

**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 Sean F. Cox
IN RE: EXHAUST SYSTEMS CASES	:	
THIS DOCUMENT RELATES TO: ALL DIRECT PURCHASER CASES	:	2:16-cv-03701-SFC-RFC
	:	2:16-cv-13968-SFC-RFC
	:	

**ORDER GRANTING PRELIMINARY APPROVAL OF PROPOSED SETTLEMENTS
WITH MERITOR AND BOSAL, FOR PROVISIONAL CERTIFICATION OF THE
MERITOR AND BOSAL DIRECT PURCHASER SETTLEMENT CLASSES, AND FOR
AUTHORIZATION TO DISSEMINATE NOTICE TO THE DIRECT PURCHASER
BOSAL, EBERSPÄCHER, FAURECIA, MERITOR, AND TENNECO SETTLEMENT
CLASSES**

Upon consideration of the Direct Purchaser Plaintiffs’ Motion for Preliminary Approval of Proposed Settlements with Defendant Meritor, Inc. f/k/a ArvinMeritor (“Meritor”), and Bosal Industries-Georgia, Inc. and Bosal USA, Inc. (“Bosal”), for Provisional Certification of the Meritor and Bosal Direct Purchaser Settlement Classes (together, the “Proposed Settlement Classes”), and for Authorization to Disseminate Notice to the Direct Purchaser Bosal, Eberspächer, Faurecia, Meritor, and Tenneco Settlement Classes (the “Motion”), and supporting memorandum (the “Notice Memorandum”), it is hereby ORDERED as follows:

1. The Motion is hereby **GRANTED**.
2. Terms used in this Order that are defined in the Meritor Settlement Agreement (the “Meritor Settlement Agreement”) and the Bosal Settlement Agreement (the “Bosal Settlement Agreement”) are, unless otherwise defined herein, used as defined in that respective Settlement Agreement.

Preliminary Approval of Meritor and Bosal Settlement Agreements

3. The terms of the Meritor and the Bosal Settlement Agreements are hereby preliminarily approved as being fair, reasonable, and adequate to the Proposed Settlement Classes, subject to a fairness hearing. In preliminarily approving the Meritor and Bosal Settlement Agreements, the Court makes the following findings:

- a. The proposed class representatives and Co-Lead Settlement Class Counsel have adequately represented the Proposed Settlement Classes;
- b. The Meritor and the Bosal Settlement Agreements were entered into at arm's length by experienced counsel and are sufficiently within the range of reasonableness that notice of the Settlement Agreements should be given to members of the Proposed Settlement Classes;
- c. The relief provided for the Proposed Settlement Classes is adequate; and
- d. The Settlement Agreements treat members of the Proposed Settlement Classes equitably relative to each other.

Class Certification

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure and in light of the proposed settlements, the Court hereby finds that the prerequisites for a class action have been met, and provisionally certifies the following direct purchaser Meritor Settlement Class for settlement purposes (the "Meritor Settlement Class"):

All individuals and entities who purchased Automotive Exhaust Systems in the United States directly from any of the Defendants (or their subsidiaries or affiliates) from January 1, 2002 through February 12, 2018. Excluded from the Settlement Class are Defendants, their present and former parent companies, subsidiaries, and affiliates, federal governmental entities and instrumentalities of the federal government, and states and their subdivisions, agencies and instrumentalities.

5. For purposes of the Meritor Settlement Class definition, the following entities are Defendants: Tenneco Inc.; Tenneco Automotive Operating Co., Inc.; Tenneco GmbH; Bosal Nederland, B.V.; Bosal Industries-Georgia, Inc.; Bosal USA, Inc.; Friedrich Boysen GmbH & Co. KG; Eberspächer Exhaust Technology GmbH & Co. KG; Eberspächer North America, Inc.; Faurecia SA; Faurecia Emissions Control Technologies, USA, LLC; Faurecia Exhaust Systems, Inc.; and Meritor, Inc. f/k/a ArvinMeritor.

6. Pursuant to Rule 23 of the Federal Rules of Civil Procedure and in light of the proposed settlements, the Court hereby finds that the prerequisites for a class action have been met, and provisionally certifies the following direct purchaser Bosal Settlement Class for settlement purposes (the “Bosal Settlement Class”):

All individuals and entities who purchased Automotive Exhaust Systems in the United States directly from Defendants (or their subsidiaries or affiliates) from January 1, 2002 through February 12, 2018. Excluded from the Settlement Class are Defendants, their present and former parent companies, subsidiaries, and affiliates, federal governmental entities and instrumentalities of the federal government, and states and their subdivisions, agencies and instrumentalities.

