

*ONTARIO*  
SUPERIOR COURT OF JUSTICE -  
COMMERCIAL LIST

IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, C.c-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF SINO-FOREST CORPORATION

**RESPONDING MOTION RECORD**  
**(Returnable Friday, December 7, 2012)**

**DAVIS LLP**

1 First Canadian Place, Suite 6000  
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Lawyers for Kai Kit Poon

*ONTARIO*  
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# TAB 1

Court File No. CV-12-9667-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE -  
COMMERCIAL LIST

IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, C.c-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF SINO-FOREST CORPORATION

**AFFIDAVIT OF JAMES CYRIL KELSALL  
(SWORN DECEMBER 5, 2012)**

I, JAMES CYRIL KELSALL, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am an articling student at the law firm of Davis LLP, which represents Mr. Kai Kit Poon in the *Companies' Creditors Arrangement Act* ("CCAA") proceedings concerning Sino-Forest Corporation ("SFC"). As such, I have personal knowledge of the facts stated herein, unless indicated otherwise.
2. On November 28, 2012, Counsel for Mr. Poon sent a letter to Counsel for SFC, the Monitor, and Counsel for the Plaintiffs in *The Trustees of the Labourers' Pension Fund of Central and Eastern Canada and others v. Sino-Forest Corporation and others* (Court File No. CV-11-431153-00CP). A copy of the letter is attached as Exhibit "A" of this Affidavit.
3. On November 29, 2012, the Monitor's Counsel replied to the November 28 letter. The reply is attached as Exhibit "B" of this Affidavit.



4. On November 30, 2012, Counsel for Mr. Poon sent the November 28 letter and the November 29 letter by email to all members of the service list for these proceedings.
5. An example of the language to which the third paragraph of Exhibit "A" refers can be found in paragraph 15 of the Order of Justice Perell in *Khalid Eidoo and another v. Infineon Technologies AG and others*, Court File No. 05-CV-4340, a class action claim, attached as Exhibit "C" of this Affidavit (without schedules). Similar language was used in Québec in *Option Consommateurs and another v. Infineon Technologies AG and others*, 2012 QCCS 2949. The Judgment of Justice Gagnon in that case, containing the relevant language in paragraphs 22 to 25, is attached as Exhibit "D" of this Affidavit.
6. A further example is found in paragraph 19 of the Judgment in Court File No. 00-CV-202080CP, a class action related to bulk vitamins, dated 23 March 2005. I attach the first 20 pages of the Judgment, including the relevant paragraph, as Exhibit "E" of this Affidavit.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, on December 5, 2012.



Commissioner for taking affidavits  
**BRANDON BARNES**  
Barrister and Solicitor



**JAMES CYRIL KELSALL**

*[Signature]*

FROM THE OFFICE OF **Susan E. Friedman** .....  
DIRECT LINE **416.365.3503** .....  
DIRECT FAX **416.777.7415** .....  
E-MAIL **sfriedman@davis.ca** .....

FILE NUMBER: **85865-00002**

November 28, 2012

**DELIVERED BY E-MAIL**

Robert Staley  
Bennett Jones LLP  
3400 One First Canadian Place  
PO Box 130  
Toronto, Ontario M5X 1A4

A. Dimitri Lascaris  
Siskinds LLP  
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Greg Watson, Jodi Porepa  
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TD Waterhouse Tower  
79 Wellington Street West  
Suite 2010  
Toronto, Ontario M5K 1G8

Derrick Tay  
Gowling Lafleur Henderson LLP  
1 First Canadian Place  
100 King Street West  
Suite 1600  
Toronto, Ontario M5X 1G5

Dear Counsel:

**Re: Sino-Forest Corporation Inc.  
Representation of Mr. Kai Kit Poon**

As you are aware, we have been instructed to act for Mr. Kai Kit Poon with respect to *Companies' Creditors Arrangement Act* matters concerning Sino-Forest Corporation ("SFC") (Court File No. CV-12-9667-00CL); various class proceedings, in particular *Trustees of the Labourers' Pension Fund of Central and Eastern Canada et al. v. Sino-Forest Corporation et al.* (Court File No. CV-11-431153-00CP) (the "Class Proceedings"); and related matters.

The draft Plan of Compromise and Reorganization for SFC dated October 19, 2012, as amended by the Amended Plan of Compromise and Reorganization dated November 28, 2012 (the "Plan"), slated to be approved by vote of the creditors on November 30, 2012, excludes our client from the benefits of certain releases and compromise arrangements accorded to the "Named Directors", as that term is described therein. The exclusion of Mr. Poon is a revision from the preceding draft dated August 27, 2012. It remains unexplained as to why this edit was made.

We write to advise you that, at the hearing for the sanction of the Plan now scheduled for December 7 and 10, 2012, we will make submissions to Justice Morawetz of the following nature:

1. That the Order sanctioning the Plan, if granted, should contain language acknowledging that the Court's approval of the Plan does not impair Mr. Poon from contending, in the Class Proceedings or any other related or subsequent proceedings, that recovery in fulfillment of any judgment against him, to the extent permitted by the Plan, on the basis that Mr. Poon is jointly and severally

**DAVIS** LLP

Page 2 of 2

liable with any defendant (including defendants added at a later point in time and third parties) against whom the plaintiff's claim has been compromised by the Plan, should be barred to the extent that such other defendant is found to be proportionally responsible for the judgment liability; and

2. that the Plan should be amended as necessary to reflect the foregoing.

By making mention of our position at this time, we seek to avoid any argument in the Class Proceedings or related proceedings that, through silence, Mr. Poon acquiesced to recoveries against him, in the event of liability, in excess of what is equitable and proportionate to the degree of blameworthiness, if any, which the Court may accord to him.

Further, to the best of our knowledge, having only recently been retained, a D&O Proof of Claim was not filed on behalf of Mr. Poon as provided in the Claims Procedure Order of May 14, 2012. At such time, it may have been contemplated that Mr. Poon would receive the same treatment as that afforded to the Named Directors when the initial draft of the Plan was finalized in August. We request that the Monitor use its discretion pursuant to paragraph 6 of the Claims Procedure Order to permit a late filing of a D&O Proof of Claim on Mr. Poon's behalf. We will shortly provide you with the D&O Proof of Claim.

We are available to discuss the above at our mutual convenience.

Sincerely,  
**DAVIS LLP**

Per:



Susan E. Friedman  
SEF/



montréal • ottawa • toronto • hamilton • waterloo region • calgary • vancouver • beijing • moscow • london

This is Exhibit <sup>B</sup> ..... referred to as  
affidavit of JAMES C. KELAN  
sworn before me, this 5<sup>th</sup>  
day of DECEMBER, 2012  
[Signature]  
A COMMISSIONER FOR TAKING AFFIDAVITS

November 29, 2012

**SENT BY EMAIL**

Jennifer Stam  
Direct 416-862-5697  
jennifer.stam@gowlings.com

Davis LLP  
1 First Canadian Place, Suite 6000  
P.O. Box 367  
100 King Street West  
Toronto, Ontario  
M5X 1E2

**Attention: Susan E. Friedman**

Dear Susan:

**Re: Sino-Forest Corporation: Kai Kit Poon**

We are in receipt of your letter dated November 28, 2012. With respect to your proposed submissions, the Monitor and the Company reserves all rights with respect to a response.

