

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE AUTOMOTIVE PARTS ANTITRUST LITIGATION	:	Master File No. 12-md-02311 Honorable Marianne O. Battani
IN RE: CERAMIC SUBSTRATES	:	
THIS DOCUMENT RELATES TO: DIRECT PURCHASER ACTIONS	:	2:16-cv-03801-MOB-MKM 2:17-cv-13785-MOB-MKM

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into this ^{22ND} day of November, 2019 (“Execution Date”) by and between Corning International Kabushiki Kaisha (“CIKK”) and Corning Incorporated (“Corning”) (together, the “Corning Defendants”), and Direct Purchaser Plaintiff (as defined in Paragraph 3), both individually and on behalf of a class of direct purchasers of Ceramic Substrates (“Settlement Class”), as more particularly defined in Paragraph 8.

WHEREAS, Direct Purchaser Plaintiff is prosecuting the above *In re Automotive Parts Antitrust Litigation*, Master File No. 12-md-02311 (E.D. Mich.) (“MDL Litigation”); the direct purchaser class action *Ceramic Substrates* case, No. 2:16-cv-03801 (E.D. Mich.); and *Airflow Catalyst Systems, Inc., et al. v. Corning Incorporated, et al.*, No. 2:17-cv-13785 (E.D. Mich.) (together, the “Action”), in the United States District Court for the Eastern District of Michigan (the “Court”), on its own behalf and on behalf of the Settlement Class against, among others, the Corning Defendants;

WHEREAS, Direct Purchaser Plaintiff alleges that it was injured as a result of the Corning Defendants’ alleged participation in an unlawful conspiracy to raise, fix, maintain,

and/or stabilize prices; rig bids; and allocate markets and customers for Ceramic Substrates (as defined in Paragraph 1) in violation of Section 1 of the Sherman Act, as set forth in Direct Purchaser Plaintiff's Class Action Complaint (No. 2:17-cv-13785, Doc. No. 1) (the "Complaint");

WHEREAS, the Corning Defendants deny Direct Purchaser Plaintiff's allegations and have asserted defenses to Direct Purchaser Plaintiff's Complaint and the claims in the Action;

WHEREAS, arm's-length settlement negotiations have taken place between Settlement Class Counsel (as defined in Paragraph 9) and counsel for the Corning Defendants, and this Agreement has been reached as a result of those negotiations;

WHEREAS, Direct Purchaser Plaintiff, through its counsel, has conducted an investigation into the facts and the law regarding the Action and has concluded that resolving the claims against the Corning Defendants, according to the terms set forth below, is in the best interests of Direct Purchaser Plaintiff and the Settlement Class because of the payment of the Settlement Amount (as defined in Paragraph 11);

WHEREAS, the Corning Defendants, despite their belief that they are not liable for the claims asserted by Direct Purchaser Plaintiff and their belief that they have good defenses thereto, have nevertheless agreed to enter into this Agreement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, and to obtain the release, orders, and judgment contemplated by this Agreement, and to put to rest with finality all claims that have been or could have been asserted against the Corning Defendants with respect to Ceramic Substrates based on the allegations made in the Action, as more particularly set out below; and

WHEREAS, Direct Purchaser Plaintiff recognizes that because of joint and several liability, this Agreement with the Corning Defendants does not impair Direct Purchaser Plaintiff's ability to collect the full amount of damages to which it and the Settlement Class may be entitled in the Action, including any damages attributable to the Corning Defendants' alleged conduct.

NOW, THEREFORE, in consideration of the covenants, agreements, and release set forth herein and for other good and valuable consideration, it is agreed by and among the undersigned that the Action be settled, compromised, and dismissed on the merits with prejudice as to the Releasees (as defined in Paragraph 6) and, except as hereinafter provided, without costs as to Direct Purchaser Plaintiff, the Settlement Class, or the Corning Defendants, subject to the approval of the Court, on the following terms and conditions:

A Definitions

1. "Ceramic Substrates," for purposes of this Agreement, means uncoated ceramic monoliths with a fine honeycomb structure.
2. "Defendant," for purposes of this Agreement, means any or all of the following: NGK Insulators Ltd., NGK Automotive Ceramics USA, Inc., Corning International Kabushiki Kaisha, Corning Incorporated, DENSO Corporation, and DENSO International America, Inc.
3. "Direct Purchaser Plaintiff" means Airflow Catalyst Systems, Inc., who is the named plaintiff in the Complaint.
4. "Document" is defined to be synonymous in meaning and equal in scope to the use of this term in Rule 34(a) of the Federal Rules of Civil Procedure, including without limitation, electronically stored information. A draft or non-identical copy is a separate document within the meaning of this term.

