

Court File No.

13-56893

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**LLOYD C. WILSON**

Plaintiff

- and -

**LG CHEM LTD., LG CHEM AMERICA, INC., PANASONIC CORPORATION,  
PANASONIC CORPORATION OF NORTH AMERICA, PANASONIC CANADA INC.,  
SANYO ELECTRIC CO., LTD., SANYO NORTH AMERICA CORPORATION, SONY  
CORPORATION, SONY OF CANADA LTD., SONY ENERGY DEVICES  
CORPORATION, SONY ELECTRONICS, INC., SAMSUNG SDI CO., LTD., SAMSUNG  
SDI AMERICA, INC., HITACHI, LTD., HITACHI CANADA, LTD., HITACHI MAXELL,  
LTD. AND MAXELL CORPORATION OF AMERICA**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**STATEMENT OF CLAIM**

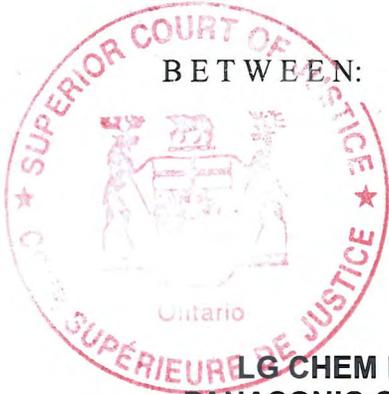
**TO THE DEFENDANTS**

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the plaintiff. The claim made against you is set out in the following pages.

**IF YOU WISH TO DEFEND THIS PROCEEDING**, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.



**IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

Date: February 26, 2013

Issued by

  
Local Registrar

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**AND TO: Hitachi, Ltd.**  
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## DEFINED TERMS

1. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

- (a) “**Lithium Ion Rechargeable Batteries**” or “**Li-Ion Rechargeable Batteries**” means any and/or all batteries that are rechargeable due to their utilization of lithium ion technology where lithium ions move from a negative electrode to a positive electrode during discharge and back when charging;
- (b) “**Lithium Ion Rechargeable Battery Products**” means any and/or all products containing a Lithium Ion Rechargeable Battery (or Batteries) when purchased – examples include, but are not limited to: such items as digital cameras, notebook computers, mobile telephones, camcorders, cell phones, personal digital assistants, tablet computers, handheld game consoles, power tools and other electronic devices and equipment;
- (c) “**Class**” or “**Class Members**” means all residents in Canada who have purchased **Lithium Ion Rechargeable Batteries** and/or **Lithium Ion Rechargeable Battery Products**, whether directly or indirectly, during the **Class Period**;
- (d) “**Class Period**” or “**Conspiracy Period**” means from January 1, 2002 to the present;
- (e) “*Courts of Justice Act*” means the Ontario Courts of Justice Act, RSO 1990, c C-43, as amended;

- (f) “*Class Proceedings Act*” means the Class Proceedings Act, 1992, SO 1992, c 6, as amended;
- (g) “*Competition Act*” means the *Competition Act*, RSC 1985, c C-34, as amended;
- (h) “*Rules of Civil Procedure*” means the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended;
- (i) “**DOJ**” means the United States Department of Justice;
- (j) “**Korean Defendants**” means LG Chem Ltd. and Samsung SDI Co., Ltd.;
- (k) “**Japanese Defendants**” means Panasonic Corporation, Sanyo Electric Co., Ltd., Sony Corporation, Sony Energy Devices Corporation, Hitachi Ltd. and Hitachi Maxell, Ltd.;
- (l) “**Foreign Defendants**” means the **Korean Defendants** and the **Japanese Defendants**;
- (m) “**Defendants**” means LG Chem Ltd., LG Chem America, Inc., Panasonic Corporation, Panasonic Corporation of North America, Panasonic Canada Inc., Sanyo Electric Co., Ltd., Sanyo North America Corporation, Sony Corporation, Sony of Canada Ltd., Sony Energy Devices Corporation, Sony Electronics, Inc., Samsung SDI Co., Ltd., Samsung SDI America, Inc., Hitachi Ltd., Hitachi Canada, Ltd., Hitachi Maxell, Ltd. and Maxell Corporation of America;
- (n) “**Plaintiff**” means Lloyd C. Wilson; and

- (o) “**Overcharge**” means the difference between the prices paid for Lithium Ion Rechargeable Batteries and Lithium Ion Rechargeable Battery Products and the prices which would have been paid during the Class Period in the absence of the conspiracy.

## CLAIM

2. The proposed Representative Plaintiff, Lloyd C. Wilson, claims on his own behalf and on behalf of the members of the Class of persons as defined in paragraph 4 below (the “Class”) as against LG Chem Ltd., LG Chem America, Inc., Panasonic Corporation, Panasonic Corporation of North America, Panasonic Canada Inc., Sanyo Electric Co., Ltd., Sanyo North America Corporation, Sony Corporation, Sony of Canada Ltd., Sony Energy Devices Corporation, Sony Electronics, Inc., Samsung SDI Co., Ltd., Samsung SDI America, Inc., Hitachi Ltd., Hitachi Canada, Ltd., Hitachi Maxell, Ltd. and Maxell Corporation of America. (collectively the “Defendants”):

- (a) An order pursuant to the *Class Proceedings Act* certifying this action as a class proceeding and appointing the Plaintiff as Representative Plaintiff for the Class Members;
- (b) A declaration that the Defendants conspired and/or agreed with each other to raise, maintain, fix and/or artificially stabilize the price of Lithium Ion Rechargeable Batteries and Lithium Ion Rechargeable Battery Products during the period beginning at least January 1, 2002 to the present (“Class Period”)

- (c) A declaration that the Defendants conspired and/or, agreed to lessen unduly, competition in the production, manufacture, sale and/or supply of Lithium Ion Rechargeable Batteries and Lithium Ion Rechargeable Battery Products in Canada during the Class Period;
- (d) Special damages and general damages on an aggregate basis or otherwise for conspiracy, unlawful and intentional interference with economic interests and relations, civil conspiracy and conduct that is contrary to Part VI of the *Competition Act* in the amount of \$100,000,000.00 or such other sum as this court finds appropriate at the trial of the common issues or at a reference or references, or alternatively, damages assessed equal to the amount of the Overcharge as established by an accounting if necessary;
- (e) Punitive, aggravated and exemplary damages in the amount of \$15,000,000.00 or as this Honourable Court deems appropriate at the trial of the common issues;
- (f) Costs of investigation and prosecution of these proceedings pursuant to Part IV, s. 36(1) of the *Competition Act*;
- (g) A declaration that the Defendants have been unjustly enriched at the expense of the Plaintiff and the other Class Members by their receipt of the illegal Overcharge;

- (h) An accounting of revenues received by the Defendants resulting from the sale of Lithium Ion Rechargeable Batteries and Lithium Ion Rechargeable Battery Products to members of the Class;
- (i) A declaration that the Defendants hold the illegal Overcharge in a constructive trust for the benefit of the Plaintiff and the other Class Members;
- (j) An order directing the Defendants to disgorge their ill-gotten Overcharge;
- (k) An order compelling the creation of a plan of distribution pursuant to ss. 23, 24, 25 and 26 of the *Class Proceedings Act*;
- (l) A declaration that the Defendants are jointly and severally liable for any and all damages awarded;
- (m) A permanent injunction restraining the Defendants from continuing any actions taken by them in contravention of the *Competition Act* and/or similar legislation;
- (n) Pre-judgment and post-judgment interest on the foregoing sums in the amount of 2% per month, compounded monthly or alternatively, pursuant to ss. 128 and 129 of the *Courts of Justice Act*;
- (o) An order directing a reference or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues;

- (p) Costs of notice and administration of the plan of distribution of recovery in this action plus applicable taxes pursuant to s. 2 (9) of the *Class Proceedings Act*;
- (q) Costs of this action on a substantial indemnity basis including any and all applicable taxes payable thereon pursuant to the *Excise Tax Act*, R.S.C. 1990. C. E-15; and
- (r) Such further and other relief as counsel may advise and/or this Honourable Court may deem just and appropriate in all the circumstances.

## **THE PARTIES**

### **The Representative Plaintiff**

3. The Plaintiff, Lloyd C. Wilson, is an individual residing in the City of Brampton, in the Province of Ontario. Mr. Wilson has purchased numerous Lithium Ion Rechargeable Battery Products including, but not limited to, a Dell Inspiron 1520 Notebook and a Kodak EasyShare Digital Camera.

### **The Class**

4. The Plaintiff seeks to represent the following class of which he is a member (the “Proposed Class”):

All residents in Canada that purchased either a Lithium Ion Rechargeable Battery containing a cell manufactured by a Defendant and/or a Lithium Ion Rechargeable Battery Product containing a Lithium Ion Rechargeable Battery containing a cell manufactured by a Defendant, whether directly or indirectly, during the period January 1, 2002 to the present (the “Class Period”).

## **The Defendants**

### **A. LG CHEM**

5. The Defendant, LG Chem, Ltd. (“LG Chem”), is a Korean corporation with its head office in South Korea.

6. The Defendant, LG Chem America, Inc. (“LG Chem America”), is a wholly-owned subsidiary of LG Chem and is an American corporation with its head office in New Jersey.

7. The LG Chem Defendants, LG Chem and LG Chem America, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries, participated in the conspiracy alleged in this complaint and manufactured, marketed and/or sold Lithium Ion Rechargeable Batteries that were purchased throughout Canada, during the Class Period.

8. The businesses of each of LG Chem and LG Chem America 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 Lithium Ion Rechargeable Batteries and Lithium Ion Rechargeable Battery Products in Canada and the conspiracy described hereinafter.

9. Given the close ties between the LG Chem Defendants and considering the preceding, they are jointly and severally liable for the acts and omissions of the other.

### **B. PANASONIC**

10. The Defendant, Panasonic Corporation (“Panasonic”), is a Japanese corporation. Up until approximately October 1<sup>st</sup> 2008, Panasonic was known as Matsushita Electric Industrial

Co., Ltd. (“MBI”). Panasonic manufactures and sells Lithium Ion Rechargeable Batteries under the Panasonic name and also under the name of the Defendant Sanyo Electric Co. Ltd. (“Sanyo”) which is a wholly-owned subsidiary. Panasonic is one of the world's leading manufacturers of Lithium Ion Rechargeable Batteries. With respect to those batteries sold under the Panasonic name, they are produced under Panasonic’s internal division called “Energy Company”.

11. The Defendant, Panasonic Corporation of North America (“Panasonic North America”), formerly known as Matsushita Electric Corporation of America, is a Delaware corporation with its head office in New Jersey. Panasonic North America is a wholly-owned and controlled subsidiary of Panasonic.

12. The Defendant, Panasonic Canada Inc. (“Panasonic Canada”), is a wholly-owned subsidiary of Panasonic and who does business throughout Canada.

