



**ONTARIO
SUPERIOR COURT OF JUSTICE**

Electronically issued : 13-Oct-2020
Délivré par voie électronique :
Ottawa

L. LAMARCHE

Plaintiff

- and -

**SYNTA TECHNOLOGY CORPORATION OF TAIWAN, SYNTA CANADA
INTERNATIONAL ENTERPRISES LTD., SUZHOU SYNTA OPTICAL
TECHNOLOGY CO., LTD., NANTONG SCHMIDT OPTO-ELECTRICAL
TECHNOLOGY CO. LTD., SW TECHNOLOGY CORPORATION, SKY-WATCHER
USA, PACIFIC TELESCOPE CORP., CELESTRON ACQUISITION, LLC,
CELESTRON INTERNATIONAL, OLIVON MANUFACTURING CO. LTD., OLIVON
INTERNATIONAL ENTERPRISE INC., OLIVON USA, LLC AND NINGBO SUNNY
ELECTRONIC CO., LTD.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANTS

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

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

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

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

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

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: October 13, 2020

Issued by

Local Registrar

Address of court office: 161 Elgin Street
2nd Floor
Ottawa, ON K2P 2K1

**TO: SYNTA TECHNOLOGY CORPORATION
OF TAIWAN**

No. 89 Lane 4, Chia-An W. Rd.
Lung-Tan Tao-Yuan, Taiwan, R.O.C.

**SYNTA CANADA INTERNATIONAL
ENTERPRISES LTD.**

4035 Williams Road
Richmond, British Columbia, V7E 1J7

**SUZHOU SYNTA OPTICAL TECHNOLOGY
CO., LTD.**

No. 65, Yushan Road, New District
215011 Suzhou, Jiangsu, China

**NANTONG SCHMIDT OPTO-ELECTRICAL
TECHNOLOGY CO. LTD.**

No. 399 West Zhongshan Rd.
Rugao City, Jiangsu, China

SW TECHNOLOGY CORPORATION

2835 Columbia Street
Torrance, California, 90503

SKY-WATCHER USA

475 Alaska Avenue
Torrance, California, 90503

PACIFIC TELESCOPE CORP.

11880 Hammersmith Way
Richmond, British Columbia, V7A 5C8

CELESTRON ACQUISITION, LLC

2835 Columbia Street
Torrance, California, 90503

CELESTRON INTERNATIONAL

2835 Columbia Street
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OLIVON MANUFACTURING CO. LTD.

11880 Hammersmith Way, Suite 175
Richmond, British Columbia, V7A 5C8

OLIVON INTERNATIONAL ENTERPRISE INC.

7331 Woolridge Court
Richmond, British Columbia, V7C 4H2

OLIVON USA, LLC

241 Rusty Plank Avenue
Las Vegas, Nevada, 89148

NINGBO SUNNY ELECTRONIC CO., LTD.

No. 199 Anshan Road, Yuyao
Zhejiang, China, 315400

THE CLAIM

1. Proposed Representative Plaintiff claims on his own behalf and on behalf of Class Members as defined in defined in paragraph 3 below (the “Class”) as against Defendants:

- (a) An order pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c.6 certifying this action as a class proceeding and appointing Plaintiff as Representative Plaintiff for Class Members;
- (b) A declaration that Defendants conspired and/or agreed with each other to fix, raise, maintain, and/or stabilize the price of Telescopes during the period beginning at least January 1, 2005 to the present (“Class Period”)
- (c) A declaration that Defendants conspired and/or agreed to lessen unduly, competition in the production, manufacture, sale and/or supply of Telescopes in Canada during the Class Period;
- (d) General damages in an amount to be determined in the aggregate for Class Members;
- (e) Special damages in an amount that this Honourable Court deems appropriate to compensate Class Members for, inter alia, the amount of the overcharge as established by an accounting if necessary;
- (f) Punitive and aggravated damages in the amount that this Honourable Court deems appropriate;

