

SEP 14 2015

No. _____
Vancouver Registry



In the Supreme Court of British Columbia

Between

DANIEL KLEIN

Plaintiff

and

**PANASONIC CORPORATION, PANASONIC CORPORATION OF
NORTH AMERICA, PANASONIC INDUSTRIAL DEVICES SALES
COMPANY OF AMERICA, PANASONIC CANADA INC.; KOA
CORPORATION, KOA SPEER ELECTRONICS, INC., MURATA
MANUFACTURING CO., LTD., MURATA ELECTRONICS NORTH
AMERICA, INC., ROHM CO. LTD., ROHM SEMICONDUCTOR U.S.A.,
LLC, VISHAY INTERTECHNOLOGY, INC., YAGEO CORPORATION,
AND YAGEO AMERICA CORPORATION**

Defendants

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

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiff 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

1. This action arises from a conspiracy to fix, raise, maintain, or stabilize prices of resistors ("Resistors") used in electronic devices sold in Canada including British Columbia, and elsewhere. During the period commencing as early as January 1, 2005 to the present (the "Class Period"), the defendants and their senior executives participated in illegal and secret meetings and made agreements to

fix the prices for Resistors sold in Canada, including British Columbia, and elsewhere.

2. Resistors are electrical components that serve as one of the fundamental building blocks of all electrical circuits. Virtually every electrical circuit contains one or more resistors. Generally, resistors serve a regulatory function by assuring that appropriate levels of voltage go to specific parts of an electronic circuit. Resistors are highly standardized. The thick film chip resistor is a common type of Resistor. These chip resistors are used in cellular phones, computer motherboards, disc drives, monitors, automotive electronic assemblies, television sets, stereo amplifiers, and many other components.
3. During the Class Period, the plaintiff, Daniel Klein, bought a laptop computer, an external computer hard drive and a light emitting diode (LED) bulb belt buckle which contained Resistors.

The Defendants

4. The defendants and other co-conspirators manufacture, market, distribute, and sell Resistors in Canada, including in British Columbia.
5. The defendants and other co-conspirators agreed, combined, and conspired to inflate, fix, raise, maintain, or artificially stabilize prices of Resistors.
6. The defendants and other co-conspirators are jointly and severally liable for the actions of, and the damages allocable to, their co-conspirators, including unnamed co-conspirators.
7. Where a particular entity within a corporate family of defendants engaged in anti-competitive conduct, it did so on behalf of all entities within that corporate family. The individual participants in the conspiratorial meetings and discussions entered into agreements on behalf of, and reported these meetings and discussions to, their respective corporate families.

8. Various persons, partnerships, sole proprietors, firms, corporations and individuals not named as defendants in this lawsuit, the identities of which are presently unknown, have participated as co-conspirators with the defendants in the unlawful behaviour alleged in this Notice of Civil Claim, and have performed acts and made statements in furtherance of the conspiracy or in furtherance of the anticompetitive conduct.

The Panasonic Corporation Defendants

9. The defendant Panasonic Corporation is a Japanese corporation with its principal place of business located at 1006 Oaza Kadoma, Kadoma-shi, Osaka 571-8501, Japan. During the Class Period, Panasonic Corporation, directly or through its subsidiaries, manufactured, marketed and/or distributed Resistors for sale, directly and indirectly, in Canada including British Columbia.
10. The defendant Panasonic Corporation of North America is a Delaware corporation with its principal place of business located at Two Riverfront Plaza, Newark, New Jersey 07102. It is affiliated with and controlled by Panasonic Corporation. During the Class Period, Panasonic Corporation of North America manufactured, marketed and/or distributed Resistors for sale, directly and indirectly, in Canada including in British Columbia.
11. The defendant Panasonic Industrial Devices Sales Company of America is a Delaware corporation with its principal place of business located at Two Riverfront Plaza, Newark, New Jersey 07102. It is affiliated with and controlled by Panasonic Corporation. During the Class Period, Panasonic Industrial Devices Sales Company of America manufactured, marketed and/or distributed Resistors for sale, directly and indirectly, in Canada including in British Columbia.
12. Panasonic Canada Inc. is a Canadian corporation with its principal place of business in Mississauga, Ontario. It is affiliated with and controlled by Panasonic Corporation. During the Class Period, Panasonic Canada Inc. manufactured, marketed and/or sold Resistors in Canada including in British Columbia.

13. The businesses of each of the defendants Panasonic Corporation, Panasonic Corporation of North America, Panasonic Industrial Devices Sales Company of America and Panasonic Canada Inc. are 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 Resistors.