13. The Defendant, Sanyo, is a Japanese corporation. Sanyo is one of the largest manufacturers and suppliers of Lithium Ion Rechargeable Batteries in the world. As of December 9, 2009, Sanyo became a wholly-owned subsidiary of Panasonic.

14. The Defendant, Sanyo North America Corporation (“Sanyo North America”), is a Delaware corporation with its head office in California. It is a wholly-owned subsidiary of Sanyo, which as described, is a wholly-owned subsidiary of Panasonic.

15. The Panasonic Defendants, Panasonic, Panasonic North America, Panasonic Canada, Sanyo and Sanyo North America, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries, participated in the conspiracy alleged in this

complaint and manufactured, marketed and/or sold Lithium Ion Rechargeable Batteries that were purchased throughout Canada, during the Class Period.

16. The businesses of each of the Panasonic Defendants 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 Lithium Ion Rechargeable Batteries and Lithium Ion Rechargeable Battery Products in Canada and the conspiracy described hereinafter.

17. Given the close ties between the Panasonic Defendants and considering the preceding, they are all jointly and severally liable for the acts and omissions of the other.

### C. SONY

18. The Defendant, Sony Corporation (“Sony”), is a Japanese corporation. Sony invented the Lithium Ion Rechargeable Battery in 1991 and since then, has been one of the world’s leading suppliers of Lithium Ion Rechargeable Batteries. It is the parent company of Sony Energy Devices Corporation (“Sony Energy”) through which it manufactures its Lithium Ion Rechargeable Batteries.

19. The Defendant, Sony Energy, is a Japanese corporation. It is a wholly-owned subsidiary of Sony and is the vehicle through which Sony manufactures its Lithium Ion Rechargeable Batteries. Sony Energy manufactures the Lithium Ion Rechargeable Batteries at plants located in Japan, in Singapore and in China;

20. The Defendant, Sony of Canada, Ltd. (“Sony Canada”), is a wholly-owned subsidiary of Sony.

21. The Defendant, Sony Electronics, Inc. (“Sony Electronics”), is a Delaware corporation with its head office in California. It is a wholly-owned subsidiary of Sony.

22. The Sony Defendants, Sony, Sony Energy, Sony Canada and Sony Electronics, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries, participated in the conspiracy alleged in this complaint and manufactured, marketed and/or sold Lithium Ion Rechargeable Batteries that were purchased throughout Canada, during the Class Period.

23. The businesses of each of the Sony Defendants 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 Lithium Ion Rechargeable Batteries and Lithium Ion Rechargeable Battery Products in Canada and the conspiracy described hereinafter.

24. Given the close ties between the Sony Defendants and considering the preceding, they are all jointly and severally liable for the acts and omissions of the other.

#### **D. SAMSUNG**

25. The Defendant, Samsung SDI Co., Ltd. (“Samsung SDI”), is a Korean corporation. It is the world’s largest manufacturer of Lithium Ion Rechargeable Batteries and is 20% owned by the Korean conglomerate Samsung Electronics, Inc.

26. The Defendant, Samsung SDI America, Inc. (“Samsung SDI America”), is an American corporation with its head office in California. It is a wholly-owned subsidiary of Samsung SDI;

27. The Samsung Defendants, Samsung SDI and Samsung SDI America, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries, participated in the conspiracy alleged in this complaint and manufactured, marketed and/or sold Lithium Ion Rechargeable Batteries that were purchased throughout Canada, during the Class Period.

28. The businesses of each of the Samsung Defendants 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 Lithium Ion Rechargeable Batteries and Lithium Ion Rechargeable Battery Products in Canada and the conspiracy described hereinafter.

29. Given the close ties between the Samsung Defendants and considering the preceding, they are all jointly and severally liable for the acts and omissions of the other.

#### **E. HITACHI**

30. The Defendant, Hitachi, Ltd. (“Hitachi”), is a Japanese corporation. It manufactures and sells Lithium Ion Rechargeable Batteries through its Components and Devices Business Unit;

31. The Defendant, Hitachi Canada, Ltd. (“Hitachi Canada”), is a wholly-owned subsidiary of Sony and who does business throughout Canada.

32. The Defendant, Hitachi Maxell, Ltd. (“Hitachi-Maxell”), is a Japanese corporation. It is a wholly-owned subsidiary of Hitachi. Hitachi-Maxell was founded in 1960 and manufactures and sells batteries through its batteries business unit.

33. The Defendant, Maxell Corporation of America (“Maxell America”), is an American corporation with its head office in New Jersey;

34. The Hitachi Defendants, Hitachi, Hitachi Canada, Hitachi Maxell and Maxell America, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries, participated in the conspiracy alleged in this complaint and manufactured, marketed and/or sold Lithium Ion Rechargeable Batteries that were purchased throughout Canada, during the Class Period.

35. The businesses of each of the Hitachi Defendants 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 Lithium Ion Rechargeable Batteries and Lithium Ion Rechargeable Battery Products in Canada and the conspiracy described hereinafter.

36. Given the close ties between the Hitachi Defendants and considering the preceding, they are all jointly and severally liable for the acts and omissions of the other.

#### **THE NATURE OF THE CLAIM**

37. The Defendants and other co-conspirators (as yet unknown) agreed, combined and conspired to inflate, fix, raise, maintain and/or artificially stabilize the prices of Lithium Ion Rechargeable Batteries.

38. These class proceedings concern the conspiracy among the Defendants to fix the price at which Lithium Ion Rechargeable Batteries were sold in Canada and worldwide. The Plaintiff alleges that the Defendants and the senior executives of the corporate Defendants during the

Class Period participated in secretive meetings and made agreements relating to price targets, specific price increases, market share divisions and production capacity for Lithium Ion Rechargeable Batteries.

39. The Lithium Ion Rechargeable Batteries and/or Lithium Ion Rechargeable Battery Products were intended to be placed into the stream of commerce, to be distributed, offered for sale and sold to the Plaintiff and to the public in Ontario and in the other Provinces and Territories in Canada.

40. The Class Members have suffered and will suffer injuries, losses or damages as a result of the Defendants' conduct.

41. The Defendants placed these Lithium Ion Rechargeable Batteries and/or Lithium Ion Rechargeable Battery Products into the stream of commerce in Ontario and elsewhere with the expectation that purchasers, such as the Plaintiff and Class Members, would buy the products.

#### **A. BATTERIES**

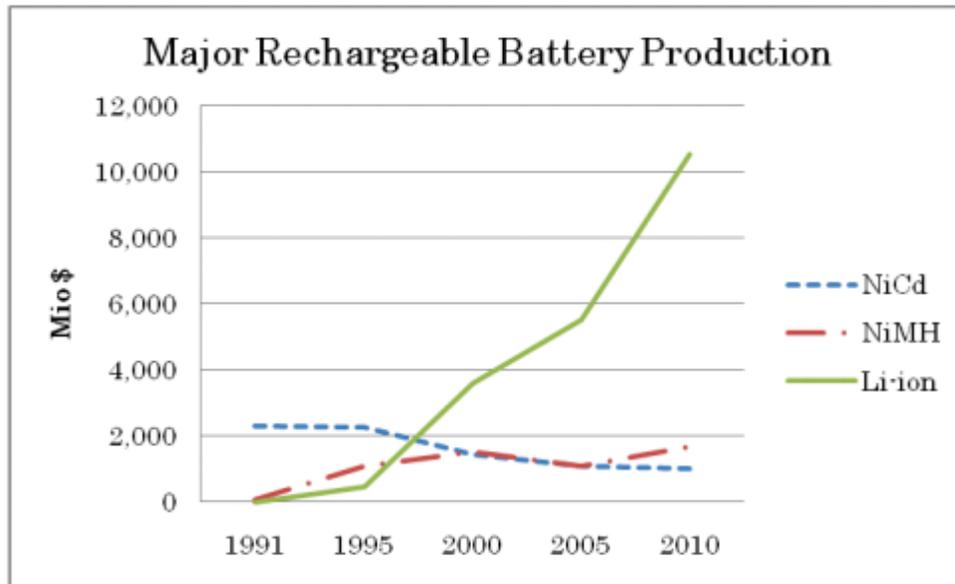
42. Batteries are one of the primary sources of energy which power many different machines and devices used every day. There are three (3) different categories of batteries: 1) chemical; 2) physical; and 3) biological. Chemical batteries generate electricity through a chemical reaction that occurs inside the battery. The batteries at issue in this case –Lithium Ion Rechargeable Batteries– are within the chemical family of batteries.

43. Chemical batteries are generally classified as either “primary” or “secondary”. Primary batteries are disposable batteries that are expended and then discarded. Secondary batteries are

rechargeable. Rechargeable batteries account for roughly 80% of all chemical batteries produced worldwide.

44. There are four (4) types of secondary batteries that account for the vast majority of secondary batteries: (1) Lithium Ion Rechargeable Batteries; (2) lead-acid; (3) nickel cadmium; and (4) nickel-metal hydride. Lithium Ion Rechargeable Batteries are by far the most popular type of rechargeable battery.

45. Both Lithium Ion Rechargeable Batteries as well as nickel-metal hydride rechargeable batteries were introduced in or around 1991. Since that time, however, Lithium Ion Rechargeable Batteries have quickly become the most popular type of secondary battery. The following graph, (based on data from the Institute of Information Technology, Ltd.) shows the growth rates of Lithium Ion Rechargeable Batteries versus nickel-metal hydride and nickel cadmium batteries.



## B. LITHIUM ION RECHARGEABLE BATTERIES

46. A Lithium Ion Rechargeable Battery generally contains three (3) primary components: (1) the negative electrode (cathode); (2) positive electrode (anode); and (3) the electrolyte. The negative electrode of a conventional Lithium Ion Rechargeable Battery is made from carbon, typically graphite. The positive electrode is a metal oxide, usually a layered oxide (such as lithium cobalt oxide), a polyanion (such as lithium iron phosphate), or a spinel (such as lithium manganese oxide). The electrolyte is typically a mixture of organic carbonates such as ethylene carbonate or diethyl carbonate containing complexes of lithium ions (usually lithium salts, such as lithium hexafluorophosphate, lithium hexafluoroarsenate monohydrate, lithium percolate, lithium tetrafluoroborate, and lithium triflate).

47. Internally, the battery has a separator between the cathode and anode and is filled with the organic electrolyte solution. The separator prevents short circuits that would occur if there were contact between the anode and cathode. At the same time, the separator protects the electrolyte solution and preserves the battery's conductivity. In the recharging process, lithium ions are released from the cathode into the electrolyte solution where they accumulate between the anode layers. During the discharge process, the ions return to the cathode. The movement of lithium ions between the cathode and the anode during the discharge process creates the electric current from the battery which powers the specific device it is used in.