- (g) A declaration that Defendants are jointly and severally liable for any and all damages awarded;
- (h) In addition, or in the alternative, an accounting of revenues received by Defendants resulting from the sale of Telescopes to Class Members;
- (i) A declaration that Defendants have been unjustly enriched at the expense of the Plaintiff and Class Members by their receipt of the illegal overcharge;
- (j) In addition, or in the alternative, restitution and/or a refund of all monies paid to or received by Defendants from the sale of their Telescopes to Class Members;
- (k) A declaration that Defendants hold the illegal overcharge in a constructive trust for the benefit of the Plaintiff and Class Members;
- (l) An order directing Defendants to disgorge their ill-gotten overcharge;
- (m) Costs of investigation and prosecution of these proceedings pursuant to Part IV, s. 36(1) of the *Competition Act*, R.S.C. 1985, c. C-34;
- (n) An order compelling the creation of a plan of distribution pursuant to ss. 23, 24, 25 and 26 of the *Class Proceedings Act*;
- (o) A permanent injunction restraining Defendants from continuing any actions taken by them in contravention of the *Competition Act*;

- (p) An order directing a reference or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues;
- (q) Pre-judgment and post-judgment interest on the foregoing sums in the amount of 2% per month, compounded monthly or alternatively, pursuant to ss. 128, 129, and 130 of the *Courts of Justice Act*, RSO 1990, c C.43;
- (r) Costs of notice and administration of the plan of distribution of recovery in this action plus applicable taxes pursuant to s. 26 (9) of the *Class Proceedings Act*;
- (s) Costs of this action on a substantial indemnity basis including any and all applicable taxes payable thereon; and
- (t) Such further and other relief as counsel may advise and/or this Honourable Court may deem just and appropriate in the circumstances.

PARTIES

Representative Plaintiff

2. Plaintiff resides in Orleans, Ontario. On May 22, 2016, Mr. Lamarche purchased a Celestron PowerSeeker 127 EQ Telescope from Costco Wholesale for a purchase price of \$203.39, including taxes.

Class

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

All persons resident in Canada (excluding Quebec) that purchased a telescope that was manufactured or sold by the Defendants or co-conspirators since January 1, 2005.

Defendants

4. There are essentially two manufacturers for telescopes in Canada; Synta and Sunny.

A. Synta

5. Synta Technology Corporation of Taiwan (“Synta Taiwan”) is a Taiwanese corporation. It is a manufacturer of telescopes and optical components that was founded by owner and chairman Dazhong/Dar Tson “David” Shen (“Shen”). In 1999, Synta established the brand Sky-Watcher to sell optics produced by Suzhou Synta. It is also the parent company of Celestron, SW Technology Corporation, and Suzhou Synta.

6. While being the owner and chairman of Synta, Shen was also an officer of Ningbo Sunny Electronic Co., Ltd. from 2001-2005, who was a direct competitor. He held a 26% ownership interest in Sunny until 2005 when Synta acquired Celestron, at which point he transferred his shares to his sister.

7. Synta Canada International Enterprises Ltd. is a Canadian corporation. It is the owner of the trademark “SYNTA”.

8. Suzhou Synta Optical Technology Co., Ltd. (“Suzhou Synta”) is a Chinese corporation and is the primary manufacturing subsidiary of Synta Taiwan. It produces telescopes and astronomical equipment like mounts and eyepieces. Products produced by Suzhou Synta are distributed under the Acuter name and via the Synta Taiwan-owned subsidiary company Celestron.

9. Nantong Schmidt Opto-Electrical Technology Co. Ltd. is a Chinese corporation that is owned or controlled by Shen.

10. SW Technology Corporation is an American corporation and a wholly-owned subsidiary of Synta Taiwan. It was established in 2005 to acquire Celestron.

11. Sky-Watcher USA is an American commercial distribution corporation and is a wholly-owned subsidiary of Synta Taiwan that was established to sell telescopes manufactured by Suzhou Synta.

12. Pacific Telescope Corp. is a Canadian corporation that was established in 1997 to sell Synta’s Sky-Watcher brand of devices in Canada. It is the owner of the trademark “SKY-WATCHER”.

13. Celestron Acquisition, LLC (“Celestron”) is a Canadian corporation and is a wholly-owned subsidiary of SW Technology Corporation. It is the owner of the trademark “CELESTRON LUMINOS EYEPIECES”.

