period, Quanta Storage manufactured, marketed, sold and/or distributed ODD and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates or subsidiaries.
48. Quanta Storage America, Inc. ("Quanta America") is a California corporation with its principal place of business in Fremont, California. Quanta America is a wholly-owned and controlled subsidiary of Quanta Storage. During the Class Period, Quanta America manufactured, marketed, sold and/or distributed ODD and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates or subsidiaries.
49. The business of each of Quanta Storage and Quanta America is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, market, sale and/or distribution of ODD and ODD Products in Canada and for the purposes of the conspiracy described hereinafter.

Panasonic

50. Panasonic Corporation, is a Japanese entity with its principal place of business at 1006 Oaza Kadoma, Kadoma, Osaka 571-8501, Japan. Up until October 1, 2008, Panasonic Corporation was known as Matsushita Electric Industrial Co., Ltd. During the Class Period, Panasonic Corporation manufactured, marketed, sold and/or distributed ODD and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates or subsidiaries.
51. Panasonic Corporation of North America ("PCNA"), formerly known as Matsushita Electric Corporation of America, is a Delaware corporation with its principal place of business at 1 Panasonic Way, Secaucus, New Jersey. PCNA is a wholly-owned and controlled subsidiary of Panasonic Corporation. During the Class Period, PCNA manufactured, marketed, sold and/or distributed ODD and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates or subsidiaries.
52. Panasonic Canada Inc. ("Panasonic Canada") is a Canadian corporation with its principal place of business at 5770 Ambler Drive, Mississauga, Ontario, Canada L4W 2T3. Panasonic Canada is a subsidiary of Panasonic Corporation. During the Class Period, Panasonic Canada manufactured, marketed, sold and/or distributed ODD and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates or subsidiaries.
53. The business of each of Panasonic Corporation, PCNA and Panasonic Canada is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, market, sale and/or distribution of ODD and ODD Products in Canada and for the purposes of the conspiracy described hereinafter.

BenQ

54. BenQ Corporation (BenQ) is a Taiwanese company, with its principal place of business at 16 Jihu Rd., Neihu, Taipei 114, Taiwan. During the Class Period BenQ Corporation, separately or through Philips & BenQ Digital Storage Corporation, manufactured, marketed, sold and/or distributed ODD and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates or subsidiaries.
55. BenQ America Corporation ("BenQ America") is a California corporation with its principal place of business at 15375 Barranca Parkway, Suite A-205, Irvine, California 92608. BenQ America Corp. is a wholly owned and controlled subsidiary of BenQ Corporation. During the Class Period BenQ America Corp. manufactured, marketed, sold and/or distributed ODD and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates or subsidiaries.
56. BenQ Canada Corp. ("BenQ Canada") is an Ontario corporation with its principal place of business at 3-1750 The Queensway, Toronto, Ontario, Canada M9C 5H5. BenQ Canada Corp. is a subsidiary of BenQ Corporation. During the Class Period BenQ Canada Corp. manufactured, marketed, sold and/or distributed ODD and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates or subsidiaries.
57. The business of each of BenQ, BenQ America and BenQ Canada is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, market, sale and/or distribution of ODD and ODD Products in Canada and for the purposes of the conspiracy described hereinafter.

Philips/BenQ and Philips/Lite-On Joint Venture

58. BenQ formed a joint venture with Philips in February of 2003 to manufacture and distribute ODD and ODD Products that was called BenQ Philips Digital Storage

("BPDS"). Philips held 51% of BPDS and BenQ owned the remaining 49%. In April of 2006, Lite-On acquired BenQ's optical business and eventually replaced BenQ in BPDS, which was renamed Philips & Lite-On Digital Solutions Corporation ("PLDS"). PLDS has its principal place of business in Taipei, Taiwan. PLDS was established in March 2007 as a joint venture between PLDS. During the Conspiracy Period, PLDS manufactured, marketed, sold and/or distributed ODD and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