48. There are generally two (2) primary steps in the manufacture of Lithium Ion Rechargeable Batteries. In the first step, the "cell" of the battery is manufactured –which includes the cathode, anode, and electrolyte. The cell, and in some cases, multiple cells, are then assembled inside an enclosure. In some cases, certain protection circuitry is also added inside the enclosure. The assembled product is referred to as the "battery" or "module" and is the

product that is placed inside a device to supply power to the device. All of the Defendants named herein manufacture both raw Lithium Ion Rechargeable Battery cells as well as modules. In addition to the manufacture and sale of raw Lithium Ion Rechargeable Battery cells and modules, the Defendants also sell raw cells to other entities commonly referred to in the industry as “assemblers.” In these cases, the raw Lithium Ion Rechargeable Battery cells made by the Defendants are incorporated into a module by assemblers who assemble the cells (and if necessary, circuitry) and then sell the module under their own brand name. Whether manufactured by a Defendant or an assembler, the raw cells in a finished battery or module make up the overwhelming cost of a finished Lithium Ion Rechargeable Battery module.

49. Lithium Ion Rechargeable Batteries are generally divided into four (4) different types: (1) small cylindrical (solid body without terminals); (2) large cylindrical (solid body with large threaded terminals); (3) pouch (soft, flat body, such as those used in cell phones); and (4) prismatic (semi-hard plastic case with large threaded terminals). Each Defendant manufactures and markets each of these types of Lithium Ion Rechargeable Batteries. Lithium ion cylindrical or prismatic batteries are used primarily in notebooks, camcorders, mobile phones, and other electronic devices.

50. In addition to the four (4) different types of Lithium Ion Rechargeable Batteries described above, there are also lithium ion polymer batteries. The exterior of the lithium ion polymer battery is generally made of a laminate film which allows it to be more flexible in terms of its shape.

51. One of the primary differences between lithium ion and lithium ion polymer batteries is that in the latter, the lithium salt electrolyte is not held in an organic solvent, but instead, in a

solid polymer composite such as polyethylene oxide or polyacrylonitrile. The dry polymer design offers advantages over the traditional lithium ion battery in terms of fabrication and ruggedness since the electrolyte is a solid polymer as opposed to a gel or liquid electrolyte.

52. Lithium Ion Rechargeable Batteries include cylindrical, prismatic, pouch and polymer Lithium Ion Rechargeable Batteries.

53. Lithium Ion Rechargeable Batteries possess certain unique performance qualities which make them the most popular form of rechargeable battery. In addition, because of these characteristics, Lithium Ion Rechargeable Batteries are not interchangeable with other types of secondary or rechargeable batteries such as nickel-cadmium or nickel-metal hydride.

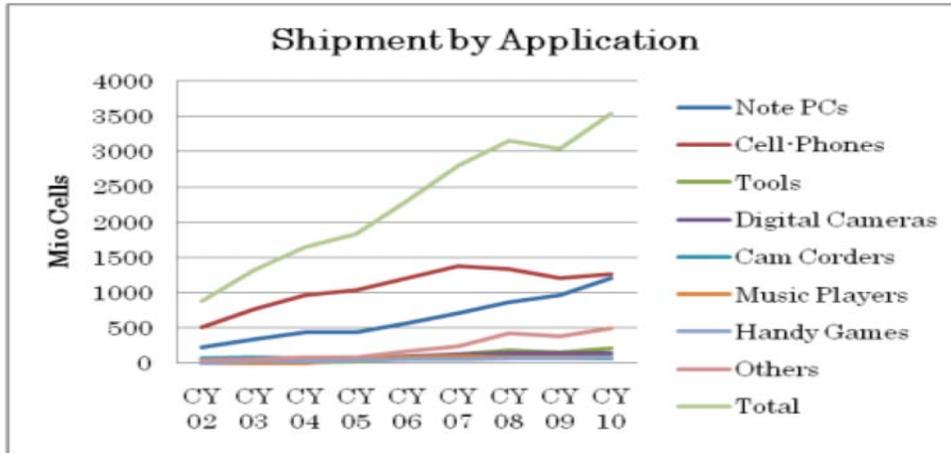
54. Unlike other forms of rechargeable batteries (such as nickel-cadmium or nickelmetal hydride), Lithium Ion Rechargeable Batteries are the only rechargeable battery which do not suffer from any “memory effect”. For example, if a nickel-cadmium battery is charged repeatedly to 70% capacity, the discharge voltage will begin to fall sharply from the 70% even after a full charge and eventually, the battery will be incapable of holding a charge. The battery essentially remembers 70% as the full capacity. On the other hand, Lithium Ion Rechargeable Batteries, do not suffer from the memory effect, and there is no risk to reducing the capacity of the battery when only partially charging the battery.

55. Another feature that makes Lithium Ion Rechargeable Batteries unique is that they are more powerful than all other types of rechargeable batteries. For example, the nominal voltage of a nickel-metal hydride rechargeable battery is 1.2 volts. The nominal voltage of a Lithium Ion Rechargeable Battery, on the other hand, is 3.7 volts, nearly three (3) times more powerful.

56. Lithium Ion Rechargeable Batteries also possess a higher “energy density” than other types of rechargeable batteries. “Capacity” refers to the volume of electricity that a battery can hold. The energy volume in a battery is the product of the voltage times and the capacity; i.e. the result of multiplying the two. Lithium Ion Rechargeable Batteries possess high energy density, both per weight and per volume, as compared to other types of rechargeable batteries. Essentially, a lighter and smaller Lithium Ion Rechargeable Battery can generate the same amount of electricity as a heavier and larger battery of a different type. For example, Lithium Ion Rechargeable Batteries can be as much as 70% lighter and 60% smaller in volume than nickel-metal hydride batteries while delivering the same power.

57. Lithium Ion Rechargeable Batteries also retain their charge better than other types of rechargeable batteries. For example, Lithium Ion Rechargeable Batteries lose only about 5% of their charge per month when idle. Other types of rechargeable batteries lose nearly 20% of their charge per month when idle.

58. Because of their superior performance characteristics and their convenient small size, Lithium Ion Rechargeable Batteries have become the standard battery used in consumer electronic products. It is estimated that approximately 40-50% of all Lithium Ion Rechargeable Batteries used today are used in small consumer electronic products such as cell phones and notebook computers. The remainder of Lithium Ion Rechargeable Batteries are used in digital cameras, power tools and other devices. The following graph (which incorporates information from the Institute of Information Technology, Ltd.) depicts the various applications that Lithium Ion Rechargeable Batteries are used in:



59. The Defendants manufacture, market and sell Lithium Ion Rechargeable Batteries throughout Canada and throughout the world. The Defendants collectively controlled approximately two-thirds (2/3) or more of the worldwide market for Lithium Ion Rechargeable Batteries throughout the relevant period and over 80 percent (80%) of the market in the early part of this period. The manufacture and sale of Lithium Ion Rechargeable Batteries is a multi-billion dollar industry. In 2011, the worldwide market for Lithium Ion Rechargeable Batteries was approximately \$14 billion. This figure is expected to top \$16 billion by the end of 2012.

60. Lithium Ion Rechargeable Batteries are highly standardized products, and interchangeable among the same type and across manufacturers. International standard-setting organizations, such as the International Electrotechnical Commission (“IEC”) or the Institute of Electrical and Electronics Engineers (“IEEE”) develop standards to be followed by the manufacturers of Lithium Ion Rechargeable Batteries so that products which utilize Lithium Ion Rechargeable Batteries can be developed to accommodate a specific Lithium Ion Rechargeable Battery. For example, a Lithium Ion Rechargeable Battery “18650,” refers to a cylindrical

shaped battery measuring 18.6 millimeters in diameter by 65.2 millimetres in height with a nominal voltage of 3.6 volts and a capacity of 2250mAh.

61. By virtue of their market shares, the Defendants are the dominant manufacturers and suppliers of Lithium Ion Rechargeable Batteries in Canada and in the world.

**C. The Defendants' Conspiracy Stabilized and Raised the Price of Lithium Ion Rechargeable Batteries Above Competitive Levels**

**i. A Price-Fixing Conspiracy may be Inferred from Pricing Behaviour for Lithium Ion Rechargeable Batteries During the Class Period**

62. The Defendants' illegal activities alleged herein artificially stabilized and raised the prices of Lithium Ion Rechargeable Batteries during the Class Period. Had there been no conspiracy, the prices of Lithium Ion Rechargeable Batteries would not have been inflated.

63. Lithium Ion Rechargeable Batteries were first invented and commercially produced by Defendant Sony in or around 1991. Between 1991 and late 1999, the market for Lithium Ion Rechargeable Batteries was dominated, if not exclusively controlled by, the Sony and Panasonic Defendants which are located in Japan. During that time, the pricing of Lithium Ion Rechargeable Batteries was characterized by remarkable stability.

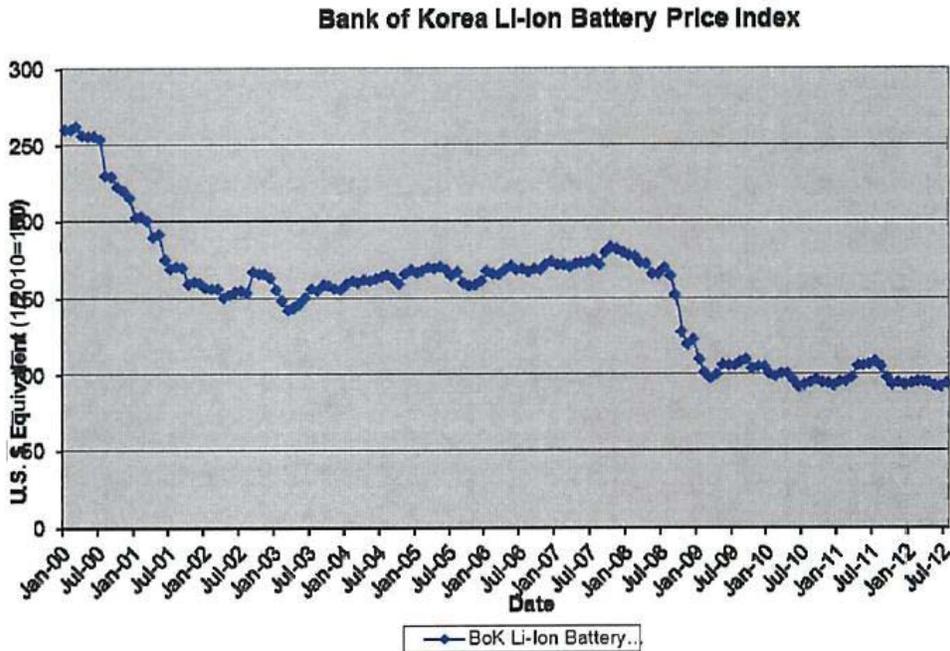
64. In or around 1999, Defendants Sony and Panasonic faced their first competitive threat from outside Japan as lower-cost manufacturers from Korea entered the market. Beginning in or around 1997, the Korean government promoted research and development centering on battery manufacturers in an effort to foster the secondary battery industry into the next generation growth industry. As a result, around this same time, Korea established the second automated mass battery production system in the world. The Korean Battery R&D Association took the

lead in the “small-size secondary battery development project” together with 11 manufacturers, 10 universities and research centres, investing \$54.87 billion over 5 years from 1997 to 2002.