14. Celestron International is a Canadian corporation and is the owner of the trademark “CELESTRON”.

15. Olivon Manufacturing Co. Ltd. is a Canadian corporation.
16. Olivon International Enterprise Inc. is a Canadian corporation and is the owner of the trademark “OLIVON”.
17. Olivon USA, LLC is an American corporation.
18. Synta, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries, participated in the conspiracy alleged in this complaint and manufactured, marketed and/or sold Telescopes that were purchased throughout Canada, during the Class Period.
19. The businesses of both of the Synta Defendants are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, marketing, import/export, sale and/or distribution of Telescopes in Canada and the conspiracy described hereinafter.
20. Given the close ties between the Synta Defendants and considering the preceding, they are all solidarily liable for the acts and omissions of the other.

B. Sunny

21. Ningbo Sunny Electronic Co., Ltd. (“Sunny”) is a Chinese telescope manufacturer.
22. Co-conspirators Meade Instruments Corp. (“Meade”) and Sunny Optics Inc. are American corporations and are wholly-owned subsidiaries of Sunny that filed for bankruptcy on December 4, 2019 following the loss of a multi-million-dollar antitrust lawsuit brought by Orion Telescopes

& Binoculars. A jury found that Sunny, Meade, and Sunny Optics Inc. colluded with other Chinese manufacturers (who had confidentially settled; i.e. Synta) in a price-fixing scheme that formed a monopoly over the consumer telescope market and awarded \$50.4 million in damages.

23. Sunny had systematically acquired key U.S. distributors and brands to create a vertically-integrated manufacturing, distribution, and sales conglomerate despite regulators' concerns.

24. Sunny, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries, participated in the conspiracy alleged in this complaint and manufactured, marketed and/or sold Telescopes that were purchased throughout Canada, during the Class Period.

25. All Defendants and other co-conspirators (as yet unknown) agreed, combined and conspired to inflate, fix, raise, maintain, or stabilize the prices of Telescopes.

THE NATURE OF THE CLAIM

26. Defendants and other co-conspirators (as yet unknown) agreed, combined and conspired to inflate, fix, raise, maintain, or to stabilize the prices of Telescopes.

27. These class proceedings concern the conspiracy among Defendants to fix the price at which Telescopes were sold in Canada and worldwide. The Plaintiff alleges that Defendants and the senior executives of the corporate Defendants during the Class Period participated in illegal and secretive meetings and made agreements relating to price targets, specific price increases, market share divisions and production capacity for Telescopes.

28. The Telescopes were intended to be placed into the stream of commerce, to be distributed, offered for sale and sold to the Plaintiff and to the public in Ontario and in the other provinces and territories within Canada.

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

30. Defendants placed these Telescopes into the stream of commerce in Ontario and elsewhere with the expectation that consumers, such as Plaintiff and Class Members, would purchase the products.

I. TELESCOPE MARKET

31. A telescope is an optical instrument using lenses, curved mirrors, or a combination of both to observe distant objects.

32. In 2018, the total value of Canadian imports of telescopes and telescope products was \$14,876,670 and the total value of Canadian imports of telescopes was \$11,053,234.

33. The global amateur telescope market is expected to grow in the forecast period of 2020 to 2025, with a compound annual growth rate of 7.8% and will expected to reach \$294 million by 2025, up from \$218.1 million in 2019.

34. Within the broader consumer telescope market, there are two relevant markets: the manufacturing market and the distribution market.

(i) Manufacturing Market

35. The geographic scope of this market is global. Sunny and Synta together possess 80% of that market.

36. Synta and Sunny are each able to manufacture all types of consumer telescopes; however, they have an illegal agreement or understanding that Synta only manufactures higher-end products while Sunny manufactures lower-end products.

37. Pursuant to that unlawful agreement, Synta will not manufacture or respond to a request for quotation (RFQ) for products offered by Sunny and vice versa, thereby eliminating competition.

38. Because of their understanding, Synta and Sunny charge supracompetitive prices, restrict supply, and engage in other anticompetitive conduct that artificially increases the prices of the telescopes.

(ii) Distribution Market

39. The second relevant market is a post-manufacturing, distribution market. Synta and Sunny possess over 80% of the consumer telescope market in North America.

