

Original Notice of Civil Claim filed September 23, 2019  
Amended pursuant to order of Mr. Justice Coval  
made April 9, 2021 pursuant to Supreme Court Civil Rule 6-2(7)

SUPREME COURT  
OF BRITISH COLUMBIA  
VANCOUVER REGISTRY

APR 13 2021

No. S1910612  
Vancouver Registry

*In the Supreme Court of British Columbia*

Between

**TONY CHEUNG, SYLVIE DE BELLEFEUILLE and  
GRAEME HONEYMAN**

Plaintiffs

and

**NHK SPRING CO., LTD., NHK INTERNATIONAL  
CORPORATION, NHK SPRING (THAILAND) CO., LTD.,  
NAT PERIPHERAL (HONG KONG) CO., LTD., TDK  
CORPORATION, TDK U.S.A. CORPORATION, TDK  
CORPORATION OF AMERICA, SAE MAGNETICS (HK)  
LTD., HEADWAY TECHNOLOGIES, INC., MAGNECOMP  
PRECISION TECHNOLOGY PUBLIC CO., LTD.,  
MAGNECOMP CORPORATION and HUTCHINSON  
TECHNOLOGY INC.**

Defendants

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, RSBC 1996, c 50

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**AMENDED NOTICE OF CIVIL CLAIM**

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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 plaintiffs.

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 plaintiffs 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 NATURE OF THE ACTION**

1. This action arises from a conspiracy between the Defendants to fix, raise, maintain, or stabilize the price of suspension assemblies for hard disk drives ("HDD Suspension Assemblies") in Canada from at least as early as January 1,

2003, and continuing until April 30, 2016 (or until such later time as the harmful effects resulting from the conspiracy ceased, referred to herein as, including in British Columbia, during the period commencing May 1, 2008 and continuing up to the present (the “Class Period”).

2. An HDD Suspension Assembly is a necessary component of a hard disk drive (“HDD”). HDDs store information using rotating magnetic disks, which are paired with magnetic heads that read and write data to the disk surface. HDD Suspension Assemblies hold the magnetic heads that read and write data to the disk surface. HDD Suspension Assemblies hold the magnetic head in close proximity to the disk and provide the electrical connection from the head to the HDD’s electronic circuitry. HDDs together with HDD Suspension Assemblies, are incorporated into other electronic devices including computers, gaming consoles, video recorders, and stand-alone storage devices, including personal HDD storage devices (such as external hard drives) and enterprise HDD storage systems (such as storage servers and arrays).
3. The Defendants and their unnamed co-conspirators manufactured, marketed, distributed and/or sold HDD Suspension Assemblies in Canada and throughout the world, directly and/or indirectly, to original equipment manufacturers (“OEMs”) who manufacture products that contain HDD Suspension Assemblies, which are sold in Canada, Asia, Europe, and elsewhere for export and sale in Canada, including British Columbia.
4. The Defendants and their senior executives participated in illegal and secretive meetings and made unlawful agreements to fix the prices for HDD Suspension Assemblies sold in Canada, including British Columbia, and elsewhere.
5. As a direct result of the unlawful conduct alleged herein, the Plaintiffs and other class members paid, directly or indirectly, artificially inflated prices for HDD manufactured, marketed, sold, and/or distributed during the Class Period and have thereby suffered damages.



## THE PLAINTIFFS AND THE CLASS

6. The Plaintiff, Tony Cheung, is a resident of British Columbia, who purchased a MacBook Pro containing a HDD Suspension Assembly during the Class Period.

7. The Plaintiff Sylvie De Bellefeuille purchased a Dell laptop computer containing an HDD Suspension Assembly in Québec in 2012.

6.8. The Plaintiff, Graeme Honeyman, is a resident of British Columbia, who purchased a Dell laptop computer containing a HDD Suspension Assembly in 2007.

7.9. The Plaintiff s seeks to represent a class consisting of:

All persons and entities in British Columbia Canada (the “**Class Members**”) who purchased one or more HDD Suspension Assemblies, or one or more products which contained an HDD Suspension Assembly, during the Class Period, including a subclass of all persons and entities in Canada who purchased one or more HDD Suspension Assemblies, or one or more products that contained an HDD Suspension Assembly, in Quebec during the Class Period (“Québec Subclass”).