65. As a result of these efforts, in 1999, Defendant LG Chem became the first Korean manufacturer of Lithium Ion Rechargeable Batteries followed closely by Defendant Samsung SDI. With the introduction of competition from the Korean Defendants, worldwide prices for Lithium Ion Rechargeable Batteries quickly fell. In fact, during the two-year period from 2000–2002, the prices for Lithium Ion Rechargeable Batteries fell by nearly 50% despite a strong increase in demand due to devices such as mobile telephones and notebook computers. The dramatic price decrease for Lithium Ion Rechargeable Batteries at this time is best explained by the entry of the Korean Defendants into the worldwide market for these products and their aggressive competition in the marketplace. In fact, as evidence of just how competitive the Korean Defendants were, in just three (3) years, Samsung SDI and LG Chem went from having 0% market share in 2000 to approximately 20% of the worldwide market by 2003.

66. The Japanese Defendants sought to curtail the rapid decline in Lithium Ion Rechargeable Battery prices and their rapid loss of market share. In or around the end of 2001, or in the beginning of 2002, the Defendants entered into an illegal conspiracy to stabilize and to raise prices for Lithium Ion Rechargeable Batteries. This is best observed from the simple fact that Lithium Ion Rechargeable Batteries prices immediately stabilized after nearly a two-year period of rapid price decline. In fact, during the period January 2002 to July 2008, the marked decline of Lithium Ion Rechargeable Battery prices that took place during 2000 – 2001 had completely ended and the prices of Lithium Ion Rechargeable Batteries actually rose throughout most of the

period. The following graph illustrates the prices of Lithium Ion Rechargeable Batteries during the Class Period:



67. As a result of the worldwide economic crisis that began in or around 2007 and the corresponding decline in demand for Lithium Ion Rechargeable Batteries and electronic devices, the prices for Lithium Ion Rechargeable Batteries again experienced a decline. Beginning in or around January 2008, the prices for Lithium Ion Rechargeable Batteries began a steady decline which ended in or around January 2009 and resulted in a price decline of approximately 40%.

68. Corresponding with the decline in prices during 2008, the Defendants dramatically cut production in an effort to maintain prices. Beginning around 2008, the Defendants cut worldwide production for Lithium Ion Rechargeable Batteries by almost 66%. This massive coordinated cut in production achieved its anticipated result – the prices for Lithium Ion Rechargeable Batteries stabilized by the end of 2009.

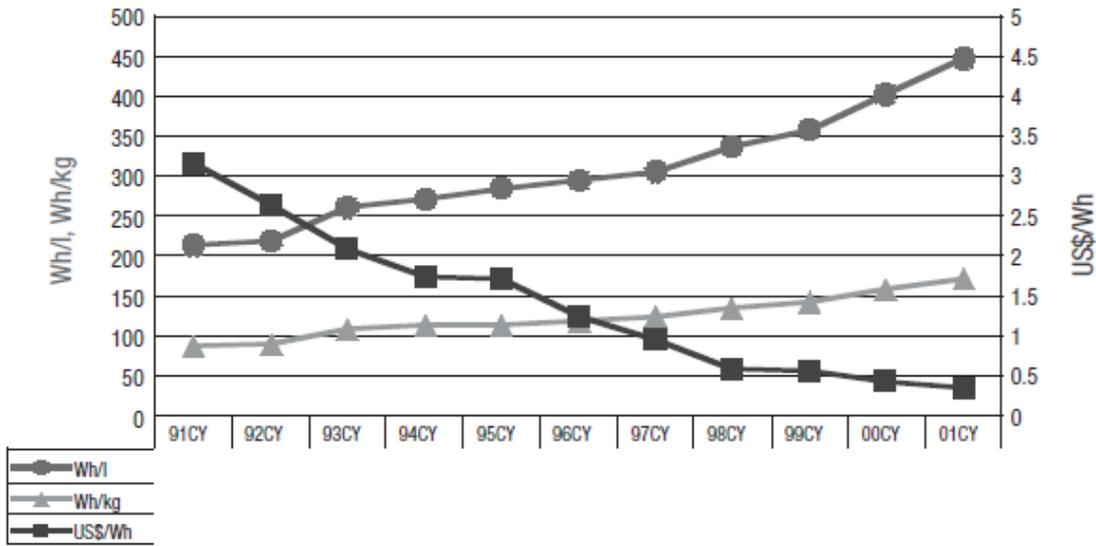
69. Yet again, Lithium Ion Rechargeable Battery prices remained stable until the Defendants received notice they were being investigated for price-fixing Lithium Ion Batteries by the DOJ and the European Union (“EU”) which began in mid-2011. Both Japanese and Korean producer price indexes for Lithium Ion Rechargeable Batteries fell after the Defendants disclosed they were being federally investigated. In fact, within three (3) months following the disclosure of the investigation, prices began an approximate 10% decline. Such a price decline is quite predictable with the end of an illegal cartel which had artificially raised prices and clearly supports the allegations of collusion occurring before this time.

**ii. Prices for Lithium Ion Rechargeable Batteries During the Class Period were Contrary to Industry Expectations**

70. Many analysts predicted that given the economics of the marketplace, prices of Lithium Ion Rechargeable Batteries would go down during the Class Period. But prices not only failed to decline throughout most of the Class Period—they actually rose, defying industry expectations.

71. Lithium Ion Rechargeable Batteries underwent substantial technological change that rapidly improved the energy density of the batteries (watt-hours delivered per weight or volume) and reduced expenses. As is illustrated below, energy density, measured in watt-hours per kilogram or watt-hours per litre, more than doubled for Lithium Ion Rechargeable Batteries over the decade from 1991 to 2001. Such technological progress continued unabated over the past decade. Today, energy density is as high as 250 wh/kg, or 620 wh/l, for Lithium Ion Rechargeable Batteries:

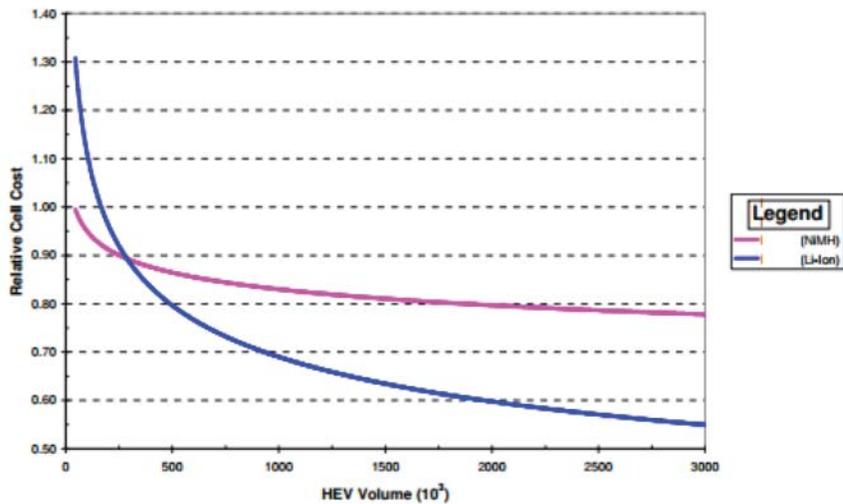
**Performance Improvement and Price Decline in Li-Ion Batteries 1991-2002**



72. As illustrated below, scientists, engineers, and industry analysts expected to see the declining prices for Lithium Ion Rechargeable Batteries, as depicted above, to continue their steady descent during the period following 2002. Numerous technical studies undertaken in the early to mid-2000s predicted that scale economies and learning curves would act to sharply lower cost as production volumes increased:

**Reduction in Li-Ion Battery Manufacturing Cost with Scale of Production**

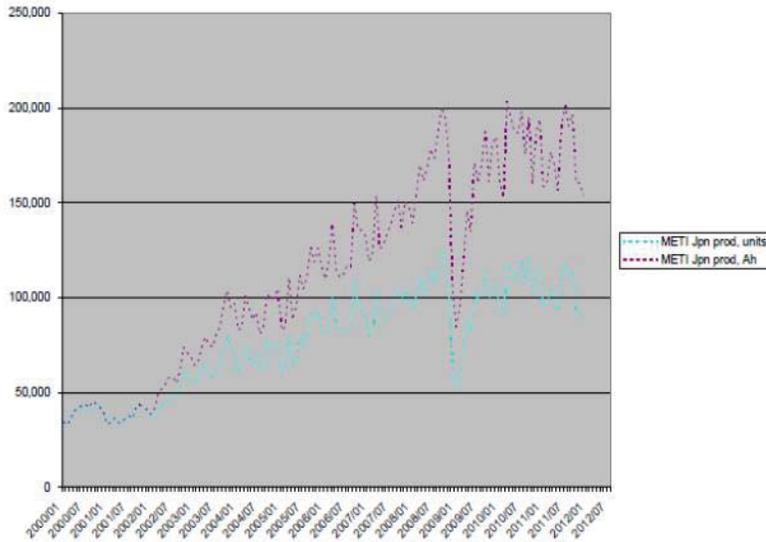
**NiMH vs Li-Ion HEV Cell Cost/Volume Curve (50k-3M HEV/year)**



73. A study conducted at the Sloan Automotive Laboratory observed that, “[i]n addition to this fundamental advantage with respect to specific energy and power, lithium ion batteries also offer the potential for lower cost as the technology matures and production volumes increase. Although more expensive than NiMH batteries today, lithium ion batteries scale more readily to high volume production hence have greater potential for cost reduction . . . Perhaps more importantly, while the most expensive constituent materials of NiMh battery are intrinsically tied to the commodity price of nickel (relatively expensive), lithium ion batteries may be made from a number of different fungible materials . . . Over the longer-term, there is strong potential to transition to even lower cost materials”.