5. "Opt-Out Deadline" means the deadline set by the Court for the timely submission of requests by Settlement Class Members to be excluded from the Settlement Class.

6. "Releasees" shall refer to (i) CIKK; (ii) Corning; (iii) all of Corning's and CIKK's respective past and present, direct and indirect, parents, subsidiary companies, and affiliates, including their respective predecessors, successors, and assigns; and (iv) each and all of the present and former principals, partners, officers, directors, supervisors, employees, agents, members, representatives, insurers, attorneys, heirs, executors, administrators, and assigns of each of the persons and entities listed in (i), (ii), and (iii). "Releasees" does not include any Defendant in any action included in the MDL Litigation other than the Corning Defendants.

7. "Releasers" shall refer to Direct Purchaser Plaintiff and the members of the Settlement Class, as defined in Paragraph 8, and to their past and present officers, directors, supervisors, employees, agents, members, attorneys, representatives, parents, subsidiaries, affiliates, principals, partners, insurers, and the predecessors, successors, heirs, executors, administrators, and assigns of any of the foregoing.

8. "Settlement Class," for purposes of this Agreement, is defined as:

All individuals and entities that purchased Ceramic Substrates in the United States directly from one or more of the Defendants (or their controlled subsidiaries, affiliates, or joint ventures) from July 1, 1999 through October 29, 2018. Excluded from the Settlement Class are Defendants and their present and former parent companies, subsidiaries, affiliates, federal governmental entities and instrumentalities of the federal government, and states and their subdivisions, agencies, and instrumentalities.

9. "Settlement Class Counsel" shall refer to the following law firms: Freed Kanner London & Millen LLC, 2201 Waukegan Road, Suite 130, Bannockburn, IL 60015; Kohn, Swift & Graf, P.C., 1600 Market Street, Suite 2500, Philadelphia, PA 19103; Preti, Flaherty, Beliveau & Pachios, LLP, One City Center, Portland, ME 04101; Spector Roseman & Kodroff, P.C., 2001

Market Street, Suite 3420, Philadelphia, PA 19103; and Cera LLP, 595 Market Street, Suite 1350, San Francisco, CA 94105.

10. “Settlement Class Member” means each member of the Settlement Class who has not timely and validly elected to be excluded from the Settlement Class.

11. “Settlement Amount” shall be US \$7,000,000 as specified in Paragraph 21.

12. “Settlement Fund” shall refer to the Settlement Amount plus accrued interest on said amount as set forth in Paragraph 23.

B Approval of this Agreement and Dismissal of Claims Against the Corning Defendants

13. Direct Purchaser Plaintiff and the Corning Defendants shall use their best efforts to effectuate this Agreement, including cooperating in seeking the Court’s approval for the establishment of procedures (including the giving of class notice under Rule 23(c) and (e) of the Federal Rules of Civil Procedure) to secure the complete and final dismissal with prejudice of the Action as to the Releasees only.

14. Direct Purchaser Plaintiff shall submit to the Court a motion seeking preliminary approval of this Agreement (the “Motion”). The Motion shall include the proposed form of an order preliminarily approving this Agreement. Before submission, the Corning Defendants shall have a reasonable opportunity to review and comment on the Motion and proposed order, including a minimum of seven (7) days, and Direct Purchaser Plaintiff shall reasonably consider the Corning Defendants’ comments.

15. Direct Purchaser Plaintiff, at a time to be decided in its sole discretion, shall submit to the Court a motion for authorization to disseminate notice of the settlement and final judgment contemplated by this Agreement to the Settlement Class (the “Notice Motion”). The Notice Motion shall include a proposed form of, method for, and proposed dates of dissemination of notice. Before submission, the Corning Defendants shall have a reasonable opportunity to review and comment

on the Notice Motion, including a minimum of seven (7) days, and Direct Purchaser Plaintiff shall reasonably consider the Corning Defendants' comments.