## THE DEFENDANTS

8.10. The Defendants are jointly and severally liable for the actions of, and damages allocable to, their co-conspirators, including any unnamed co-conspirators.

9.11. Where a particular entity within a corporate family of the 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.

10.12. 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 herein and have performed acts and made

statements in furtherance of the conspiracy or in furtherance of the anticompetitive conduct.

### ***The NHK Defendants***

~~11.~~13. The Defendant NHK Spring Co., Ltd. is a Japanese corporation with its principal place of business located at 3-10 Fukuura, Kanazawa-ku, Yokohama, 236-0004, Japan. During the Class Period, NHK Spring Co., Ltd. manufactured, marketed, sold, and/or distributed HDD Suspension Assemblies either directly or through its subsidiaries, agents or affiliates to customers throughout Canada, ~~including~~ **British Columbia**.

~~12.~~14. The Defendant NHK International Corporation ("**NHK International**"), a wholly-owned subsidiary of NHK Spring Co., Ltd., is a Michigan corporation with its principal place of business located at 46855 Magellan Drive, Novi, Michigan 48377, United States of America. During the Class Period, NHK International manufactured, marketed, sold, and/or distributed HDD Suspension Assemblies, either directly or indirectly, to customers throughout Canada, ~~including~~ **British Columbia**.

~~13.~~15. The Defendant NHK Spring (Thailand) Co., Ltd. ("**NHK Thailand**"), a wholly-owned subsidiary of NHK Spring Co., Ltd., is a corporation with its principal place of business located at Bangna Tower A, 6th-7th floor 2/3 Moo 14, Bangna-Trad Rd., (km. 6.5), Bangkaew, Bangplee, Samutprakarn 10540 Thailand. During the Class Period, NHK Thailand manufactured, marketed, sold, and/or distributed HDD Suspension Assemblies, either directly or indirectly, to customers throughout Canada, ~~including~~ **British Columbia**.

~~14.~~16. The Defendant NAT Peripheral (Hong Kong) Co., Ltd. ("**NAT Peripheral**") is a wholly owned subsidiary of NHK Spring Co., Ltd. with its principal place of business located at Room 15B-17 9/F, Tower 3, China Hong Kong City, 33 Canton Rd, Tsim Sha Tsui, Hong Kong. NAT Peripheral operated as a joint venture with the TDK Corporation's subsidiary, SAE Magnetics (HK) Ltd. from 2003 until March 31, 2015, when it became a wholly owned subsidiary of NHK



Spring Co. Ltd. During the Class Period, NAT Peripheral manufactured, marketed, sold, and/or distributed HDD Suspension Assemblies, either directly or indirectly, to customers throughout Canada, ~~including British Columbia~~.

~~15.17.~~ The businesses of each of NHK Spring Co., Ltd., NHK International, NHK Thailand, and NAT Peripheral 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 HDD Suspension Assemblies.

~~16.18.~~ The Defendants NHK Spring Co., Ltd., NHK International, NHK Thailand, and NAT Peripheral are collectively referred to herein as “**NHK**”.

### ***The TDK Defendants***

~~17.19.~~ The Defendant TDK Corporation is a Japanese corporation with its principal place of business located at Nihonbashi Takashimaya Mitsui Building, 2-5-1 Nihonbashi, Chuo-ku, Tokyo, Japan. During the Class Period, TDK Corporation, manufactured, marketed, sold and/or distributed HDD Suspension Assemblies either directly or through its subsidiaries, agents or affiliates to customers throughout Canada, ~~including British Columbia~~.

~~18.20.~~ The Defendant TDK U.S.A. Corporation (“**TDK U.S.A.**”), a wholly owned subsidiary of TDK Corporation, is a New York corporation, with its principal place of business located at 525 RXR Plaza, Uniondale, New York 11556, United States of America. During the Class Period, TDK U.S.A., manufactured, marketed, sold and/or distributed HDD Suspension Assemblies, either directly or indirectly, to customers throughout Canada, ~~including British Columbia~~.