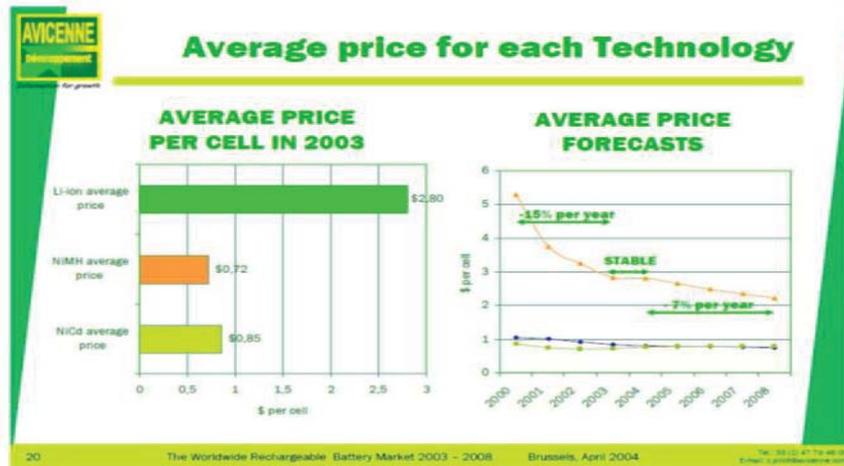
74. As illustrated in the graph below, which represents production figures for Lithium Ion Rechargeable Battery cells manufactured by Japanese manufacturers (responsible for the majority share of global production throughout this decade), the predicted expansion in the production volume of Lithium Ion Rechargeable Batteries did indeed materialize. Batteries produced in Japan more than tripled from just below 34 million units in January 2001, to almost 118 million units in July 2011. The power provided by these technologically-improved batteries increased twice as fast, by a factor of almost six (6) over the same period from just over 34 million amp-hours (“Ah”), to over 200 million Ah in July 2011:

### Increase in Production Volumes for Li-Ion Batteries in Japan 1000's of Units and Ah



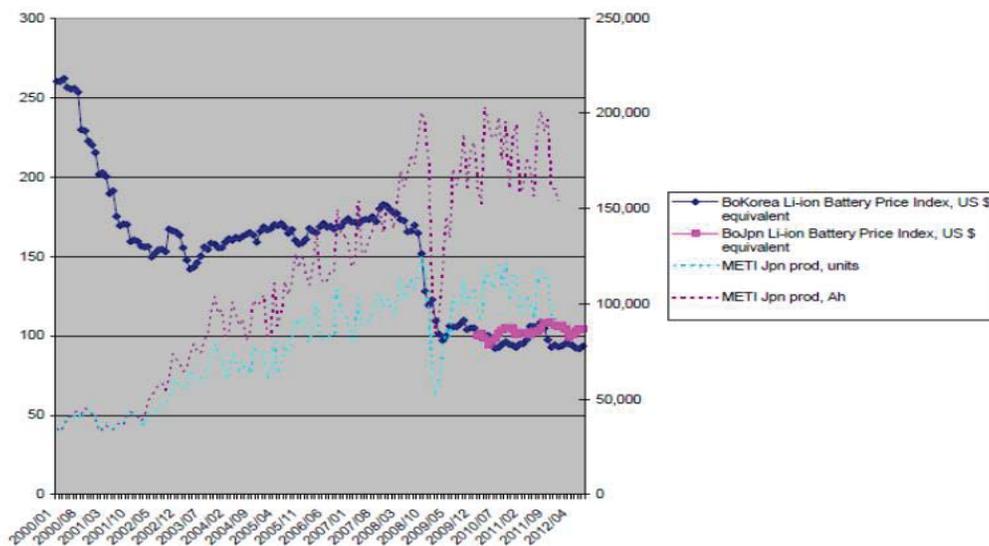
75. Thus, as is illustrated below, analysts were confident in predicting continuing price declines in Lithium Ion Rechargeable Batteries at the beginning of this decade. Basic economic theory supports the notion that these rapidly increasing volumes of production should have been associated with continuing price declines for Lithium Ion Rechargeable Batteries in a competitive market. After sharp price declines prior to 2002 and, flat prices in 2003, industry analysts continued to predict continued annual 7% declines in Lithium Ion Rechargeable Battery prices after 2003. However, these continuing price declines predicted by both technologists and market analysts did not materialize because of the formation of the price-fixing cartel alleged in this action. The interruption of this trend in 2003 was viewed merely as a temporary deviation from the expected trend, rather than the beginning of a collusive effort by producers to prevent further price declines:

### Historical and Forecast Prices for Batteries, April 2004



76. As illustrated below, these trends in pricing are evident in the official government producer price index for Lithium Ion Rechargeable Batteries constructed by the Bank of Korea, the second most important location for Lithium Ion Rechargeable Batteries production (after Japan, which did not start producing a Lithium Ion Rechargeable Batteries price index until 2010). A price index, unlike an average unit value for batteries, controls for changes in mix or size and qualities of batteries being produced:

### Lithium Ion Battery Price Indexes, January 2010



77. The above graph depicts that after the sharp decline in prices beginning in early 2000 (triggered by entry of Korean producers into the market as described above in paragraphs 64-65), the cartel members managed to arrest any continuing decline in Lithium Ion Rechargeable Battery prices and, defying industry expectations, even increased prices, over a five-year period, from early 2002 through early 2008. This effort was highly successful in not only reducing the rate of decline, but actually elevating Lithium Ion Rechargeable Battery prices until the global recession struck in 2008. At that point, as markets for the mobile consumer electronics and information technology products reliant on the use of Lithium Ion Rechargeable Batteries crashed, prices started to sharply tumble once again, at an even steeper rate than had been triggered by the Korean entry back in early 2000.

**iii. The Defendants' Pricing and Production Levels in Response to the Global Economic Crisis in 2008 Further Supports the Existence of the Conspiracy**

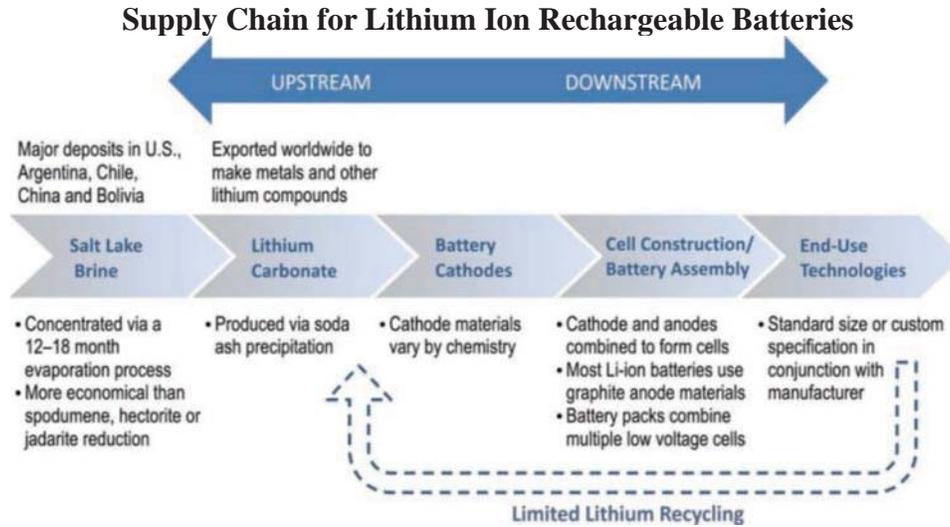
78. When the global recession reduced demand for the devices which use Lithium Ion Rechargeable Batteries, prices for these batteries also dropped accordingly. In fact, prices for Lithium Ion rechargeable Batteries fell roughly 34% from August 2008 through January 2009. Faced with rapidly decreasing prices during this time, the cartel members sharply cut back production of Lithium Ion Rechargeable Batteries in an effort to curtail the price decline. The Japanese cartel members radically cut production from 125 million units per month in September of 2008, to 52 million units per month in January of 2009, engineering a reduction in output of 58%, over a period of just four (4) months! Then, just five (5) months later, Japanese production shot back up to near pre-economic crisis levels to approximately 103 million units per month.

79. The Defendants' near 60% reduction in output successfully arrested further decline in prices, while the continuing restraint in not resuming production growth after 2008 successfully stabilized prices at a roughly constant level and stopped any further price declines.

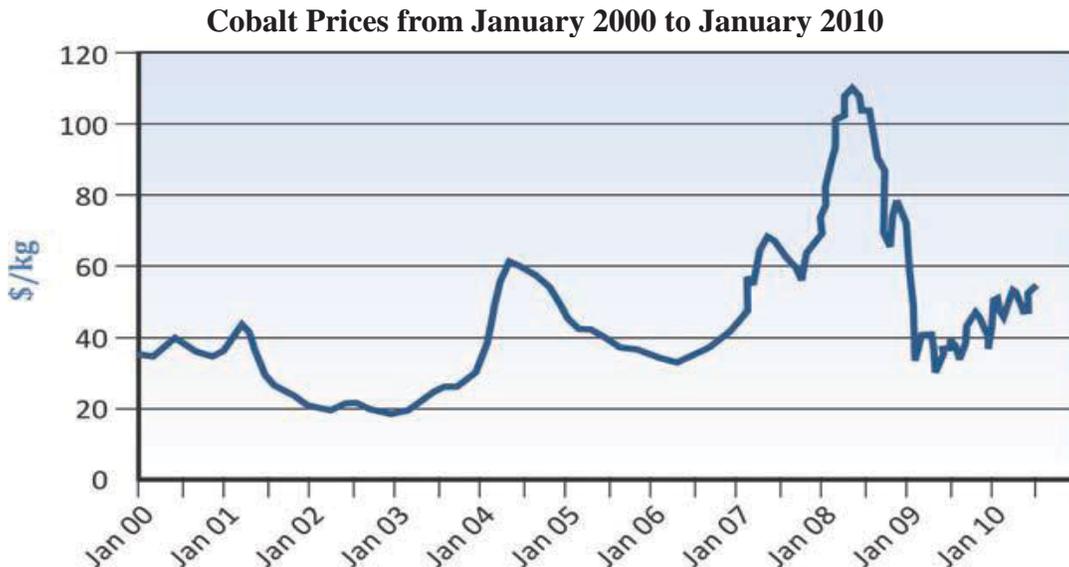
80. Economic principles teach that when producers are behaving competitively, they expand output to where price just covers the incremental or marginal cost of the last unit produced. The Defendants' decrease in production by 58%, only to increase output five (5) months later to nearly the same production levels (while holding prices the same), is simply inconceivably the result of competitive forces.

81. This production and pricing behaviour is better (more plausibly) explained by the existence of an anti-competitive agreement, because when the Defendants raised production a mere five (5) months later, they maintained prices at the same level as before the reduction in output. In other words, the Defendants' production and pricing behaviour would only be consistent with normal competition if incremental production costs had somehow been cut by a huge amount – 34% – over the intervening five (5) months. This could then possibly support an inference of competitive prices remaining at the same levels when production returned to nearly the same levels. But as illustrated below, input costs for Lithium Ion Rechargeable Batteries do not explain the Defendants' pricing and production behaviour.