16. Direct Purchaser Plaintiff shall seek the entry of an order and final judgment, the text of which Direct Purchaser Plaintiff and the Corning Defendants shall agree upon, and such agreement will not be unreasonably withheld. The terms of that proposed order and final judgment will include, at a minimum, the substance of the following provisions:

(a) certifying the Settlement Class described in Paragraph 8, pursuant to Rule 23 of the Federal Rules of Civil Procedure, as a settlement class;

(b) as to the Action, approving finally this settlement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to the terms of this Agreement;

(c) as to the Corning Defendants, directing that the Action be dismissed with prejudice and, except as provided for in this Agreement, without costs;

(d) directing that all Releasors shall, by operation of law, be deemed to have released all Releasees from the Released Claims (defined in Paragraph 19);

(e) reserving exclusive jurisdiction over the settlement and this Agreement, including the interpretation, administration, and consummation of this settlement, to the United States District Court for the Eastern District of Michigan;

(f) determining under Rule 54(b) of the Federal Rules of Civil Procedure that there is no just reason for delay and directing that the judgment of dismissal in the Action as to the Corning Defendants shall be final; and

(g) providing that (i) the Court's certification of the Settlement Class is without prejudice to, or waiver of, the rights of any Defendant, including the Corning Defendants, to contest certification of any other class proposed in the MDL Litigation; (ii) the Court's findings in the order shall have no effect on the Court's ruling on any motion to certify any class in the MDL Litigation or on the Court's rulings concerning any Defendant's motion; and (iii) no party may cite or refer to the Court's approval of the Settlement Class as persuasive or binding authority with respect to any motion to certify any such class or any Defendant's motion.

17. This Agreement shall become final when (i) the Court has entered in the Action a final order certifying the Settlement Class described in Paragraph 8 and approving this Agreement under Rule 23(e) of the Federal Rules of Civil Procedure and has entered a final judgment dismissing the Action with prejudice as to the Corning Defendants without costs other than those provided for in this Agreement, and (ii) the time for appeal or to seek permission to appeal from the Court's approval of this Agreement and entry of a final judgment as to the Corning Defendants described in (i) hereof has expired in the Action or, if appealed, approval of this Agreement and the final judgment in the Action as to the Corning Defendants has been affirmed in its entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review. It is agreed that the provisions of Rule 60 of the Federal Rules of Civil Procedure shall not be taken into account in determining the above-stated times. On the date that Direct Purchaser Plaintiff and the Corning Defendants have executed this Agreement, Direct Purchaser Plaintiff and the Corning Defendants shall be bound by its terms and this Agreement shall not be rescinded except in accordance with Paragraph 44.

18. Neither this Agreement (whether or not it becomes final) nor the final judgment, nor any negotiations, documents, and discussions associated with them, shall be deemed or

construed to be an admission by the Corning Defendants, or evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by the Corning Defendants, or of the truth of any of the claims or allegations contained in any complaint or any other pleading filed in the Action, and evidence thereof shall not be discoverable or used directly or indirectly, in any way, whether in the MDL Litigation, or in any other arbitration, action, or proceeding whatsoever, against the Corning Defendants. Neither this Agreement, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any other action taken to carry out this Agreement by the Corning Defendants, shall be referred to, offered as evidence, or received in evidence in any pending or future civil, criminal, or administrative action, arbitration, or proceeding, except in a proceeding to enforce this Agreement, or to defend against the assertion of the Released Claims (defined in Paragraph 19), or as otherwise required by law. The parties and their counsel further agree that this Agreement or any of its terms and provisions, or any and all negotiations, shall be governed by Rule 408 of the Federal Rules of Evidence. Nothing in this Paragraph shall be construed to limit the use of this Agreement to enforce its terms.

