

# COUR SUPÉRIEURE

CANADA  
PROVINCE DE QUÉBEC  
DISTRICT DE QUÉBEC

N° : 200-06-000082-076

DATE : 8 novembre 2013

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**SOUS LA PRÉSIDENTE DE : L'HONORABLE CATHERINE LA ROSA, j.c.s.**

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**COMMUNICATION MÉGA-SAT INC.,**

Requérante;

c.

**LG PHILIPS LCD CO., LTD. et LG PHILIPS LCD AMERICA, INC.**

et

**SAMSUNG ELECTRONICS CO. LTD., et SAMSUNG ELECTRONICS CANADA INC.,**

et

**HITACHI LTD., HITACHI CANADA LTD., HITACHI AMERICA LTD., HITACHI  
ELECTRONICS DEVICES (USA) INC. et HITACHI DISPLAYS LTD.**

et

**SHARP CORPORATION et SHARP ELECTRONICS OF CANADA LTD et SHARP  
ELECTRONICS CORPORATION**

et

**TOSHIBA OF CANADA LTD. et TOSHIBA CORPORATION et TOSHIBA AMERICA  
CORPORATION et TOSHIBA MATSUSHITA DISPLAY TECHNOLOGY CO., LTD.**

et

**AU OPTRONICS CORPORATION et AU OPTRONICS CORPORATION AMERICA**

et

**CHI MEI OPTOELECTRONICS USA INC. et CHI MEI OPTOELECTRONICS JAPAN  
CO., LTD. et CHI MEI OPTOELECTRONICS CORPORATION**

et

**HANNSTAR DISPLAY CORPORATION.**

Intimées.

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## JUGEMENT

portant sur une demande d'approbation de l'entente intervenue avec les intimées  
Samsung Electronics Co. LTD. et Samsung Electronics Canada inc.

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[1] La requérante Communication Méga-Sat inc. (*Méga-Sat*) requiert l'approbation de l'entente intervenue avec les intimées Samsung Electronics Co. LTD. et Samsung Electronics Canada inc. (l'Entente Samsung).

### Le contexte

[2] Le 6 juin 2007, la requérante a déposé une requête pour obtenir l'autorisation d'exercer un recours collectif contre les intimées et pour obtenir le statut de représentante (ci-après la « Requête en autorisation ») au bénéfice des membres du groupe ci-après décrit :

Tous les résidants du Québec qui ont acheté, utilisé ou reçu un écran à cristaux liquides ou qui ont acheté des produits contenant un écran à cristaux liquides (ci-après le « ACL »), et ce entre le 1<sup>er</sup> janvier 1998 et le 4 juin 2007.

[3] Deux autres procédures en matière de recours collectif ont également été déposées au Canada, l'une en Colombie-Britannique, l'autre en Ontario, celles-ci étant collectivement désignées avec le recours du Québec, les « Procédures » ou les « Recours principaux », soit :

- *Kristopher Gruber v. LG Philipps LCD Co. Ltd et al*, Cour suprême de Colombie-Britannique, registre de Vancouver, dossier numéro S071569 (le « Recours de la CB »); et
- *The Fanshawe College of Applied Arts and Technology v. LG Philipps LCD Co. Ltd et al*, Cour supérieure de justice de l'Ontario, dossier numéro 54054CP (le « Recours de l'Ontario »).

[4] Également, divers autres recours de la nature d'un recours collectif ont été entrepris aux États-Unis. Ces recours ont tous été regroupés dans une action devant le *United States district Court for the Northern district of California*, sous le titre *in re TFT-LCD (flat panel) anti-trust litigation, Case M : 07-cv-01827-SI*.

[5] Avant que la Requête en autorisation ne soit présentée au tribunal pour adjudication, les requérants dans les Procédures ont conclu une entente avec l'intimée Chunghwa Picture Tubes, Ltd (ci-après l' « Entente Chunghwa »), le 11 mai 2009.

[6] L'Entente Chunghwa a subséquemment été approuvée par la Cour supérieure du Québec et par les tribunaux de la Colombie-Britannique et de l'Ontario.

[7] Les intimés identifiés dans les Procédures ont conclu une seconde entente, cette fois avec l'intimée Epson Imaging Devices Corporation (autrefois désignée sous la dénomination sociale Sanyo Epson Imaging Devices Corporation (ci-après l' « Entente Epson »)) afin de régler l'ensemble des réclamations des membres des groupes du Québec, de l'Ontario et de la Colombie-Britannique.

[8] L'Entente Epson a été approuvée par la Cour supérieure du Québec et par les tribunaux de la Colombie-Britannique et de l'Ontario.

[9] Toujours avant que la requête en autorisation ne soit présentée à la Cur pour adjudication, la requérante et les intimés Samsung Electronics Co., LTD. et Samsung Electronics Canada inc. (ci-après les « intimés qui règlent/Settling Defendants » ou « Samsung ») ont conclu une entente le 29 avril 2013.

[10] En vertu de l'Entente Samsung, les recours canadiens définis dans l'Entente Samsung sous le terme *Proceedings* seraient réglés dans l'éventualité où l'Entente Samsung est approuvée par les tribunaux, moyennant le paiement par Samsung d'une somme de 21 250 000,00 \$ canadiens.

[11] Il y est aussi prévu que :

- i. L'exercice d'un recours collectif aux seules fins de l'Entente Samsung et seulement contre Samsung est autorisé;
- ii. Le groupe du Québec, aux fins ci-dessus, est défini comme suit :

« Toutes (i) personnes au Québec (ii) de même que toute personne morale de droit privé, toute société ou toute association résidant au Québec, qui comptait sous sa direction ou son contrôle au plus de cinquante (50) personnes liées à elle par contrat de travail, qui a acheté des Produits avec de grands panneaux ACL au cours de la Période visée par le recours, à l'exception des Personnes exclues;
- iii. La question commune, sur la base de laquelle les parties à l'Entente Samsung ont accepté de régler est :

- Est-ce que les intimées qui règlent/*Settling Defendants* ont comploté pour fixer, augmenter, maintenir ou stabiliser le prix ou se répartir les parts de marché et la clientèle pour les grands panneaux ACL, que ce soit directement ou indirectement au Canada au cours de la Période visée par le recours/*Class Period* ?
  - Le cas échéant, quels dommages, s'il en est, les membres du groupe ont-ils subis ?
- iv. Samsung accepte de régler cette affaire, sur une base nationale, mais continue à nier avoir posé quelque geste illégal que ce soit.

[12] Conformément à la loi, l'Entente Samsung n'est valable que si elle est approuvée par le tribunal.

[13] Au préalable, en conformité avec l'article 1025 C.p.c., le Tribunal, par jugement rendu le 12 juillet 2013, a approuvé la forme, le contenu et le mode de diffusion des avis qui ont déjà été produits au dossier de la Cour.

[14] La preuve révèle que les avis ont été diffusés suivant le jugement du 12 juillet 2013.

[15] Les parties à l'Entente Samsung se sont entendues sur une méthode et un délai pour s'exclure du groupe et ces détails sont compris dans l'Avis détaillé déposé au dossier de la Cour.

[16] Les parties à l'Entente Samsung se sont également entendues sur un mécanisme et un délai permettant aux membres du groupe de s'opposer à l'Entente Samsung au moyen d'une opposition écrite ou par représentation orale lors de l'audience portant sur l'approbation finale.

[17] Les avis R-22 et R-23 ont été diffusés et publiés selon le protocole de diffusion approuvé par la Cour.

[18] Les avis contenaient toutes les informations nécessaires pour permettre à quiconque le désirait de s'opposer à l'Entente Samsung.

[19] La date limite pour s'opposer était le 13 septembre 2013 et la date limite pour s'exclure a été fixée au 28 septembre 2013.

[20] À la tombée des échéances, personne n'a signifié son intention de s'opposer à l'Entente Samsung ou de s'exclure des Procédures.

[21] La Cour supérieure de justice de l'Ontario a approuvé l'Entente Samsung le 23 septembre 2013.

[22] La Cour suprême de la Colombie-Britannique a approuvé l'Entente Samsung le 1<sup>er</sup> octobre 2013.

[23] Compte tenu de l'état du dossier, les requérants principaux et Samsung se sont entendus pour que l'indemnité versée par Samsung soit conservée en fidéicommis par les procureurs du groupe de l'Ontario, au bénéfice de tous les membres du groupe, et que toute distribution de sommes contenues dans tels fonds se fasse ultérieurement dans le cadre d'un plan de distribution qui sera au préalable soumis au Tribunal pour approbation.

[24] Vu l'état du dossier, les parties à l'Entente Samsung se sont entendues pour que l'avis final annonçant l'approbation de ce recours collectif aux fins de l'Entente Samsung ainsi que la méthode de diffusion retenue pour la publication de cet avis soient approuvés par le Tribunal ultérieurement, dans le cadre d'une requête qui sera au préalable soumise au Tribunal pour approbation.

[25] Bien que l'assistance du Fonds d'aide aux recours collectifs n'ait pas été sollicitée en l'instance, la requête lui a été dûment signifiée.

## Analyse

### *Principes généraux quant à l'approbation de l'entente*

[26] La requérante cherche à obtenir l'approbation d'un règlement à l'amiable conclu le 29 avril 2013 (l'« Entente Samsung ») avec Samsung Electronics Co., Ltd. et Samsung Electronics Canada inc. (les « intimées qui règlent/*Settling Defendants* » ou « Samsung »).

[27] Rappelons d'abord que les faits allégués dans la requête en autorisation (allégations qui n'ont pas été mises en preuve dans le cadre du recours du Québec) constituent une violation de la Partie IV de la *Loi sur la concurrence*<sup>1</sup> (ci-après la « Loi »).

[28] En vertu de la Loi, les personnes qui ont subi des dommages en raison de tels agissements peuvent s'adresser au tribunal pour obtenir compensation.

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<sup>1</sup> L.R.C. (1985), c. C-34.

[29] La constitutionnalité des recours civils découlant de la Loi a été confirmée par la Cour suprême du Canada dans l'arrêt *General Motors of Canada c. City National Leasing*<sup>2</sup>. Ainsi, les dispositions de la Loi habilite les personnes à exercer des poursuites devant les tribunaux civils si elles peuvent démontrer qu'elles ont subi des pertes à cause des actes enfreignant toute disposition à la Loi.

[30] L'article 1025 du *Code de procédure civile* requiert que la transaction soit approuvée par le tribunal puisqu'elle n'est pas faite sans réserve et pour la totalité de la demande.

[31] Dans l'affaire *Markus c. Reebok Canada Inc.*<sup>3</sup>, l'honorable juge Gagnon a écrit :

[20] Le tribunal doit encourager les règlements à l'amiable en donnant effet à la volonté des parties, à moins qu'il y ait atteinte à l'ordre public.

[21] Le tribunal doit prendre garde de ne pas modifier significativement le contrat de transaction conclu entre les parties. Le tribunal doit l'approuver tel quel ou refuser de l'entériner, quitte à renvoyer les parties négocier des modifications.

[22] Le tribunal ne doit pas exiger la perfection mais décider si en fin de compte, les avantages pour les membres l'emportent sur les inconvénients.

[32] Cette position, comme exposée par le juge Gagnon, est le reflet de la volonté du législateur. Cette volonté de favoriser les règlements à l'amiable est aussi la pierre angulaire du prochain *Code de procédure civile*. En effet, l'avant-projet de loi<sup>4</sup> instituant le nouveau *Code de procédure civile* présenté par l'ancien ministre de la justice, monsieur Jean-Marc Fournier, prévoit ceci :

9. Les tribunaux ont pour mission de trancher les litiges dont ils sont saisis en conformité avec les règles de droit qui leur sont applicables et, à cet égard, de dire le droit. Ils ont aussi pour mission de statuer, même en l'absence de litige, lorsque la loi exige, en raison de la nature de l'affaire ou de la qualité des personnes, qu'une demande leur soit soumise.