~~19.21.~~ The Defendant TDK Corporation of America (“**TDK America**”), is a wholly owned subsidiary of TDK Corporation with its principal place of business located at 475 Half Day Road, Lincolnshire, Illinois 60069-2934, United States of America. During the Class Period, TDK America, manufactured, marketed, sold and/or distributed HDD Suspension Assemblies, either directly or indirectly, to customers throughout Canada, ~~including British Columbia~~.

20-22. The Defendant SAE Magnetics (HK) Ltd. is a wholly owned subsidiary of TDK Corporation with its principle place of business located at SAE Technology Center, 6 Science Park East Avenue, Hong Kong Science Park Shatin, N.T., Hong Kong. During the Class Period, SAE Magnetics (HK) Ltd., manufactured, marketed, sold and/or distributed HDD Suspension Assemblies—~~either~~, either directly or indirectly, to customers throughout Canada,~~including British Columbia~~.

21-23. The Defendant Headway Technologies, Inc. ("**Headway Technologies**"), is a wholly owned subsidiary of TDK Corporation with its principle place of business located at 682 S Hillview Dr, Milpitas, California 95035, United States of America. During the Class Period, Headway Technologies, manufactured, marketed, sold and/or distributed HDD Suspension Assemblies—~~either~~, either directly or indirectly, to customers throughout Canada,~~including British Columbia~~.

22-24. The Defendant Magnecomp Precision Technology Public Co., Ltd. ("**Magnecomp Precision**") is a wholly owned subsidiary of TDK Corporation with its principal place of business located at 162 M.5 Phaholyothin Road, T.Lamsai A.Wangnoi, Ayutthaya 13170, Thailand. During the Class Period, Magnecomp Precision manufactured, marketed, sold, and/or distributed HDD Suspension Assemblies, either directly or indirectly, to customers throughout Canada,~~including British Columbia~~.

23-25. The Defendant Magnecomp Corporation is a wholly owned subsidiary of TDK Corporation with its principal place of business located at 38975 Sky Cayon Drive, Suite 111 Murrieta, California 92563, United States of America. During the Class Period, Magnecomp Corporation, manufactured, marketed, sold and/or distributed HDD Suspension Assemblies—~~either~~, either directly or indirectly, to customers throughout Canada,~~including British Columbia~~.

24-26. The businesses of each of TDK Corporation, TDK U.S.A., TDK America, SAE Magnetics (HK) Ltd., Headway Technologies, Magnecomp Precision and Magnecomp 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 HDD Suspension Assemblies.

25-27. The Defendants TDK Corporation, TDK U.S.A., TDK America, SAE Magnetics (HK) Ltd., Headway Technologies, Magnecomp Precision and Magnecomp Corporation are collectively referred to herein as “TDK”.

***Hutchinson Technology Inc.***

26-28. The Defendant Hutchinson Technology Inc., is a wholly owned subsidiary of TDK Corporation, its principal place of business located at 40 West Highland Park Drive NE, Hutchinson, Minnesota 55350-9784, United States of America. During the Class Period, Hutchinson Technology Inc., manufactured, marketed, sold and/or distributed HDD Suspension Assemblies either directly or through its subsidiaries, agents or affiliates to customers throughout Canada, ~~including~~ **British Columbia**.

27-29. On November 2, 2015, it was announced that TDK Corporation and Hutchinson Technology Inc. had entered into a definitive merger agreement under which TDK Corporation, through Headway Technologies, would acquire all outstanding shares of common stock of Hutchinson Technology Inc, which was expected to close in the first quarter of 2016. The completion of the acquisition was announced on October 6, 2016.

**FACTUAL BACKGROUND**

***The HDD Suspension Assemblies Industry***

28-30. The structure and characteristics of the market for HDD Suspension Assemblies are conducive to the conspiracy alleged herein.

29-31. There are no close substitutes for HDD Suspension Assemblies. An HDD Suspension Assembly is a fundamental component of an HDD, and if an HDD is to be used in an electronic product, an HDD Suspension Assembly is required.