We have considered your request to provide the Monitor's consent to allowing Mr. Poon to file a late D&O Proof of Claim. First, we note that Mr. Poon did file both a Claim and a D&O Indemnity Claim already. We also note that under the Claims Procedure Order, the Monitor does not have the discretion to unilaterally accept late filed claims. Any late filed claims would still need leave of the Court. Given that Mr. Poon is seeking to file late D&O Claims which we assume would be against other directors and officers, there would likely be additional interested parties. Further, the terms of the Plan provide for releases in favour of Named Directors and Officers. Accordingly, in light of those circumstances as well as the current stage of the CCAA proceedings, the Monitor is not prepared to confirm at this time that it will not disallow any D&O Proof of Claim filed by Mr. Poon on the basis that it was filed late.

TOR\_LAW\8051283M

gowlings

Sincerely,

**GOWLING LAFLEUR HENDERSON LLP**

A handwritten signature in black ink, appearing to be 'JS' with a long horizontal flourish extending to the right.

Jennifer Stam

JS

- c. Derrick Tay (*Gowling LaFleur Henderson LLP*)  
Greg Watson/ Jodi Porepa (*The Monitor*)  
Rob Staley (*Bennett Jones LLP*)  
Dimitri Lascaris (*Siskands LLP*)

This is Exhibit.....<sup>C</sup>.....<sup>000007</sup> in the  
affidavit of.....JAMES C. KELLY.....  
sworn before me, this.....<sup>54</sup>.....  
day of.....DECEMBER.....20..12

~~SCHEDULE "A"~~ JPM

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Court File No. 05-CV-4340

A COMMISSIONER FOR TAKING AFFIDAVITS

THE HONOURABLE  
JUSTICE PERELL

) Wednesday, the 20th day  
) of June, 2012

BETWEEN:

KHALID EIDOO and  
CYGNUS ELECTRONICS CORPORATION

Plaintiffs

- and -

INFINEON TECHNOLOGIES AG, INFINEON TECHNOLOGIES  
CORPORATION, INFINEON TECHNOLOGIES NORTH AMERICA  
CORPORATION, HYNIX SEMICONDUCTOR INC., HYNIX SEMICONDUCTOR  
AMERICA INC., HYNIX SEMICONDUCTOR MANUFACTURING  
AMERICA, INC., SAMSUNG ELECTRONICS CO., LTD., SAMSUNG  
SEMICONDUCTOR, INC., SAMSUNG ELECTRONICS AMERICA, INC.  
SAMSUNG ELECTRONICS CANADA INC., MICRON TECHNOLOGY, INC.  
MICRON SEMICONDUCTOR PRODUCTS, INC. o/a CRUCIAL TECHNOLOGIES,  
MOSEL VITELIC CORP., MOSEL VITELIC INC. and ELPIDA MEMORY, INC.

Defendants

Proceeding under the *Class Proceedings Act 1992*

Court File No. CV-10-15178

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

KHALID EIDOO and  
CYGNUS ELECTRONICS CORPORATION

Plaintiff

- and -

HITACHI LTD., HITACHI AMERICA, HITACHI  
ELECTRONIC DEVICES (USA), HITACHI CANADA LTD.,  
MITSUBISHI ELECTRIC CORPORATION, MITSUBISHI  
ELECTRIC SALES CANAD INC., MITSUBISHI ELECTRIC  
& ELECTRONICS USA, INC., NANYA TECHNOLOGY  
CORPORATION, NANYA TECHNOLOGY CORPORATION USA,  
NEC CORPORATION, NEC CORPORATION OF AMERICA,  
NEC CANADA, RENESAS ELECTRONICS CORPORATION fka  
NEC ELECTRONICS CORPORATION, RENESAS

- 2 -

ELECTRONICS AMERICA, INC. fka NEC ELECTRONICS  
AMERICA, INC., RENESAS ELECTRONICS CANADA LTD.,  
TOSHIBA CORPORATION, TOSHIBA AMERICA  
ELECTRONICS COMPONENTS INC., TOSHIBA OF CANADA LTD.,  
WINBOND ELECTRONICS CORPORATION and WINBOND  
ELECTRONICS CORPORATION AMERICA

Defendants

Proceeding under the *Class Proceedings Act 1992***ORDER**

**THIS MOTION** made by the Plaintiffs in the Ontario Proceeding for an Order approving the settlement agreement entered into with the Defendant Elpida Memory Inc. (the "Settling Defendant"), was heard this day at the Court House, 330 University Avenue, Toronto, Ontario.

**ON READING** the materials filed, including the settlement agreement dated November 15, 2011 attached to this Order as Schedule "A" (the "Settlement Agreement"), and on hearing the submissions of counsel for the Ontario Plaintiffs, counsel for the Settling Defendant, and counsel for the Non-Settling Defendants in the Ontario Proceeding;

**AND ON BEING ADVISED** that (a) the Plaintiffs in the Ontario Proceeding consent to this Order; and (b) the Settling Defendant consents to this Order:

1. **THIS COURT ORDERS AND DECLARES** that, except to the extent they are modified by this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT DECLARES** that the Settlement Agreement is fair, reasonable and in the best interests of the Ontario Settlement Class.

3. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 29 of the *Class Proceedings Act, 1992* and shall be implemented in accordance with its terms.
4. **THIS COURT DECLARES** that the Settlement Agreement is incorporated by reference into and forms part of this Order and is binding upon the representative plaintiffs and all Ontario Settlement Class Members who have not validly opted out of the Ontario Proceeding.
5. **THIS COURT ORDERS** that any Ontario Settlement Class Member who has validly opted out of the Ontario Proceeding is not bound by the Settlement Agreement and shall no longer participate or have the opportunity in the future to participate in the Ontario Proceeding.
6. **THIS COURT ORDERS** that any Ontario Settlement Class Member who has not validly opted out of the Ontario Proceeding is bound by the Settlement Agreement and may not opt out of the Ontario Proceeding in the future.
7. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each Ontario Settlement Class Member who has not validly opted out of the Ontario Proceeding 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 who has not validly opted out of the Ontario Proceeding shall be and is hereby dismissed against the Releasees, without costs and with prejudice.



9. **THIS COURT ORDERS AND DECLARES** that this Order, including the Settlement Agreement, is binding upon each Ontario Settlement Class Member who has not validly opted out of the Ontario Proceeding 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 Proceeding.
10. **THIS COURT ORDERS AND DECLARES** 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.
11. **THIS COURT ORDERS** that each Releasor 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 Defendant or named or unnamed co-conspirators that are not Releasees or the continuation of the Ontario Additional Proceeding against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees.
12. **THIS COURT ORDERS AND DECLARES** 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.