Il entre également dans leur mission, tant en première instance qu'en appel, de favoriser la conciliation des parties si la loi leur en fait devoir, si les parties le demandent ou y consentent ou si les circonstances s'y prêtent.

Enfin, il entre aussi dans leur mission d'assurer la saine gestion des instances en accord avec les principes et les objectifs de la procédure.

<sup>2</sup> [1989] 1 R.C.S. 641.

<sup>3</sup> 2012 QCCS 3562.

<sup>4</sup> Avant-projet de loi instituant le nouveau Code de procédure civile, 29 septembre 2011.

Le tribunal et les juges bénéficient de l'immunité judiciaire dans l'exercice de leur mission.

[Soulignement ajouté]

[33] Enfin, la Cour d'appel du Québec, dans l'affaire *Kosko c. Bijimine*<sup>5</sup>, écrivait ceci :

[34] Je suis d'avis que l'objection à la preuve était bien fondée et c'est à bon droit que le juge de première instance l'a retenue. Cette conclusion s'impose pour trois motifs : (1) le respect des principes qui sous-tendent l'indépendance et l'impartialité des tribunaux; (2) l'intérêt public au nom duquel les tribunaux ont de tout temps favorisé le règlement à l'amiable des conflits; (3) les règles inhérentes au fonctionnement de tout système de conciliation ou médiation efficace et crédible.

[Soulignement ajouté]

[34] Une transaction conclue dans le cadre d'un recours collectif n'est valable que si elle est approuvée par le tribunal. Avant d'approuver une transaction, le tribunal détermine si elle est juste, raisonnable et au mieux des intérêts du groupe pris dans son ensemble<sup>6</sup>.

[35] Le tribunal peut tenir compte de divers facteurs afin de décider d'approuver une transaction relative à un recours collectif, dont les suivants<sup>7</sup> :

- (1) la probabilité de récupération ou la probabilité de réussite;
- (2) les frais futurs et la prolongation probable du litige si la question n'est pas réglée;
- (3) les modalités et les conditions de la transaction;
- (4) le montant et la nature de l'enquête préalable, de la preuve ou de l'examen;
- (5) la présence de négociations de pleine concurrence et l'absence de collusion;
- (6) la compétence et l'expérience de l'avocat;

<sup>5</sup> *Kosko c. Bijimine*, 2006 QCCA 671.

<sup>6</sup> *Gagné c. Primerica Financial Service Ltd*, C.S. Québec, n° 200-06-000008-006, le 16 octobre 2001, juge Jean Lemelin, par. 9; *Pelletier c. Baxter Healthcare Corp.*, C.S. Montréal n° 500-06-000003-955, juge Irving Halperin, le 16 avril 1998; *Dabbs v. Sunlife Assurance Co. Of Canada*, [1998] O.J. No. 1598 (Gen. Div.) (Dabbs No. 1), par. 9.

<sup>7</sup> *Id.*

- (7) le nombre d'opposants et la nature des oppositions;
- (8) la possibilité de se prévaloir d'une option de retrait si le membre du groupe n'est pas satisfait des modalités de la transaction; et
- (9) l'approbation de la transaction par des tribunaux d'autres provinces/territoires.

### **Application au cas en l'espèce**

[36] En l'espèce, la requérante ainsi que l'intimée *Samsung* ont conclu une entente. Le Tribunal est d'avis que l'entente intervenue est dans l'intérêt des membres puisqu'elle est juste et raisonnable, et ce, pour les motifs qui suivent.

[37] Tout d'abord, il convient de noter qu'apparaît au préambule de l'entente un paragraphe qui confirme que malgré l'entente intervenue, *Samsung* ne reconnaît aucune responsabilité au regard des allégations contenues à la requête introductive d'instance.

[38] C'est donc dire qu'elle croit malgré tout que si aucun règlement n'avait eu lieu, elle aurait pu soumettre au Tribunal des arguments sérieux pour soutenir sa position.

[39] Or, le règlement concrétisé met fin au litige avec *Samsung* et par le fait même, a comme conséquence de limiter de façon importante l'ensemble des honoraires et frais qui auraient dû être assumés par les membres si le litige n'avait pas été réglé avec *Samsung*, d'autant plus que le litige est réglé avec *Samsung* sur une base nationale.

[40] En présence de plusieurs intimés accusés de complot pour fixer artificiellement le prix de la chose qu'on achète, il peut être difficile d'obtenir un règlement avec l'un ou l'autre des intimés. En ce cas, lorsque ce règlement partiel survient, il peut être intéressant pour les membres.

[41] Dans ce contexte, le Tribunal fait siens les propos émis par la juge Dominique Bélanger dans l'affaire *Johnson*<sup>8</sup> :

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<sup>8</sup> *Johnson c. Bayer Inc & al*, C.S.Québec, n° 200-06-000069-065, le 16 octobre 2008, juge Dominique Bélanger.



[3] Tout comme le juge Robert R. Beezer, la soussignée reconnaît la difficulté d'obtenir un règlement dans les cas de poursuites contre une multitude de défendeurs.

[4] Le Tribunal reconnaît la valeur, pour les membres, d'un règlement avec l'un des présumés instigateurs d'un complot visant à déterminer les prix, surtout s'il offre sa collaboration, d'autant plus qu'aucune des intimées n'a été déclarée coupable d'accusations en vertu de la *Loi sur la concurrence*.

[42] Ensuite, le règlement en lui-même prévoit le paiement d'une somme de 21 250 000,00 \$ canadiens en considération d'une quittance et d'une assurance que *Samsung* ne sera pas poursuivie de nouveau par les autres coïntimées dans le même dossier. Il s'agit d'une somme importante qui devra être déposée dans le compte en fiducie des avocats de la requérante et ne pourra être distribuée sans que le plan proposé de distribution soit approuvé par le Tribunal, ce qui assurera une protection accrue pour les membres.

[43] Également, *Samsung* s'est engagée à coopérer avec la requérante dans la poursuite du recours contre les autres intimées qui n'ont pas réglé. Cet engagement de coopération est très important dans le contexte d'un recours où la preuve du complot peut s'avérer complexe. La mise à la disposition des membres des connaissances de *Samsung* peut s'avérer un outil fort utile pour rentabiliser l'administration de la preuve.

[44] Il est important de noter qu'au Québec, aucun membre ne s'est opposé ou n'a demandé d'être exclu.

[45] En considération des engagements de *Samsung*, l'entente prévoit une ordonnance d'interdiction de poursuivre contre les intimées qui n'ont pas réglé. Cette ordonnance respecte les paramètres émis par la juge Bélanger dans l'affaire *Johnson*.

[46] Le Tribunal ajoute que les membres sont représentés au Québec par des avocats d'expérience en matière de recours collectif. Ils n'en sont pas à leurs premières armes et ont acquis, au fil des ans, une solide expertise au regard de recours collectifs québécois et nationaux.

[47] Finalement, la Cour supérieure de l'Ontario et la Cour suprême de la Colombie-Britannique ont déjà approuvé l'entente avec *Samson*.

[48] Dans ce contexte, le Tribunal est d'avis qu'il y a lieu d'entériner l'entente intervenue.

**POUR CES MOTIFS, LE TRIBUNAL :**

[49] **DÉCLARE** que les définitions figurant dans l'Entente Samsung sont utilisées dans ce jugement et que, par conséquent, elles sont réputées en faire partie intégrante;

[50] **DÉCLARE** que l'Entente Samsung est valable, équitable, raisonnable, dans le meilleur intérêt des membres du groupe du Québec et constitue une transaction au sens de l'article 2631 du *Code civil du Québec*;

[51] **APPROUVE** l'Entente Samsung, en accord avec l'article 1025 du *Code de procédure civile* et **DÉCLARE** qu'elle doit être mise en œuvre en conformité avec ses termes, sous réserve des termes de ce jugement ainsi que des jugements rendus par les tribunaux de l'Ontario et de la Colombie-Britannique dans le cadre des affaires suivantes :

- *Kristopher Gruber v. LG Philipps LCD Co. Ltd et al*, Cour suprême de Colombie-Britannique, registre de Vancouver, dossier numéro S071569; et
- *The Fanshawe College of Applied Arts and Technology v. LG Philipps LCD Co. Ltd et al*, Cour supérieure de justice de l'Ontario, dossier numéro 54054CP;

[52] **DÉCLARE** que l'Entente Samsung qui est jointe à ce jugement dans son intégralité, y compris son préambule, ses définitions, ses appendices et addenda, font partie intégrante de ce jugement, liant toutes les parties et tous les membres qui y sont décrits;

[53] **DÉCLARE** que tout membre du groupe de règlement du Québec qui ne s'est pas exclu du groupe est lié par l'Entente Samsung et ne pourra s'exclure du groupe à l'avenir;

[54] **DÉCLARE** que chaque membre du groupe de règlement du Québec est présumé avoir irrévocablement consenti au rejet final et définitif de tous les Autres recours/*Other Actions* intentés par celui-ci (celle-ci) contre les Parties quittancées/*Releasees*, sans frais et sans réserve;

[55] **DÉCLARE** que tout autre recours institué au Québec par tout membre du groupe de règlement du Québec est par la présente rejeté contre les Parties quittancées/*Releasees*, sans frais et sans réserve;

[56] **ORDONNE** et **DÉCLARE** que ce jugement, y compris l'Entente Samsung, lie chaque membre du groupe de règlement du Québec qui ne se s'est pas valablement exclu du groupe;

[57] **ORDONNE** et **DÉCLARE** que chaque Partie donnant quittance/*Releasor* qui ne se s'est pas valablement exclu du groupe a donné quittance et est considérée avoir donné une quittance complète, générale et finale aux Parties quittancées/*Releasees* eu égard aux Réclamations quittancées/*Releasees Claims*;

[58] **DÉCLARE** que chaque Partie donnant quittance/*Releasor* qui ne s'est pas valablement exclu du groupe ne pourra directement ou indirectement, au Canada ou ailleurs, pour son propre compte ou pour le compte de tout groupe ou de toute autre personne tenter, continuer, maintenir ou faire valoir toute poursuite, action, cause d'action, réclamation ou demande contre l'une ou l'autre des Parties quittancées en rapport avec les Réclamations quittancées ou toute autre matière y étant reliée, à l'exception de la poursuite des procédures contre les intimées non parties à l'Entente Samsung ou tout autre coconspirateur non désigné dans les procédures;

[59] **ORDONNE** et **DÉCLARE** qu'à l'arrivée de la date d'entrée en vigueur/*Effective Date* que chaque Partie quittancée aura donné quittance et sera réputée, de manière concluante, avoir donné quittance complète et pour toujours à chacune des autres parties quittancées à l'égard de toutes les réclamations pour contribution et dédommagement eu égard aux réclamations quittancées;

[60] **DÉCLARE** que, par l'Entente Samsung, la requérante et les membres du groupe de règlement du Québec renoncent expressément aux bénéfices de la solidarité envers les intimées qui ne participent pas à l'Entente Samsung, eu égard aux faits et gestes de Samsung;

[61] **DÉCLARE** que la requérante et les membres du groupe de règlement du Québec ne pourront dorénavant réclamer et obtenir que les dommages, y incluant les dommages punitifs, attribuables aux ventes et agissements des intimées qui ne participent pas à l'Entente Samsung;

[62] **DÉCLARE** que tout recours en garantie ou autre mise en cause pour obtenir une contribution ou une indemnité de Samsung, ou se rapportant aux réclamations quittancées est irrecevable et non avenu dans le cadre des procédures;

[63] **DÉCLARE** que les droits des intimées non parties à l'Entente Samsung d'interroger l'intimée Samsung seront régis par les règles du *Code de procédure civile*;


[64] **DÉCLARE** que les intimées non parties à l'Entente Samsung pourront valablement signifier toute procédure pouvant être requise pour faire valoir les droits aux paragraphes qui précèdent à Samsung en signifiant telle procédure au procureur *ad litem* de cette partie, comme il est identifié dans ce jugement;

[65] **DÉCLARE** que cette cour conservera un rôle de surveillance continue, aux fins d'exécution de ce jugement et **CONSTATE** que les intimées parties à l'Entente Samsung reconnaissent la compétence de cette Cour à ces fins;

[66] **ORDONNE** que toute somme composant le Fonds de l'Entente soit détenue en fidéicommiss par les procureurs du groupe de l'Ontario au bénéfice du groupe partie à l'Entente Samsung, jusqu'à ce qu'un jugement soit rendu par cette cour, à la suite de la présentation d'une requête présentée à cet effet, après avoir été signifiée aux intimées;

[67] **DÉCLARE** que les parties quittancées/*Releasees* n'ont aucune responsabilité ni implication quant à l'administration de l'Entente Samsung y compris dans la gestion, le placement ou la distribution de la somme prévue à l'Entente Samsung;

[68] **SANS FRAIS**, sauf en cas de contestation.