40. In 2005, Synta acquired telescope distributor Celestron as its wholly-owned subsidiary through SW Technology Corp. Celestron, through Defendants' collusion, became the dominate telescope distributor in North America.

41. With Synta's help, Sunny subsequently acquired telescope distributor Meade.

42. Synta and Sunny manufacture, market, and/or sell their telescopes to distributors (including their respective wholly-owned subsidiaries Celestron and Meade). These distributors then sell the telescopes online, in stores, and through dealers to astronomy enthusiasts in North America. Telescopes sold by Celestron and Meade account for the vast majority of consumer telescopes sold in North America.

43. Electrolytic and electrostatic Telescopes are further distinguished within these two categories by the material from which their dielectrics are made. Electrolytic Telescopes use aluminum or tantalum dielectrics, whereas electrostatic Telescopes use ceramic or film Telescopes are electrostatic.

II. THE U.S. FEDERAL TRADE COMMISSION (FTC)

44. The consumer telescope market has long drawn the attention of antitrust regulators. Approximately 30 years ago, the FTC investigated a proposed joint venture between Meade and Celestron that it charged would have created a virtual monopoly in the manufacture and sale of certain telescopes. FTC's motion for a preliminary injunction barring the acquisition of any assets or other interest in Celestron International by Harbour Group (Meade's parent) and further barring Diethelm (Celestron's parent) from acquiring any assets or other interest in Meade was granted. In 1991, the FTC gave final approval to a consent agreement that settled those charges. The

agreement required, for ten years, the former parents of Meade and Celestron to obtain FTC approval before acquiring any company that manufactures or sells certain telescopes in the United States.

45. In 2002, Meade, at the time the leading manufacturer of performance telescopes and Schmidt-Cassegrain telescopes in North America, attempted to acquire Celestron. The deal was abandoned after a temporary restraining order and a preliminary injunction was ordered in federal district court. According to the FTC complaint, Meade's acquisition of Celestron assets would adversely impact the performance telescope market by eliminating substantial actual competition between the two companies and by creating a monopoly in the telescope market.

III. MONOPOLY OF DIFFERENT TELESCOPE PRODUCTS

46. Synta and Sunny divided the consumer telescope market. By agreeing that Synta would manufacture higher-end products and Sunny would manufacture lower-end products.

47. As a result of their respective market shares, agreements not to compete, and significant barriers to entry, Synta and Sunny have maintained an effective monopoly over their respective products.

48. Synta and Sunny limit supply, charge supracompetitive prices, and engage in other anticompetitive conduct that artificially increases the prices of the telescopes that they manufacture, market and/or sell.

IV. MEADE ACQUISITION

49. For many years, Meade was the leading manufacturer and supplier of high- and low-end telescopes. Meade owned highly valued patents; one of these patents was for “GoTo technology,” a telescope mount and related software that can automatically point a telescope at astronomical objects that the user selects. GoTo technology was also the subject of extensive litigation between Meade and Celestron.

50. When Meade was offered for sale in 2013, a small telescope manufacturer (Jinghua Optical Co. Ltd.) tried to purchase it. Jinghua was a competitor of Sunny and Synta and if it had succeeded, it would have gained critical manufacturing knowledge about high-end telescopes and accessories, as well as Meade’s patents, permitting it to better compete with Sunny and Synta in both the manufacturing and distribution markets.

51. Synta and Sunny colluded to prevent Jinghua’s acquisition of Meade, which would have diversified the manufacturing market, preserved an independent distributor, and increased competition in the telescope industry.

52. The FTC had blocked Meade and Celestron from merging in 1991 and 2002. Because Synta owned Celestron, Synta could not acquire Meade directly. As a result, Sunny’s Mr. Ni and Synta’s Mr. Shen agreed that if Sunny moved to acquire Meade, Celestron and Synta would provide financial and other assistance to complete the acquisition. This was explained in an email from Mr. Ni to co-conspirator Anderson (Celestron’s then-CEO) and Celestron board members Huen, Chen and Sylvia Shen, asking Celestron and Synta to continue providing financial support to Sunny.

53. Synta/Celestron made substantial payments and loans to Sunny to facilitate the Meade acquisition. These payments were documented, for example, in an accounting provided by Celestron's CFO, Paul Roth.