C Release, Discharge, and Covenant Not to Sue

19. In addition to the effect of any final judgment entered in accordance with this Agreement, upon this Agreement becoming final, as set out in Paragraph 17, and in consideration of payment of the Settlement Amount, as specified in Paragraphs 11 and 21, into the Escrow Account (defined in Paragraph 22), the Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits, and causes of action, whether class, individual, or otherwise in nature (whether or not any Settlement Class Member has objected to the settlement or makes a claim upon or participates in the settlement, whether directly, representatively, derivatively, or in any other capacity), under any federal, state, local, statutory, or common law of any jurisdiction in the United States (including, but not limited to, unjust

enrichment claims) that Releasors, or each of them, ever had, now has, or hereafter can, shall, or may ever have, that now exist or may exist in the future, on account of, or in any way arising out of, any and all known or unknown, foreseen or unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated claims, injuries, damages, and the consequences thereof in any way arising out of or relating in any way to (i) any conduct prior to the Execution Date alleged in the Complaint; and/or (ii) any act or omission of the Releasees (or any combination thereof) prior to the Execution Date concerning Ceramic Substrates, including, but not limited to, any conduct alleged and causes of action asserted or that could have been alleged or asserted, in any class action or other complaints filed in the Action concerning Ceramic Substrates (the "Released Claims"), provided, however, that nothing herein shall release: (1) any claims based on indirect purchases of Ceramic Substrates; (2) any claims made by any State, State agency, or instrumentality or political subdivision of a State, as to government purchases and/or penalties; (3) claims involving any negligence (that is unrelated to any failure to comply with antitrust laws), personal injury, breach of contract (that is unrelated to any failure to comply with antitrust laws), bailment, failure to deliver lost goods, damaged or delayed goods, product defect, breach of product warranty, securities, or similar claims relating to Ceramic Substrates; (4) claims brought outside the United States relating to purchases of Ceramic Substrates outside the United States; (5) claims brought outside the United States under foreign laws (i.e., not promulgated under the laws of any jurisdiction in the United States) relating to purchases of Ceramic Substrates outside the United States; or (6) claims concerning any product other than Ceramic Substrates. Releasors shall not, after the date of this Agreement, seek to establish liability against any Releasee based, in whole or in part, upon any of the Released Claims unless the Agreement is, for any reason, not finally approved or is terminated.

20. In addition to the provisions of Paragraph 19, Releasors hereby expressly waive and release, solely with respect to the Released Claims, upon this Agreement becoming final, as set out in Paragraph 17, any and all provisions, rights, and benefits, as to their claims concerning Ceramic Substrates, conferred by Section 1542 of the California Civil Code, which states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code. Each Releasor may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims that are released pursuant to the provisions of Paragraph 19, but each Releasor hereby expressly waives and fully, finally, and forever settles and releases, upon this Agreement becoming final, any known or unknown, foreseen or unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated claim that the Corning Defendants and Direct Purchaser Plaintiff have agreed to release pursuant to Paragraph 19, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

D Settlement Amount

21. Subject to the provisions hereof, and in full, complete, and final settlement of the Action as provided herein, the Corning Defendants shall pay or cause to be paid the Settlement Amount of US \$7,000,000. The Settlement amount shall be paid into an escrow account in United States Dollars to be administered in accordance with the provisions of Section E (“Escrow Account”) within the later of (i) sixty (60) days following entry of an order preliminarily approving

the Settlement Agreement or (ii) sixty (60) days following the date that the Corning Defendants are provided with the account number, account name, and wiring transfer information for the Escrow Account. No part of the Settlement Amount paid by the Corning Defendants shall constitute, nor shall it be construed or treated as constituting, a payment for treble damages, fines, penalties, forfeitures, or punitive recoveries.

E Escrow Account

22. An Escrow Account shall be maintained by Settlement Class Counsel at The Huntington National Bank. The Escrow Account shall be administered under the Court's continuing supervision and control.

23. All payments into the Escrow Account shall, at the direction of Settlement Class Counsel, be invested in instruments or accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including U.S. Treasury Bills, U.S. Treasury Money Market Funds or a bank account insured by the Federal Deposit Insurance Corporation ("FDIC") up to the guaranteed FDIC limit. Any interest earned on any of the foregoing shall become part of the Settlement Fund. The Corning Defendants shall have no responsibility for, or liability in connection with, the Settlement Fund or Escrow Account, including, without limitation, the investment, administration, maintenance, or distribution thereof.

24. The Settlement Fund held in the Escrow Account shall be deemed and considered to be in *custodia legis* of the Court and shall remain subject to the jurisdiction of the Court until such time as the Settlement Fund shall be distributed pursuant to this Agreement or further order(s) of the Court.