  
CATHERINE LA ROSA, j.c.s.

**Me Simon Hébert**  
**Siskinds Desmeules, s.e.n.c.r.l.** (casier 15)  
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Avocats de l'intimée Chi Mei Optoelectronics

**Me Neil A. Peden**

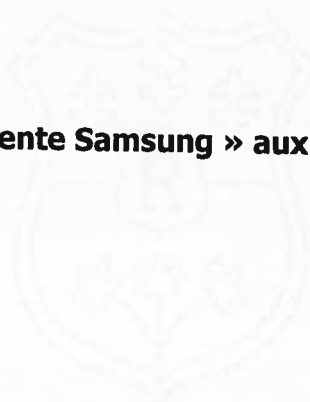
***Woods, s.e.n.c.r.l.***

1000, Sherbrooke Ouest, bur. 2700  
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Avocats de l'intimée Au Optronics Corporation

**ANNEXE A**

**Voir l' « Entente Samsung » aux 58 pages suivantes**



SUPERFINE  
LINEN RECORD  
100% COTON / COTTON

**CANADIAN LCD PANELS CLASS ACTION  
NATIONAL SETTLEMENT AGREEMENT**

Made as of April 29, 2013

Between

**THE FANSHAWE COLLEGE OF APPLIED ARTS AND TECHNOLOGY,  
COMMUNICATION MEGA-SAT INC., and KRISTOPHER GRUBER**  
(the "Plaintiffs")

and

**SAMSUNG ELECTRONICS CO., LTD. and  
SAMSUNG ELECTRONICS CANADA INC**

(the "Settling Defendants")

**CANADIAN LCD PANELS CLASS ACTION  
NATIONAL SETTLEMENT AGREEMENT  
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**CANADIAN LCD CLASS ACTION  
NATIONAL SETTLEMENT AGREEMENT**

**RECITALS**

A. WHEREAS Proceedings have been commenced by the Plaintiffs in British Columbia, Quebec and Ontario which allege that the Settling Defendants participated in an unlawful conspiracy to raise, fix, maintain or stabilize the price of LCD Products in Canada and/or to allocate markets and customers for the sale of LCD Products in Canada, contrary to Part VI of the *Competition Act* and the common law and/or the civil law;

B. WHEREAS the Ontario Action was certified as a class proceeding under the Ontario *Class Proceedings Act* pursuant to the Ontario Certification Order dated October 21, 2011 with respect to a class defined as follows:

All persons in Canada (excluding defendants and their respective parents, employees, subsidiaries, affiliates, officers and directors) who purchased LCD Panels\* or LCD Products\*\* directly from a defendant or any entity affiliated with a defendant, an Original Equipment Manufacturer\*\*\* or a Distributor\*\*\*\* in Canada between January 1, 1998 and December 11, 2006.

\*LCD Panels means liquid crystal display panels that are 10 inches or larger, measured diagonally.

\*\*LCD Products means televisions, computer monitors and laptops containing LCD Panels.

\*\*\*Original Equipment Manufacturer means any of the following entities or any company affiliated with any of the following entities: Acer Inc. (including the Gateway brand), Apple Canada Inc., Compaq Computer Corporation, Dell Corporation, Fujitsu Limited, Hewlett-Packard Development Company, L.P., IBM Corporation, JVC Canada, LG Electronics, Lenovo Group Limited, Mitsubishi Electric Corporation, Panasonic Corporation, Koninklijke Philips Electronics N.V., Polaroid Corporation, Prima Technology Inc., Proview Technology Inc., TTE Corporation (including the RCA brand), Sony of Canada Ltd., Stealth Computer Corporation, ViewSonic Corporation and Westinghouse Digital Electronics.

\*\*\*\*Distributor means any of the following entities or any company affiliated with any of the following entities: ALC Micro,

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Computer Distributors of Canada, Comtronic Computer Inc., D&H Distributing Co., Eprom Inc., Funai Electric Co., Ltd., Ingram Micro Inc., Pro-Data Inc., Supercom, Synnex Canada Limited, Tech Data Canada Corporation and TTX Canada.

C. WHEREAS the Non-Settling Defendants and Settling Defendants in the Ontario Action sought and were granted leave to appeal the Ontario Certification Order to the Ontario Divisional Court;

D. WHEREAS the BC and Quebec Actions have not yet proceeded to certification or authorization motions with respect to the Settling Defendants;

E. WHEREAS the Proceedings were certified for settlement purposes in the context of a settlement with Chunghwa Picture Tubes Ltd. by order of the Ontario Court dated April 26, 2010, the order of the British Columbia Court dated May 21, 2010, and the order of the Quebec Court dated September 21, 2010 with respect to the following class and putative Settlement Class Members included in this class were permitted an opportunity to opt out of the Proceedings and one Person validly and timely exercised the right to opt out of the Proceedings:

All persons in Canada (excluding defendants and their respective parents, employees, subsidiaries, affiliates, officers and directors) who purchased LCD Panels\* or LCD Products\*\* directly from a defendant or any entity affiliated with a defendant, an Original Equipment Manufacturer\*\*\* or a Distributor\*\*\*\* in Canada between September 21, 2001 and December 11, 2006.

\*LCD Panels means liquid crystal display panels that are 10 inches or larger, measured diagonally.

\*\*LCD Products means televisions, computer monitors and laptops containing LCD Panels.

\*\*\*Original Equipment Manufacturer means any of the following entities or any company affiliated with any of the following entities: Acer Inc. (including the Gateway brand), Apple Canada Inc., Compaq Computer Corporation, Dell Corporation, Fujitsu Limited, Hewlett-Packard Development Company, L.P., IBM Corporation, JVC Canada, LG Electronics, Lenovo Group Limited, Mitsubishi Electric Corporation, Panasonic Corporation, Koninklijke Philips Electronics N.V., Polaroid Corporation, Prima Technology Inc., Proview Technology Inc., TTE Corporation (including the RCA brand), Sony of Canada Ltd., Stealth

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Computer Corporation, ViewSonic Corporation and Westinghouse Digital Electronics.

\*\*\*Distributor means any of the following entities or any company affiliated with any of the following entities: ALC Micro, Computer Distributors of Canada, Comtronic Computer Inc., D&H Distributing Co., Eprom Inc., Funai Electric Co., Ltd., Ingram Micro Inc., Pro-Data Inc., Supercom, Synnex Canada Limited, Tech Data Canada Corporation and TTX Canada.

F. WHEREAS the Proceedings were certified for settlement purposes in the context of a settlement with Epson Imaging Devices Corporation by order of the Ontario Court dated December 2, 2011, order of the BC Court dated January 26, 2012 and order of the Quebec Court dated December 14, 2011 with respect to the following class and putative Settlement Class Members included in this class, but not included in the Chunghwa class, as defined in paragraph E above, were permitted an opportunity to opt out of the Proceedings, but the notice advising of this opportunity to opt out has not yet been published:

All persons in Canada who purchased LCD Large Screen Products during the Class Period\*, except the Excluded Persons and persons who are included in the Quebec Class and the BC Class.

\*Class Period means September 21, 2001 to December 11, 2006.

G. WHEREAS the Settling Defendants do not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct alleged in the Proceedings or otherwise;

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

I. WHEREAS the Settling Defendants are entering into this Settlement Agreement in order to achieve a final and nation-wide resolution of all claims asserted or which could have been asserted against the Releasees by the Plaintiffs and the Settlement Class in the Proceedings, and

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to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

J. WHEREAS the Settling Defendants do not hereby attorn to the jurisdiction of the Courts or any other court or tribunal in respect of any civil, criminal or administrative process except to the extent expressly provided in this Settlement Agreement with respect to the Proceedings;

K. WHEREAS Counsel for the Settling Defendants and counsel for the Plaintiffs have engaged in arm's-length settlement discussions and negotiations, resulting in this Settlement Agreement relating to Canada;

L. WHEREAS as a result of these settlement discussions and negotiations, the Settling Defendants and the Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Settling Defendants and the Plaintiffs, both individually and on behalf of the classes they seek to represent, subject to approval of the Courts;

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

N. WHEREAS the Parties therefore wish to and hereby finally resolve on a national basis, without admission of liability, all of the Proceedings as against the Settling Defendants;

O. WHEREAS while the Ontario Action was previously certified as a class proceeding under the Ontario Class Proceedings Act on a contested basis (subject to a pending appeal), and while the BC Action and the Ontario Action were certified on a consent basis as against the Settled Defendants for the purposes of settlement only and the Quebec Action was authorized on a consent basis as against the Settled Defendants, the Parties now consent to certification or authorization of the Proceedings as class proceedings and to the Settlement Classes and a

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Common Issue in respect of each of the Proceedings solely for the purposes of implementing this Settlement Agreement in a coordinated and consistent manner across Canada and contingent on approvals by the Courts as provided for in this Settlement Agreement, on the express understanding that such certification or authorization shall not derogate from the rights of the Ontario Plaintiffs as against the Non-Settling Defendants under the Ontario Certification Order or from the respective rights of the Parties in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason; and

P. WHEREAS the Plaintiffs assert that they are adequate class representatives for the classes they seek to represent and will seek to be appointed representative plaintiffs in their respective Proceedings;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, it is agreed by the Parties that the Proceedings be settled and dismissed with prejudice as to the Settling Defendants only, without costs as to the Plaintiffs, the classes they seek to represent or the Settling Defendants, subject to the approval of the Courts, on the following terms and conditions:

#### Section 1 - Definitions

For the purposes of this Settlement Agreement only, including the Recitals and Schedules hereto:

- (1) *Administration Expenses* means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices and claims administration but excluding Class Counsel Fees.
- (2) *BC Action* means the BC Action as defined in Schedule A.
- (3) *BC Counsel* means Camp Fiorante Matthews Mogeran.
- (4) *BC Court* means the Supreme Court of British Columbia.