The KOA Defendants

14. The defendant KOA Corporation is a Japanese corporation with its principal place of business located at 2-17-2 Midori-Cho, Fuchu-Shi, Tokyo 183-0006, Japan. During the Class Period, KOA Corporation, directly or through its subsidiaries, manufactured, marketed and/or distributed Resistors for sale, directly and indirectly, in Canada, including British Columbia.
15. The defendant KOA Speer Electronics, Inc. is a Delaware corporation, with its principal place of business located at 199 Bolivar Drive, Bradford, Pennsylvania 16701. It is affiliated with and controlled by KOA Corporation. During the Class Period, KOA Speer Electronics, Inc. manufactured, marketed and/or distributed Resistors for sale, directly and indirectly, in Canada, including British Columbia.
16. The businesses of each of the defendants KOA Corporation and KOA Speer Electronics, Inc. are 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 Resistors.

The Murata Defendants

17. The defendant Murata Manufacturing Co., Ltd. is a Japanese corporation with its principal place of business located at 10-1, Higashikotari 1-chome, Nagaokakyo-shi, Kyoto 617-8555, Japan. During the Class Period, Murata Manufacturing Co., Ltd., directly or through its subsidiaries, manufactured, marketed and/or distributed Resistors for sale, directly and indirectly, in Canada, including British Columbia.

18. The defendant Murata Electronics North America, Inc., is a Texas corporation, with its principal place of business in located at 2200 Lake Park Drive SE, Smyrna Georgia 30080-7604. It is affiliated with and controlled by Murata Manufacturing Co., Ltd. During the Class Period, Murata Electronics North America Inc., manufactured, marketed and/or distributed Resistors for sale, directly and indirectly, in Canada, including British Columbia.
19. The businesses of each of the defendants Murata Manufacturing Co., Ltd and Murata Electronics North America, Inc. are 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 Resistors.

The Vishay Defendant

20. The defendant Vishay Intertechnology, Inc., is a Delaware corporation with its principal place of business located at 63 Lancaster Avenue, Malvern, Pennsylvania 19355. During the Class Period, Vishay Intertechnology, Inc., directly or through its subsidiaries, manufactured, marketed and/or distributed Resistors for sale, directly and indirectly, in Canada, including British Columbia.

The ROHM Defendants

21. The defendant ROHM Co., Ltd., is a Japanese corporation with its principal place of business in Kyoto, Japan. During the Class Period, ROHM Co., Ltd., directly or through its subsidiaries, manufactured, marketed and/or distributed Resistors for sale, directly and indirectly, in Canada, including British Columbia.
22. The defendant ROHM Semiconductor U.S.A., LLC, is a Delaware corporation, with its principal place of business in Santa Clara, California. It is affiliated with and controlled by ROHM Co., Ltd. During the Class Period, ROHM Semiconductor U.S.A., LLC, manufactured, marketed and/or distributed Resistors for sale, directly and indirectly, in Canada, including British Columbia.
23. The businesses of each of the defendants ROHM Co., Ltd. and ROHM Semiconductor U.S.A., LLC are 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 Resistors.

The Yageo Defendants

24. The defendant Yageo Corporation is a corporation with its principal place of business at 3F, 233-1, Baoqiao Rd. Xindian Dist., New Taipei City 23145. During the Class Period, Yageo Corporation directly or through its subsidiaries, manufactured, marketed and/or distributed Resistors for sale, directly and indirectly, in Canada, including British Columbia.
25. The defendant Yageo America Corporation, is a Delaware corporation, with its principal place of business at 2550 North First St., Suite 480, San Jose, CA 95131. It is affiliated with and controlled by Yageo Corporation. During the Class Period, Yageo America Corporation manufactured, marketed and/or distributed Resistors for sale, directly and indirectly, in Canada, including British Columbia.
26. The businesses of each of the defendants Yageo Corporation and Yageo America Corporation are 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 Resistors.

The Class and Class Period

27. This action is brought on behalf of members of the class (the "Class Members") consisting of the plaintiff and all British Columbia resident persons who, during the Class Period commencing as early as January 1, 2005 and continuing to the present, purchased a Resistor or a product containing a Resistor.

The Resistors Industry

28. The defendants sold Resistors, directly and indirectly, to original equipment manufacturers ("OEMs") who install resistors into their products, electronic manufacturing service providers ("EMS Providers") who manufacture electric circuit products that contain Resistors and are integrated into end-use products

manufactured by others, third-party electronics distributors that sell Resistors to various consumers, and the Class Members, among others.