54. In exchange for Synta's support, (1) Sunny concealed Synta's and Celestron's involvement or assistance in its acquisition of Meade; (2) Sunny provided Celestron and Synta with access to Meade's intellectual property rights, ensuring that Celestron no longer needed to compete with Meade; and (3) Sunny shared its customers' data—including pricing data—with Celestron, enabling them to coordinate their prices and strategies. This cooperation fortified Synta and Sunny's respective monopoly for their products.

55. After Sunny acquired Meade, Shen and Huen continued to provide advice and assistance to what should have been its competitors. Shen and Huen met with Mr. Ni about manufacturing and other issues and toured Meade's facilities. Further evidence of Synta's collusive relationship with Sunny, Mr. Huen (Celestron Board Member and advisor to Synta's Mr. Shen) also instructed Sunny to remove Meade's CEO and to replace him with Celestron's former CEO, Mr. Lupica.

V. ORION'S ACQUISITION OF HAYNEEDLE ASSETS

56. Synta and Sunny conspired to prevent Orion from acquiring various valuable assets that would have threatened their monopoly. In 2014, independent telescope distributor and retailer Orion attempted to acquire certain assets, including web domains like "telescopes.com" from online retailer Hayneedle. Defendants used their market power to fix credit terms to prevent Orion from acquiring the Hayneedle assets; they cut off Orion's credit when they learned that Orion sought to acquire these assets.

57. On May 12, 2014, Orion sent a letter to Hayneedle stating that Orion sought to purchase the Hayneedle assets. Synta subsequently sent Orion's CEO, Peter Moreo, an email on June 14, 2014 threatening to end Orion's credit, stating, "if Orion really buys Hayneedle, this will be the beginning of hazard, we could not trust Orion's credit any more." Synta then forwarded this email threat to Sunny and requested that Sunny also withdraw Orion's line of credit. Sunny then sent Orion an email nearly identical to Synta's email. With its supplier credit cut off, Orion could not move forward with the asset acquisition. Synta and Sunny sabotaged Orion's purchase of the Hayneedle assets that would have allowed Orion to better compete with them.

VI. COLLUSION

58. Synta and Sunny agreed to divide the market whereby Sunny produces low to medium end telescopes and Synta makes the higher end models. Absent such an agreement, both Defendants would have produced all models.

59. As a result of their unlawful agreement, both Synta and Sunny have long been free to fix prices, restrict output, and engage in other anticompetitive conduct.

60. Defendants have engaged in the following:

- Jointly setting the price at which Class Members could purchase Telescopes;
- Jointly setting trade and credit terms for Class Members' purchase of Telescopes;
- Jointly refusing to manufacture specific Telescope products;

- Jointly agreeing to divide the market for the production and distribution of Telescopes;
- Jointly colluding to ensure Defendants' purchase of Meade.

61. The effect of Defendants' conduct as described herein has been to: (1) reduce the number of manufacturers for consumer telescopes and accessories; (2) eliminate new entrants into the consumer telescope market and push existing independent manufacturers and distributors out of the market; (3) restrain or eliminate price competition; and (4) artificially inflate the prices paid by Applicant and Class Members for telescopes.

62. In the Orion litigation, evidence showed that the defendants fixed the prices for consumer telescopes, allocated the market thereof, illegally acquired assets, and unlawfully monopolized and/or attempted to monopolize the telescope supply and distribution markets. They also used cooperation and dominance in the consumer telescope manufacturing market to take over of the distribution market.

63. Through these activities, the Synta and Sunny corporate families illegally combined and conspired with each other instead of competing against one another and enabled Celestron to dominate the consumer telescope distribution market.

VII. FRAUDULENT CONCEALMENT

64. Plaintiff and Class Members did not discover and could not have discovered through the exercise of reasonable diligence, the existence of the collusion and/or conspiracy alleged herein

until in or about September 2019, when evidence of Defendants' conspiracy was first made public in the Orion Litigation.

65. Defendants engaged in a secret conspiracy that did not give rise to facts that would put Plaintiff or the Class on inquiry notice that there was an agreement or collusion among Telescope manufacturers and distributors to artificially fix, raise, maintain and/or to stabilize prices for Telescopes, as well as to restrict their respective outputs.