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- (5) *Claims Administrator* means the firm proposed by Class Counsel and appointed by the Courts to administer the Settlement Amount in accordance with the provisions of this Settlement Agreement and the Distribution Protocol as approved by the Courts, and any employees of such firm.
- (6) *Class Counsel* means Ontario Counsel, Quebec Counsel and BC Counsel.
- (7) *Class Counsel Fees* include the fees, disbursements, costs, interest, and/or charges of Class Counsel, and any GST, HST and other applicable taxes or charges thereon, including any amounts payable by Class Counsel or the Settlement Class Members to any other body or person, including the Fonds d'aide aux recours collectif in Quebec.
- (8) *Class Period* means January 1, 1998 to December 11, 2006.
- (9) *Common Issue* means: Did the Settling Defendants conspire to fix, raise, maintain or stabilize the prices of, or allocate markets and customers for, LCD Large Screen Panels directly or indirectly in Canada during the Class Period? If so, what damages, if any, did Settlement Class Members suffer?
- (10) *Counsel for the Settling Defendants* means Blake, Cassels & Graydon LLP.
- (11) *Courts* means the Ontario Court, the Quebec Court and the BC Court.
- (12) *Date of Execution* means the date on the cover page as of which the Parties have executed this Settlement Agreement.
- (13) *Defendants* means the entities named as defendants in any of the Proceedings as set out in Schedule A, and any persons added as defendants in the Proceedings in the future. For greater certainty, Defendants includes the Settling Defendants.
- (14) *Distribution Protocol* means the plan for distributing the Settlement Amount and accrued interest, in whole or in part, as approved by the Courts.
- (15) *Effective Date* means the date when Final Orders have been received from all Courts approving this Settlement Agreement.

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(16) *Excluded Person* means each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing, and those Persons who validly and timely opted-out of the Proceedings in accordance with the orders of the Ontario Court dated April 26, 2010, the order of the British Columbia Court dated May 21, 2010, or the order of the Quebec Court dated September 21, 2010, as applicable, and those Persons who validly and timely opt out of the Proceedings in accordance with the order of the Ontario Court dated December 2, 2011, the order of the British Columbia Court dated January 16, 2012, or the order of the Quebec Court dated December 14, 2011, as applicable, and those Persons who validly and timely opt out of the Proceedings in accordance with the orders of the Courts certifying or authorizing the Proceedings commenced in their respective jurisdictions as a class proceeding against the Settling Defendants (for settlement purposes only).

(17) *Final Order* means the later of a final judgment entered by a Court approving this Settlement Agreement, once the time to appeal such judgment has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the certification or authorization of a Proceeding as a class proceeding and the approval of this Settlement Agreement upon a final disposition of all appeals.

(18) *LCD Panels* means liquid crystal display panels or screens of any size.

(19) *LCD Products* means LCD Panels and products containing LCD Panels.

(20) *LCD Large Screen Panels* means LCD Panels that are 10 inches or larger, measured diagonally.

(21) *LCD Large Screen Products* means LCD Large Screen Panels and televisions, computer monitors and laptops containing LCD Large Screen Panels.

(22) *Non-Settling Defendant* means any Defendant that is not a Releasee or a Settled Defendant, and includes any Defendant that terminates its own settlement agreement in accordance with its terms or whose settlement otherwise fails to take effect for any reason, whether or not such settlement agreement is in existence at the Date of Execution.



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- (23) *Ontario Action* means the Ontario Action as defined in Schedule A.
- (24) *Ontario Certification Order* means the order of the Ontario Court dated October 21, 2011 in respect of the certification of the Ontario Action under the Ontario *Class Proceedings Act*.
- (25) *Ontario Class Proceedings Act* means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended, S.O. 2006, c. 19.
- (26) *Ontario Counsel* means Siskinds LLP.
- (27) *Ontario Court* means the Ontario Superior Court of Justice.
- (28) *Other Actions* means actions or proceedings, excluding the Proceedings, relating to Released Claims commenced by a Settlement Class Member either before or after the Effective Date.
- (29) *Parties* means the Settling Defendants, the Plaintiffs, and, where necessary, the Settlement Class Members.
- (30) *Person* means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.
- (31) *Plaintiffs* means the individuals and entities named as plaintiffs in the Proceedings as set out in Schedule A.
- (32) *Proceedings* means the BC Action, the Quebec Action, and the Ontario Action as defined in Schedule A.
- (33) *Proportionate Liability* means the proportion of any judgment that, had they not settled, the Ontario or BC Court, as appropriate, would have apportioned to the Releasees.

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(34) *Purchase Price* means the sale price paid by Settlement Class Members for LCD Large Screen Products purchased during the Class Period, less any rebates, delivery or shipping charges, taxes and any other form of discounts.

(35) *Quebec Action* means the Quebec Action as defined in Schedule A.

(36) *Quebec Counsel* means Siskinds Desmeules s.c.n.c.r.l.

(37) *Quebec Court* means the Superior Court of Quebec.

(38) *Released Claims* means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages of any kind (including compensatory, punitive or other damages) whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, relating in any way to any conduct anywhere, from the beginning of time to the date hereof, in respect of the purchase, sale, pricing, discounting, marketing or distributing of LCD Products in Canada or relating to any conduct alleged (or which was previously or could have been alleged) in the Proceedings including, without limitation, any such claims which have been asserted or could have been asserted, directly or indirectly, whether in Canada or elsewhere, in respect of the purchase, sale, pricing, discounting, marketing or distributing of LCD Products in Canada, including, without limitation, any claims for consequential, subsequent or follow-on harm that arises after the date hereof in respect of any agreement, combination or conduct that occurred prior to the date hereof. However, nothing herein shall be construed to release any alleged product defect, breach of contract, or similar claim between the Parties that relates to LCD Products but does not relate to an alleged unlawful conspiracy or other unlawful agreement or combination or as a result of or in connection with any other alleged unlawful horizontal or vertical anti-competitive conduct.

(39) *Releasees* means, jointly and severally, individually and collectively, the Settling Defendants and all of their present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other Persons, partnerships or corporations with

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whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives, and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing, excluding always the Non-Settling Defendants.

(40) *Releasers* means, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members and their respective parents, subsidiaries, affiliates, predecessors, successors, heirs, executors, administrators, insurers and assigns.

(41) *Settled Defendants* means Chunghwa Picture Tubes Ltd. and Epson Imaging Devices Corporation (formerly known as Sanyo Epson).

(42) *Settlement Agreement* means this agreement, including the recitals and schedules.

(43) *Settlement Amount* means CDN\$21,250,000.

(44) *Settlement Class* means, in respect of each Proceeding, the settlement class defined in Schedule A.

(45) *Settlement Class Member* means a member of a Settlement Class.

(46) *Settling Defendants* means Samsung Electronics Co., Ltd. and Samsung Electronics Canada Inc.

(47) *Trust Account* means an interest-bearing trust account at a Canadian Schedule 1 bank under the control Ontario Counsel or the Claims Administrator, once appointed, for the benefit of the Settlement Class Members, as provided for in this Settlement Agreement.

(48) *U.S. Litigation* means the class action proceeding pending in the United States District Court for the Northern District of California, under the caption In re TFT-LCD (Flat Panel) Antitrust Litigation, 07-MDL-1827, and includes all actions transferred by the Judicial Panel for Multidistrict Litigation for coordination, all actions pending such transfer, and all actions that may be transferred in the future.

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## **Section 2- Settlement Approval**

### **2.1 Best Efforts**

(1) The Parties shall use their best efforts to effectuate this settlement and to secure the prompt, complete and final dismissal with prejudice of the BC Action and Ontario Action as against the Settling Defendants, and a prompt, complete and final declaration of settlement out of Court of the Quebec Action.

### **2.2 Motions Seeking Approval of Notice and Certification or Authorization**

(1) The Plaintiffs shall bring motions before the Courts, as soon as practicable after the Settlement Agreement is executed, for orders approving the notices described in Section 11.1(1) and certifying or authorizing each of the Proceedings commenced in their respective jurisdictions as a class proceeding as against the Settling Defendants (for settlement purposes only).

(2) The Ontario order approving the notices described in Section 11.1(1) and certifying the Ontario Action for settlement purposes shall be substantially in the form attached as Schedule B. The BC and Quebec orders approving the notices described in Section 11.1(1) and certifying or authorizing the BC and Quebec Actions for settlement purposes shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the Ontario order.

### **2.3 Motions Seeking Approval of the Settlement**

(1) The Plaintiffs shall bring motions before the Courts for orders approving this Settlement Agreement, as soon as practicable after:

- (a) the orders referred to in Section 2.2(2) have been granted;
- (b) the notices described in Section 11.1(1) have been published; and
- (c) the deadline for objecting to the Settlement Agreement has expired.

(2) The Ontario order approving this Settlement Agreement shall be substantially in the form attached as Schedule C. The BC and Quebec orders approving this Settlement Agreement shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the Ontario order.

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

### **Section 3 - Settlement Benefits**

#### **3.1 Payment of Settlement Amount**

- (1) The Settlement Amount shall be paid in full satisfaction of the Released Claims against the Releasees.
- (2) The Settlement Amount shall be all-inclusive.
- (3) The Releasees shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement or the Proceedings.
- (4) The Plaintiffs will timely pay any reasonable invoice rendered in respect of the cost of disseminating the notices contemplated in Section 11.1(1) or in respect of the costs of translation contemplated in Section 14.12(1).
- (5) Within forty-five (45) days following the Effective Date, the Settling Defendants shall transfer the Settlement Amount to Ontario Counsel to be held in the Trust Account unless otherwise ordered by the Courts.
- (6) Once a Claims Administrator has been appointed, Ontario Counsel shall transfer control of the Trust Account to the Claims Administrator.
- (7) Ontario Counsel and the Claims Administrator, respectively, shall maintain the Trust Account as provided for in this Settlement Agreement.
- (8) Ontario Counsel and the Claims Administrator, respectively, shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Courts obtained after notice to the Parties.

#### **3.2 Taxes and Interest**

- (1) All interest earned on the Settlement Amount in the Trust Account shall accrue to the benefit of the Settlement Classes and shall become and remain part of the Trust Account.

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(2) All taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be paid from the Trust Account.

(3) Ontario Counsel or the Claims Administrator, as appropriate, shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Trust Account, and the Settling Defendants shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned by the Settlement Amount or pay any taxes on the monies in the Trust Account.

### 3.3 Intervention in the U.S. Litigation

(1) The Settling Defendants shall consent to any application by or on behalf of the Plaintiffs to intervene in the U.S. Litigation in order to gain access to discovery documents and other documents and information subject to protective order. However it is understood and agreed that nothing in this Settlement Agreement shall be construed to require the Settling Defendants to bring a motion requesting that the U.S. protective order be lifted.

## Section 4 – Cooperation

### 4.1 Extent of Cooperation

(1) Within thirty (30) days of the Effective Date, or at a time mutually agreed upon by the Parties, subject to any court order with respect to confidentiality and the other provisions of this Settlement Agreement, the Settling Defendants agree to use reasonable efforts to:

- (a) provide to Class Counsel existing electronic transactional data for sales by the Settling Defendants of LCD Large Screen Products delivered in Canada during the Class Period, to the extent that such data has not previously been provided pursuant to Section 12.2(1). The transactional data shall be produced in Microsoft Excel or such other format as may be agreed upon by Counsel for the Settling Defendants and Class Counsel. Counsel for the Settling Defendants agree to be reasonably available as necessary to respond to Class Counsel's questions

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regarding the electronic transactional data produced by the Settling Defendants. If Counsel for the Settling Defendants are unable to provide an adequate response to Class Counsel's questions, the Settling Defendants shall request that an employee of the Settling Defendants be reasonably available to Class Counsel to respond to Class Counsel's questions. The Settling Defendants shall bear no liability with respect to the completeness or accuracy of the information provided pursuant to this Section;

- (b) provide to Class Counsel any transcripts or video recordings of all depositions of the Settling Defendants' current or former employees, directors or officers taken in the course of the U.S. Litigation concerning the allegations raised in the Proceedings with respect to the Class Period;
- (c) provide any pre-existing documents (as defined in Rule 30.01 of the Ontario *Rules of Civil Procedure*) produced by the Settling Defendants in the U.S. Litigation concerning the allegations raised in the Proceedings with respect to the Class Period, including, but not limited to, any documents provided to counsel for the plaintiffs in the U.S Litigation pursuant to any settlement agreement entered into between the plaintiffs in the U.S. Litigation and the Settling Defendants;
- (d) to the extent not included in production under Section 4.1(c), provide any pre-existing documents (as defined in Rule 30.01 of the Ontario *Rules of Civil Procedure*) provided by the Settling Defendants to the United States Department of Justice, the European Commission, the Competition Bureau, or any other state, federal or international government or administrative agency, without geographic limitation, concerning the allegations raised in the Proceedings with respect to the Class Period, excluding documents created for the purpose of being so provided; and
- (e) through a meeting between Counsel for the Settling Defendants and Class Counsel, provide an evidentiary proffer, which will include information originating with the Settling Defendants and being within their possession relating to the allegations in the Proceedings with respect to the Class Period including,

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without limitation, information with respect to dates, locations, subject matter, and participants in any meetings or discussions between competitors relating to the purchase, sale, pricing, discounting, marketing or distributing of LCD Large Screen Products in Canada during the Class Period.