7. For purposes of the Bosal Settlement Class definition, the following entities are Defendants: Tenneco Inc.; Tenneco Automotive Operating Co., Inc.; Tenneco GmbH; Bosal Industries-Georgia, Inc.; Bosal USA, Inc.; Friedrich Boysen GmbH & Co. KG; Eberspächer Exhaust Technology GmbH & Co. KG; Eberspächer North America, Inc.; Faurecia SA; Faurecia Emissions Control Technologies, USA, LLC; Faurecia Exhaust Systems, Inc.; and Meritor, Inc. f/k/a ArvinMeritor.

8. The Court finds that provisional certification of the Proposed Settlement Classes is warranted in light of the Settlement Agreements because: (a) the Proposed Settlement Classes are

so numerous that joinder is impracticable; (b) the Direct Purchaser Plaintiff Class Representatives' claims present common issues and are typical of the Proposed Settlement Classes; (c) the Direct Purchaser Plaintiff Class Representatives and Co-Lead Settlement Class Counsel (identified below) will fairly and adequately represent the Proposed Settlement Classes; and (d) common issues predominate over any individual issues affecting the members of the Proposed Settlement Classes. The Court further finds that the Direct Purchaser Plaintiff Class Representatives' interests are aligned with the interests of all other members of the Proposed Settlement Classes. The Court also finds that settlement of this action on a class basis is superior to other means of resolving the matter.

Appointment of Class Representatives and Co-Lead Settlement Class Counsel

9. The Court hereby appoints Plaintiffs Manny's Auto Supply, Inc. and Irving Levine Automotive Distributors, Inc. to serve as Class Representatives for the Proposed Settlement Classes.

8. The Court hereby appoints the law firms of Freed Kanner London & Millen LLC; Kohn, Swift & Graf, P.C.; Preti, Flaherty, Beliveau & Pachios LLP; and Spector Roseman & Kodroff, P.C. to serve as Co-Lead Settlement Class Counsel for the Proposed Settlement Classes, having determined that the requirements of Rule 23(g) are fully satisfied by these appointments.

Notice to Potential Bosal, Eberspächer, Faurecia, Meritor,
and Tenneco Settlement Class Members

9. By Order dated September 17, 2018 (2:16-cv-03701, ECF No. 65), this Court preliminarily approved a Settlement Agreement between the Direct Purchaser Plaintiffs and Defendants Faurecia Emissions Control Technologies, USA, LLC; and Faurecia Exhaust Systems, Inc.; (collectively, the "Faurecia Defendants") and certified for purposes of the settlement a Direct Purchaser Faurecia Settlement Class (the "Faurecia Settlement Class").

10. By Order dated September 17, 2018 (2:16-cv-03701, ECF No. 66), this Court preliminarily approved a Settlement Agreement between the Direct Purchaser Plaintiffs and Defendant Tenneco Inc.; Tenneco Automotive Operating Co., Inc.; and Tenneco GmbH; (collectively, the “Tenneco Defendants”) and certified for purposes of the settlement a Direct Purchaser Tenneco Defendants Settlement Class (the “Tenneco Settlement Class”).

11. By Order dated June 26, 2019 (2:16-cv-03701, ECF No. 77), this Court preliminarily approved a Settlement Agreement between the Direct Purchaser Plaintiffs and Defendants Eberspächer Exhaust Technology GmbH & Co. KG; and Eberspächer North America, Inc.; (collectively, the “Eberspächer Defendants”) and certified for purposes of the settlement a Direct Purchaser Eberspächer Settlement Class (the “Eberspächer Settlement Class”).

12. The Bosal, Eberspächer, Faurecia, Meritor, and Tenneco Settlement Classes shall receive notice in accordance with the terms of this Order.

13. The Court approves the form and content of: (a) the Notice of Proposed Settlements of Direct Purchaser Class Action with the Bosal, Eberspächer, Faurecia, Meritor, and Tenneco Defendants and Hearing on Settlement Approval and Related Matters, and Claim Form (the “Notice”), attached as Exhibit 3 to the Notice Memorandum; (b) the Summary Notice of Proposed Settlements of Direct Purchaser Class Action with the Bosal, Eberspächer, Faurecia, Meritor, and Tenneco Defendants and Hearing on Settlement Approval and Related Matters (the “Summary Notice”), attached as Exhibit 4 to the Notice Memorandum; and (c) the Informational Press Release (the “Press Release”), attached as Exhibit 5 to the Notice Memorandum.

14. The Court finds that the mailing of the Notice and publication of the Summary Notice and Press Release in the manner set forth herein constitutes the best notice that is practicable under the circumstances, is valid, due and sufficient notice to all persons entitled thereto, and

complies fully with the requirements of Federal Rule of Civil Procedure 23 and the due process requirements of the Constitution of the United States.