29. The structure of the Resistors manufacturing industry is conducive to the conspiracy alleged in this Notice of Civil Claim. There are substantial barriers that preclude, reduce, or make more difficult entry into the Resistors market. The market is subject to high manufacturing and technological barriers to entry.
30. There are no close substitutes for Resistors. Resistors are electronic components that serve as one of the fundamental building blocks of all types of electrical circuits. There is no alternative product that can replace Resistors.
31. Resistors are a commodity like product that is interchangeable among the defendants. Resistors of like technical and operational specification are mutually interchangeable.
32. By virtue of their market shares, the defendants and their co-conspirators are the dominant manufacturers and suppliers of Resistors in Canada, including in British Columbia, and around the world.

The Conspiracy to Fix Prices of Resistors

33. The acts alleged under this heading are, collectively, the "Conspiratorial Acts".
34. During the Class Period, the defendants and unnamed co-conspirators conspired and/or agreed with each other to fix, maintain, increase, and control the price for the supply of Resistors and/or to enhance unreasonably the prices of Resistors and/or to lessen unduly competition in the sale of Resistors in Canada including British Columbia and elsewhere.
35. During the Class Period, senior executives and employees of the defendants, acting in their capacities as agents for the defendants, engaged in communications, conversations, and attended meetings with each other at times and places, some of which are unknown to the plaintiff. As a result of the

communications and meetings the defendants and unnamed co-conspirators unlawfully conspired and/or agreed to:

- (a) unreasonably enhance the prices of Resistors in Canada, including in British Columbia, and elsewhere;
- (b) fix, maintain, increase, or control the prices of Resistors in Canada, including in British Columbia, and elsewhere;
- (c) monitor and enforce adherence to an agreed-upon pricing scheme for Resistors; and
- (d) lessen unduly competition in the sale of Resistors in Canada, including in British Columbia, and elsewhere.

36. In furtherance of the conspiracy, during the Class Period, the defendants and/or their servants and agents:

- (a) fixed, maintained, increased, controlled, and/or enhanced unreasonably the prices of Resistors in Canada, including in British Columbia, and elsewhere;
- (b) communicated secretly, in person and by telephone, to discuss and fix prices of Resistors;
- (c) made formal agreements with respect to the prices of Resistors;
- (d) exchanged information regarding the prices of Resistors for the purposes of monitoring and enforcing adherence to the agreed-upon prices;
- (e) allocated sales, territories, customers or markets for supply of Resistors;
- (f) fixed, maintained, controlled, prevented or lessened the supply of Resistors; and
- (g) disciplined any conspirator which failed to comply with the conspiracy.

37. During the Class Period and continuing to the present, the defendants and/or their servants and agents took active steps to, and did, conceal the unlawful conspiracy from the Class Members.
38. The defendants were motivated to conspire and their predominant purposes and predominant concerns were to harm the plaintiff and other Class Members by requiring them to pay unlawfully high prices for Resistors.
39. The Conspiratorial Acts alleged in this claim to have been done by each defendant were authorized, ordered, and done by each defendant's officers, directors, agents, employees, or representatives while engaged in the management, direction, control, or transaction of its business affairs.

Damages

40. As a result of the Conspiratorial Acts:
 - (a) the prices of Resistors have been, directly or indirectly, enhanced unreasonably and/or fixed at artificially high and non-competitive levels; and
 - (b) competition in the sale of Resistors has been lessened.
41. During the Class Period, the Class Members purchased Resistors both directly and indirectly. By reason of the alleged violations of the *Competition Act*, RSC 1985, c 19 (2nd Suppl.) (the "*Competition Act*") and the common law, the plaintiff and the other Class Members have been overcharged for Resistors by paying more than they would have paid in the absence of the illegal conspiracy and, as a result, the plaintiff and the other Class Members have suffered damages (the "Overcharge").
42. The Overcharge is capable of being quantified on an aggregate basis as the difference between the actual prices for Resistors and the prices which would have been paid in the absence of the unlawful conspiracy. The defendants are jointly and severally liable for the Overcharge.

PART 2: RELIEF SOUGHT

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

- (a) a declaration that the defendants, and each of them, conspired each with the other to raise, maintain, fix, and stabilize the price of Resistors during the Class Period, in violation of statutory, common law, and equitable laws as alleged in this claim;
- (b) a declaration that the defendants, and each of them, conspired, combined, agreed or arranged to prevent or lessen, unduly, competition in the manufacture or production of Resistors or to enhance unreasonably the price of Resistors;
- (c) an order certifying this action as a class proceeding against the defendants and appointing the plaintiff as representative plaintiff in respect of the Class Members;
- (d) general damages for conspiracy and unlawful interference with economic interests;
- (e) a declaration that the defendants account for and make restitution to the plaintiff and the other Class Members in an amount equal to the Overcharge;
- (f) a declaration that the defendants have each been unjustly enriched by the receipt of the Overcharge an order that the defendants disgorge and make restitution of the Overcharge;
- (g) judgment in the amount of the Overcharge;
- (h) general damages for conduct that is contrary to Part VI of the *Competition Act*;
- (i) punitive damages;

- (j) an injunction enjoining the defendants from conspiring or agreeing with each other, or others, to raise, maintain, fix, or stabilize the price of Resistors;
- (k) costs of investigation and prosecution of this proceeding pursuant to section 36 of the *Competition Act*;
- (l) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, RSBC 1996, c 78, s 128; and
- (m) such further and other relief as to this Honourable Court may seem just.