(2) The obligation to provide documents pursuant to this Section shall be a continuing obligation to the extent documents are identified following the initial productions pursuant to this Settlement Agreement.

(3) Following the Effective Date, the Settling Defendants shall, at the request of Class Counsel, upon reasonable notice, and subject to any legal restrictions, make reasonable efforts to make available at a mutually convenient time, employees of the Settling Defendants who have knowledge of the allegations raised in the Proceedings to provide information regarding the allegations raised in the Proceedings in a personal interview with Class Counsel and/or experts retained by Class Counsel. The employees shall be made available in Korea or such other place as agreed to by Counsel for the Settling Defendants and Class Counsel. Costs incurred by, and the expenses of, the employees of the Settling Defendants in relation to such interviews shall be the responsibility of the Settling Defendants. Costs of an interpreter or otherwise related to foreign language translation in connection with interviews shall be the responsibility of Class Counsel. If an employee refuses to provide information, or otherwise cooperate, the Settling Defendants shall use reasonable efforts to make him/her available for an interview with Class Counsel and/or experts retained by Class Counsel. The failure of an employee to agree to make him or herself available, or to otherwise cooperate, with the Plaintiffs shall not constitute a violation of this Settlement Agreement.

(4) Subject to the rules of evidence, any court order with respect to confidentiality and the other provisions of this Settlement Agreement, the Settling Defendants agree to use reasonable efforts to produce at trial and/or discovery or through acceptable affidavits or other testimony in the Proceedings, (i) a current representative qualified to establish for admission into evidence the Settling Defendants' sales of LCD Large Screen Products delivered in Canada during the Class Period; (ii) representatives qualified to establish for admission into evidence any of the Settling Defendants' documents and information provided as cooperation pursuant to Section 4.1 of this



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Settlement Agreement that Class Counsel and the Settling Defendants, acting reasonably, agree may be reasonably necessary for the prosecution of the Proceedings with respect to the Non-Settling Defendants and may be presented to the Courts. The failure of a specific officer, director or employee to agree to make him or herself available, or to otherwise cooperate with the Plaintiffs, shall not constitute a violation of this Settlement Agreement. The Plaintiffs shall be responsible for all reasonable expenses of any representative in relation to an attendance pursuant to this Section.

(5) Nothing in this Settlement Agreement shall be construed to require the Settling Defendants to perform any act, including the transmittal or disclosure of any information, which would violate the law of this or any jurisdiction.

(6) Nothing in this Settlement Agreement shall require, or shall be construed to require, the Settling Defendants or any representative or employee of a Settling Defendant to disclose or produce any documents or information prepared by or for counsel for the Settling Defendants, or that is not within the Settling Defendants' possession, custody or control, or to disclose or produce any documents or information in breach of any order, regulatory directive, rule or law of this or any jurisdiction, or subject to solicitor-client privilege, litigation privilege, or any other privilege, or to disclose or produce any information or documents they obtained on a privileged or co-operative basis from any party to any action or proceeding who is not a Settling Defendant.

(7) If any documents protected by any privilege and/or any privacy law or other rule or law of this or any applicable jurisdiction are accidentally or inadvertently disclosed or produced, such documents shall be promptly returned to the Settling Defendants and the documents and the information contained therein shall not be disclosed or used directly or indirectly, except with the express written permission of the Settling Defendants, and the production of such documents shall in no way be construed to have waived in any manner any privilege or protection attached to such documents.

(8) The Settling Defendants' obligations to cooperate as particularized in this Section shall not be affected by the release provisions contained in Section 7 of this Settlement Agreement. The Settling Defendants' obligations to cooperate shall cease at the date of final judgment in the Proceedings against all Defendants. In the event the Settling Defendants materially breach this

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Section, Class Counsel may move before the Courts to either enforce the terms of this Settlement Agreement or set aside the approval of this Settlement Agreement or part thereof.

(9) The provisions set forth in this Section 4.1 are the exclusive means by which the Plaintiffs, Class Counsel and Settlement Class Members may obtain discovery or information or Documents from the Settling Defendants or their current or former officers, directors or employees. The Plaintiffs, Class Counsel and Settlement Class Members agree that they shall not pursue any other means of discovery against, or seek to compel the evidence of, the Settling Defendants or their current or former officers, directors, employees, agents, or counsel, whether in Canada or elsewhere and whether under the rules or laws of this or any other Canadian or foreign jurisdiction. Notwithstanding the above in this Section 4.1(9), subject to the other provisions of this Settlement Agreement, the Plaintiffs are at liberty to exercise any rights they may have to seek to obtain discovery in the Proceedings of any current or former officer, director or employee of the Settling Defendants who is put forward to participate in employee interviews or provide testimony at trial or otherwise pursuant to Sections 4.1(3) and (4) but who fails to cooperate in accordance with that Section and the provisions of this Settlement Agreement.

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

(11) The scope of the Settling Defendants' cooperation under this Settlement Agreement shall be limited to the allegations asserted in the Proceedings as presently filed.

(12) The Settling Defendants make no representation regarding and shall bear no liability with respect to the accuracy of or that they have, can or will produce a complete set of any of the information described in this Section 4.1, and the failure to do so shall not constitute a breach or violation of this Settlement Agreement.

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#### 4.2 Limits on Use of Documents

(1) It is understood and agreed that all documents and information made available or provided by the Settling Defendants to Plaintiffs and Class Counsel under this Settlement Agreement, shall be used only in connection with the prosecution of the claims in the Proceedings, and shall not be used directly or indirectly for any other purpose. Plaintiffs and Class Counsel agree they will not disclose the documents and information provided by the Settling Defendants beyond what is reasonably necessary for the prosecution of the Proceedings or as otherwise required by law. Subject to the foregoing, Class Counsel shall take reasonable precautions to ensure and maintain the confidentiality of such documents and information, and of any work product of Class Counsel that discloses such documents and information.

(2) If the Plaintiff or Class Counsel intends to produce or file in the Proceeding any Documents or other information provided by the Settling Defendants as cooperation under the Settlement Agreement (and such disclosure is not otherwise prohibited by the Settlement Agreement) which, at the time of being provided, were marked or designated by the Settling Defendants as "Confidential – Subject to Procedure Under Section 4.2(2) of the Settlement Agreement", Class Counsel shall provide the Settling Defendants with an advance description of the Documents or other information sought to be produced or filed in the Proceeding at least thirty (30) days in advance of the proposed production or filing, in order that the Settling Defendants may intervene for the purposes of obtaining a sealing or confidentiality order or similar relief. If the Settling Defendants intervene for this purpose, the Plaintiff, Settlement Class Members and Class Counsel shall not oppose the position taken by the Settling Defendants.

(3) In the event that a Person applies for an order requiring the Plaintiff or Settlement Class Members to disclose or produce any Documents or other information provided by the Settling Defendants as cooperation under this Settlement Agreement which, at the time of being provided, were marked or designated by the Settling Defendants as "Confidential – Subject to Procedure Under Section 4.2(2) of the Settlement Agreement", Class Counsel shall notify the Settling Defendants of such application promptly upon becoming aware of it in order that the Settling Defendants may intervene to oppose such disclosure or production. In no circumstances

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shall the Plaintiff, Settlement Class Members or Class Counsel apply for or consent to such an application for disclosure or production.

**Section 5- Distribution of the Settlement Amount  
and Accrued Interest**

**5.1 Distribution Protocol**

(1) At a time wholly within the discretion of Class Counsel, but on notice to the Settling Defendants, Class Counsel will bring motions seeking orders from the Courts approving the Distribution Protocol. The motions can be brought before the Effective Date, but the orders approving the Distribution Protocol shall be conditional on the Effective Date occurring.

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

**5.2 No Responsibility for Administration or Fees**

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

**Section 6 - Termination of Settlement Agreement**

**6.1 Right of Termination**

(1) In the event that:

- (a) any Court declines to certify or authorize the Settlement Class;
- (b) any Court declines to dismiss the Proceedings against the Settling Defendants and approve this Settlement Agreement or any material part hereof;
- (c) any Court approves this Settlement Agreement in a materially modified form;

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- (d) the Parties do not reach agreement on the form and content of any order or notice required by this Settlement Agreement, or the agreed order or notice is approved by a Court in a materially modified form; or
- (e) any orders approving this Settlement Agreement made by the Ontario Court, the British Columbia Court or the Quebec Court do not become Final Orders;

each of the Settling Defendants, Class Counsel, and the Plaintiffs shall have the right to terminate this Settlement Agreement by delivering a written notice pursuant to Section 14.18, within 30 days following the event described above. Except as provided for in Section 6.4, if the Settling Defendants, Class Counsel or the Plaintiffs exercise their right to terminate, the Settlement Agreement shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

- (2) Any order, ruling or determination made (or rejected) by any Court with respect to
  - (a) Class Counsel's fees and disbursements,
  - (b) the Distribution Protocol, or
  - (c) documentary confidentiality as provided in Section 4.2(2) above,

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

(3) For greater certainty, the Plaintiffs, Class Counsel and the Settling Defendants acknowledge and agree that they shall not rely on any current or future rulings or proceedings arising from or in connection with the appeals to the Supreme Court of Canada in *Samsung Electronics Co., Ltd., et al. v. Opton Consommateurs, et al.* (Supreme Court of Canada No. 34617), in *Sun-Rype Products Ltd. v. Archer Daniels Midland Company* (Supreme Court of Canada No. 34283) or in *Pro-Sys Consultants Ltd. v. Microsoft Corporation* (Supreme Court of Canada No. 34282) as a material adverse change for the purpose of terminating this Settlement Agreement pursuant to Section 6.1(1) or otherwise at law.

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**6.2 If Settlement Agreement is Terminated**

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

- (a) no motion to certify or authorize any of the Proceedings as a class proceeding on the basis of this Settlement Agreement, or to approve this Settlement Agreement, which has not been decided, shall proceed;**
- (b) any order certifying or authorizing a Proceeding as a class proceeding on the basis of the Settlement Agreement or approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and anyone shall be estopped from asserting otherwise;**
- (c) any prior certification or authorization of a Proceeding as a class proceeding on the basis of this Settlement Agreement, including the definitions of the Settlement Class and the Common Issue pursuant to this Settlement Agreement, shall be without prejudice to any position that any of the Parties or Releasees may later take on any issue in the Proceedings or any other litigation; and**
- (d) within ten (10) days of such termination having occurred, Class Counsel shall destroy all documents or other materials provided by the Settling Defendants under this Settlement Agreement or containing or reflecting information derived from such documents or other materials received from the Settling Defendants and, to the extent Class Counsel has disclosed any documents or information provided by the Settling Defendants to any other person, shall recover and destroy such documents or information. Class Counsel shall provide the Settling Defendants with a written certification by Class Counsel of such destruction. Nothing contained in this paragraph shall be construed to require Class Counsel to destroy any of their work product. However, any documents or information provided by the Settling Defendants, or received from the Settling Defendants in connection with this Settlement Agreement, may not be disclosed to any person in any manner or used, directly or indirectly, by Class Counsel or any other person in any way for any reason, without the express prior written permission of the**

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Settling Defendants. Class Counsel shall take appropriate steps and precautions to ensure and maintain the confidentiality of such documents, information and any work product of Class Counsel.