59. Philips & Lite-On Digital Solutions USA, Inc. ("PLDS USA") has its principal place of business in Fremont, California. PLDS USA is a subsidiary of PLDS. During the Conspiracy Period, PLDS USA manufactured, marketed, sold and/or distributed ODD and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
60. Throughout the Conspiracy Period, the business of each of Philips, PLDS (formerly known as BPDS) and PLDS USA was inextricably interwoven with that of the other and each was the agent of the other for the purposes of the manufacture, market, sale and/or distribution of ODD and ODD Products in Canada and for the purposes of the conspiracy described hereinafter.
61. From the beginning of the Conspiracy Period until April 2006, the business of each of BenQ and PLDS (formerly known as BPDS) was inextricably interwoven with that of the other and each was the agent of the other for the purposes of the manufacture, market, sale and/or distribution of ODD and ODD Products in Canada and for the purposes of the conspiracy described hereinafter.
62. From April 2006 until the end of the Conspiracy Period, the business of each of Lite-On, PLDS and PLDS USA was inextricably interwoven with that of the other and each was the agent of the other for the purposes of the manufacture, market,

sale and/or distribution of ODD and ODD Products in Canada and for the purposes of the conspiracy described hereinafter.

Pioneer

63. Pioneer Corporation is a Japanese company with its headquarters located at 1-1 Shin-ogura, Saiwai-ku, Kawasaki—shi, Kanagawa 212-0031, Japan. During the Class Period, Pioneer Corporation manufactured, marketed, sold and/or distributed ODDs and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates or subsidiaries.
64. Pioneer North America, Inc. (“Pioneer N.A.”) is a U.S. company with its principal place of business at 1925 E Dominguez Street, Long Beach, California 90810. During the Class Period, Pioneer manufactured, marketed, sold and/or distributed ODDs and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates or subsidiaries.
65. Pioneer Electronics (USA) Inc. (“Pioneer USA”) is a U.S. company with its principal place of business at 1925 E Dominguez Street, Long Beach, California 90810. During the Class Period, Pioneer manufactured, marketed, sold and/or distributed ODDs and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates or subsidiaries.
66. Defendant Pioneer High Fidelity Taiwan Co., Ltd is a Taiwanese company with its principal place of business at 13th Floor, No. 44, Chung Shan North Road, Sec. 2, Taipei, Taiwan. During the Class Period, Pioneer manufactured, marketed, sold and/or distributed ODDs and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates or subsidiaries.

67. Defendant Pioneer Electronics of Canada Inc. is a Canadian company with its principal place of business at 340 Ferrier Street, Unit 2, Markham, Ontario L3R 2Z5, Canada. During the Class Period, Pioneer manufactured, marketed, sold and/or distributed ODDs and ODD Products to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates or subsidiaries.
68. The business of each defendant is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, marketing, sale, and/or distribution of ODDs and ODD Products in Canada and for the purposes of the conspiracy described hereinafter.

THE ODD INDUSTRY

69. During the Class Period, the defendants and their co-conspirators were the dominant suppliers of ODD both in Canada and internationally. The ODD industry has several characteristics that served to facilitate the conspiracy alleged herein.
70. During the Class Period, PLDS controlled 30%, Hitachi LG Data controlled 27%, TSST controlled 20%, and Sony Optiarc controlled 17% of the global ODD market meaning these defendants collectively controlled 94% of the global ODD market.
71. There are high barriers to entry by manufacturers into the ODD market related to complexity in developing the technology, intellectual property rights and the high capital cost of production facilities. Efficient ODD fabrication plants are large and expensive. In order to compete in the ODD industry, companies have to spend hundreds of millions of dollars in research and development, licensing of intellectual property rights and manufacturing facilities and equipment. These barriers to entry make it less likely that new competitors will enter the ODD market and undercut the defendants' cartel prices.

72. There has been a trend towards consolidation in the ODD industry. In November 2000, Hitachi and LG Electronics established a joint venture (Hitachi LG Data). In February 2003, BenQ and Philips formed an ODD joint venture, which later became a joint venture between Philips & Lite-On in March 2007 (PLDS). In April 2004, Toshiba Corporation and Samsung Electronics formed an ODD joint venture. In April 2006, Sony Corporation and NEC Corporation established an ODD joint venture.
73. Since its inception, the ODD industry has been typified by standardization. The standardization of ODD and ODD Products is driven by industry participants and by organizations whose members include the defendants and their co-conspirators, such as ECMA International, the International Standardization Organization, and the International Electrotechnical Commission.
74. The ODD industry is also subject to patents and intellectual property rights belonging to the defendants and their co-conspirators that require adoption of standardized product specifications. Many patents are held by patent pools that facilitate collusion.
75. As a result of the standardization of ODDs, ODDs are largely interchangeable, such that the ODDs of one manufacturer are readily substitutable for the ODDs of another manufacturer. Price is the primary factor driving customer choice between ODDs of the different manufacturers, and is the most important competitive factor for manufacturers of ODDs.
76. The ODD industry is served by several major trade organizations that put on industry-wide meetings several times a year. These meetings have facilitated collusion, and the trade associations have themselves functioned as a means by which the conspiracy was effectuated and implemented. Such associations involving the defendants include the DVD Forum, the Optical Storage Technology Association ("OSTA"), and the International Symposium of Optical Memory ("ISOM").