25. Subject to the limitation set forth in Paragraph 31, reasonable disbursements for expenses associated with providing notice of the settlement to the Settlement Class, expenses for

maintaining and administering the Settlement Fund, and taxes and expenses incurred in connection with taxation matters may be paid without approval from the Court and shall not be refundable to the Corning Defendants in the event the Agreement is disapproved or rescinded or otherwise fails to become effective, to the extent such expenses have actually been expended or incurred. Any refund that becomes owed to the Corning Defendants if this Settlement does not become final or is reduced or rescinded or otherwise fails to become effective may be paid out of the Escrow Account without approval from the Court. No other disbursement from or distribution of the Settlement Fund shall be made without prior approval of the Court.

26. The Escrow Account is intended by the parties hereto to be treated as a “qualified settlement fund” within the meaning of Treasury Regulation § 1.468B-1, and to that end the parties hereto shall cooperate with each other and shall not take a position in any filing or before any tax authority that is inconsistent with such treatment. At the request of the Corning Defendants, a “relation back election” as described in Treasury Regulation § 1.468B-1(j) shall be made so as to enable the Escrow Account to be treated as a qualified settlement fund from the earliest date possible, and the parties shall take all actions as may be necessary or appropriate to this end. At the direction of Settlement Class Counsel, taxes or estimated taxes shall be paid on any income earned on the funds in the Escrow Account, whether or not final approval has occurred. In the event federal or state income tax liability is finally assessed against and paid by the Corning Defendants as a result of any income earned on the funds in the Escrow Account, the Corning Defendants shall be entitled to reimbursement of such payment from the funds in the Escrow Account after approval of the Court and whether or not final approval has occurred. The Corning Defendants will use reasonable efforts to resist any such assessment or payment. Except as set forth in this Paragraph, the Corning Defendants and their respective counsel shall have no

responsibility to make any tax filings related to the Settlement Fund or to pay any taxes or tax expenses with respect thereto, and neither the Corning Defendants nor their respective counsel shall have any liability or responsibility for the taxes or expenses incurred in connection with taxation matters.

27. If this Agreement does not receive final Court approval, including final approval of the Settlement Class as defined in Paragraph 8, or if the Action is not certified as a class action for settlement purposes, then all amounts paid by the Corning Defendants into the Settlement Fund (other than costs expended or incurred in accordance with Paragraphs 25 and 31), shall be returned to the Corning Defendants from the Escrow Account along with any interest accrued thereon within thirty (30) calendar days of the Court's denial of final approval of the Agreement and/or Settlement Class.

F Exclusions

28. Subject to Court approval, any person or entity seeking exclusion from the Settlement Class must file with Settlement Class Counsel a written request for exclusion by the Opt-Out Deadline, which shall be the date set by the Court by which any class member must request exclusion from the Settlement Class. Any person or entity that files such a request shall be excluded from the Settlement Class and shall have no rights with respect to this settlement. Subject to Court approval, a request for exclusion that does not comply with all of the provisions set forth in the applicable Court-approved notice of settlement to be disseminated to the members of the Settlement Class will be invalid, and the person(s) or entity(ies) serving such an invalid request shall be deemed Settlement Class Member(s) and shall be bound by the Agreement upon final approval.

29. Within ten (10) days of the Opt-Out Deadline, Settlement Class Counsel will cause copies of all requests for exclusion from the Settlement Class to be provided to counsel for the

Corning Defendants. With respect to any potential Settlement Class Member who requests exclusion from the Settlement Class, the Corning Defendants reserve all of their legal rights and defenses, including, but not limited to, any defenses relating to whether the excluded Settlement Class Member is a direct purchaser of any allegedly price-fixed Ceramic Substrates or has standing to bring any claim.

30. The Corning Defendants or Settlement Class Counsel may dispute an exclusion request, and the parties shall, if possible, resolve the disputed exclusion request by agreement and shall inform the Court of their position and, if necessary, obtain a ruling thereon within thirty (30) days of the Opt-Out Deadline.

G Payment of Expenses

31. The Corning Defendants agree to permit use of US \$150,000 (which limitation is effective up until the date of final approval of this settlement) of the Settlement Fund towards notice to the Settlement Class and the costs of administration of the Settlement Fund. The notice and administration expenses (up to the maximum of US \$150,000) are not recoverable by the Corning Defendants if this settlement does not become final or is terminated to the extent such funds have actually been expended or the expenses have been incurred for notice and administration costs. Other than as set forth in this Paragraph, and in Paragraph 25, the Corning Defendants shall not be liable for any of the costs or expenses of the litigation of the Action, including attorneys' fees; fees and expenses of expert witnesses and consultants; costs and expenses associated with discovery, motion practice, hearings before the Court or Special Master, appeals, trials, or the negotiation of other settlements; or class notice or administration costs.