13. **THIS COURT ORDERS AND DECLARES** that 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, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.
14. **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, the Ontario Additional Proceeding or otherwise, by any Non-Settling Defendant, any named or unnamed co-conspirators who are not Releasees, any Defendant in the Ontario Additional Proceeding, or any other Person or party, against a Releasee, or by a Releasee against a Non-Settling Defendant, any named or unnamed co-conspirators who are not Releasees or any Defendant in the Ontario Additional Proceeding 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 Ontario Proceeding).
15. **THIS COURT ORDERS** that if, in the absence of paragraph 14 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 Ontario Plaintiffs 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 the Defendants in the Ontario Additional Proceeding that are not Releasees 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 Ontario Plaintiffs and the Ontario Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed coconspirators and/or the Defendants in the Ontario Additional Proceeding that are not Releasees to, and shall be entitled to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or the Defendants in the Ontario Additional Proceeding that are not Releasees, only those claims for damages, 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 the Defendants in the Ontario Additional Proceeding that are not Releasees to the Ontario Plaintiffs 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 the Defendants in the Ontario Additional Proceeding who are not Releasees, 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 Proceeding or the Ontario Additional Proceeding, whether or not the Releasees remain in the Ontario 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 Ontario Proceeding and/or Ontario Additional Proceeding and any determination by this Court in respect of the Proportionate Liability of the

Releasees shall only apply in the Ontario Proceeding and/or the Ontario Additional Proceeding and shall not be binding on the Releasees in any other proceedings.

16. **THIS COURT ORDERS** that if, in the absence of paragraph 14 hereof, the Non-Settling Defendants or the Defendants in the Ontario Additional Proceeding 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 or the Defendants in the Ontario Additional Proceeding may make regarding the reduction of any assessment of damages, restitutionary award, disgorgement of profits or judgment against them in the Ontario Proceeding or the Ontario Additional Proceeding.
17. **THIS COURT ORDERS** that a Non-Settling Defendant or a Defendant in the Ontario Additional Proceeding may, on motion to this Court determined as if the Settling Defendant remained a party to the Ontario Proceeding or was a party in the Ontario Additional Proceeding, and on at least ten (10) days notice to counsel for the Settling Defendant, and not to be brought unless and until the action against the Non-Settling Defendants or Defendants in the Ontario Additional Proceeding 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 Defendant in accordance with the *Rules of Civil Procedure*, O.Reg. 194;
  - b) oral discovery of a representative of the Settling Defendant, the transcript of which may be read in at trial;

- c) leave to serve a request to admit on the Settling Defendant in respect of factual matters; and/or
  - d) the production of a representative of the Settling Defendant to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants or the Defendants in the Ontario Additional Proceeding.
18. **THIS COURT ORDERS** that the Settling Defendant retains all rights to oppose such motion(s) brought under paragraph 17. Notwithstanding any provision in this Order, on any motion brought pursuant to paragraph 17, the Court may make such orders as to costs and other terms as it considers appropriate.
19. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 17 above on the Settling Defendant by service on counsel of record for the Settling Defendant in the Ontario Proceeding.
20. **THIS COURT ORDERS** that for purposes of administration of this Order, this Court will retain an ongoing supervisory role and the Settling Defendant acknowledges the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement, and subject to the terms and conditions set out in the Settlement Agreement.
21. **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 against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees in the Ontario Proceeding.

22. **THIS COURT ORDERS** that the Settling Defendant shall have no responsibility or liability relating to the administration, investment, or distribution of the Trust Account.
23. **THIS COURT ORDERS** that the Settlement Amount, plus any accrued interest, be held in trust by the Escrow Agent for the benefit of the Settlement Class, pending further order of the Courts, which shall be sought by the Plaintiffs on a motion(s) made without notice.
24. **THIS COURT ORDERS** that the approval of the Settlement Agreement is contingent upon approval by the British Columbia 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 British Columbia Court and the Quebec Court.
25. **THIS COURT DECLARES** 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 AND ADJUDGES** that, except as aforesaid, the Ontario Proceeding be and is hereby dismissed against the Settling Defendant without costs and with prejudice.

Date:



---

THE HONOURABLE JUSTICE PERELL

This is Exhibit D 000017 referred to in the  
affidavit of JAMES C. KELSH  
sworn before me, this 5<sup>th</sup>  
day of DECEMBER 2012

Option Consommateurs c. Infineon Technologies, a.g.

2012 QCCS 2949

**SUPERIOR COURT**

(Class Action)

A COMMISSIONER FOR TAKING AFFIDAVITS

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No: 500-06-000251-047

DATE: June 27, 2012

---

THE HONOURABLE PIERRE-C. GAGNON, J.S.C.

---

**OPTION CONSOMMATEURS**

Petitioner

and

**CLAUDETTE CLOUTIER**

Designated Person

v.

**INFINEON TECHNOLOGIES AG**

and

**INFINEON TECNONLOGIES NORTH AMERICA CORP.**

and

**MICRON TECHNOLOGIES, INC.**

and

**HYNIX SEMICONDUCTOR INC.**

and

**SAMSUNG ELECTRONICS CO., LTD.**

and

**SAMSUNG SEMICONDUCTOR INC.**

and

**ELPIDA MEMORY, INC.**

Respondents

JG1462

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JUDGMENT APPROVING THE ELPIDA TRANSACTION  
REGARDING THE QUEBEC SETTLEMENT CLASS

2012 QCCS 2949 (CanLI)



- 
- [1] **WHEREAS** the Parties are involved in class action proceedings.
- [2] **CONSIDERING** the judgment rendered in the present case on March 27, 2012 by which the Court:
- Authorized the exercise of a class action against the Respondent Elpida Memory, Inc. for settlement purposes only;
  - Identified the principal questions to be treated collectively;
  - Approved the content and ordered the publication of a notice of hearing;
- [3] **CONSIDERING** that the proper notices were published in timely fashion, in French and in English;
- [4] **CONSIDERING** the Motion before the Court;
- [5] **CONSIDERING** the exhibits in the file, notably the agreement entered into on November 15, 2011 between, notably, the Petitioner, the Respondent Elpida Memory, Inc. (the “Elpida Respondent”) and Elpida Memory (USA) Inc. (“Elpida USA”), filed in the present proceedings as Exhibit R-1 (the “Elpida Transaction”);
- [6] **CONSIDERING** the submissions of the counsel for the parties and the representations made on all sides during the hearing of June 22 2012;
- [7] **CONSIDERING** that there is no objection by anyone to the motion;
- [8] **CONSIDERING** Articles 1025, 1045 and 1046 of the *Code of Civil Procedure*;
- [9] **CONSIDERING** that the motion meets to criteria meet the criteria recognized by the Ontario precedent in *Dabbs*<sup>1</sup>, as recently adapted in the Quebec case of *Conseil québécois sur le tabac et la santé*<sup>2</sup>;
- [10] **CONSIDERING** in particular the provision of the Elpida transaction whereby the Elpida Defendants undertake to cooperate with the plaintiffs;
- [11] **CONSIDERING** that the Elpida transaction conforms to the laws of Quebec regarding the waiver of the benefit of solidarity, as stated in the *Bayers* (2008) judgment<sup>3</sup> and the *Cadbury Adams Canada* judgment<sup>4</sup>;

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<sup>1</sup> *Dabbs v. Sun Life Assurance Compagny of Canada*, [1998] O.J. N° 1598.