30.32. An HDD Suspension Assembly is a commodity product that is interchangeable among the Defendants and others. One HDD Suspension Assembly manufactured by one of the Defendants can be exchanged for an HDD Suspension Assembly of another Defendant with the same technical and operational specifications.

31.33. The Defendants dominate the global market for HDD Suspension Assemblies, including the sale of HDD Suspension Assemblies in Canada. Together, the Defendants exceed an 80% share of the global market for HDD Suspension Assemblies.

32.34. There are substantial financial and relational barriers that preclude, reduce, or make more difficult entry into the HDD Suspension Assemblies market. HDD Suspension Assemblies are expensive to manufacture. A supply chain must be established for all new materials. New entrants into the market face high and lengthy start-up costs. New fabrication operations are required to meet the market demand and to adjust to technological changes. The Defendants have developed longstanding manufacturing capabilities and relationships within the HDD industry.

33.35. These barriers to entry, coupled with the defendants' high market share and the commodity-like nature of HDD Suspension Assemblies, meant that the defendants intended and were able to increase the prices of all HDD Suspension Assemblies sold directly or indirectly into Canada, including those manufactured by non-cartel members, and including as a component of other products, to supra-competitive levels during the Class Period.

34.36. Relying on higher prices set by the Defendants and given capacity constraints, the non-cartel suppliers were able to, and did, maximize their profits by charging higher prices for HDD Suspension Assemblies than they would have in a competitive market. The non-cartel suppliers' conduct in charging higher prices was a direct response to the higher prices of HDD Suspension Assemblies caused by the defendants' collusive conduct and exercise of collective market

power. But for the conspiracy, the Defendants would have charged lower, competitive prices, and the non-cartel suppliers would have needed to follow those lower prices or risk losing market share.

35.37. During the Class Period, Class Members who directly and indirectly purchased HDD Suspension Assemblies manufactured by non-cartel suppliers (“**Umbrella Purchasers**”), including as a component of another product, suffered damages measured as the difference between the actual prices paid by them and the “but for” prices that they would have obtained in a competitive market. The Defendants were aware and intended that the alleged conspiracy would result in Umbrella Purchasers paying supra-competitive prices for HDD Suspension Assemblies and other products containing HDD Suspension Assemblies during the Class Period.

### ***Regulatory Investigations***

#### **Japan Fair Trade Commission**

36.38. On February 9, 2018, the Japan Fair Trade Commission (“JFTC”) named the following companies in a Cease and Desist order in relation to a violation of Article 3 of Japan’s *Antimonopoly Act* in the market for HDD Suspension Assemblies:

- (a) NHK Spring Co., Ltd.;
- (b) NAT Peripheral;
- (c) TDK Corporation;
- (d) SAE Magnetics (HK) Ltd.; and
- (e) Magnecomp Precision.

37.39. The JFTC found that NHK Spring Co, Ltd. and its Hong Kong-based subsidiary (NAT Peripheral) exchanged information such as sales prices of suspensions and market shares, and agreed with TDK Corporation and its subsidiaries (SAE

Magnetics (HK) Ltd. and Magnecomp Precision) to maintain sales prices. The JFTC found these five companies coordinated to implement their agreement to fix prices “in order to secure the market shares and profits” for their mutual financial gain.

38.40. As a result of its findings, the JFTC issued cease-and-desist orders and imposed surcharges (¥1,076 million in total, or \$13.03M CDN as at present) on NHK Spring Co., Ltd., and NAT Peripheral.

### **Brazil’s Administrative Council for Economic Defense**

39.41. On April 26, 2018, Brazil’s Administrative Council for Economic Defense (“CADE”) ~~announced that it had~~ initiated an Administrative Proceeding “to investigate the practice of an international cartel ... in the market of hard disk components, used in computers and known as suspension assemblies.” CADE’s announcement listed five companies subject to its investigation:

- (a) Hutchinson Technology Inc.;
- (b) Magnecomp Precision;
- (c) NHK Spring Co., Ltd.;
- (d) TDK Corporation; and
- (e) SAE Magnetics (H.K.) Ltd.