PART 3: LEGAL BASIS

44. The plaintiff pleads and relies upon the *Class Proceedings Act*, RSBC, 1996 c 50, the *Competition Act*, and the *Court Jurisdiction and Proceedings Transfer Act*, RSBC 2003, c 28 (the "CJPTA").

Causes of Action

Breach of the Competition Act

45. The Conspiratorial Acts are in breach of section 45 of Part VI of the *Competition Act*, as amended from time to time, caused injury to the plaintiff and the other Class Members and render the defendants jointly and severally liable to pay damages and costs of investigation pursuant to section 36 of the *Competition Act*. Further, the Canadian subsidiaries of the foreign defendants are jointly and severally liable to the plaintiff and the other Class Members pursuant to s. 36 of the *Competition Act* for acts in contravention of s. 46(1) of the *Competition Act*.

Civil Conspiracy

46. Further, or alternatively, the Conspiratorial Acts 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 other Class Members and, as such, the defendants are jointly and severally liable for the tort of civil conspiracy. Further, or alternatively, the predominant

purpose of the Conspiratorial Acts was to injure the plaintiff and other Class Members, and the defendants are jointly and severally liable for the tort of conspiracy to injure.

47. The plaintiff and other Class Members suffered damages as a result of the defendants' conspiracy.

Unlawful Means Tort

48. Further, or alternatively, the Conspiratorial Acts were unlawful acts intended to cause the plaintiff and the other Class Members economic loss as an end in itself or as a necessary means of enriching the defendants.
49. The Conspiratorial Acts were unlawful under the laws of the jurisdictions where the Conspiratorial Acts took place and are actionable by third parties, including OEMs, EMS Providers and third-party electronics distributors located outside of British Columbia who directly purchased Resistors, or would be actionable by those third parties if those third parties had suffered a loss. As such, the defendants are jointly and severally liable for the unlawful means tort.
50. The plaintiff and the other Class Members suffered damages as a result of the defendants' unlawful means tort and each of the defendants is jointly and severally liable to pay the resulting damages.

Unjust Enrichment and Waiver of Tort

51. Further, and in the alternative, the plaintiff and the other Class Members are entitled to claim and recover based on equitable and restitutionary principles.
52. The defendants have each been unjustly enriched by the receipt of the Overcharge. The plaintiff and the other Class Members have suffered a corresponding deprivation in the amount of such Overcharge.
53. Since the Overcharge that was received by the defendants from the plaintiff and the Class Members resulted from the defendants' wrongful or unlawful acts, there is and can be no juridical reason justifying the defendants retaining any part of it.

54. Equity and good conscience require the defendants to make restitution to the plaintiff and the other Class Members of all of the Overcharge and/or disgorge that amount to the plaintiff and the other Class Members.
55. Further, or alternatively, the plaintiff waives the tort and elects to pursue restitutionary remedies against the defendants as set out above.

Punitive Damages

56. The plaintiff asserts that the defendants' conduct was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful, in contemptuous disregard of the plaintiff's rights and the rights of the Class Members, and as such renders the defendants liable to pay aggravated and punitive damages.

Jurisdiction

57. There is a real and substantial connection between British Columbia and the facts alleged in this proceeding. The plaintiff and other Class Members plead and rely upon the *CJPTA* in respect of the defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to sections 10 (f) – (i) of the *CJPTA* because this proceeding:

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

Plaintiff's address for service:

CAMP FIORANTE MATTHEWS MOGERMAN

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Place of trial: Vancouver Law Courts

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

Date: September 14, 2015



Signature of lawyer
for Plaintiff

David G.A. Jones

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

The plaintiff, Daniel Klein, 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 *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 action arises from a conspiracy to fix, raise, maintain, or stabilize prices of Resistors sold in Canada and worldwide. During the Class Period, the defendants and their senior executives participated in illegal and secretive meetings and made agreements relating to the prices for Resistors. The plaintiff and the Class Members suffered damages as a result.

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*, RSBC, 1996 c 50;
2. *Competition Act*, RSC 1985, c 19 (2nd Suppl.); and
3. *Court Jurisdiction and Proceedings Transfer Act*, RSBC 2003, c 28.