77. The DVD Forum is an organization responsible for the licensing and distribution of DVD products whose purpose is to exchange and disseminate ideas and information about the DVD Format and its technical capabilities, improvements and innovations. Hitachi, LG Electronics, Samsung Electronics, Sony Corporation, Toshiba Corporation and Pioneer Corporation are members of the DVD Forum steering committee.
78. During the Class Period, ODD industry organizations held multiple meetings and conferences attended by the defendants and their co-conspirators. These meetings and conferences provided the defendants and their co-conspirators with the opportunity to meet, discuss and agree upon the pricing of ODD.

THE CONSPIRACY

79. During the Class Period, senior executives and employees of the defendants and their co-conspirators, acting in their capacities as agents for the defendants and their co-conspirators, engaged in communications, conversations and attended meetings with each other at times and places, some of which are unknown to the Plaintiff, and as a result of the communications and meetings the defendants and their co-conspirators unlawfully conspired or agreed to:
- (a) enhance unreasonably the prices of ODDs globally including in Canada;
 - (b) exchange information in order to monitor and enforce adherence to the agreed upon prices for ODDs;
 - (c) allocate the market share, customers, or to set specific sales volumes of ODDs that each defendant and their co-conspirator would supply in Canada; and
 - (d) to lessen unduly competition in the production, manufacture, sale or supply of ODDs globally including Canada.
80. In furtherance of the conspiracy, during the Class Period, the following acts were done by the Defendants, their co-conspirators and their servants and agents:

- (a) they increased or maintained the prices of ODDs globally including Canada;
- (b) they allocated the volumes of sales of, and customers and markets for ODDs among themselves;
- (c) they reduced the supply of ODDs;
- (d) they communicated secretly, in person and by telephone, to discuss and fix prices and volumes of sales of ODDs;
- (e) they exchanged information regarding the prices and volumes of sales of ODDs and ODD Products for the purposes of monitoring and enforcing adherence to the agreed upon prices, volumes of sales and markets;
- (f) they refrained from submitting truly competitive bids for ODDs in Canada and elsewhere;
- (g) they submitted collusive, non-competitive and rigged bids for ODDs in Canada and elsewhere;
- (h) they took active steps to, and did, conceal the unlawful conspiracy from their customers; and
- (i) they disciplined any corporation which failed to comply with the conspiracy.

81. The defendants and their co-conspirators were motivated to conspire and their predominant purposes and predominant concerns were:

- (a) to harm the plaintiff and other Class Members by requiring them to pay artificially high prices for ODDs and ODD Products; and
- (b) to illegally increase their profits on the sale of ODDs.

82. The Canadian subsidiaries of the foreign defendants and their co-conspirators participated in and furthered the objectives of the conspiracy by knowingly modifying their competitive behaviour in accordance with instructions received from their respective parent companies and thereby acted as agents in carrying out the conspiracy and are liable for such acts.
83. The acts alleged in this claim to have been done by each corporate defendant were authorized, ordered and done by each corporate defendant's officers, directors, agents, employees or representatives while engaged in the management, direction, control or transaction of its business affairs.

CAUSES OF ACTION

Unlawful Acts: Breach of the Competition Act

84. The acts particularized in paragraphs 79-83 are in breach of s. 45 of the *Competition Act*, R.S. 1985, c. 19 (2nd Suppl.) ("*Competition Act*").

Civil Conspiracy

85. Further, or alternatively, the acts particularized in paragraphs 79-83 were unlawful acts directed towards the plaintiff and other Class Members, which unlawful acts the defendants knew in the circumstances would likely cause injury to the Plaintiff and other Class Members and, as such, the defendants are liable for the tort of civil conspiracy. Further, or alternatively, the predominant purpose of the acts particularized in paragraphs 79-83 was to injure the plaintiff and the other Class Members and the defendants are liable for the tort of civil conspiracy.