**6.3 Allocation of Settlement Amount Following Termination**

(1) If the Settlement Agreement is terminated, the Settling Defendants shall keep the Settlement Amount.

**6.4 Survival of Provisions After Termination**

(1) If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, the provisions of Sections 4.1(7), 6.2(1), 6.3, 6.4, 9.1, 9.2 and 12.2(4), and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of Sections 4.1(7), 6.2(1), 6.3, 6.4, 9.1, 9.2 and 12.2(4) within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

**Section 7- Releases and Dismissals**

**7.1 Release of Releasees**

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

**7.2 Release by Releasees**

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

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**7.3 Covenant Not To Sue**

(1) Notwithstanding Section 7.1, for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasors do not release the Releasees but instead covenant and undertake not to make any claim in any way or to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

**7.4 No Further Claims**

(1) Upon the Effective Date, the Releasors shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee or any other Person who may claim contribution or indemnity, or other claims over relief, from any Releasee in respect of any Released Claim or any matter related thereto, except for the continuation of the Proceedings against the Non-Settling Defendants or unnamed alleged co-conspirators that are not Releasees or, if the Proceedings are not certified or authorized, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendant or unnamed co-conspirator that is not a Releasee.

**7.5 Dismissal of the Proceedings**

(1) Upon the Effective Date, the BC Action and the Ontario Action shall be dismissed with prejudice and without costs as against the Settling Defendants.

(2) Upon the Effective Date, the Quebec Action shall be settled, without costs and without reservation as against the Settling Defendants, and the Parties shall sign and file a declaration of settlement out of court with the Quebec Court.

(3) Upon the Effective Date, the Settling Defendants shall abandon their appeal of the Ontario Certification Order before the Ontario Divisional Court.



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#### **7.6 Dismissal of Other Actions**

- (1) Upon the Effective Date, each member of the Ontario Settlement Class and the BC Settlement Class shall be deemed to irrevocably consent to the dismissal, without costs and with prejudice, of his, her or its Other Actions against the Releasees.
- (2) Upon the Effective Date, all Other Actions commenced in British Columbia or Ontario by any Settlement Class Member shall be dismissed against the Releasees, without costs and with prejudice.
- (3) Each member of the Quebec Settlement Class who makes a claim under this Settlement Agreement shall be deemed to irrevocably consent to the dismissal, without costs and without reservation, of his, her or its Other Actions against the Releasees.
- (4) Each Other Action commenced in Quebec by a member of the Quebec Settlement Class who makes a claim under this Settlement Agreement shall be dismissed as against the Releasees, without costs and without reservation.

#### **7.7 Material Term**

- (1) The releases contemplated in this Section shall be considered a material term of the Settlement Agreement and the failure of any Court to approve the releases contemplated herein shall give rise to a right of termination pursuant to Section 6.1 of the Settlement Agreement.

### **Section 8- Bar Order, Waiver of Solidarity Order and Other Claims**

#### **8.1 Ontario and British Columbia Bar Order**

- (1) Bar orders shall be granted by the Ontario Court and the BC Court providing for the following:
  - (a) all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceedings or otherwise, by any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee or any other Person or party against

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a Releasee, or by a Releasee against any Non-Settling Defendant or any named or unnamed co-conspirator that is not a Releasee, are barred, prohibited and enjoined in accordance with the terms of this Section (unless such claim is made in respect of a claim by a Person who has validly opted out of the Proceedings);

(b) if the Ontario Court or BC Court, as applicable, ultimately determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise:

(A) the Ontario and BC Plaintiffs and Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;

(B) the Ontario and BC Plaintiffs and Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to include, and shall be entitled to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, only such claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, costs, and interest attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to the Ontario and BC Plaintiffs and Settlement Class Members, if any, and, for greater certainty, the Ontario and BC

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Settlement Class Members shall be entitled to claim and recover on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, to the extent provided by law; and

- (C) the Ontario and BC Courts shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the relevant Proceeding, whether or not the Releasees remain in the relevant Proceeding or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the relevant Proceeding and any determination by the Court in respect of the Proportionate Liability of the Releasees shall only apply in the relevant Proceeding and shall not be binding on the Releasees in any other proceeding;
- (c) a Non-Settling Defendant may, on motion to the Ontario Court or the BC Court, as appropriate, determined as if the Settling Defendants remained party to the relevant Proceeding, and on at least ten (10) days notice to Counsel for the Settling Defendants, and not to be brought unless and until the relevant Proceeding against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek Orders for the following:
- (A) documentary discovery and an affidavit of documents from the Settling Defendants in accordance with that Court's rules of procedure;
  - (B) oral discovery of a representative of the Settling Defendants, the transcript of which may be read in at trial;
  - (C) leave to serve a request to admit on the Settling Defendants in respect of factual matters; and/or
  - (D) the production of a representative of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.

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- (d) The Settling Defendants retain all rights to oppose any motion brought pursuant to Section 8.1(1)(c), including any such motion brought at trial seeking an order requiring the Settling Defendants to produce a representative to testify at trial. Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of documents to be produced and/or for information obtained from discovery in accordance with Section 8.1(1)(c);
- (e) on any motion brought pursuant to Section 8.1(1)(c), the Court may make such Orders as to costs and other terms as it considers appropriate;
- (f) to the extent that such an order is granted and discovery is provided to a Non-Settling Defendant, a copy of all discovery provided, whether oral or documentary in nature, shall be provided by the Settling Defendants to the Plaintiffs and Class Counsel within ten (10) days of such discovery being provided to a Non-Settling Defendant;
- (g) the Ontario and BC Courts will retain an ongoing supervisory role over the discovery process and the Settling Defendants will attorn to the jurisdiction of the Ontario and BC Courts for these (but no other) purposes; and
- (h) a Non-Settling Defendant may effect service of the motion(s) referred to in Section 8.1(1)(c) on a Settling Defendant by service on Counsel for the Settling Defendants in the relevant Proceedings.

#### **8.2 Quebec Waiver or Renunciation of Solidarity Order**

- (1) A waiver or renunciation of solidarity shall be granted by the Quebec Court providing for the following:
  - (a) the Quebec Plaintiffs and the Settlement Class Members in the Quebec Action expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts, deeds or other conduct of the Releasees;

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- (b) the Quebec Plaintiffs and the Settlement Class Members in the Quebec Action shall henceforth only be able to claim and recover damages, including punitive damages, interest and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) attributable to the conduct of the Non-Settling Defendants, the sales by the Non-Settling Defendants, and/or other applicable measure of proportionate liability of the Non-Settling Defendants;
- (c) any claims in warranty or any other claim or joinder of parties to obtain any contribution or indemnity from the Releasees or relating to the Released Claims shall be inadmissible and void in the context of the Quebec Action; and
- (d) the ability of Non-Settling Defendants to seek discovery from the Settling Defendants shall be determined according to the provisions of the *Code of Civil Procedure*, and the Settling Defendants shall retain and reserve all of their rights to oppose such discovery under the *Code of Civil Procedure*.

### **8.3 Claims Against Other Entities Reserved**

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

## **Section 9 – Effect of Settlement**

### **9.1 No Admission of Liability**

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

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**9.2 Agreement Not Evidence**

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

**9.3 No Further Litigation**

(1) No Class Counsel, nor anyone currently or hereafter employed by or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any person which relates to or arises from the Released Claims, except in relation to the continued prosecution of the Proceedings against any Non-Settling Defendant or unnamed co-conspirators that are not Releasees or, if the Proceedings are not certified or authorized, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendant or unnamed co-conspirator that is not a Releasee. Moreover, these persons may not divulge to anyone for any purpose any information obtained in the course of the Proceedings or the negotiation and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available or unless ordered to do so by a court.

(2) Section 9.3(1) shall be inoperative to the extent that it requires any lawyer who is a member of the Law Society of British Columbia to breach his or her obligations under section 3.2-10 of the Law Society of British Columbia's *Code of Professional Conduct for British Columbia* by refraining from participation or involvement in any claim or action in a British Columbia court.

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**Section 10 – Certification or Authorization  
for Settlement Only**

- (1) The Parties agree that the Proceedings shall be certified or authorized as class proceedings as against the Settling Defendants solely for purposes of settlement of the Proceedings and the approval of this Settlement Agreement by the Courts.
- (2) The Plaintiffs agree that, in the motions for certification or authorization of the Proceedings as class proceedings for settlement purposes and for the approval of this Settlement Agreement, the only common issue that they will seek to define is the Common Issue and the only classes that they will assert are the Settlement Classes.
- (3) The Parties agree that the certification or authorization of the Proceedings as against the Settling Defendants for the purpose of implementing this Settlement Agreement, shall not derogate in any way from the rights of the Plaintiffs as against the Non-Settling Defendants.

**Section 11- Notice to Settlement Classes**

**11.1 Notices Required**

- (1) The proposed Settlement Classes shall be given a single notice of (i) the certification or authorization of the Proceedings as class proceedings as against the Settling Defendants for settlement purposes; and (ii) the hearings at which the Courts will be asked to certify or authorize the Proceedings as class proceedings as against the Settling Defendants for settlement purposes and approve the Settlement Agreement; and (iii) if they are brought with the hearings to approve the Settlement Agreement, the hearings to approve Class Counsel Fees and/or a Distribution Protocol.
- (2) The proposed Settlement Classes shall also be given a notice of: (i) approval of the Settlement Agreement; and (ii) the Distribution Protocol.

**11.2 Form and Distribution of Notices**

- (1) The notices shall be in a form agreed upon by the Parties and approved by the Courts or, if the Parties cannot agree on the form of the notices, the notices shall be in a form ordered by the Courts.

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(2) The notices shall be disseminated by a method agreed upon by the Parties and approved by the Courts or, if the Parties cannot agree on a method for disseminating the notices, the notices shall be disseminated by a method ordered by the Courts.

#### **Section 12 – Administration and Implementation**

##### **12.1 Mechanics of Administration**

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

##### **12.2 Information and Assistance**

(1) The Settling Defendants will make reasonable efforts to compile a list of the names and addresses of Persons, if any, in Canada who purchased LCD Large Screen Products from them or from the Releasees during the Class Period and the Purchase Price paid by each such Person for such purchases.

(2) The information required by Section 12.2(1) shall be delivered to the Class Counsel within fifteen (15) days of the Date of Execution or at a time mutually agreed upon by the Parties. The information shall be delivered in Microsoft Excel or such other format as may be agreed upon by Counsel for the Settling Defendants and Class Counsel.

(3) Class Counsel may use the information provided under Section 12.2(1):

- (a) to facilitate the dissemination of the notices required in Section 11.1;
- (b) to advise persons in Canada who purchased LCD Large Screen Products from the Settling Defendants during the Class Period of any subsequent settlement agreement reached in the Proceedings, any related approval hearings, and any other major steps in the Proceedings;
- (c) to facilitate the claims administration process with respect to this Settlement Agreement and any other settlement agreement achieved in the Proceedings; and
- (d) as otherwise authorized in Section 4.