42. CADE also named 39 of the defendants’ executives, board members and employees as participants in the conspiracy.

43. CADE initiated the Administrative Proceeding on the basis of “the existence of robust evidence” of antitrust conduct. CADE found “the antitrust conduct took place at least from the year 2003 and lasted until at least 2016” and “affected the global market of suspension assemblies”.



## United States Department of Justice

40.44. On July 29, 2019, the United States Department of Justice (“DOJ”) issued a press release indicating that NHK Spring Co. Ltd. agreed to plead guilty and pay a USD \$28.5 million criminal fine for a price fixing conspiracy related to HDD Suspension Assemblies that lasted from at least as early as May 2008 and continued until at least April 2016. NHK agreed to cooperate in the DOJ’s ongoing investigation.

41.45. According to the DOJ’s press release, NHK Spring Co. Ltd.:

“reached agreements with co-conspirators to refrain from price competition and allocate their respective market shares for suspension assemblies used in hard disk drives. Pursuant to their agreements not to compete, NHK Spring and its co-conspirators exchanged pricing information including anticipated pricing quotes, which they used to inform their negotiations with U.S. and foreign customers that purchased suspension assemblies and produced hard disk drives for sale in, or delivery to, the U.S. and elsewhere.”

42.46. On February 13, 2020, the DOJ indicted two senior executives of NHK Spring Co. Ltd., Hitoshi Hashimoto and Hiroyuki Tamura, for their role in the HDD Suspension Assemblies price fixing conspiracy.

### ***The Conspiracy to Fix the Price of HDD Suspension Assemblies***

43.47. The acts alleged under this heading are, collectively, the “**Conspiracy Acts.**”

44.48. During the Class Period, the Defendants and their unnamed co-conspirators conspired and/or agreed with each other to fix, maintain, increase, or control the price for the supply of HDD Suspension Assemblies and/or to enhance unreasonably the prices of HDD Suspension Assemblies and/or to unduly lessen competition in the sale of HDD Suspension Assemblies in Canada, ~~including in British Columbia~~. The conspiracy was intended to, and did, affect prices of HDD Suspension Assemblies and products containing HDD Suspension Assemblies.

45.49. 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 Plaintiffs. 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 HDD Suspension Assemblies in Canada, ~~including in British Columbia~~;
- (b) fix, maintain, increase, or control the prices of HDD Suspension Assemblies in Canada, ~~including in British Columbia~~;
- (c) monitor and enforce adherence to an agreed-upon pricing scheme;
- (d) restrain trade in the sale of HDD Suspension Assemblies in Canada, ~~including in British Columbia~~; and
- (e) unduly lessen competition in the sale of HDD Suspension Assemblies in Canada, ~~including in British Columbia~~.

46.50. 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 or discounts for HDD Suspension Assemblies in Canada, ~~including in British Columbia~~;
- (b) communicated secretly, in person and by telephone, to discuss and fix prices of HDD Suspension Assemblies;
- (c) actively and deliberately employed steps to keep their conduct secret and to conceal and hide facts, including but not limited to using code names, following security rules to prevent "paper trails," abusing confidences, communicating by telephone and meeting in locations where they were unlikely to be discovered by other competitors and industry participants;

- (d) made formal agreements with respect to the prices of HDD Suspension Assemblies;
- (e) exchanged information regarding the prices of HDD Suspension Assemblies for the purposes of monitoring and enforcing adherence to the agreed-upon prices and price-fixing scheme;
- (f) rigged bids for the sale of HDD Suspension Assemblies to OEMs and their subsidiaries;
- (g) allocated sales, territories, customers or markets for the supply of HDD Suspension Assemblies;
- (h) prevented or lessened, unduly, competition in the market in North America and elsewhere for the production, manufacture, sale or distribution of HDD Suspension Assemblies;
- (i) fixed, maintained, controlled, prevented or lessened the production and/or the supply of HDD Suspension Assemblies; and
- (j) disciplined any conspirator which failed to comply with the conspiracy.