Breach of the Competition Act

86. Further, or alternatively, the acts particularized in paragraphs 79-83 are in breach of s. 45 of the *Competition Act*, R.S. 1985, c. 19 (2nd Suppl.) ("*Competition Act*") and render the defendants liable to pay damages and costs of investigation pursuant to s. 36 of the *Competition Act*.

Unjust Enrichment and Waiver of Tort

87. Further, the plaintiff waives the tort and pleads that the Non-Umbrella Purchaser Subclass Members are entitled to recover under restitutionary principles.
88. The defendants have each been enriched by the receipt of the artificially induced overcharge on the sale of ODDs and ODD Products. Non-Umbrella Purchaser Subclass Members have suffered a corresponding deprivation. There is no juristic reason for the enrichment as the defendants' receipt of the overcharge is the result of wrongful or unlawful acts as described in paragraphs 79-83. As such, there is and can be no juridical reason justifying the defendants' retention of the overcharge and, in particular, any contracts upon which the defendants purport to rely to receive the overcharge are void because they are (1) prohibited by statute, entered into with the object of doing an act prohibited by statute, and/or require performance of an act prohibited by statute, (2) in contravention of common law principles, and/or (3) in contravention of public policy, in that they are, amongst other things, in restraint of trade.
89. The defendants are required to make restitution to the plaintiff and other Non-Umbrella Purchaser Subclass Members of the artificially induced overcharge from the sale of ODDs and ODD Products because, among other reasons:
 - (a) the defendants were unjustly enriched by the artificially induced overcharge;
 - (b) the Non-Umbrella Purchaser Subclass Members situated suffered a deprivation because of the artificially induced overcharge;
 - (c) the defendants engaged in wrongful conduct and committed unlawful acts in conspiring to fix the price of ODD and allocate market share and volume of ODD;
 - (d) the artificially induced overcharge was acquired in such circumstances that the defendants may not in good conscience retain it;

- (e) justice and good conscience require restitution;
- (f) the integrity of the marketplace would be undermined if the court did not order restitution; and
- (g) there are no factors that would render restitution unjust.

90. The plaintiff pleads that equity and good conscience requires the defendants to make restitution to the Non-Umbrella Purchaser Subclass Members of all the artificially induced overcharge from the sale of ODDs and ODD Products in CanadaBritish Columbia.

DAMAGES

91. The plaintiff and the other Class Members suffered the following damages:

- (a) the price of ODDs and ODD Products has been enhanced unreasonably at artificially high and non-competitive levels; and
- (b) competition in the sale of ODDs has been unduly restrained.

92. During the period covered by this claim, the plaintiff and the other Class Members purchased ODDs and ODD Products. By reason of the alleged violations of the Competition Act and the common law, the plaintiff and the other Class Members paid more for ODDs and ODD Products than they would have paid in the absence of the illegal conspiracy and, as a result, they have been injured in their business and property and have suffered damages in an amount presently undetermined.

PUNITIVE DAMAGES

93. The plaintiff pleads that the defendants' conduct as particularized in paragraphs 79-83 was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful, in contumelious disregard of the plaintiff's rights and the rights of each Class Member, indifferent to the consequences and, as such, renders the defendants liable to pay punitive damages.

JURISDICTION

94. There is a real and substantial connection between British Columbia and Canada and the facts alleged in this proceeding and the plaintiff and other Class Members plead and rely upon the *Court Jurisdiction and Proceedings Transfer Act*, RSBC 2003 Ch. 28 (the "CJPTA") in respect of these defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and Canada and the facts alleged in this proceeding exists pursuant to ss.10 (f) –(i) CJPTA because this proceeding:

- (f) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia and Canada;
- (g) concerns a tort committed in British Columbia and Canada;
- (h) concerns a business carried on in British Columbia and Canada; and
- (i) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia and Canada.

PART 2: RELIEF SOUGHT

95. The plaintiff, on its own behalf, and on behalf of the Class Members, claims against the defendants:

- (a) a declaration that the defendants conspired with each other to raise, maintain, fix and/or stabilize the price of ODDs during the period beginning at least January 1, 2004 through January 1, 2010;
- (b) an order certifying this action as a class proceeding and appointing the plaintiff as representative plaintiff;
- (c) general damages for conspiracy,
- (d) general damages for conduct that is contrary to Part VI of the *Competition Act*;

- (e) an injunction enjoining the defendants from conspiring with each other or with any co-conspirators to raise, maintain, fix and/or stabilize the price of ODDs;
- (f) a declaration that the defendants have been unjustly enriched at the expense of the plaintiff and the other Non-Umbrella Subclass Members by their receipt of the ill-gotten overcharge;
- (g) a declaration that the defendants account for and make restitution to the Non-Umbrella Subclass Members in an amount equal to the ill-gotten overcharge;
- (h) punitive and/or exemplary damages;
- (i) costs of investigation and prosecution of this proceeding pursuant to s.36 of the *Competition Act*;
- (j) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 78, s. 128; and
- (k) such further and other relief as to this Honourable Court may seem just.