<sup>2</sup> *Conseil québécois sur le tabac et la santé v. JTI-MacDonald Corp.*, 2011 QCCS 4981.

<sup>3</sup> *Johnson v. Bayers inc.*, 2008 QCCS 4957.

<sup>4</sup> *Roy v. Cadbury Adams Canada inc.*, 2012 QCCS 1606.

- [12] **CONSIDERING THAT**, after review, it is appropriate to grant the Motion of the Petitioner in respect of the Elpida Respondent and the Elpida Transaction;

**FOR THESE REASONS, THE COURT:**

- [13] **GRANTS** the Petitioner's Motion for Approval of the Elpida Transaction;
- [14] **DECLARES** that the definitions set forth in the Elpida Transaction apply to and are incorporated into this Judgment and, as a consequence, shall form an integral part thereof, being understood that the definitions are binding on the parties to the Elpida Transaction, and that the other Respondents, which are Non-Settling Defendants, are in no way bound by those definitions except for the purposes of this Judgment;
- [15] **DECLARES** that, subject to all of the other provisions of the present Judgment, the Elpida Transaction is valid, fair, reasonable and in the best interest of the Quebec Settlement Class Members, and constitute a transaction within the meaning of Article 2631 of the *Civil Code of Québec*, binding all parties and all members described thereto;
- [16] **APPROVES** the Elpida Transaction in conformity with Article 1025 of the *Code of Civil Procedure* and **DECLARES** that it shall be implemented in accordance with its terms, but subject to the terms of this Judgment;
- [17] **DECLARES** that, subject to the other provisions of this Judgment, the Elpida Transaction, in its entirety (including the preamble, the definitions, schedules and addendum), is attached to this Judgment as Schedule "A" and shall form an integral part of this Judgment and shall be binding on all Parties;
- [18] **DECLARES** that, in the event of a conflict or discrepancy between the terms of the present Judgment and those of the Elpida Transaction, the terms of the present Judgment shall prevail;
- [19] **ORDERS AND DECLARES** that, upon the Effective Date, each Releasor has released and shall conclusively be deemed to have fully, finally, irrevocably and forever released the Releasees from the Released Claims;
- [20] **DECLARES** that any Quebec Settlement Class Member who makes a claim under the Elpida Transaction shall be deemed to have irrevocably consented to the full and final dismissal of all Other Actions he or she instituted against the Releasees, without costs and without reservation;
- [21] **ORDERS AND DECLARES** that this Judgment, including the Elpida Transaction, shall be binding on every Quebec Settlement Class Member who has not validly opted-out of the action;

- [22] **DECLARES** that, by the Elpida Transaction, the Petitioner, the Designated Person, and the Quebec Settlement Class Members expressly waive the benefit of solidarity against the Respondents that do not participate in the Elpida Transaction, with respect to the actions of the Elpida Respondent and the other Releasees;
- [23] **DECLARES** that the Petitioner, the Designated Person, and the Quebec Settlement Class Members shall from now on limit their claim towards the Respondents that are Non-Settling Defendants to the damages that were caused by them or attributable to their sales and/or conduct, including punitive damages, interest and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) that may be attributable to their sales and and/or conduct, and, for greater certainty, cannot claim from them any damages, either compensatory, punitive, recursive or of any other kind attributable to the sales and/or conduct of the Elpida Respondent or any of the Releasees, in any way whatsoever;
- [24] **DECLARES** that any and all claims in warranty or other third party claims to obtain contribution or indemnity from the Elpida Respondent or any of the Releasees, or relating to the Released Claims, is inadmissible and void in the context of the present class action;
- [25] **DECLARES** that the rights of the Respondents that are Non-Settling Defendants to examine the Elpida Respondent and/or any of the Releasees shall be governed by the rules of the *Code of Civil Procedure*, and the Elpida Respondent and/or the Releasees shall retain and reserve all of their respective rights to oppose such discovery under the *Code of Civil Procedure*;
- [26] **DECLARES** that the Respondents that are Non-Settling Defendants may validly serve the proceedings referred to in the preceding paragraph relating to the Elpida Respondent by serving such proceeding on the Elpida Respondent's *ad litem* counsel, as identified in this Judgment;
- [27] **DECLARES** that this Court retains an ongoing supervisory role for the purposes of executing this Judgment, and **PRAYS ACT** that the Elpida Respondent as well as Elpida USA shall acknowledge the jurisdiction of this Court solely for the purposes of implementing, administrating and enforcing the Elpida Transaction, and subject to the terms and conditions set forth in the Elpida Transaction;
- [28] **DECLARES** that the present proceedings are hereby settled with respect to the Elpida Respondent, without costs;
- [29] **DECLARES** that Elpida Respondent shall have no responsibility or involvement in the administration, investment or distribution of the Trust Account;

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- [30] **ORDERS** that this Judgment is contingent upon the approval by the Ontario Court and the B.C. Court and that this Judgment shall have no force and effect if such approval is not secured in Ontario and British Columbia;
- [31] **INSTRUCTS** the Elpida Defendants, in accordance with subparagraph 15.15(2) of the Elpida Transaction, to deliver to Option Consommateurs within 30 days after the date of this Judgment, an unofficial French translation of the Judgment.
- [32] **INSTRUCTS** Option Consommateurs and its lawyers to post on their appropriate websites both the English official version and the French official translation (as soon as received) of this Judgment and to cause that both versions be properly referenced on the websites of the lawyers acting for B.C. Plaintiffs and for plaintiffs in the Ontario Proceeding;
- [33] **DECLARES** that the parties have yet to proceed before the Court to seek approval of the Distribution Protocol and for Quebec Class Counsel to seek approval of their fees;
- [34] **THE WHOLE** without costs and without reservations.

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THE HONOURABLE PIERRE-C. GAGNON, J.S.C.

**Me Daniel Belleau**  
**Me Maxime Nasr**  
BELLEAU LAPOINTE, LLP  
Attorneys for Petitioner

**Me Sylvain Lussier**  
**Me Christopher Naudie**  
OSLER, HOSKIN & HARCOURT, LLP  
Attorneys for Elpida Memory, Inc.

**Me Yves Martineau**  
STIKEMAN ELLIOTT, LLP  
Attorneys for Infineon Technologie AG and Infineon Technologies North America Corp.

**Me Madeleine Renaud**  
**Me Céline Legendre**  
MCCARTHY TÉTRAULT, LLP  
Attorneys for Hynix Semiconductor Inc.

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**Me Éric Vallières**

**Me Martin Low**

MCMILLAN

Attorneys for Micron Technology, Inc.