32. To mitigate the costs of notice and administration, Direct Purchaser Plaintiff shall use its best efforts, if practicable, to disseminate notice with any other settlement reached with

other Defendants in the Action and to apportion the costs of notice and administration on a pro rata basis across the applicable settlements.

33. Direct Purchaser Plaintiff acknowledges that the Corning Defendants have supplied to Settlement Class Counsel, in an electronic mailing format, the names and addresses of putative Settlement Class Members to whom the Corning Defendants or their subsidiaries or affiliates sold Ceramic Substrates during the Settlement Class period to the extent they were identifiable through reasonable efforts.

H The Settlement Fund

34. Releasors' sole recourse for settlement and satisfaction against the Releasees of all Released Claims is against the Settlement Fund, and Releasors shall have no other recovery against the Corning Defendants or any other Releasee as to the Released Claims.

35. After this Agreement becomes final within the meaning of Paragraph 17, the Settlement Fund shall be distributed in accordance with a plan to be submitted to the Court at the appropriate time by Settlement Class Counsel, subject to approval by the Court. In no event shall any Releasee have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution, or administration of the Settlement Fund, including, but not limited to, the costs and expenses of such distribution and administration except as expressly otherwise provided in Paragraphs 25 and 31.

36. Direct Purchaser Plaintiff and Settlement Class Counsel shall be reimbursed and indemnified solely out of the Settlement Fund for all expenses and costs, as provided by Court Order and the provisions of Paragraphs 25 and 31. The Corning Defendants and the other Releasees shall not be liable for any costs, fees, or expenses of Direct Purchaser Plaintiff's or the Settlement Class's respective attorneys, experts, advisors, agents, or representatives. Instead, all such costs,

fees, and expenses as approved by the Court, or authorized by Paragraphs 25 and 31, shall be paid out of the Settlement Fund.

I Settlement Class Counsel's Attorneys' Fees, Reimbursement of Expenses, and Incentive Award for the Class Representative

37. Subject to Court approval, Direct Purchaser Plaintiff and Settlement Class Counsel shall be reimbursed and paid solely out of the Settlement Fund for all past, current, or future litigation costs and expenses and any award of attorneys' fees. An incentive award to the settlement class representative, if approved by the Court, will also be paid solely out of the Settlement Fund. Attorneys' fees and costs and expenses awarded by the Court shall be payable from the Settlement Fund upon award, notwithstanding the existence of any timely filed objections thereto, or potential appeal therefrom, or collateral attack on the settlement or any part thereof, subject to Settlement Class Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund with interest, if and when, as a result of any appeal or further proceedings on remand, or successful collateral attack, the fee or award of costs and expenses is reduced or reversed, or in the event the settlement is rescinded or otherwise fails to become effective.

38. The procedure for and the allowance or disallowance by the Court of the application by Settlement Class Counsel for attorneys' fees, costs, and expenses, or an incentive award for the class representative to be paid out of the Settlement Fund are not part of this Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement. Any order or proceeding relating to a request for attorneys' fees and reimbursement of expenses or incentive awards, or any appeal from any such order, shall not operate to terminate or cancel this Agreement, or affect or delay the finality of the judgment approving the settlement.

39. Neither the Corning Defendants nor any other Releasee under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to any payment to Settlement Class Counsel and/or Direct Purchaser Plaintiff of any fee and expense award, or incentive award, in the Action.

40. Neither the Corning Defendants nor any other Releasee under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to the allocation among Settlement Class Counsel and/or any other person who may assert some claim thereto, of any fee or expense award that the Court may make in the Action.

J Discovery

41. Notwithstanding anything contained herein, Direct Purchaser Plaintiff and the Settlement Class are not relinquishing any rights to pursue discovery against the Corning Defendants in the event that this Agreement fails to receive final approval by the Court, including final approval of the Settlement Class, as defined in Paragraph 17, or in the event that it is terminated by either party under any provision herein.

42. Other than to enforce the terms of this Agreement, neither the Corning Defendants nor Direct Purchaser Plaintiff shall file motions against the other, in the Action, during the pendency of the Agreement.