PART 3: LEGAL BASIS

- 96. The plaintiff pleads and relies upon the *Class Proceedings Act*, R.S.B.C., 1996 c. 50, and the *Competition Act*.
- 97. Further, the plaintiff claims that the acts particularized in paragraphs 79-83 were unlawful acts directed towards the plaintiff and the other Class Members which unlawful acts the defendants knew in the circumstances would likely cause injury to the plaintiff and the other Class Members, and the defendants are liable for the tort of civil conspiracy.
- 98. Further, the predominant purpose of the acts particularized in paragraphs 79-83 was to injure the plaintiff and the other Class Members and the defendants are liable for the tort of civil conspiracy.

99. In the alternative, the plaintiff waives the tort and pleads that the Non-Umbrella Subclass Members are entitled to recover damages under restitutionary principles.
100. The defendants have each been unjustly enriched by the receipt of the artificially induced overcharge on the sale of ODDs and ODD Products. The Non-Umbrella Subclass Members have suffered a deprivation in the amount of such overcharge attributable to the sale of ODDs and ODD Products in ~~British Columbia~~Canada.
101. Since the artificially induced overcharge received by the defendants from each Non-Umbrella Subclass Member resulted from the defendants' wrongful or unlawful acts, there is and can be no juridical reason justifying the defendants' retaining any part of such overcharge.
102. The defendants are required to make restitution to the Non-Umbrella Subclass Members of all of the artificially induced overcharge from the sale of ODDs and ODD Products because, among other reasons:
- (a) the defendants were unjustly enriched by the artificially induced overcharge;
 - (b) the Non-Umbrella Subclass Members suffered a deprivation because of the artificially induced overcharge;
 - (c) the defendants engaged in inappropriate conduct and committed a wrongful act in conspiring to fix the price of ODDs and allocate market share and volume of ODDs;
 - (d) the artificially induced overcharge was acquired in such circumstances that the defendants may not in good conscience retain it;
 - (e) justice and good conscience require restitution;
 - (f) the integrity of the marketplace would be undermined if the court did not order restitution; and

(g) there are no factors that would, in respect of the artificially induced overcharge, render the imposition of a constructive trust unjust.

103. The plaintiff pleads that equity and good conscience require the defendants to make restitution to the Non-Umbrella Subclass Members of all of the artificially induced overcharge from the sale of ODDs and ODD Products in **British ColumbiaCanada**.

Plaintiff's address for service:

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Fax: (604) 689-7554

Email: service@cfmlawyers.ca

Place of trial: Vancouver Law Courts

Address of the registry: 800 Smithe Street, Vancouver, BC V6Z 2E1

Date: 4/Sep/2010



Signature of lawyer
for plaintiff

J.J. Camp, Q.C

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE
OUTSIDE BRITISH COLUMBIA**

The plaintiff Neil Godfrey claims the right to serve this pleading on the defendants outside British Columbia on the ground that there is a real and substantial connection between British Columbia and the facts alleged in this proceeding and the plaintiff and other Class Members plead and rely upon the *Court Jurisdiction and Proceedings Transfer Act*, RSBC 2003 Ch. 28 (the "CJPTA") in respect of these defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to ss.10 (f) –(i) of the CJPTA because this proceeding:

- (f) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;
- (g) concerns a tort committed in British Columbia;
- (h) concerns a business carried on in British Columbia; and
- (i) is a claim for an injunction ordering a party to do or refrain from doing anything in *British Columbia*

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX

CONCISE SUMMARY OF NATURE OF CLAIM:

This proposed class action claim involves allegations of a price fixing conspiracy by manufacturers of optical disc drives and products containing optical disc drives causing harm to purchasers of such products in ~~British Columbia~~Canada.

THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)

- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

1. *Class Proceedings Act*, R.S.B.C., 1996 c. 50,
2. *Competition Act*, R.S. 1985, c. 19, (2nd Supp.)