47.51. The defendants and their unnamed co-conspirators knew that their unlawful scheme and conspiracy would unlawfully increase the price at which HDD Suspension Assemblies would be sold from the price that would otherwise be charged on a competitive basis. The defendants and their unnamed co-conspirators were aware that, by unlawfully increasing the prices HDD Suspension Assemblies, the prices of products containing HDD Suspension Assemblies would also be artificially inflated. The defendants and their unnamed co-conspirators knew that their unlawful scheme and conspiracy would injure purchasers of HDD Suspension Assemblies and purchasers of products containing HDD Suspension Assemblies. The defendants' conduct impacted the price paid by all purchasers of HDD Suspension Assemblies.



48.52. The Defendants were motivated to conspire and their predominant purposes and predominant concerns were to harm the Plaintiffs and the Class Members by requiring them to pay unlawfully high prices for HDD Suspension Assemblies and products containing HDD Suspension Assemblies.

49.53. The North American subsidiaries of the foreign Defendants 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 their agents in carrying out the conspiracy and are liable for such acts.

50.54. The Conspiracy 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.

### ***Discoverability***

51.55. HDD Suspension Assemblies are not exempt from competition regulation and thus, the Plaintiffs and the Class Members reasonably considered the HDD Suspension Assemblies industry to be a competitive industry. A reasonable person under the circumstances would not have been alerted to investigate the legitimacy of the Defendants' prices for HDD Suspension Assemblies.

52.56. Accordingly, the Plaintiffs and the Class Members did not discover, and could not discover through the exercise of reasonable diligence, the existence of the alleged conspiracy during the Class Period.

### ***Damages***

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

- (a) price competition has been unduly restrained or eliminated with respect to HDD Suspension Assemblies and products containing HDD Suspension

Assemblies sold directly or indirectly to the Plaintiffs and other Class Members;

- (b) the prices of HDD Suspension Assemblies and products containing HDD Suspension Assemblies sold directly or indirectly to the Plaintiffs and other Class Members in ~~British Columbia~~Canada have been fixed, maintained, increased or controlled at artificially inflated levels; and
- (c) the Plaintiffs and other Class Members have been deprived of free and open competition for HDD Suspension Assemblies and products containing HDD Suspension Assemblies in ~~British Columbia~~Canada.

~~54.58.~~ HDD Suspension Assemblies are identifiable, discrete physical products that remain essentially unchanged when incorporated into a product. As a result, HDD Suspension Assemblies follow a traceable chain of distribution from the defendants to ~~the to~~ consumers or other end-user purchasers. Costs attributable to HDD Suspension Assemblies can be traced through the distribution chain.

~~55.59.~~ By reason of the wrongful conduct alleged herein, the Plaintiffs and the Class Members have sustained losses by virtue of having paid higher prices for HDD Suspension Assemblies and/or products containing HDD Suspension Assemblies than they would have paid in the absence of the illegal conduct of the defendants and their unnamed co-conspirators. As a result, the ~~p~~Plaintiffs and other Class Members have suffered loss and damage in an amount not yet known but to be determined (the "Overcharge").

~~56.60.~~ The Overcharge is capable of being quantified on an aggregate basis as the difference between the prices actually paid by the Class Members and the prices which would have been paid in the absence of the unlawful conspiracy. The Defendants and their co-conspirators are jointly and severally liable for the entire Overcharge.

57.61. All amounts payable to the class on account of damages and disgorgement should be calculated on an aggregate basis pursuant to section 24 of the *Class Proceedings Act*, RSBC 1996, c 50 (the "*Class Proceedings Act*"), or otherwise.

## PART 2: RELIEF SOUGHT

58.62. The Plaintiffs claims on their own behalf, and on behalf of the Class:

- (a) a declaration that the Defendants, and each of them, conspired each with the other to raise, maintain, fix, and stabilize the price of HDD Suspension Assemblies during the Class Period, in violation of statute, common law, and equity 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 HDD Suspension Assemblies or to enhance unreasonably the price thereof;
- (c) an order certifying this action as a class proceeding against the defendants and appointing the Plaintiffs as representative plaintiffs in respect of the Class Members;
- (d) a declaration that the Defendants have been unjustly enriched by receipt of the Overcharge;
- (e) general damages for conspiracy and unlawful interference with economic interests in the amount of the Overcharge;
- (f) a declaration that the defendants account for and make restitution to the Plaintiffs and the other Class Members in an amount equal to the Overcharge;
- (f)(g) a declaration that the defendants' conduct gives rise to extracontractual civil liability to the Québec Subclass pursuant to article 1457 of the *Civil Code of Québec*;