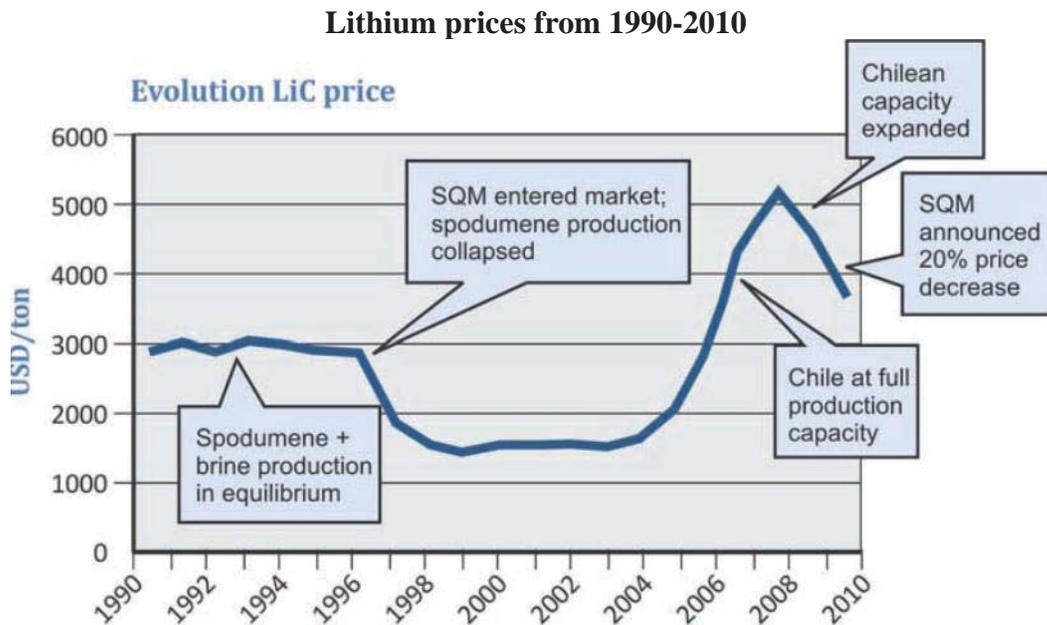
82. The two (2) most important raw materials used to manufacture Lithium Ion Rechargeable Batteries are lithium carbonate and cobalt. However, prices for these raw materials do not explain the Defendants' changes to Lithium Ion Rechargeable Battery prices and production levels:



83. Significant increases in cobalt prices in 2004 and 2008 were not mirrored by the slight rate of increase associated with Lithium Ion Rechargeable Battery prices during the 2002 through early 2008 time period. And when the global recession hit in 2008, cobalt prices, like many other prices (including Lithium Ion Rechargeable Battery prices) fell. But when cobalt prices rose again from early 2009 through early 2010, Lithium Ion Rechargeable Batteries did not track these price increases and large declines in cobalt prices in 2004 and in 2005 were not mirrored by the rate of increase of Lithium Ion Rechargeable Battery prices during that same time frame:



84. Similarly, Lithium Ion Rechargeable Battery price changes are not readily explained by the price movements for another important raw material –lithium carbonate (“LiC”). The period from 2000-2004 basically saw flat LiC prices, while Lithium Ion Rechargeable Battery prices dropped precipitously through 2002, then grew at a very slow rate. Then, LiC prices more than doubled from 2005 to 2007 after this flat 2000-2004 period, whereas Lithium Ion Rechargeable Battery prices continued with a slight rate of growth very similar to the 2002-2004 period. LiC prices dropped sharply during 2009-2010, while Lithium Ion Rechargeable Battery prices were basically flat:



85. Further, the steep price swings of Lithium Ion Rechargeable Batteries are not likely explained by changes in costs for capital, labour and/or energy. There were no drastic six-month swings in these variable costs.

**D. The structure and characteristics of the Lithium Ion Rechargeable Batteries market render the conspiracy even more plausible as they are conducive to anti-competitive price-fixing**

86. In addition to Lithium Ion Rechargeable Battery pricing and production levels supporting the existence of a conspiracy, the structure and other characteristics of the Lithium Ion Rechargeable Batteries market are conducive to a price-fixing agreement and have made collusion particularly attractive in this market. Specifically, the Lithium Ion Rechargeable Batteries market: (i) has high barriers to entry; (ii) has inelasticity of demand; and (iii) is highly concentrated:

**i. The Lithium Ion Rechargeable Batteries market has High Barriers to Entry for New Suppliers**

87. A collusive agreement that raises product prices above competitive levels would, under basic economic principles, attract new entrants seeking to benefit from the supracompetitive pricing. Where; however, there are significant barriers to entry, new entrants are less likely. Thus, barriers to entry help to facilitate the formation and maintenance of a cartel.

88. There are substantial barriers that preclude, reduce or hinder entry into the Lithium Ion Rechargeable Batteries market. A new entrant into the business would face costly and lengthy start-up costs, including multi-billion dollar costs associated with manufacturing plants and equipment, energy, transportation distribution infrastructure, skilled labour and long-standing customer relationships.

89. It has been estimated that the cost to build a plant to manufacture Lithium Ion Rechargeable Batteries that is capable of producing three million cells per month is approximately \$3-\$4 per cell. Thus, a plant making three million cells per month would cost

approximately \$108-\$144 million to build. This estimate does not include the costs of research, development and engineering that produce the technology and equipment designs for the plant.

90. In addition to the sizable costs of building a manufacturing plant, given the nature of the materials used in Lithium Ion Rechargeable Batteries, any new entrant would be required to comply with various environmental regulations in the jurisdiction in which such plant is built. Compliance with such regulations requires extensive testing and the receipt of government approvals, all of which take many years.

**ii. The Demand for Lithium Ion Rechargeable Batteries Is Inelastic Relative to Demand**

91. “Elasticity” is a term used to describe the sensitivity of supply and demand to changes in one or the other. Demand is said to be inelastic where customers have nowhere to turn to for an alternative, cheaper product of similar quality and must continue to purchase an item despite a price increase. Because of the lack of substitute products, the Lithium Ion Rechargeable Batteries market should not see a large decrease in demand as prices rise. The market is inelastic in that an increase in prices does not result in a drop in demand or in revenue.

92. Because the Lithium Ion Rechargeable Batteries market is inelastic, it is a market favourable for collusive activity. Such a market will allow the cartel to artificially raise prices without concern for a loss in demand by customers as there are few viable substitutes for the product.

93. Demand for Lithium Ion Rechargeable Batteries is highly inelastic as there are no close substitutes and customers must purchase Lithium Ion Rechargeable Batteries as an essential part of their electronic devices, even if prices are kept at a supracompetitive level.

**iii. The Market for Lithium Ion Rechargeable Batteries is Highly Concentrated**

94. Simply put, market concentration facilitates collusion as the fewer firms that dominate the market, the more power they maintain. If an industry is divided into a large number of small firms, the current gain from cheating on a cartel (profits from sales captured from other cartel members through undercutting of the cartel-fixed price in the current time period, which risks causing the cartel to fall apart in the future) is large relative to the firm's possible gains from the cartel's continuing future success (the firm's future share of the total cartel profits if collusion were to continue successfully). Conversely, with a more concentrated industry, a greater share for a colluding firm in future cartel profits tips the balance in favour of continued collusion and away from any short-term, transitory bump in profits that could be achieved by undercutting the cartel price and gaining a transitory increase in market share.

95. Empirical scholarship on cartels has primarily focused on an economics concentration measure called the CR4 – the four-firm concentration ratio, which is a measure of the total output produced in an industry by a given number of firms in the industry. The share of product sales accounted for by the four largest firms is used as a diagnostic in analyzing what levels of concentration facilitate multi-firm collusion.

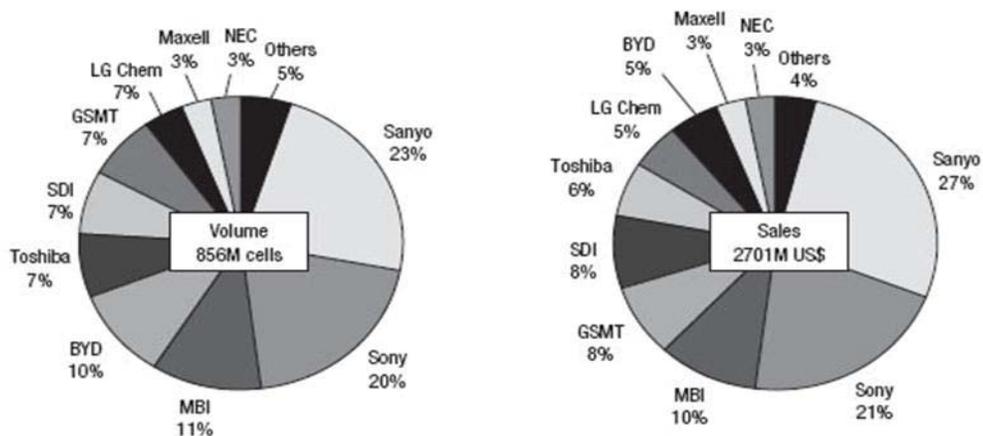
96. Concentration ratios range from 0 to 100 percent. The levels reach from no, low or medium to high to “total” concentration. No concentration, or a 0% concentration, signifies that there is no monopoly and the four (4) largest firms in the industry would not have any significant

market share. Total concentration signifies an extremely concentrated oligopoly, i.e. a monopoly. A concentration ratio of 50% or more in the industry indicates that an oligopoly is likely.

97. A seminal published study of DOJ price-fixing investigations found that 76% of these cartels occurred in sectors with CR4 of 50% or greater, which was about double the average CR4 for manufacturing. Fully a quarter of these cartels therefore, were still organized in markets with a less than 50% share held by the four largest firms.

98. For the Lithium Ion Rechargeable Batteries market, the four largest manufacturers accounted for more than 60% of the market for Lithium Ion Rechargeable Batteries during the Class Period, and exceeded 80% in some years. The market share of the alleged cartel members never fell below 70% and reached almost 90% in some years. As is illustrated below, the market share for Lithium Ion Rechargeable Batteries is highly concentrated by Defendants Sony, Panasonic (including Sanyo and formerly known as MBI see paragraph 10), Toshiba, Samsung SDI, LG Chem and Hitachi:

Figure A5.1. Li-ion Market Share for 2002



## E. GOVERNMENT INVESTIGATIONS

99. A globally-coordinated antitrust investigation is taking place in at least the United States and in Europe, aimed at suppliers of Lithium Ion Rechargeable Batteries.

100. In or around May 2011, Defendant Sony Corporation disclosed that its wholly-owned U.S. subsidiary, Sony Electronics, Inc., received a subpoena from the Antitrust Division of the DOJ concerning its “secondary batteries” business. Specifically, Sony disclosed that:

In May 2011, Sony Corporation’s U.S. subsidiary, Sony Electronics, Inc., received a subpoena from the U.S. Department of Justice (“DOJ”) Antitrust Division seeking information about its secondary battery business. Sony understands that the DOJ and agencies outside the United States are investigating competition in the secondary batteries market. Based on the stage of the proceedings, it is not possible to estimate the amount of loss or range of possible loss, if any, that might result from adverse judgments, settlements or other resolution of this matter.

101. On or about August 20, 2012, LG Chem confirmed that it also was the target of the investigation being conducted by the DOJ.

102. Other news articles have confirmed that in addition to Defendants Sony and LG Chem, Samsung SDI and Panasonic are also under investigation by the DOJ for price-fixing with respect to the sale of rechargeable batteries.