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(4) All information provided by the Settling Defendants pursuant to Section 12.2(1) shall be dealt with in accordance with Section 4. If this Settlement Agreement is terminated, all information provided by the Settling Defendants pursuant to Section 12.2(1) shall be dealt with in accordance with Section 6.2(1)(d) and no record of the information so provided shall be retained by Class Counsel in any form whatsoever.

(5) The Settling Defendants shall bear no liability with respect to the completeness or accuracy of the information provided pursuant to this Section 12.2.

#### **Section 13 – Class Counsel Fees and Administration Expenses**

(1) Class Counsel may seek the Courts' approval to pay Class Counsel Fees and Administration Expenses contemporaneous with seeking approval of this Settlement Agreement or at such other time as they may determine in their sole discretion.

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

#### **Section 14 - Miscellaneous**

##### **14.1 Motions for Directions**

(1) Class Counsel or the Settling Defendants may apply to the Ontario Court and/or such other Courts as may be required by the Courts for directions in respect of the interpretation, implementation and administration of this Settlement Agreement. Unless the Courts order otherwise, motions for directions that do not relate specifically to the matters affecting the BC Action, BC Settlement Class Members, the Quebec Action or/and Settlement Class Members in the Quebec Action shall be determined by the Ontario Court.

(2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

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**14.2 Releasees Have No Liability for Administration**

(1) The Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement or Distribution Protocol.

**14.3 Headings, etc.**

(1) In this Settlement Agreement:

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

**14.4 Computation of Time**

(1) In the computation of time in this Settlement Agreement, except where a contrary intention appears,

- (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
- (b) only in the case where the time for doing an act expires on a holiday as "holiday" is defined in the *Interpretation Act*, RSC 1985, c I-21, the act may be done on the next day that is not a holiday.

**14.5 Ongoing Jurisdiction**

(1) Each of the Courts shall retain exclusive jurisdiction over the Proceeding commenced in its jurisdiction, the Parties and the Class Counsel Fees in that Proceeding.

(2) No Party shall ask a Court to make any order or give any direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a complementary

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order or direction being made or given by the other Court(s) with which it shares jurisdiction over that matter.

(3) Notwithstanding Section 14.5(1) and (2), the Ontario Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement, and the Plaintiffs and Settlement Class Members attorn to the jurisdiction of the Ontario Court for such purposes. Issues related to the administration of this Settlement Agreement, the Trust Account, and other matters not specifically related to the claim of a Settlement Class Member in the BC Action or the Quebec Action shall be determined by the Ontario Court.

(4) Notwithstanding Section 14.6(1), for matters relating specifically to the claim of a Settlement Class Member in the BC Action or the Quebec Action or to the BC or Quebec Actions, the BC or Quebec Court, as applicable, shall apply the law of its own jurisdiction.

#### **14.6 Governing Law**

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

#### **14.7 Entire Agreement**

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

#### **14.8 Amendments**

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

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**14.9 Binding Effect**

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

**14.10 Counterparts**

(1) This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

**14.11 Negotiated Agreement**

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

**14.12 Language**

(1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais. Nevertheless, Class Counsel and/or a translation firm selected by Class Counsel shall prepare a French translation of the Settlement Agreement, the cost of which shall be paid from the Settlement Amount. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

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**14.13 Transaction**

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

**14.14 Recitals**

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

**14.15 Schedules**

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

**14.16 Acknowledgements**

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

- (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
- (c) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of the Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

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**14.17 Authorized Signatures**

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

**14.18 Notice**

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

**For the Plaintiffs and for Class Counsel in the Proceedings:**

Charles M. Wright and Andrea DeKay  
SISKINDS LLP  
Barristers and Solicitors  
680 Waterloo Street  
London, ON N6A 3V8  
Tel: 519-660-7753  
Fax: 519-672-6065  
Email: charles.wright@siskinds.com  
andrea.dekay@siskinds.com

J. J. Camp, Q.C. and Reidar Mogerman  
CAMP FIORANTE MATTHEWS  
MOGERMAN  
4<sup>th</sup> Floor, 856 Homer St.  
Vancouver, BC V6B 2W5  
Tel: 604-689-7555  
Fax: 604-689-7554  
Email: jjcamp@cfmlawyers.ca  
rmogerman@cfmlawyers.ca

Simon Hebert  
SISKINDS DESMBULES s.e.n.c.r.l.  
Les promenades du Vieux-Quebec  
43 rue Buade, bureau 320  
Quebec City, QC G1R. 4A2  
Tel: 418-694-2009  
Fax: 418-694-0281  
Email: simon.hebert@siskindsdesmeules.com

**For the Settling Defendants:**

Robert E. Kwinter and David T. Neave

BLAKE, CASSELS & GRAYDON J.L.P.  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto ON M5L 1A9

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Tel: 416.863.2400  
Fax: 416.863.2653  
Email: robert.kwinter@blakes.com  
david.neave@blakes.com

14.19 Date of Execution

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

THE FANSHAWE COLLEGE OF APPLIED ARTS AND TECHNOLOGY,  
COMMUNICATION MEGA-SAT INC., and KRISTOPHER GRUBER, on  
their own behalf and on behalf of the Settlement Class, by their counsel

Signature of Authorized Signatory: *Charles M. Wright*  
Name of Authorized Signatory: Charles M. Wright  
Siskinds LLP  
Ontario Class Counsel

Signature of Authorized Signatory: *J.J. Camp*  
Name of Authorized Signatory: J.J. Camp, Q.C.  
Camp Fiorante Matthews Mogeran  
BC Class Counsel

Signature of Authorized Signatory: *Simon Hébert*  
Name of Authorized Signatory: Simon Hébert  
Siskinds Desmeules s.e.n.c.r.l.  
Quebec Class Counsel

SAMSUNG ELECTRONICS CO., LTD. and SAMSUNG ELECTRONICS  
CANADA INC. by their counsel

Signature of Authorized Signatory: *Robert B. Kwinter*  
Name of Authorized Signatory: Robert B. Kwinter  
Blake, Cassels & Grynion LLP  
Counsel for the Settling Defendants

**SCHEDULE "A"**

**Proceedings**

Court and File No.	Plaintiffs' Counsel	Plaintiff	Named Defendants	Settlement Class
<b>Ontario Action</b>				
Ontario Superior Court of Justice Court File No. 54054 CP	Siskinds LLP	The Fanshawe College of Applied Arts and Technology	LG Philips LCD Co., Ltd., L.G. Philips LCD America, Inc., Samsung Electronics Co. Ltd., Samsung Electronics Canada Inc., Hitachi Ltd., Hitachi Displays, Ltd., Hitachi Canada, Ltd., Hitachi America Ltd., Hitachi Electronics Devices (USA) Inc., Sharp Corporation, Sharp Electronics Corporation, Sharp Electronics of Canada Ltd., Toshiba Corporation, Toshiba Matsushita Display Technology Co., Ltd., Toshiba America Corporation, Toshiba of Canada Limited, AU Optronics Corporation America, Chi Mei Optoelectronics USA, Inc., CHI Mei Optoelectronics Japan Co., Ltd., and Chunghwa Picture Tubes Ltd.	All persons in Canada who purchased LCD Large Screen Products during the Class Period, except the Excluded Persons and persons who are included in the Quebec Class and the BC Class.
<b>BC Action</b>				
British Columbia Supreme	Camp Fiorante Matthews Mogerman	Kristopher Gruber	LG Philips LCD Co., Ltd., L.G. Philips LCD America, Inc., Samsung Electronics Co. Ltd., Samsung Electronics Canada	All persons in British Columbia who purchased LCD Large Screen Products during the Class Period,



Court and File No.	Plaintiffs' Counsel	Plaintiff	Named Defendants	Settlement Class
Court File No. S071569 (Vancouver Registry)			Inc., NEC Corporation, NEC Electronics America, Inc., NEC LCD Technologies Ltd., Hitachi Ltd., Hitachi Displays, Ltd., Hitachi Canada, Ltd., Hitachi America Ltd., Hitachi Electronics Devices (USA) Inc., IDT International Ltd., International Display Technology Co., Ltd., International Display Technology USA Inc., Epson Imaging Devices Corporation aka Sanyo Epson Imaging Devices Corporation, Sharp Corporation, Sharp Electronics Corporation, Sharp Electronics of Canada Ltd., Toshiba Corporation, Toshiba Matsushita Display Technology Co., Ltd., Toshiba America Corporation, Toshiba of Canada Limited, AU Optronics Corp., AU Optronics Corporation America, Chi Mei Optoelectronics Corporation, Chi Mei Optoelectronics USA, Inc., Chunghwa Picture Tubes, Ltd., and HannStar Display Corporation	except the Excluded Persons.
Québec-Actéon				
Superior Court of Quebec (District of Québec), File No.	Siskinds Desmeniles s.e.n.c.r.l.	Communication Mega-Sat Inc.	LG Philips LCD Co., Ltd., LG Philips LCD America, Inc., Samsung Electronics Co. Ltd., Samsung Electronics Canada Inc., Hitachi Ltd., Hitachi Canada, Ltd., Hitachi America Ltd., Hitachi Displays Ltd., Hitachi Electronics Devices (USA)	All (i) individuals in Quebec and (ii) legal persons resident in Quebec established for a private interest, partnership or association which had under its direction or control no more than 50 persons bound to it.

Court and File No.	Plaintiffs' Counsel	Plaintiff	Named Defendants	Settlement Class
200-06-00082-076			Inc., Sharp Corporation, Sharp Electronics Corporation, Sharp Corporation of Canada Ltd., Toshiba Corporation, Toshiba of Canada Limited, Toshiba America Corporation, Toshiba Matsushita Display Technology Co., Ltd., AU Optronics Corporation America, Chi Mei Optoelectronics USA, Inc., Chi Mei Optoelectronics Japan Co., Ltd. and Chungwa Picture Tubes, Ltd.	by a contract of employment who purchased LCD Large Screen Products during the Class Period, except Excluded Persons.

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SCHEDULE "B"

Court File No. 54054 CP

ONTARIO  
SUPERIOR COURT OF JUSTICE

THE HONOURABLE )  
 ) , the day  
JUSTICE GRACE ) of , 2013

B E T W E E N:

THE FANSHAWE COLLEGE OF APPLIED ARTS AND TECHNOLOGY

Plaintiff

- and -

LG PHILIPS LCD CO., LTD., L.G. PHILIPS LCD AMERICA, INC., SAMSUNG  
ELECTRONICS CO. LTD., SAMSUNG ELECTRONICS CANADA INC., HITACHI LTD.,  
HITACHI DISPLAYS, LTD., HITACHI CANADA, LTD., HITACHI AMERICA LTD,  
HITACHI ELECTRONICS DEVICES (USA) INC., SHARP CORPORATION, SHARP  
ELECTRONICS CORPORATION, SHARP ELECTRONICS OF CANADA LTD., TOSHIBA  
CORPORATION, TOSHIBA MATSUSHITA DISPLAY TECHNOLOGY CO., LTD.,  
TOSHIBA AMERICA CORPORATION, TOSHIBA OF CANADA LIMITED, AU  
OPTRONICS CORPORATION AMERICA, CHI MEI OPTOELECTRONICS USA, INC., CHI  
MEI OPTOELECTRONICS JAPAN CO., LTD., and CHUNGHWA PICTURE TUBES LTD.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION made by the Plaintiff for an Order approving the short-form and long-  
form notice of settlement approval hearings and the method of dissemination of said notices, and  
certifying this proceeding as a class proceeding for settlement purposes as against the Defendants

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Samsung Electronics Co. Ltd and Samsung Electronics Canada Inc. (the "Settling Defendants") was heard this day at the Courthouse, 80 Dundas Street, London, Ontario.