~~(g)~~(h) judgment in the amount of the Overcharge;

~~(h)~~(i) general damages for conduct that is contrary to *Competition Act*, RSC 1985, c 16 (2nd Suppl.) Part VI (the "**Competition Act**");

~~(i)~~(j) aggravated, exemplary and punitive damages;

~~(j)~~(k) an injunction enjoining the Defendants from conspiring or agreeing with each other, or others, to raise, maintain, fix, or stabilize the price of HDD Suspension Assemblies;

~~(k)~~(l) costs of investigation and prosecution of this proceeding pursuant to section 36 of the *Competition Act*;

~~(l)~~(m) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, RSBC 1996, c 78, s 128 and similar provisions under the Judgment Interest Act, RSA 2000, c J-1, Pre-judgment Interest Act, SS 1984-85-86, c P-22.2, The Court of Queen's Bench Act, CCSM c C280, Courts of Justice Act, R.S.O. 1990, c. C.43, Civil Code of Québec, CQLR c CCQ-1991 (including the additional indemnity provided for in article 1619), Judicature Act, RSNB 1973, c J-2, Judicature Act, RSNS 1989, c 240, Judicature Act, R.S.P.E.I. 1988 c. J-2.1, Judgment Interest Act, RSNL 1990, c. J-2, Judicature Act, R.S.Y. 2002, c. 128, Judicature Act, R.S.N.W.T., 1988 c. J-1, Rules of the Supreme Court of the Northwest Territories, NWT Reg (Nu) 010-96; and

~~(m)~~(n) costs for the administration of the plan of distribution for relief obtained in this action, including an aggregate damage award;

~~(n)~~(o) such further and other relief as to this Honourable Court may seem just.

### PART 3: LEGAL BASIS

~~59.63.~~ The Plaintiffs plead and relies upon the *Class Proceedings Act*, 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*

~~60.64.~~ The Conspiracy Acts are in breach of sections 45 and 46 of Part VI of the *Competition Act*, caused injury to the Plaintiffs and the 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*.

~~61.65.~~ Further, or in the alternative, the Defendants NHK International, TDK America, TDK U.S.A., and Hutchinson Technologies Inc. (the “**North American Subsidiary Defendants**”) are in breach of section 46(1) of Part VI of the *Competition Act* and caused injury to the Plaintiffs and the Class Members which renders the North American Subsidiary Defendants jointly and severally liable to pay damages and costs of the investigation pursuant to section 36 of the *Competition Act*.

~~62.66.~~ Further or alternatively, the Conspiracy Acts are in breach of section 47 of Part VI of the *Competition Act*, caused injury to the Plaintiffs and the 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*.

#### *Civil Conspiracy*

~~63.67.~~ Further, and in the alternative, the Defendants are liable for the tort of civil conspiracy. The Conspiracy Acts were unlawful acts under the *Competition Act* and/or in restraint of trade directed towards the Plaintiffs and the Class Members. The Defendants and their unknown co-conspirators knew that the unlawful acts alleged herein would likely cause injury to the Plaintiffs and 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 Conspiracy Acts was to injure the Plaintiffs and Class Members, and the Defendants are jointly and severally liable for the tort of conspiracy to injure.

64.68. The Plaintiffs and Class Members suffered damages as a result of the Defendants' conspiracy.

### ***Fraudulent Concealment***

65.69. The Defendants and their co-conspirators actively, intentionally and fraudulently concealed the existence of the combination and conspiracy from the public, including the Plaintiffs and the Class Members. The Defendants and their co-conspirators represented to customers and others that their pricing and bidding activities were unilateral, thereby misleading the Plaintiffs and the Class Members. The affirmative acts of the Defendants alleged herein, including acts in furtherance of the conspiracy, were fraudulently concealed and carried out in a manner that precluded detection.