**Me Francis Rouleau**

BLAKE, CASSELS & GRAYDON

Attorneys for Samsung Semiconductor Inc. and Samsung Electronics Co., Ltd.

Date of hearing: June 22, 2012

E

This is Exhibit.....referred to in the  
 affidavit of... JAMES C. KELLY  
 sworn before me, this...  
 day of... DECEMBER... 20... 12

A COMMISSIONER FOR **ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

000023  
 00-CV-202080CP

THE HONOURABLE MR JUSTICE CUMMING )  
 )  
 ) WEDNESDAY, THE 23<sup>RD</sup> DAY  
 )  
 ) OF MARCH, 2005

<p style="text-align: center;">ONTARIO SUPERIOR COURT OF JUSTICE</p> <p style="text-align: center;">Court File No 00 CV 202080CP</p> <p>BETWEEN</p> <p style="text-align: center;">GLEN FORD VITAPHARM CANADA LTD FLEMING FEED MILL LTD and MARCY DAVID</p> <p style="text-align: right;">Plaintiffs</p> <p style="text-align: center;">and</p> <p style="text-align: center;">HOFFMANN LA ROCHE LTD HOFFMANN LA ROCHE LTD MERCK KGAA LONZA AG ALLSUISSE LONZA CANADA INC SUMITOMO CHEMICAL CO LTD SUMITOMO CANADA LIMITED/LIMITÉE and TANABE SEYAKU CO LTD</p> <p style="text-align: right;">Defendants</p> <p style="text-align: center;">Proceeding under the Class Proceedings Act 1997 (Biotin)</p>	<p style="text-align: center;">ONTARIO SUPERIOR COURT OF JUSTICE</p> <p style="text-align: center;">Court File No 00-CV 200045CP</p> <p>BETWEEN</p> <p style="text-align: center;">GLEN FORD VITAPHARM CANADA LTD FLEMING FEED MILL LTD ALIMENTS BRETON INC ROGER AWAD and MARY HELEN AWAD</p> <p style="text-align: right;">Plaintiffs</p> <p style="text-align: center;">and</p> <p style="text-align: center;">HOFFMANN LA ROCHE LTD HOFFMANN LA ROCHE LIMITED/LIMITÉE RHÔNE-POULENC SA AVENTIS ANIMAL NUTRITION SA RHÔNE-POULENC CANADA INC RHÔNE-POULENC ANIMAL NUTRITION INC RHÔNE-POULENC INC BASF AKTIENGESELLSCHAFT BASF CORPORATION BASF CANADA INC ESAYCO LTD TAKEDA CHEMICAL INDUSTRIES LTD TAKEDA CANADA VITAMIN AND FOOD INC MERCK KGAA DAICHI PHARMACEUTICAL COMPANY LTD ROUSSEL CANADA INC REINHARD STEINMETZ DIETER SLUTER HUGO STROTSMANN ANDREAS HAURI KUNO SOMMER and ROLAND BRONNIMANN</p> <p style="text-align: right;">Defendants</p> <p style="text-align: center;">Proceeding under the Class Proceedings Act 1997 (Bulk Vitamins)</p>
<p style="text-align: center;">ONTARIO SUPERIOR COURT OF JUSTICE</p> <p style="text-align: center;">Court File No 00-CV 198647CP</p> <p>BETWEEN</p> <p style="text-align: center;">FLEMING FEED MILL LTD ALIMENTS BRETON INC GLEN FORD and MARCY DAVID</p> <p style="text-align: right;">Plaintiffs</p> <p style="text-align: center;">and</p> <p style="text-align: center;">BASF AKTIENGESELLSCHAFT BASF CORPORATION BASF CANADA INC CHINOOK GROUP LTD DCV INC DLCOA LP AKZO NOBEL NV AKZO NOBEL CHEMICALS BV SIOPRODUCTS INC RUSSELL COSBURN JOHN KENNEDY ROBERT SAMUELSON LINDELL HILLING JOHN L (PETE) FISCHER and ANTONIO FELIX</p> <p style="text-align: right;">Defendants</p> <p style="text-align: center;">Proceeding under the Class Proceedings Act 1997 (Choline Chloride)</p>	<p style="text-align: center;">ONTARIO SUPERIOR COURT OF JUSTICE</p> <p style="text-align: center;">Court File No 00 CV 201723CP</p> <p>BETWEEN</p> <p style="text-align: center;">GLEN FORD FLEMING FEED MILL LTD ALIMENTS BRETON INC and KRISTI CAPPA</p> <p style="text-align: right;">Plaintiffs</p> <p style="text-align: center;">and</p> <p style="text-align: center;">RHÔNE-POULENC SA RHÔNE-POULENC CANADA INC DEGUSSA HULS AG DEGUSSA CORPORATION DEGUSSA CANADA INC NOVUS INTERNATIONAL, INC and AVENTIS ANIMAL NUTRITION SA</p> <p style="text-align: right;">Defendants</p> <p style="text-align: center;">Proceeding under the Class Proceedings Act 1997 (Methionine)</p>
<p style="text-align: center;">ONTARIO SUPERIOR COURT OF JUSTICE</p> <p style="text-align: center;">Court File No 00 CV 200044CP</p> <p>BETWEEN</p> <p style="text-align: center;">VITAPHARM CANADA LTD FLEMING FEED MILL LTD ALIMENTS BRETON INC and KRISTI CAPPA</p> <p style="text-align: right;">Plaintiffs</p> <p style="text-align: center;">and</p> <p style="text-align: center;">DEGUSSA HULS AG DEGUSSA CORPORATION DEGUSSA CANADA INC REILLY INDUSTRIES INC REILLY CHEMICALS SA VITACHEM COMPANY ALLSUISSE LONZA CANADA INC LONZA AG NEPERA INCORPORATED ROGER NOACK and DAVID PLRIT</p> <p style="text-align: right;">Defendants</p> <p style="text-align: center;">Proceeding under the Class Proceedings Act 1992 (Niacin)</p>	

### JUDGMENT

THIS MOTION, made by the Settling Plaintiffs for certification of the Ontario  
 Actions as class proceedings and for judgment pursuant to subsection 29(2) of the *Class  
 Proceedings Act, 1992* in accordance with the terms of the Settlement Agreement, was  
 heard on March 8 and 9, 2005 at Toronto, Ontario (the "Ontario Approval Hearing")