REPRESENTATIVE PLAINTIFF

66. As outlined above in paragraph 2, on May 22, 2016, Mr. Lamarche purchased a Celestron PowerSeeker 127 EQ Telescope from Costco Wholesale for a purchase price of \$203.39, including taxes.

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

68. Plaintiff has suffered damages in the amount of the difference between the artificially-inflated price that he paid for said product and the price that he would have paid in a competitive market.

69. The conduct of Defendants was kept secret and was not known to Plaintiff at the time that he purchased said product nor could it have been discovered through the exercise of reasonable diligence.

CAUSES OF ACTION

I. TORTIOUS INTERFERENCE WITH ECONOMIC INTERESTS

70. During the relevant time period, senior executives and employees of Defendants, acting in their capacities as agents for Defendants, conspired with each other to illegally fix the prices of Telescopes sold in Canada. In furtherance of the conspiracy, at times and places some of which are unknown to the Plaintiff, Defendants wrongfully, unlawfully and lacking bona fides engaged in communications conversations and attended meetings with each other in which these persons unlawfully agreed to:

- (a) Allocate the market share and/or to set specific sales volumes of Telescopes that each company would manufacture and supply in Canada and elsewhere;
- (b) Fix, increase and/or maintain at artificially high levels the prices at which Defendants would sell Telescopes in Canada and elsewhere;
- (c) Exchange information in order to monitor and enforce adherence to the agreed-upon prices for Telescopes;
- (d) Prevent or lessen, unduly, competition in the manufacture, sale and distribution of Telescopes in Canada and elsewhere by reducing the supply; and
- (e) Intentionally cause harm to the Plaintiff and to Class Members.

71. The North American subsidiaries participated in and furthered the objectives of the conspiracy by knowingly modifying their competitive behaviour in accordance with instructions from their respective parent companies and thereby acted as agents in carrying out the conspiracy and are liable for such acts.

II. CIVIL CONSPIRACY

72. In furtherance of the conspiracy, during the Class Period, the following acts were done by Defendants, their servants and agents and co-conspirators:

- (a) Acted in combination by agreement or common design to illegally increase their profits on the sale of Telescopes;
- (b) Had the predominant purposes to intentionally cause injury to Plaintiff and Class Members by requiring them to pay artificially high prices for Telescopes; and
- (c) Defendants' conduct caused harm to the Plaintiff and to Class Members.

73. Further or alternatively, the acts alleged in this claim were unlawful acts directed towards the Plaintiff and other purchasers of Telescopes in Canada amounting to the tort of unlawful means conspiracy in that Defendants:

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

74. Defendants were motivated to conspire and their predominant purposes and predominant concerns were to:

- (a) Harm the Plaintiff and other Class Members by requiring them to pay artificially high prices for Telescopes; and
- (b) Illegally increase their profits on the sale of Telescopes.

75. In furtherance of the conspiracy, during the Class Period, the following acts were done by Defendants, their servants and agents and co-conspirators:

- (a) They fixed, increased, and/or maintained at artificially high levels the price of Telescopes and to coordinate price increases for the sale of Telescopes;
- (b) They allocated the volumes of sales of, and customers and markets for Telescopes among themselves;
- (c) They reduced the supply of Telescopes;
- (d) They met secretly to discuss prices and volumes of sales of Telescopes;
- (e) They exchanged information regarding the prices and volumes of sales of Telescopes for the purposes of monitoring and enforcing adherence to the agreed-upon prices, volumes of sales, and markets;
- (f) They instructed members of the conspiracy at meetings not to divulge the existence of the conspiracy; and
- (g) They disciplined any corporation which failed to comply with the conspiracy.

76. The acts alleged in this claim were also in breach of Part VI of the *Competition Act* and render Defendants liable to pay the damages which resulted pursuant to s. 36 of the *Competition Act*.

77. Further, or alternatively, the acts alleged in this claim were unlawful acts directed towards the Plaintiff and other purchasers of Telescopes or products containing Telescopes in Canada which unlawful acts Defendants knew in the circumstances would likely cause injury to the Plaintiff and the other purchasers of Telescopes or products containing Telescopes and Defendants are liable for the tort of civil conspiracy.