43. The Corning Defendants need not respond to discovery requests from Direct Purchaser Plaintiff or otherwise participate in the Action during the pendency of the Agreement, except as required by the terms of this Agreement.

K Rescission if this Agreement is Not Approved or Final Judgment is Not Entered

44. If the Court refuses to approve this Agreement or any part hereof, including if the Court does not certify the Settlement Class in accordance with the specific Settlement Class definition set forth in Paragraph 8 of this Agreement, or if such approval is modified or set aside

on appeal, or if the Court does not enter the final judgment provided for in Paragraph 16, or if the Court enters the final judgment and appellate review is sought, and on such review, such final judgment is not affirmed in its entirety, then the Corning Defendants and Direct Purchaser Plaintiff shall each, in their sole discretion, have the option to rescind this Agreement in its entirety. The provisions of Paragraphs 25 and 31 of this Agreement shall remain in effect in the event this Agreement is rescinded. Written notice of the exercise of any such right to rescind shall be made according to the terms of Paragraph 57. A modification or reversal on appeal of any amount of Settlement Class Counsel's fees and expenses awarded by the Court from the Settlement Fund shall not be deemed a modification of all or a part of the terms of this Agreement or such final judgment.

45. In the event that this Agreement does not become final as set forth in Paragraph 17, or this Agreement otherwise is terminated, then this Agreement shall be of no force or effect and any and all parts of the Settlement Fund caused to be deposited in the Escrow Account (including interest earned thereon) shall be returned to the Corning Defendants less only disbursements made, or the amount of obligations incurred in accordance with Paragraphs 25 and 31. The Corning Defendants expressly reserve all rights and defenses if this Agreement does not become final.

46. Further, and in any event, Direct Purchaser Plaintiff and the Corning Defendants agree that this Agreement, whether or not it shall become final, and any and all negotiations, documents, and discussions associated with it, shall not be deemed or construed to be an admission or evidence of (i) any violation of any statute or law or any liability or wrongdoing whatsoever by the Corning Defendants, or the other Releasees; or of (ii) the truth of any of the claims or allegations contained in the Complaint or any other pleading filed in the Action, or by any person

or entity in any other action, and evidence thereof shall not be discoverable or used in any way, whether in the Action or in any other action or proceeding, against the Corning Defendants.

47. This Agreement shall be construed and interpreted to effectuate the intent of the parties, which is to provide, through this Agreement, for a complete resolution of the relevant claims with respect to the Corning Defendants as provided in this Agreement in exchange for the payment of the Settlement Amount by the Corning Defendants.

L Miscellaneous

48. The Corning Defendants, Direct Purchaser Plaintiff, and Settlement Class Counsel agree not to disclose publicly or to any other person the fact of or terms of this Agreement until the motion for preliminary approval is submitted to the Court. The Corning Defendants and Direct Purchaser Plaintiff may disclose the Agreement itself and the terms and conditions thereof: (i) to persons for whom such information is necessary to effectuate the provisions of the Agreement (and who shall be advised of its confidentiality and be requested to agree to this provision); (ii) to those employees and outside professional advisors (e.g., accountants, lawyers, tax advisors, etc.) who need to be aware of this Agreement or its terms in the ordinary course of business to perform their duties and to properly advise the Corning Defendants and Direct Purchaser Plaintiff; (iii) to the extent such disclosure is required for enforcement of this Agreement; (iv) for the preparation of financial records (e.g., tax returns, financial statements, etc.); (v) as required by law for the purpose of financial reporting (e.g., securities notices, filings, and/or disclosures, etc.); or (vi) as otherwise required by law, including, for example, compliance with legally authorized discovery procedures. The Corning Defendants may disclose the fact that they have settled with Direct Purchaser Plaintiff, without disclosing the settlement terms, to counsel for other Defendants in the Action and the MDL Litigation.

49. The Corning Defendants shall submit all materials required to be sent to appropriate federal and state officials pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

50. Within sixty (60) days after the final disposition of the Action, including all appeals, pursuant to Paragraph 17, Direct Purchaser Plaintiff and Settlement Class Counsel shall destroy all Confidential Information and Highly Confidential Information produced by the Corning Defendants in the Action, unless such information is necessary for the allocation and distribution of the Settlement Fund in the MDL Litigation. Settlement Class Counsel shall certify in writing that the foregoing materials have, in fact, been destroyed. Direct Purchaser Plaintiff and Settlement Class Counsel shall not be required to destroy any work product that contains Confidential Information or Highly Confidential Information produced in the Action.