ON READING the following

- (a) the notice of motion and record returnable March 8, 2005,
- (b) the Amended Settlement Agreement, the Akzo Settlement Agreement and the UCB/Reilly Settlement Agreement, filed,
- (c) the letter from the counsel to the Public Guardian and Trustee, filed,
- (d) the letter from the counsel to the Children's Lawyer, filed, and
- (e) the affidavits of
  - (i) Charles M Wright, sworn February 17, 2005 and March 3, 2005,
  - (ii) Andrea DeKay, sworn February 16, 2005 and March 3, 2005,
  - (iii) Heather Rumble Peterson, sworn February 28, 2005, March 5, 2005 and March 6, 2005,
  - (iv) Patricia A Speight, sworn February 28, 2005,
  - (v) Thomas Ross, sworn February 8, 2005,
  - (vi) Kristi Cappa, sworn February 15, 2005,
  - (vii) Christian Breton of Aliments Breton Ltd , sworn February 18, 2005,
  - (viii) Glen Ford, sworn February 15, 2005,
  - (ix) Bill Fleming of Fleming Feed Mill Ltd , sworn February 15, 2005,
  - (x) Roger Awad, sworn February 17, 2005,
  - (xi) Mary Helen Awad, sworn February 17, 2005,
  - (xii) Marcy David, sworn February 16, 2005,

- (xiii) Jannick Desforges, sworn February 7, 2005,
- (xiv) Margaret Woltz, sworn February 17, 2005,
- (xv) Craig Flinn, sworn February 18, 2005,
- (xvi) Jennifer Bald, sworn February 22, 2005,
- (xvii) Joe Fiorante, sworn March 3, 2005,
- (xviii) David Jones, sworn March 3, 2005,
- (xix) William Dermody, sworn March 7, 2005,
- (f) the written objections, and
- (g) the orders dated December 10, 2004 and February 22, 2005

AND ON HEARING the submissions of counsel for the Settling Plaintiffs, some of the Defendants, William Dermody, the friend of the court, and the objectors, Lars Soderstrom, Milton Bowling, Phil G Anderson and David Rowland,

AND ON BEING ADVISED that while Degussa Canada Inc is a Settling Defendant in the Ontario Niacin Action, it is a Non-Settling Defendant in the Ontario Methionine Action,

AND ON BEING ADVISED that counsel for all Parties consent to the language found in paragraph 19 of this judgment and agree that, to the extent that the language varies from paragraph 19 of Schedule E1 of the Amended Settlement Agreement, the Parties waive their right of termination as a result of this variation that is provided by s 15 1(1) of the Amended Settlement Agreement



AND ON BEING FURTHER ADVISED that

- (a) the Settling Plaintiffs in the Ontario Actions consent to this judgment,
- (b) the Settling Defendants in the Ontario Actions consent to this judgment,
- (c) Deloitte & Touche LLP consents to being appointed Administrator,
- (d) Reva E. Devins consents to being appointed Referee, and
- (e) Harvey T. Strosberg, Q.C., J.J. Camp, Q.C., Claude Desmeules and William L. Vanveen consent to being appointed to the Management Committee

AND without any admission of liability on the part of any of the Settling Defendants, all Settling Defendants having denied liability,

1 THIS COURT ORDERS AND DECLARES that for the purposes of this judgment, the definitions set out in the Amended Settlement Agreement apply to and are incorporated into this judgment and, in addition, the following definitions also apply

- (a) ***“Amended Settlement Agreement”*** means the Settlement Agreement made as of November 1, 2004 and amended as of January 6, 2005 in the form attached as Appendix 1 to this judgment,
- (b) ***“Akzo Settlement Agreement”*** means the settlement agreement between the plaintiffs in the Choline Chloride Actions and Akzo Nobel Chemicals BV made as of the 6<sup>th</sup> day of January, 2005,

- (c) **“Ontario Actions”** means the Ontario Biotin Action, the Ontario Bulk Vitamins Action, the Ontario Choline Chloride Action, the Ontario Methionine Action and the Ontario Niacin Action,
- (d) **“Ontario Biotin Action”** means Ontario Court File No 00-CV-202080CP,
- (e) **“Ontario Bulk Vitamins Action”** means Ontario Court File No 00-CV-200045CP,
- (f) **“Ontario Choline Chloride Action”** means Ontario Court File No 00-CV-198657CP,
- (g) **“Ontario Methionine Action”** means Ontario Court File No 00-CV-201723CP,
- (h) **“Ontario Niacin Action”** means Ontario Court File No 00-CV-200044CP,
- (i) **“Ontario Releasers”** means, jointly and severally, the Settling Plaintiffs and the Settlement Class Members in the Ontario Actions and their respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and 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,
- (j) **“Released Ontario 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 whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses, penalties and lawyers’ fees, known or unknown, suspected or unsuspected, in law, under statute or in equity, that Ontario Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct from the beginning of time to the date hereof in respect of the purchase, sale, pricing, discounting, marketing or distributing of Vitamins Products in Canada, or relating to any conduct alleged (or which could have been alleged) in the Ontario Actions, including, without limitation, any such claims which have been asserted (whether by way of a Proceeding, Dismissed Action, Other Action or otherwise), would have been asserted or could have been asserted, whether in Canada or elsewhere, as a result of the purchase of Vitamin Products in Canada,
- (k) **“SCSD”** means Sutts, Strosberg LLP, Camp Fiorante Matthews, Siskind Cromarty Ivey & Dowler LLP and Siskinds, Desmeules,

- (l) ***“Supplemental Choline Chloride Actions”*** means Ontario Court File No 40610/02 (London) and British Columbia Court File, Vancouver Registry, No L023727,
- (m) ***“Supplemental Methionine Actions”*** means Ontario Court File No 42267/CP (London) and British Columbia Court File, Vancouver Registry, No L032297, and
- (n) ***“UCB/Reilly Settlement Agreement”*** means the settlement agreement between the plaintiffs in the Niacin Actions and the Supplemental Choline Chloride Actions and Reilly Industries Inc and UCB S A made as of the 23<sup>rd</sup> day of February, 2005

2 THIS COURT ORDERS that

- (a) the Ontario Biotin Action is hereby certified as a class proceeding against F Hoffmann-La Roche Ltd , Lonza AG, Merck KGaA, Sumitomo Chemical Co Ltd and Tanabe Seiyaku Co Ltd , the Settling Defendants therein,
- (b) the Settlement Class in the Ontario Biotin Action is defined as  
All persons in Canada who purchased Class Vitamins in Canada from October 1, 1991 to September 30, 1995, except the Excluded Persons and persons who are included in British Columbia Court File, Vancouver Registry, No L003307 and in Quebec Court (District of Montreal) Action No 500-06-000083-994,
- (c) Marcy David, Fleming Feed Mill Ltd and Glen Ford are hereby appointed as the representative plaintiffs in the Ontario Biotin Action, and

- (d) the common issue in the Ontario Biotin Action is

Did the Settling Defendants and their Affiliated Defendants in the Ontario Biotin Action agree to fix, raise, maintain or stabilize the prices of, or allocate markets and customers for, biotin in Canada from October 1, 1991 to September 30, 1995?