**ON BEING ADVISED** that, pursuant to the order of this Court dated April 26, 2010 a right to opt out was provided with respect to members of the settlement class as defined in that order and one person validly and timely opted out of the Ontario Action in accordance with that order;

**AND ON BEING ADVISED** that, pursuant to the order of this Court dated December 11, 2011 a right to opt out was provided with respect to members of the settlement class as defined in that order, but that notice advising of that right to opt out has not yet been published;

**AND ON BEING ADVISED** that the Plaintiff and the Settling Defendants consent to this Order:

**AND ON READING** the materials filed, including the settlement agreement dated April 29, 2013 attached to this Order as Schedule "A" (the "Settlement Agreement"), and on hearing the submissions of counsel for the Plaintiff, counsel for the Settling Defendants and counsel for the Non-Settling Defendants in the Ontario Action;

1. **THIS COURT ORDERS** that for the purposes of this Order the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS THAT** the short-form and long-form of the notice of settlement approval hearings are hereby approved substantially in the form attached respectively hereto as Schedules "B" and "C."
3. **THIS COURT ORDERS** that the plan of dissemination for the short-form and long-form of notice of settlement approval hearings (the "Plan of Dissemination") is hereby approved in the form attached hereto as Schedule "D" and that the notice of settlement approval hearings shall be disseminated in accordance with the Plan of Dissemination.

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4. **THIS COURT ORDERS** that the Ontario Action is certified as a class proceeding as against the Settling Defendants for settlement purposes only.

5. **THIS COURT ORDERS** that the "Ontario Settlement Class" is certified as follows:

All persons in Canada who purchased LCD Large Screen Products during the Class Period, except the Excluded Persons and persons who are included in the Quebec Class and the BC Class.

6. **THIS COURT ORDERS** that The Fanshawe College of Applied Arts and Technology be appointed as the representative plaintiff for the Ontario Settlement Class.

7. **THIS COURT ORDERS** that the following issue is common to the Ontario Settlement Class:

Did the Settling Defendants conspire to fix, raise, maintain or stabilize the prices of, or allocate markets and customers for, LCD Large Screen Panels directly or indirectly in Canada during the Class Period? If so, what damages, if any, did Class Members suffer?

8. **THIS COURT ORDERS** that the certification of the Ontario Action as against the Settling Defendants for settlement purposes pursuant to this Order, including the definition of the Ontario Settlement Class and the Common Issue, is without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Ontario Action.

9. **THIS COURT ORDERS** that putative members of the Settlement Class shall be eligible to opt out of the Ontario Action only if:

- (a) they are eligible to opt-out pursuant to the order of this Court, dated December 2, 2011; or

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(b) they purchased LCD Large Screen Products during the early part of the class period (January 1, 1998 to September 20, 2001), but did not purchase LCD Large Screen Products during the September 21, 2001 to December 11, 2006 period.

10. **THIS COURT ORDERS** that putative members of the Settlement Class who are eligible to opt out of the Ontario Action can do so by sending a written request to opt out to Class Counsel, postmarked on or before the date that is sixty (60) days from the date of the first publication of the short-form notice of settlement approval hearings attached hereto as Schedule "B". The written election to opt-out must include the information specified in the long-form notice of settlement approval hearings attached hereto as Schedule "C".
11. **THIS COURT ORDERS** that any putative member of the Settlement Class who validly opts out of the Ontario Action shall not be able to participate in the Ontario Action and no further right to opt out of the Ontario Action will be provided.
12. **THIS COURT ORDERS** that this Order is contingent upon parallel orders being made by the BC Court and the Quebec Court, and the terms of this Order shall not be effective unless and until such orders are made by the BC Court and the Quebec Court.

Date:

THE HONOURABLE JUSTICE GRACE

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**SCHEDULE "C"**

Court File No. 54054 CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) , the day  
JUSTICE GRACE ) of , 2013

**B E T W E E N:**

**THE FANSHAWE COLLEGE OF APPLIED ARTS AND TECHNOLOGY**

**Plaintiff**

- and -

**LG PHILIPS LCD CO., LTD., L.G. PHILIPS LCD AMERICA, INC., SAMSUNG  
ELECTRONICS CO. LTD., SAMSUNG ELECTRONICS CANADA INC., HITACHI LTD.,  
HITACHI DISPLAYS, LTD., HITACHI CANADA, LTD., HITACHI AMERICA LTD,  
HITACHI ELECTRONICS DEVICES (USA) INC., SHARP CORPORATION, SHARP  
ELECTRONICS CORPORATION, SHARP ELECTRONICS OF CANADA LTD., TOSHIBA  
CORPORATION, TOSHIBA MATSUSHITA DISPLAY TECHNOLOGY CO., LTD.,  
TOSHIBA AMERICA CORPORATION, TOSHIBA OF CANADA LIMITED, AU  
OPTRONICS CORPORATION AMERICA, CHI MEI OPTOELECTRONICS USA, INC., CHI  
MEI OPTOELECTRONICS JAPAN CO., LTD., and CHUNGHWA PICTURE TUBBS LTD.**

**Defendants**

*Proceeding under the Class Proceedings Act, 1992*

**ORDER**

**THIS MOTION** made by the Plaintiff for an Order approving the settlement agreement entered into with the Defendants Samsung Electronics Co. Ltd. and Samsung Electronics Canada

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Inc. (the "Settling Defendants") and dismissing this action as against the Settling Defendants, was heard this day at the Court House, 80 Dundas Street, London, Ontario.

**ON READING** the materials filed, including the settlement agreement dated April 29, 2013 attached to this Order as Schedule "A" (the "Settlement Agreement"), and on hearing the submissions of counsel for the Plaintiff, counsel for the Settling Defendants and counsel for the Non-Settling Defendants in the Ontario Action;

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

**AND ON BEING ADVISED** that the Plaintiff and the Settling Defendants consent to this Order:

1. **THIS COURT ORDERS** that, in addition to the definitions used elsewhere in this Order, for the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.

2. **THIS COURT ORDERS** that the "Ontario Settlement Class" is defined to mean:

All persons in Canada who purchased LCD Large Screen Products during the Class Period, except the Excluded Persons and persons who are included in the Quebec Class and the BC Class.

3. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.



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4. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each Ontario Settlement Class Member including those Persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of the Ontario Actions.
5. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Ontario Settlement Class.
6. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.
7. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each Ontario Settlement Class Member shall consent and shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice.
8. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each Other Action commenced in Ontario by any Ontario Settlement Class Member shall be and is hereby dismissed against the Releasees, without costs and with prejudice.
9. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.

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10. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, cause of action, claim or demand against any Releasee or any other Person who may claim contribution or indemnity, or other claims over relief, from any Releasee, whether pursuant to the *Negligence Act*, R.S.O. 1990, c. N. 1 or other legislation or at common law or equity in respect of any Released Claim or any matter related thereto, except for the continuation of the Proceedings against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees or, if the Proceedings are not certified or authorized with respect to the Non-Settling Defendants, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendant or named or unnamed co-conspirator that is not a Releasee.

11. **THIS COURT ORDERS** that the use of the terms "Releasors" and "Released Claims" in this Order does not constitute a release of claims by those Ontario Settlement Class Members who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.

12. **THIS COURT ORDERS** that, upon the Effective Date, each Ontario Settlement Class Member who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way nor to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

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13. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceedings or otherwise, by any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee, or any other Person or party against a Releasee, or by a Releasee against a Non-Settling Defendant, or any named or unnamed co-conspirator that is not a Releasee, are barred, prohibited and enjoined in accordance with the terms of this Order (unless such claim is made in respect of a claim by a Person who has validly opted-out of the Proceedings).

14. **THIS COURT ORDERS** that if, in the absence of paragraph 13 above, the Court determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise:

- (a) the Plaintiff and the Ontario Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee that portion of any damages (including punitive damages, if any) restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;
- (b) the Plaintiff and the Ontario Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to include, and shall be entitled to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, only those claims for damages (including punitive damages, if any) restitutionary award,

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disgorgement of profits, costs and interest attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to the Plaintiff and the Ontario Settlement Class Members, if any, and, for greater certainty, the Ontario Settlement Class Members shall be entitled to claim and recover on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, to the extent provided by law; and

- (c) this Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Ontario Action, whether or not the Releasees remain in the Ontario Action or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Ontario Action and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in the Ontario Action and shall not be binding on the Releasees in any other proceedings.

15. **THIS COURT ORDERS** that if, in the absence of paragraph 13 hereof, the Non-Settling Defendants would not have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Releasees, then nothing in this Order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of damages, restitutionary award, disgorgement of profits or judgment against them in favour of the Ontario Settlement Class Members in the Ontario Action.

16. **THIS COURT ORDERS** that a Non-Settling Defendant may, on motion to this Court determined as if the Settling Defendants remained parties to the Ontario Action and on at least ten (10) days notice to Counsel for the Settling Defendants, and not to be brought

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unless and until the Ontario Action against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek orders for the following:

- (a) documentary discovery and an affidavit of documents from the Settling Defendants in accordance with the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;
- (b) oral discovery of a representative of the Settling Defendants, the transcript of which may be read in at trial;
- (c) leave to serve a request to admit on the Settling Defendants in respect of factual matters; and/or
- (d) the production of a representative of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.

17. **THIS COURT ORDERS** that the Settling Defendants retain all rights to oppose such motion(s) brought under paragraph 16. Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of documents to be produced and/or for information obtained from discovery in accordance with paragraph 16. Notwithstanding any provision in this Order, on any motion brought pursuant to paragraph 16, the Court may make such orders as to costs and other terms as it considers appropriate.

18. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 16 above on the Settling Defendants by service on Counsel for the Settling Defendants.

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19. **THIS COURT ORDERS** that for purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Settling Defendants acknowledge and attorn to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.
20. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any Ontario Settlement Class Member has or may have in the Ontario Action against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees.
21. **THIS COURT ORDERS** that no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement; to administration, investment, or distribution of the Trust Account; or to the Distribution Protocol.
22. **THIS COURT ORDERS** that within forty-five days following the Effective Date, the Settling Defendants shall transfer the Settlement Amount to Ontario Counsel to be held in the Trust Account.
23. **THIS COURT ORDERS** that Ontario Counsel shall hold the Settlement Amount, plus any accrued interest, in trust for the benefit of the Settlement Classes pending further orders of the Courts.

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24. **THIS COURT ORDERS** that the approval of the Settlement Agreement is contingent upon approval by the BC Court and the Quebec Court, and the terms of this Order shall not be effective unless and until the Settlement Agreement is approved by the BC Court and the Quebec Court, and the BC and Quebec Actions have been dismissed with prejudice and without costs as against the Settling Defendants by the BC Court and the Quebec Court. If such orders are not secured in Quebec and British Columbia, this Order shall be null and void and without prejudice to the rights of the parties to proceed with this action and any agreement between the parties incorporated in this Order shall be deemed in any subsequent proceedings to have been made without prejudice.

25. **THIS COURT ORDERS** that this Order shall be declared null and void on subsequent motion made on notice in the event that the Settlement Agreement is terminated in accordance with its terms.

26. **THIS COURT ORDERS** that, except as aforesaid, the Ontario Action is hereby dismissed against the Settling Defendants without costs and with prejudice.

Date:

\_\_\_\_\_  
THE HONOURABLE JUSTICE GRACE

Fanshawe College v. LG Philips LCD Co., Ltd. et al

Court File No: 54054CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at London

Proceeding under the *Class Proceedings Act, 1992*

**ORDER  
Samsung Settlement Approval**

Siskinds LLP  
Barristers & Solicitors  
680 Waterloo Street  
P.O. Box 2520  
London, ON N6A 3V8

Charles M. Wright LSUC #36599Q  
Linda Visser LSUC # 521581  
Tel: (519) 672-2121  
Fax: (519) 672-6065

Lawyers for the Plaintiff