66.70. The Defendants' anti-competitive conspiracy was self-concealing. The Defendants took active, deliberate and wrongful steps to conceal their participation in the alleged conspiracy.

67.71. Because the Defendants' agreements, understandings and conspiracies were kept secret, the Plaintiffs and the Class Members were unaware of the Defendants' unlawful conduct during the Class Period.

### ***Unjust Enrichment***

68.72. Further, and in the alternative, the Plaintiffs and the Class Members are entitled to claim and recover based on equitable and restitutionary principles.

69.73. The Defendants have each been unjustly enriched by the receipt of the Overcharge. The Plaintiffs and the Class Members have suffered a corresponding deprivation in the amount of the Overcharge.



70.74. Since the Overcharge that was received by the Defendants from the Plaintiffs 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 the Overcharge. 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.

71.75. The Defendants are required to make restitution to the Plaintiffs and the Class Members for the entire Overcharge because, among other reasons:

- (a) the Defendants were unjustly enriched by receipt of the Overcharge;
- (b) the Class Members suffered a deprivation by paying the Overcharge;
- (c) the Defendants engaged in inappropriate conduct and committed wrongful acts by engaging in the conspiracies alleged in this claim;
- (d) the 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 restitution unjust.

72.76. Equity and good conscience require the Defendants to make restitution to the Plaintiffs and the Class Members of the artificially-induced Overcharge from the sale of HDD Suspension Assemblies and products containing HDD Suspension

Assemblies, or alternatively to disgorge that amount to the Plaintiffs and the Class Members.

### ***Waiver of Tort***

~~73. Further, or alternatively, the Plaintiff plead and rely on the doctrine of waiver of tort and states that the Defendants' conduct, including the alleged breaches of the Competition Act, constitute conduct which can be waived in favour of an election to receive restitutionary or other equitable remedies.~~

### ***Claims of the Québec Subclass***

77. In committing the Conspiracy Acts, the defendants, and each of them, committed a fault related to their obligation not to cause injury to others.

78. The defendants' conduct caused injury in Québec by artificially inflating the prices of HDD Suspension Assemblies and products containing HDD Suspension Assemblies sold in Québec during the Class Period.

79. Therefore, the defendants' conduct gives rise to extracontractual civil liability under article 1457 of the Civil Code of Québec.

### ***Punitive Damages***

~~74.80.~~ The Defendants' conduct was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful, and in contumelious disregard of the Plaintiffs' rights and the rights of the Class Members. As such, the Defendants are liable to pay aggravated, exemplary, and punitive damages.

### **JURISDICTION**

~~75.81.~~ There is a real and substantial connection between British Columbia and Canada and the facts alleged in this proceeding. The Plaintiffs and the 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 Canada 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 and Canada;
- (b) concerns a tort committed in British Columbia and Canada;
- (c) concerns a business carried on in British Columbia and Canada; and
- (d) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia and Canada.

Plaintiff's address for service:

**CAMP FIORANTE MATTHEWS MOGERMAN LLP**  
#400 – 856 Homer Street  
Vancouver, BC V6B 2W5

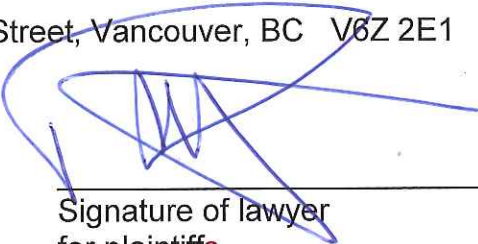
Tel: (604) 689-7555  
Fax: (604) 689-7554

Email: service@cfmlawyers.ca

Place of trial: Vancouver Law Courts

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

Date: April 13, 2021



Signature of lawyer  
for plaintiffs

Reidar Mogerman Q.C.

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

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The Plaintiffs, Tony Cheung, 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 Plaintiffs and



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.

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## APPENDIX

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### CONCISE SUMMARY OF NATURE OF CLAIM:

This action arises from a conspiracy to fix, raise, maintain, or stabilize prices of HDD Suspension Assemblies 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 HDD Suspension Assemblies. The Plaintiffs 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.