3 THIS COURT ORDERS that

- (a) the Ontario Bulk Vitamins Action is hereby certified as a class proceeding against Aventis Animal Nutrition S A , BASF Aktiengesellschaft, Danchi Pharmaceutical Company, Ltd , Eisai Co Ltd , F Hoffmann-La Roche Ltd , Merck KGaA, Roussel Canada Inc and Takeda Pharmaceutical Company Limited (formerly Takeda Chemical Industries, Ltd ), the Settling Defendants therein,
- (b) the Settlement Class in the Ontario Bulk Vitamins Action is defined as

All persons in Canada who purchased Class Vitamins in Canada in the relevant Purchase Periods indicated, except the Excluded Persons and persons who are included in British Columbia Court File, Vancouver Registry, No L003292 and in Quebec Court (District of Montreal) Action No 500-06-000083-994

Class Vitamin	Purchase Period	Class Vitamin	Purchase Period
A	01/01/90 – 28/02/99	B12	01/01/90 – 31/12/97
B1 (thiamine)	01/01/91 – 31/12/94	Beta carotene	01/10/91 – 31/12/98
B2 (riboflavin)	01/07/91 – 31/10/95	C	01/01/91 – 31/12/95
B5 (calpan)	01/01/91 – 31/12/98	Canthaxanthin	01/01/92 – 31/12/97
B6 (pyridoxine)	01/01/91 – 30/09/94	E	01/01/90 – 28/02/99
B9 (folic acid)	01/01/91 – 31/12/94	Premix	01/01/91 – 31/12/97

- (c) Aliments Breton Inc , Mary Helen Awad, Roger Awad, Fleming Feed Mill Ltd and Glen Ford are hereby appointed as the representative plaintiffs in the Ontario Bulk Vitamins Action, and

- (d) the common issue in the Ontario Bulk Vitamins Action is

Did the Settling Defendants and their Affiliated Defendants in the Ontario Bulk Vitamins Action agree to fix, raise, maintain or stabilize the prices of, or allocate markets and customers for, any of the following Vitamins in Canada in the relevant Purchase Periods indicated

Vitamin	Purchase Period	Vitamin	Purchase Period
A	01/01/90 – 28/02/99	B12	01/01/90 – 31/12/97
B1 (thiamine)	01/01/91 – 31/12/94	Beta carotene	01/10/91 – 31/12/98
B2 (riboflavin)	01/07/91 – 31/10/95	C	01/01/91 – 31/12/95
B5 (calpan)	01/01/91 – 31/12/98	Canthaxanthin	01/01/92 – 31/12/97
B6 (pyridoxine)	01/01/91 – 30/09/94	E	01/01/90 – 28/02/99
B9 (folic acid)	01/01/91 – 31/12/94	Premix	01/01/91 – 31/12/97

4 THIS COURT ORDERS that

- (a) the Ontario Choline Chloride Action is hereby certified against Chinook Group Limited (incorrectly named Chinook Group, Ltd ), BASF Aktiengesellschaft and Bioproducts, Incorporated (incorrectly named Bioproducts, Inc ), the Settling Defendants therein,
- (b) the Settlement Class in the Ontario Choline Chloride Action is defined as  
All persons in Canada who purchased Class Vitamins in Canada from January 1, 1988 to December 31, 1998 except the Excluded Persons and persons who are included in British Columbia Court File, Vancouver Registry, No L002690 and in Quebec Court (District of Montreal) Action No 500-06-000083-994,
- (c) Aliments Breton Inc , Marcy David, Glen Ford and Fleming Feed Mill Ltd are hereby appointed as the representative plaintiffs in the Ontario Choline Chloride Action, and

- (d) the common issue in the Ontario Choline Chloride Action is

Did the Settling Defendants and their Affiliated Defendants in the Ontario Choline Chloride Action agree to fix, raise, maintain or stabilize the prices of, or allocate markets and customers for, choline chloride in Canada from January 1, 1988 to December 31, 1998?

5 THIS COURT ORDERS that

- (a) the Ontario Methionine Action is hereby certified against Aventis Animal Nutrition S A , the Settling Defendant therein,

- (b) the Settlement Class in the Ontario Methionine Action is defined as

All persons in Canada who purchased Class Vitamins in Canada from January 1, 1986 to December 31, 1998 except the Excluded Persons and persons who are included in British Columbia Court File, Vancouver Registry, No L003124 and in Quebec Court (District of Montreal) No 500-06-000233-045 (formerly Quebec Court (District of Quebec) No 200-06-000011-000),

- (c) Aliments Breton Inc , Kristi Cappa, Glen Ford and Fleming Feed Mill Ltd are hereby appointed as the representative plaintiffs in the Ontario Methionine Action, and

- (d) the common issue in the Ontario Methionine Action is

Did the Settling Defendant and its Affiliated Defendants in the Ontario Methionine Action agree to fix, raise, maintain or stabilize the prices of, or allocate markets and customers for, methionine in Canada from January 1, 1986 to December 1, 1998?

6 THIS COURT ORDERS that

(a) the Ontario Niacin Action is hereby certified against Degussa Canada Inc , Lonza AG and Nepera, Inc (incorrectly named Nepera, Incorporated), the Settling Defendants therein,

(b) the Settlement Class in the Ontario Niacin Action is defined as

All persons in Canada who purchased Class Vitamins in Canada from January 1, 1992 to March 31, 1998 except the Excluded Persons and persons who are included in British Columbia Court File, Vancouver Registry, No L003045 and in Quebec Court (District of Montreal) Action No 500-06-000083-994,

(c) Aliments Breton Inc , Kristi Cappa and Fleming Feed Mill Ltd are hereby appointed as the representative plaintiffs in the Ontario Niacin Action, and

(d) the common issue in the Ontario Niacin Action is

Did the Settling Defendants and their Affiliated Defendants in the Ontario Niacin Action agree to fix, raise, maintain or stabilize the prices of, or allocate markets and customers for niacin and/or niacinamide in Canada from January 1, 1992 to March 31, 1998?

7 THIS COURT DECLARES, for greater certainty, that a person may be a member of the Settlement Class in one, some or all of the Ontario Actions

8 THIS COURT ORDERS AND ADJUDGES that the proposed settlement of the Ontario Actions as particularized in this judgment and the Amended Settlement

Agreement is fair, reasonable, adequate, and in the best interests of the members of the Settlement Class in each of the Ontario Actions

9 THIS COURT ORDERS that the Amended Settlement Agreement, attached as Appendix 1, is incorporated by reference into this judgment and is hereby approved and shall be implemented in accordance with its terms

10 THIS COURT ORDERS that

- (a) Deloitte & Touche LLP be and is hereby appointed as the Administrator of the Amended Settlement Agreement, until further order of this court, on the terms and conditions and with the powers, rights, duties and responsibilities set out in the Amended Settlement Agreement,
- (b) in the event the Amended Settlement Agreement is terminated in accordance with any of the provisions therein, the total amount payable to the Administrator shall not exceed \$125,000 for fees, disbursements and GST,
- (c) the total amount payable to the Administrator for the administration of the Amended Settlement Agreement in its entirety is hereby fixed at \$725,000 for fees, disbursements and GST, and
- (d) if the Courts issue the orders contemplated by s 16.1 of the Amended Settlement Agreement, then, in addition to its fixed fee, the Administrator



shall pay to Deloitte & Touche LLP, \$27,000 for the supplementary work that it has done as Escrow Agent in relation to the Amended Settlement Agreement, the Akzo Settlement Agreement and the UCB/Reilly Settlement Agreement, such payment to be allocated as a charge of \$9,000 to each of the Direct Purchaser Fund, Intermediate Purchaser Fund and Consumer Fund