78. The acts alleged in this claim to have been done by each corporate Defendant were authorized, ordered and done by each corporate Defendant's officers, directors, agents, employees or representatives while engaged in the management, direction, control or transaction of its business affairs.

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

- (a) Each was the agent of the other;
- (b) Each companies' business was operated so that it was inextricably interwoven with the business of the other as set out above;
- (c) Each company entered into a common advertising and business plan to manufacture, distribute, market, and sell the Telescopes;
- (d) Each Defendant owed a duty of care to the other and to each Class Member by virtue of the common business plan to manufacture, distribute, market, and sell the Telescopes; and

- (e) Defendants intended that their businesses be run as one global business organization.

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

III. BREACH OF THE *COMPETITION ACT*, RSC 1985, c C-34

81. Defendants' acts described above are in breach of ss. 45, 46(1), and 47 of Part VI of the *Competition Act*, were and are unlawful and render Defendants jointly and severally liable to pay damages and costs of investigation pursuant to s. 36 of the *Competition Act*. The Canadian subsidiaries of the foreign Defendants are liable to the Plaintiff and Class Members pursuant to s. 36 of the *Competition Act* for acts in contravention of s.46(1) of the *Competition Act*.

82. In furtherance of the conspiracy, during the Class Period, the following acts were done by Defendants, by their servants and by their agents whereby they agreed to:

- (a) Fix, maintain, increase and/or control the prices of Telescopes;
- (b) Fix, maintain, control, prevent, lessen or eliminate the supply of competitively-priced Telescopes by competitors; and/or
- (c) undertake not to submit a bid or tender in response to a call or request for bids or tenders;

- (d) undertake to withdraw a bid or tender submitted in response to such a call or request,
- (e) submit, in response to a call or request for bids or tenders, bids or tenders that are arrived at by agreement or arrangement between themselves.

83. Pursuant to s. 36 of the *Competition Act*, Defendants are liable to pay the damages which resulted from the breach of s. 46.

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

CAUSATION

85. The acts, omissions, wrongdoings, and breaches of legal duties and obligations of Defendants are the direct and proximate cause of Class Members' injuries.

86. The Plaintiff pleads that by virtue of the acts, omissions and breaches of legal obligations as described above, they are entitled to legal and/or equitable relief against Defendants, including damages, consequential damages, specific performance, rescission, attorneys' fees, costs of suit and other relief as appropriate in the circumstances

DAMAGES

87. The Plaintiff and other Class Members have suffered damages as a result of the foregoing conspiracy, which had the effect of raising, maintaining, and stabilizing prices of Telescopes at artificial and non-competitive levels.

88. By reason of the alleged violations of the *Competition Act* and the unlawful conduct at common law, the Plaintiff and Class Members paid more for Telescopes than they would have paid in the absence of the illegal conspiracy. As a result, they have been injured in their business and property and have suffered damages in an amount presently undetermined.

89. The Plaintiff asserts that the combined damages of himself and of Class Members are capable of being quantified on an aggregate basis as the difference between the prices actually obtained by Defendants and co-conspirators and the prices which would have been obtained in the absence of the illegal agreements (the overcharge).

PUNITIVE DAMAGES

90. Defendants have taken a cavalier and arbitrary attitude to their legal and moral duties to Class Members.

91. In addition, it should be noted since Defendants are parts of a highly-revered, multi-billion-dollar corporations, it is imperative to avoid any perception of evading the law without impunity. Should Defendants only be required to disgorge monies which should not have been retained and/or withheld, such a finding would be tantamount to an encouragement to other businesses to deceive their customers as well. Punitive, aggravated, and exemplary damages are necessary in the case at hand to be material in order to have a deterrent effect on other corporations.

92. At all material times, the conduct of Defendants as set forth was malicious, deliberate and oppressive towards their customers and Defendants conducted themselves in a wilful, wanton and reckless manner

WAIVER OF TORT, UNJUST ENRICHMENT AND CONSTRUCTIVE TRUST

93. Plaintiff pleads and relies on the doctrine of waiver of tort and states that Defendants' conduct including tortious, statutory and otherwise, constitutes wrongful conduct which can be waived in favour of an election to receive restitutionary or other equitable remedies.