103. It is significant that the Defendants’ anti-competitive behaviour is the subject of a criminal grand jury investigation being conducted by the DOJ. In order for the DOJ to institute a grand jury investigation, a DOJ Antitrust Division attorney must believe that a crime has been committed and prepare a detailed memorandum to that effect.

104. Following a review of that memorandum, the request for a grand jury must be approved by the Assistant Attorney General for the Antitrust Division, based on the standard that a criminal violation may have occurred. In addition, the fact that the DOJ Antitrust Division investigation is criminal, as opposed to civil, is significant as well. The Antitrust Division's "Standards for Determining Whether to Proceed by Civil or Criminal Investigation" states: "[i]n general, current Division policy is to proceed by criminal investigation and prosecution in cases involving horizontal, per se unlawful agreements such as price-fixing, bid rigging, and customer and territorial allocations." Accordingly, the existence of a criminal investigation into the market for Lithium Ion Rechargeable Batteries supports the existence of the conspiracy alleged in this complaint.

**F. THE DEFENDANTS HAVE A HISTORY OF COLLUDING TO FIX PRICES FOR CRITICAL COMPONENTS OF CONSUMER ELECTRONICS**

105. Many of the Defendants have a long history of collusion and are either currently involved in worldwide investigations into other technology-related products or have been convicted of participating in price-fixing cartels involving technology-related products. Further, much of the illegal conduct which the Defendants or their affiliates have admitted to took place during the Class Period identified in this Class Action.

106. A notebook computer contains four (4) key pieces of hardware: a DRAM chip, an LCD screen, an ODD and a rechargeable lithium ion battery. The Defendants here have pled guilty to fixing the prices of the first three (3) of these components and the DOJ is investigating whether to bring criminal price-fixing charges for the fourth component – Lithium Ion Rechargeable Batteries.

107. In or around October 2005, Samsung Electronics Company, Ltd. and Samsung Semiconductor, Inc. agreed to plead guilty and pay a \$300 million fine for “participating in an international conspiracy to fix prices in the DRAM market ....” Samsung Electronics Company, Ltd. and Samsung Semiconductor, Inc. admitted that they participated in the conspiracy from approximately April 1, 1999 through June 15, 2002. In addition, seven (7) Samsung executives (Il Ung Kim, Sun Woo Lee, Yeongho Kang, Young Woo Lee, Thomas Quinn, Young Hwan Park, Young Bae Rha) agreed to plead guilty to participating in the conspiracy with respect to Lithium Ion Rechargeable Batteries. Each agreed to pay a \$250,000 criminal fine and serve a prison sentence in the United States ranging from seven to fourteen months.

108. Although it has not been publicly acknowledged, it is widely believed that Samsung is in the DOJ leniency program with respect to the DOJ’s investigation into the market for LCDs, meaning that it has admitted its participation in the cartel.

109. In November 2008, LG Display Co., Ltd., a wholly-owned Korean subsidiary of LG Electronics, agreed to plead guilty and pay a \$400 million fine to the United States, in connection with its participation in a worldwide conspiracy to fix the prices of LCDs during the period from September 2001 through June 2006. At the time, the fine paid by LG was the second highest fine ever imposed by the Antitrust Division of the DOJ. In addition, in April 2009, an executive of LG Display, Bock Kwon, agreed to plead guilty to participating in the global LCD conspiracy from September 2001 through June 2006. Kwon, a Korean national, agreed to serve 12 months in a United States prison and pay a \$30,000 criminal fine. Further, in February, 2009, another LG Display executive, Duk Mo Koo, agreed to plead guilty to participating in the global conspiracy with respect to LCDs from September 2001 through December 2006.

110. In March 2009, Hitachi Displays, Ltd., a wholly-owned Japanese subsidiary of Hitachi, Ltd., agreed to plead guilty and pay a \$31 million fine for participating in a worldwide conspiracy to fix the prices of LCDs during the period April 1, 2001 through March 31, 2004.

111. In September 2011, an entity which is a joint venture between Hitachi, Ltd. and LG Electronics, Inc., Hitachi-LG Data Storage, Inc., agreed to plead guilty and to pay a \$21.1 million fine for participating in various conspiracies to rig bids and fix prices for ODDs during the period from June 2004 to September 2009. In addition, three (3) Hitachi-LG Data Storage executives also agreed to plead guilty for participating in the same conspiracy. In December 2011, Yong Kuen Park, Sang Hun Kim, and Sik Hur agreed to plead guilty for participating in the conspiracy with respect to ODDs during the period November 2005 through September 2009. All three agreed to serve prison time in the United States and pay criminal fines.

112. The Defendants have also pled guilty to fixing prices for other high-tech products.

113. In or around March 2011, Defendant Samsung SDI agreed to plead guilty and pay a \$32 million fine for participating in a “global conspiracy to fix prices, reduce output, and allocate market share of colour display tubes, a type of cathode ray tube used in computer monitors and other specialized applications ....” Samsung SDI admitted it participated in the conspiracy from approximately January 1997 through at least March 2006.

114. In September 2010, Defendant Panasonic agreed to plead guilty and pay a \$49.1 million fine for participating in a conspiracy to “suppress and eliminate competition by fixing prices to customers of household compressors ....” during the period October 14, 2004 through December 31, 2007.

115. Clearly, the Defendants have a long history of engaging in violations of antitrust laws.

### **THE REPRESENTATIVE PLAINTIFF**

116. Over the past few years, the Plaintiff has purchased many Lithium Ion Rechargeable Battery Products from various retailers in Ontario including, but not limited to a Dell Inspiron 1520 Notebook and a Kodak EasyShare Digital Camera.

117. Due to the Defendants' conduct, Plaintiff was deprived of the benefit of free market competition, and because of this, he was charged a higher price for the products that he purchased.

### **CAUSES OF ACTION**

#### **TORTIOUS INTERFERENCE WITH ECONOMIC INTERESTS**

118. During the Class Period, senior executives and employees of the Defendants, acting in their capacities as agents for the Defendants, conspired with each other and with other manufacturers and distributors of Lithium Ion Rechargeable Batteries to illegally fix the prices of Lithium Ion Rechargeable Batteries sold in Canada and supplied to original equipment manufacturers for inclusion in products sold in Canada. In furtherance of the conspiracy, at times and places some of which are unknown to the Plaintiff, the Defendants wrongfully, unlawfully and lacking *bona fides* engaged in communications, conversations and attended meetings with each other in which these persons unlawfully agreed to:

- (a) Allocate the market share and/or set specific sales volumes of Lithium Ion Rechargeable Batteries that each company would manufacture and supply in Canada and elsewhere;
- (b) Allocate among themselves the customers and/or certain sales contracts, in whole or in part, for Lithium Ion Rechargeable Batteries in Canada;
- (c) Fix, maintain, increase and/or control the price at which the Defendants and other manufacturers and distributors of Lithium Ion Rechargeable Batteries would sell Lithium Ion Rechargeable Batteries in Canada and to original equipment manufacturers for inclusion in products sold in Canada and elsewhere;
- (d) Exchange information in order to monitor and enforce adherence to the agreed-upon prices for Lithium Ion Rechargeable Batteries;
- (e) Exchange information regarding the prices and volumes of sales of Lithium Ion Rechargeable Batteries for the purposes of monitoring and enforcing adherence to the agreed-upon prices, sales volumes, customers and markets;
- (f) Submit collusive, non-competitive and rigged bids for Lithium Ion Rechargeable Batteries in Canada;
- (g) Control, prevent, lessen and/or eliminate, unduly, competition in the manufacture, sale and distribution of Lithium Ion Rechargeable Batteries in Canada and elsewhere by fixing the prices of Lithium Ion Rechargeable Batteries at artificially high levels and allocating the volume of Lithium Ion Rechargeable Batteries;
- (h) Reduce the supply of Lithium Ion Rechargeable Batteries;
- (i) Meet secretly to discuss prices and volumes of sales of Lithium Ion Rechargeable Batteries;
- (j) Instruct members of the conspiracy at meetings not to divulge the existence of the conspiracy; and
- (k) Discipline any corporation which failed to comply with the conspiracy.

119. The acts alleged in this claim were also in breach of Part VI of the *Competition Act* as described in paragraphs 132 and following.

120. The North American subsidiaries, LG Chem America, Panasonic North America, Panasonic Canada, Sanyo North America, Sony Canada, Sony Electronics, Samsung SDI America, Hitachi Canada and Maxell America, 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, LG Chem, Panasonic, Sanyo, Sony, Sony Energy, Samsung, Hitachi and Hitachi-Maxell. LG Chem America, Panasonic North America, Panasonic Canada, Sanyo North America, Sony Canada, Sony Electronics, Samsung SDI America, Hitachi Canada and Maxell America. The North American subsidiaries thereby acted as agents in carrying out the conspiracy and are liable for such acts.

**CIVIL CONSPIRACY (PREDOMINANT PURPOSE CONSPIRACY & UNLAWFUL MEANS CONSPIRACY)**

121. Further, or alternatively, the tort of predominant purpose conspiracy can be made out as the Defendants:

- (a) Acted in combination by agreement or common design to illegally increase their profits on the sale of Lithium Ion Rechargeable Batteries;
- (b) Had the predominant purposes and predominant concerns to intentionally injure the Plaintiff and other Class Members by requiring them to pay artificially high prices for Lithium Ion Rechargeable Batteries and for Lithium Ion Rechargeable Battery Products; and
- (c) The Defendants' conduct caused harm to the Plaintiff and other Class Members.

122. Further or alternatively, the acts alleged in this claim were unlawful acts directed towards the Plaintiff and other purchasers of Lithium Ion Rechargeable Batteries or products containing Lithium Ion Rechargeable Batteries in Canada amounting to the tort of unlawful means conspiracy in that the Defendants:

- (a) Acted in combination, by agreement or common design to illegally increase their profits on the sale of Lithium Ion Rechargeable Batteries;
- (b) Are liable for the conspiracy and/or are in breach of the *Competition Act* as described in paragraph 132 and following;
- (c) Directed their unlawful conduct at the Plaintiff and other Class Members;
- (d) Knew or ought to have known in the circumstances that their conduct would likely cause injury to the Plaintiff and to other purchasers of Lithium Ion Rechargeable Batteries or Lithium Ion Rechargeable Battery Products; and
- (e) Caused harm through their unlawful conduct in furtherance of their conspiracy to the Plaintiff and Class Members.

123. 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.

124. The Plaintiff pleads that by virtue of the acts and omissions described above, the Defendants are liable in damages to him and to the Class Members and that each Defendant is responsible for the acts and omissions of the other Defendants for the following reasons:

- (a) Each was the agent of the other;

- (b) Each company's business was operated such that it was inextricably interwoven with the business of the other as set out above;
- (c) Each company entered into a common business plan to manufacture, distribute, market, test and sell the Lithium Ion Rechargeable Batteries; and
- (d) The Defendants intended that their businesses be run as one global business organization.