51. This Agreement does not settle or compromise any claim by Direct Purchaser Plaintiff or any Settlement Class Member asserted in the Complaint or, if amended, any subsequent complaint, against any Defendant or alleged co-conspirator other than Releasees. All rights against such other Defendants or alleged co-conspirators are specifically reserved by Direct Purchaser Plaintiff and the Settlement Class. All rights of any Settlement Class Member against any and all former, current, or future Defendants or co-conspirators or any other person other than Releasees for sales made by Releasees relating to alleged illegal conduct are specifically reserved by Direct Purchaser Plaintiff and Settlement Class Members. The Corning Defendants' and the other Releasees' sales to the Settlement Class and their alleged illegal conduct shall, to the extent permitted or authorized by law, remain in the Action as a potential basis for damage claims and shall be part of any joint and several liability claims against other current or future Defendants in the Action or other persons or entities other than Releasees. Releasees shall not be responsible for

any payment to Direct Purchaser Plaintiff other than the Settlement Amount and the amounts specifically agreed to in Paragraphs 25 and 31.

52. The United States District Court for the Eastern District of Michigan shall retain jurisdiction over the implementation, interpretation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of this Agreement that cannot be resolved by negotiation and agreement by Direct Purchaser Plaintiff and the Corning Defendants, including challenges to the reasonableness of any party's action. This Agreement shall be governed by and interpreted according to the substantive laws of the state of Michigan without regard to its choice of law or conflict of laws principles. The Corning Defendants will not object to complying with any of the provisions outlined in this Agreement on the basis of jurisdiction.

53. This Agreement constitutes the entire, complete, and integrated agreement between Direct Purchaser Plaintiff and the Corning Defendants pertaining to the settlement of the Action against the Corning Defendants, and supersedes all prior and contemporaneous undertakings, communications, representations, understandings, negotiations, and discussions, either oral or written, between Direct Purchaser Plaintiff and the Corning Defendants in connection herewith. This Agreement may not be modified or amended except in writing executed by Direct Purchaser Plaintiff and the Corning Defendants and approved by the Court.

54. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Direct Purchaser Plaintiff and the Corning Defendants. Without limiting the generality of the foregoing, upon final approval of this Agreement, each and every covenant and agreement made herein by Direct Purchaser Plaintiff or Settlement Class Counsel shall be binding upon all Settlement Class Members and Releasors. The Releasees (other than the Corning entities

that are parties hereto) are third-party beneficiaries of this Agreement and are authorized to enforce its terms applicable to them.

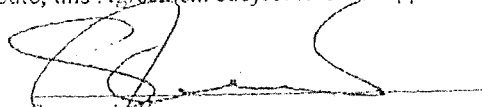
55. This Agreement may be executed in counterparts by Direct Purchaser Plaintiff and the Corning Defendants, and a facsimile or Portable Document Format (.pdf) image of a signature shall be deemed an original signature for purposes of executing this Agreement.

56. Neither Direct Purchaser Plaintiff nor the Corning Defendants shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

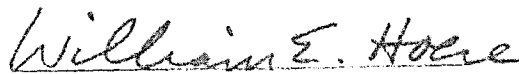
57. Where this Agreement requires either party to provide notice or any other communication or document to the other, such notice shall be in writing, and such notice, communication, or document shall be provided by facsimile or email (provided that the recipient acknowledges having received that email, with an automatic “read receipt” or similar notice constituting an acknowledgement of an email receipt for purposes of this Paragraph), or letter by overnight delivery to the undersigned counsel of record for the party to whom notice is being provided.

58. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement subject to Court-approval.

Dated: November nd 22, 2019



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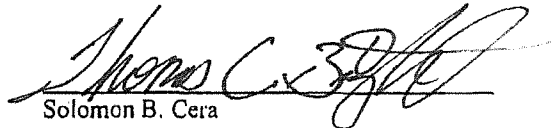


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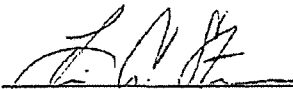
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