94. Plaintiff reserves the right to elect at the Trial of the Common Issues to waive the legal wrongs and to have damages assessed in an amount equal to the artificially-induced overcharge from the sale of the Telescopes.

95. Further, Defendants have been unjustly enriched as a result of the revenues generated from the sale of the Telescopes and as such, *inter alia*, that:

- (a) Defendants have obtained an enrichment by the artificially-induced overcharge;
- (b) Plaintiff and Class Members have suffered a corresponding deprivation in having paid the artificially-induced overcharge;
- (c) Defendants engaged in inappropriate conduct and committed a wrongful act in conspiring to fix the price of Telescopes and allocate market share and volume of Telescopes; and

- (d) The benefit obtained by Defendants and the corresponding detriment experienced by Plaintiff and Class Members has occurred without juristic reason. Since the monies that were received by Defendants resulted from their inappropriate conduct and wrongful acts in conspiring to fix the price and allocate the market share of Telescopes, there is and can be no juridical reason justifying Defendants' retaining any portion of such money paid.

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

- (a) Defendants were unjustly enriched by the artificially-induced overcharge for the Telescopes;
- (b) Class Members suffered a corresponding deprivation because of the artificially-induced overcharge in the amount of such overcharge attributable to the sale of Telescopes in Canada;
- (c) The artificially-induced overcharge was acquired in such circumstances that Defendants may not in good conscience retain it;
- (d) Equity, justice and good conscience require the imposition of a constructive trust;
- (e) The integrity of the marketplace would be undermined if the court did not impose a constructive trust; and

- (f) There are no factors that would, in respect of the artificially-induced overcharge, render the imposition of a constructive trust unjust.

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

EFFICACY OF CLASS PROCEEDINGS

98. Class Members potentially number in the tens of thousands. Because of this, joinder into one action is impractical and unmanageable.

99. Class counsel proposes to prosecute these claims on behalf of the Class through this Action and through other actions commenced by the offices of Consumer Law Group P.C. These actions include *Baban v. Synta Technology Corporation of Taiwan, et alii*, an action commenced before the Superior Court of Quebec in Montreal (October 6, 2020 File No.: 500-06-001095-203).

100. Members of the proposed Class have no material interest in commencing separate actions. In addition, given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against Defendants.

101. Also, a multitude of actions instituted risks having contradictory and inconsistent judgments on questions of fact and law that are similar or related to all Class Members.

102. Plaintiff has the capacity and interest to fairly and fully protect and represent the interests of the proposed Class and has given the mandate to his counsel to obtain all relevant information

with respect to the present action and intends to keep informed of all developments. In addition, class counsel is qualified to prosecute complex class actions.

LEGISLATION

103. Plaintiff pleads and relies on the *Class Proceedings Act*, the *Courts of Justice Act*, the *Competition Act*, and the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

JURISDICTION AND FORUM

Real and Substantial Connection with Ontario

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

- (a) Defendants engage in business with residents of Ontario;
- (b) Defendants derive substantial revenue from carrying on business in Ontario; and
- (c) The damages of Class Members were sustained in Ontario.

105. Plaintiff proposes that this action be tried in Ottawa, Ontario as a proceeding under the *Class Proceedings Act*.

DEFENDANTS' JOINT AND SEVERAL LIABILITY

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

- (a) Each was the agent of the other;
- (b) Each companies' business was operated so that it was inextricably interwoven with the business of the other as set out above;
- (c) Each company entered into a common advertising and business plan to manufacture, market, sell and to distribute the Telescopes;
- (d) Each Defendant owed a duty of care to the other and to each Class Member by virtue of the common business plan to manufacture, market, sell and to distribute the Telescopes; and
- (e) Defendants intended that their businesses be run as one global business organization.

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

SERVICE OUTSIDE ONTARIO

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

- (a) In respect of a tort committed in Ontario (rule 17.02(g));
- (b) The claim is authorized by statute and the *Competition Act* (rule 17.02(n)); and
- (c) Against a person carrying on business in Ontario (rule 17.02(p)).

Date: October 13, 2020

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Plaintiff

SYNTA TECHNOLOGY CORPORATION OF TAIWAN
et alii.
Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED IN OTTAWA

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

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