125. The Plaintiff and the other Class Members are entitled to legal and equitable relief against the Defendants, including damages, consequential damages, specific performance, rescission, attorneys' fees, costs of suit and other relief as appropriate.

**Compensatory Damages (Economic and Non-Economic Losses)**

126. The Plaintiff and other Class Members have suffered damages as a result of the foregoing conspiracy, which had the effect of raising, maintaining and stabilizing prices of Lithium Ion Rechargeable Batteries and Lithium Ion Rechargeable Battery Products at artificial and non-competitive levels.

127. During the Class Period, the Plaintiff and other Class Members have, directly or indirectly, purchased millions of dollars of Lithium Ion Rechargeable Batteries and Lithium Ion Rechargeable Battery Products manufactured and distributed by the Defendants and other manufacturers and distributors of Lithium Ion Rechargeable Batteries who participated in the unlawful conspiracy described above. By reason of the alleged violations of the *Competition Act*, as described in paragraph 132, and the unlawful conduct at common law, the Plaintiff and

the other Class Members paid more for Lithium Ion Rechargeable Batteries or Lithium Ion Rechargeable Battery Products than they would have paid in the absence of the illegal combination and conspiracy. As a result, they have been injured in their business and property and have suffered damages in an amount that is presently undetermined.

128. The Plaintiff asserts that the combined damages of himself and of the other Class Members are capable of being quantified on an aggregate basis as the difference between the prices actually obtained by the Defendants and other manufacturers and distributors of Lithium Ion Rechargeable Batteries who participated in the unlawful conspiracy described above for Lithium Ion Rechargeable Batteries and the prices which would have been obtained in the absence of the illegal agreements.

### **Punitive, Exemplary and Aggravated Damages**

129. The Plaintiff pleads that the Defendants' conduct was high-handed, reckless, wanton, without care, deliberate, callous, 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 aggravated, exemplary and punitive damages.

### **STATUTORY REMEDIES**

130. The Defendants are in breach of the *Competition Act* and/or other similar/equivalent legislation.

131. The Plaintiff pleads and relies upon competition and trade legislation and on the common law, as it exists in this jurisdiction, and the equivalent/similar legislation and common law in

other Canadian provinces and territories. The Class Members have suffered injury, economic loss and damages caused by or materially-contributed to by the Defendants' inappropriate and unfair business practices.

**Breach of the *Competition Act***

132. The Defendants' acts, as particularized in paragraph 118, are in breach of s. 45 of Part VI of the *Competition Act*, were and are unlawful and render the Defendants jointly and severally liable to pay damages and costs of investigation pursuant to s. 36 of the *Competition Act*. Further or alternatively, the Canadian subsidiaries of the Foreign Defendants are liable to the Plaintiff and to the other Class Members pursuant to s. 36 of the *Competition Act* for acts in contravention of s.46(1) of the *Competition Act*.

133. In furtherance of the conspiracy, during the Class Period, the following acts were done by the Defendants, their servants and agents and other manufacturers and distributors of Lithium Ion Rechargeable Batteries:

- (a) They agreed to fix, maintain, increase and/or control the price for the supply of Lithium Ion Rechargeable Batteries and to coordinate price increases for the sale of Lithium Ion Rechargeable Batteries;
- (b) They agreed to allocate the sales volumes of, customers and markets for the production and/or supply of Lithium Ion Rechargeable Batteries among themselves; and
- (c) They agreed to fix, maintain, control, prevent, lessen or eliminate the production and/or supply of Lithium Ion Rechargeable Batteries;

134. The Canadian subsidiaries of the Foreign Defendants implemented, in whole or in part, directives, instructions, intimations of policy and/or other communications from the Foreign Defendants, for the purpose of giving effect to the conspiracy, combination, agreement or arrangement.

135. The Plaintiff and Class Members are also entitled to recover as damages or costs, in accordance with the *Competition Act*, the costs of administering the plan to distribute the recovery in this action and the costs to determine the damages of each Class Member.

#### **WAIVER OF TORT, UNJUST ENRICHMENT AND CONSTRUCTIVE TRUST**

136. The Plaintiff pleads and relies on the doctrine of waiver of tort and states that the Defendants' conduct, including the alleged breaches of the *Competition Act* constitutes wrongful conduct which can be waived in favour of an election to receive restitutionary or other equitable remedies.

137. The Plaintiff reserves the right to elect at the Trial of the Common Issues to waive the Tortious Interference with Economic Interests and to have damages assessed in an amount equal to the artificially-induced Overcharge from the sale of the Lithium Ion Rechargeable Batteries.

138. Further, the Defendants have been unjustly enriched as a result of the revenues generated from the sale of the Lithium Ion Rechargeable Batteries and as such, *inter alia*, that:

- (a) The Defendants have obtained an enrichment by the artificially-induced Overcharge;

- (b) The Plaintiff and the Class Members have suffered a corresponding deprivation because of the artificially-induced Overcharge in the amount of such Overcharge attributable to the sale of Lithium Ion Rechargeable Batteries and Lithium Ion Rechargeable Battery Products in Canada; and
- (c) The benefit obtained by the Defendants and the corresponding detriment experienced by the Plaintiff and Class Members has occurred without juristic reason. Since the monies that were received by the Defendants resulted from the Defendants' inappropriate conduct and wrongful acts in conspiring to fix the price and allocate the market share of Lithium Ion Rechargeable Batteries, there is no juridical reason justifying the Defendants' retaining any portion of such money paid.

139. Further, or in the alternative, the Defendants are constituted as constructive trustees in favour of the Class Members for all of the monies received because, among other reasons:

- (a) The Defendants were unjustly enriched by the artificially-induced Overcharge for the Lithium Ion Rechargeable Batteries;
- (b) The Class Members suffered a corresponding deprivation because of the artificially-induced Overcharge in the amount of such Overcharge attributable to the sale of Lithium Ion Rechargeable Batteries and products containing Lithium Ion Rechargeable Batteries in Canada;

- (c) The artificially-induced Overcharge was acquired in such circumstances that the Defendants may not in good conscience retain it;
- (d) Equity, justice and good conscience require the imposition of a constructive trust;
- (e) The integrity of the marketplace would be undermined if the court did not impose a constructive trust; and
- (f) There are no factors that would, in respect of the artificially-induced Overcharge, render the imposition of a constructive trust unjust.

140. Further, or in the alternative, the Plaintiff claims an accounting and disgorgement of the benefits which accrued to the Defendants.

### **COMMON ISSUES**

141. Common questions of law and fact exist for the Class Members and predominate over any questions affecting individual members of the Class. The common questions of law and fact include:

- (a) Did the Defendants engage in an agreement, combination, collusion, and/or conspiracy to fix, raise, maintain, or stabilize the prices of Lithium Ion Rechargeable Batteries?
- (b) Did the Defendants take any actions to conceal this unlawful agreement, combination, collusion, and/or conspiracy?

- (c) Did the Defendants' conduct cause the prices of Lithium Ion Rechargeable Batteries and Lithium Ion Rechargeable Battery Products to be sold at artificially inflated and non-competitive levels?
- (d) Were members of the class prejudiced by the Defendants' conduct, and, if so, what is the appropriate measure of these damages?
- (e) Are members of the class entitled to, among other remedies, injunctive relief, and, if so, what is the nature and extent of such injunctive relief?
- (f) Are the Defendants liable to pay compensatory and/or punitive damages to member of the class, and, if so, in what amount?
- (g) Did the Defendants' acts or practices breach the *Competition Act* or other similar/equivalent legislation?

### **EFFICACY OF CLASS PROCEEDINGS**

142. The members of the proposed Class number in the hundreds of thousands. As a result, the Class is so numerous that joinder in a single action is not practical. However, proceeding with the Class Members' claim by way of a class proceeding is both practical and feasible.

143. Class counsel proposes to prosecute these claims on behalf of the Class through this Action and through other actions commenced by the offices of Consumer Law Group Inc. These actions include *Cohen v. LG Chem Ltd. et alii*, an action commenced before the Quebec Superior Court in Montreal (November 5, 2012 File No.: 500-06-000632-121).

144. Individual members of the proposed class do not have a significant interest in individually controlling the prosecution of their claim by way of separate actions and individualized litigation would also present the potential for varying, inconsistent and contrary judgments and would magnify the delay and expense to all parties resulting from multiple proceedings on the same issues. The cost to pursue individual actions concerning this claim would effectively deny the individual Class Members access to the Courts and appropriate legal relief.

145. The Plaintiff will fully and adequately protect the interests of the proposed Class Members and has retained counsel to represent the Class Members who are qualified to prosecute complex class action litigation. Neither the Plaintiff nor his solicitors have interests which are contrary to, or conflicting with, the interests of the proposed Class.

## **LEGISLATION**

146. The Plaintiff pleads and relies on the *Class Proceedings Act*, the *Courts of Justice Act* and the *Competition Act*.

## **JURISDICTION AND FORUM**

### **Real and Substantial Connection with Ontario**

147. There is a real and substantial connection between the subject matter of this action and the province of Ontario because:

- (a) Defendants Panasonic Canada Inc., Sony of Canada Ltd. and Hitachi Canada, Ltd. have registered offices in Ontario;
- (b) The Defendants engage in business with residents of Ontario;
- (c) The Defendants derive substantial revenue from carrying on business in Ontario;  
and
- (d) The damages of Class Members were sustained in Ontario.

148. The Plaintiff proposes that this action be tried in the City of Ottawa, in the Province of Ontario as a proceeding under the *Class Proceedings Act*.

### **Service Outside of Ontario**

149. The originating process herein may be served *ex juris* on Defendants located outside Ontario, pursuant to subparagraphs (a), (c), (g), (h), (o) and (p) of Rule 17.02 of the *Rules of Civil Procedure*. Specifically, the originating process herein may be served without court order outside Ontario, on the basis that the claim is:

- (a) In respect of personal property situated in Ontario (rule 17.02(a));
- (b) For the interpretation and enforcement of a contract or other instrument in respect of personal property in Ontario (rule 17.02 (c));
- (c) In respect of a tort committed in Ontario (rule 17.02(g));

- (d) In respect of damages sustained in Ontario arising from a tort or breach of contract wherever committed (rule 17.02(h));
- (e) The claim is authorized by statute and the *Competition Act* (rule 17.02(n));
- (f) Against a person outside Ontario who is necessary and/or proper party to a proceeding properly brought against another person served in Ontario; (rule 17.02(o)); and
- (g) Against a person carrying on business in Ontario (rule 17.02(p)).

Date: February 26, 2013

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**LG CHEM LTD. et alii**  
Defendants

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**PROCEEDING COMMENCED IN OTTAWA**

*Proceeding under the Class Proceedings Act, 1992*

**STATEMENT OF CLAIM**

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