11 THIS COURT ORDERS that

- (a) Reva E Devins be and is hereby appointed as Referee, until further order of this court, with the duties and responsibilities set out in the Amended Settlement Agreement,
- (b) the fees, disbursements and GST of the Referee for her services shall be fixed by the judge hearing the Ontario Approval Hearing on notice to the Settling Plaintiffs and Settling Defendants, and
- (c) the total amount payable to the Referee for her services shall not exceed \$150,000 for fees, disbursements and GST

12 THIS COURT ORDERS that

- (a) Harvey T Strosberg, Q C , J J Camp, Q C and Claude Desmeules are appointed to the Management Committee on behalf of the Settlement Classes and William L Vanveen is appointed to the Management

*Committee as the Settling Defendants' representative, until further order of this court, with the duties and responsibilities of overseeing the implementation and administration of the Amended Settlement Agreement,*

- (b) *the fees, disbursements and GST of the members of the Management Committee for their services shall be fixed by the judge hearing the Ontario Approval Hearing on notice to the Settling Plaintiffs and Settling Defendants, and*
- (c) *the total amount payable to the members of the Management Committee for their services shall not exceed \$150,000 for fees, disbursements and GST*

13 THIS COURT ORDERS AND DECLARES that each Ontario Releasor in any of the Ontario Actions has released and shall be conclusively deemed to have fully, finally and forever released the Releasees in the Ontario Actions from any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, penalties and lawyers' fees, known or unknown, suspected or unsuspected, in law, under statute or in equity, that said Ontario Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to the Released Ontario Claims

14 THIS COURT ORDERS that each Ontario Releasor in any of the Ontario Actions shall not commence or continue any action or take any proceeding relating in any way to the Released Ontario Claims against any person or persons who will or could, in connection with any such action or proceeding, bring or commence or continue any claim, crossclaim, claim over or any claim for contribution, indemnity or any other relief against any one of the Releasees in any of the Ontario Actions, provided that nothing in this judgment affects the rights of a member of a Settlement Class in any of the Ontario Actions to claim or continue to claim against any Non-Settling Defendant in any of the Proceedings

15 THIS COURT ORDERS AND DECLARES that the Releasees in any of the Ontario Actions have released and shall be conclusively deemed to have fully, finally and forever released each other from any and all claims for contribution and indemnity that said Releasees, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to the Released Ontario Claims

16 THIS COURT ORDERS AND DECLARES that the use of the terms "Ontario Releasors" and "Released Ontario Claims" in this judgment does not constitute a release of claims by those members of a Settlement Class in the Ontario Actions who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors

17 THIS COURT ORDERS AND DECLARES that each member of a Settlement Class in the Ontario Actions 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, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Ontario Claims

18 THIS COURT ORDERS AND DECLARES that each member of a Settlement Class in the Ontario Actions who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors shall not commence or continue any action or take any proceeding relating in any way to the Released Ontario Claims against any person or persons who will or could, in connection with any such action or proceeding, bring or commence or continue any claim, crossclaim, claim over or any claim for contribution, indemnity or any other relief against any one of the Releasees in any of the Ontario Actions, provided that nothing in this judgment affects the rights of a member of a Settlement Class in any of the Ontario Actions to claim or continue to claim against any Non-Settling Defendant in any of the Proceedings

19 THIS COURT ORDERS that

- (a) all claims for contribution, indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Ontario Claims, which were or could have been brought against a Releasee by any Non-Settling Defendant or any other person or party, or by any Releasee against a Non-Settling Defendant, are barred, prohibited and enjoined in accordance with the terms of this paragraph (unless such claim is made in

respect of a claim by a person who has validly opted out of a Settlement Class),

- (b) the Settling Plaintiffs shall restrict their claims against the Non-Settling Defendants such that the Settling Plaintiffs shall only be entitled to claim and to seek to recover from the Non-Settling Defendants, on a joint and several basis
  - (i) those damages, if any, arising from the sales of the Non-Settling Defendants, or
  - (ii) those damages, if any, allocable to the conduct (but not necessarily the sales) of the Non-Settling Defendants in the Choline Chloride Actions, the Quebec Action (insofar as it relates to choline chloride), Ontario Court File No 40610/02 (London) and British Columbia Court File, Vancouver Registry, No L023727, and
  - (iii) those punitive damages, if any, allocable to the conduct of any of the Non-Settling Defendants,
- (c) no part of this order is intended to prejudice nor does it prejudice the right and ability of any Non-Settling Defendant to assert in these or any other future proceedings related hereto that its liability, if any, is several only,
- (d) the Settling Plaintiffs shall not claim from any Non-Settling Defendant that portion of any damages arising from the sales of or allocable to the conduct of an insolvent Non-Settling Defendant which any solvent Non-Settling Defendant would but for this order be able to claim contribution for from one or more of the Settling Defendants,

- (e) a Non-Settling Defendant may seek an order from the court providing for discovery from some or all of the Settling Defendants and/or their Affiliated Defendants as deemed appropriate by the court, and
- (f) a Non-Settling Defendant may effect service of the motion(s) referred to in subparagraph (e) on a Settling Defendant by service on counsel of record for the Settling Defendant in the Settling Proceeding

20 THIS COURT ORDERS AND DECLARES that each member of a Settlement Class in any of the Ontario Actions who does not opt out in accordance with the terms of this judgment shall consent and shall be deemed to have consented to the dismissal of any Other Actions he, she or it has commenced against the Releasees in the Ontario Actions, without costs and with prejudice

21 THIS COURT ORDERS AND DECLARES that each Other Action commenced in Ontario by any member of a Settlement Class in any of the Ontario Actions who does not opt out in accordance with the terms of this judgment shall be and is hereby dismissed against the Releasees in the Ontario Actions, without costs and with prejudice

22 THIS COURT ORDERS that the members of the Settlement Classes in the Ontario Actions shall be given notice of this judgment, substantially in the form of the notice attached as Appendix 2 to this judgment instead of the notice at Schedule K of the Amended Settlement Agreement and substantially in the manner set out in Schedule J of the Amended Settlement Agreement within 30 days after the last of the Final Orders

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, C.c-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
SINO-FOREST CORPORATION

Court File No: CV-12-9667-00-CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE -**  
**COMMERCIAL LIST**

Proceeding commenced at Toronto

**AFFIDAVIT OF JAMES CYRIL KELSALL**  
**SWORN DECEMBER 5, 2012**

**DAVIS LLP**

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**RESPONDING MOTION RECORD**

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