15. On or before August 14, 2020, the Notice, in substantially the same form as Exhibit 3 to the Notice Memorandum, shall be mailed by first class mail, postage prepaid, to all potential members of the Bosal, Eberspächer, Faurecia, Meritor, and Tenneco Settlement Classes identified by Defendants. The Notice shall also be provided to all persons who request it in response to the Summary Notice or Press Release. In addition, a copy of the Notice shall be posted on the Internet at www.autopartsantitrustlitigation.com, the website dedicated to this litigation.

16. On or before August 24, 2020, Co-Lead Settlement Class Counsel shall cause the Summary Notice, in substantially the same form as Exhibit 4 to the Notice Memorandum, to be published in one edition of *Automotive News*. Additionally, an online banner notice will appear over a 21-day period on www.AutoNews.com, the digital version of *Automotive News*. To supplement the notice program further, the Press Release, in substantially the same form as Exhibit 4 to the Notice Memorandum, will be issued nationwide via PR Newswire's "Auto Wire," which targets auto industry trade publications.

17. On or before September 14, 2020, Co-Lead Settlement Class Counsel shall file with the Court their motion or motions for: final approval of the proposed settlements with the Bosal, Eberspächer, Faurecia, Meritor, and Tenneco Defendants; approval of a proposed plan of distribution of the settlement funds; an award of attorneys' fees and expenses; and incentive payments to the Class Representatives.

18. All requests for exclusion from any of the Bosal, Eberspächer, Faurecia, Meritor, and Tenneco Settlement Classes must be in writing, postmarked no later than October 5, 2020, and must otherwise comply with the requirements set forth in the Notice.

19. Any objection by any member of the Bosal, Eberspächer, Faurecia, Meritor, and Tenneco Settlement Classes to any of those proposed settlements, or to the proposed plan of distribution, the request for attorneys' fees and expenses, or to an incentive payment to the Class Representatives, must be in writing, must be filed with the Clerk of Court and postmarked no later than October 5, 2020, and must otherwise comply with the instructions set forth in the Notice.

20. At least ten (10) days before the date fixed by this Court for the Fairness Hearing, Co-Lead Settlement Class Counsel shall file with the Court affidavits or declarations of the person under whose general direction the mailing and posting of the Notice, and publication of the Summary Notice and Press Release, were made, showing that mailing, posting and publication were made in accordance with this Order.

21. The Court will hold a Fairness Hearing on **November 5, 2020, at 2:00 p.m.**, at the Theodore Levin U.S. Courthouse, 231 West Lafayette Blvd., Detroit, MI, 48226, Courtroom 817 (or such other courtroom as may be assigned for the hearing), to determine whether to approve: (1) the proposed Bosal, Eberspächer, Faurecia, Meritor, and Tenneco settlements; (2) the proposed plan of distribution of the settlement funds; (3) Co-Lead Settlement Class Counsel's request for an award of attorneys' fees and litigation costs and expenses; and (4) the request for incentive payments to the Class Representatives. Any Settlement Class member who follows the procedure set forth in the Notice may appear and be heard at this hearing. If the Court believes that it is appropriate, the hearing may be conducted remotely by telephone or other electronic means. If the Court determines to hold the hearing remotely, Co-Lead Settlement Class Counsel shall post that information on the website devoted to the direct purchaser litigation and provide any Settlement Class member that has informed the Court that it intends to participate the information required to remotely participate. The Fairness Hearing may be rescheduled, adjourned or continued, and the

courtroom assigned for the hearing may be changed, without further notice to the Settlement Classes.

22. Any Settlement Class member who wishes to participate in the distribution of the Bosal, Eberspächer, Faurecia, Meritor, and Tenneco settlement funds must submit a Claim Form in accordance with the instructions therein, postmarked on or before November 21, 2020.

Other Provisions

23. In the event that the Meritor Settlement Agreement or the Bosal Settlement Agreement is terminated in accordance with its provisions, that Settlement Agreement and all proceedings had in connection therewith shall be null and void, except insofar as expressly provided to the contrary in that Settlement Agreement, and without prejudice to the status quo and rights of Plaintiffs, the Meritor and Bosal Defendants, and the members of the Proposed Settlement Classes.

24. The Court's provisional certification of the Proposed Settlement Classes as provided herein is without prejudice to, or waiver of, the rights of any Defendant to contest certification of any other class proposed in these coordinated actions. The Court's findings in this Order shall have no effect on the Court's ruling on any motion to certify any class in these actions or on the Court's rulings concerning any Defendant's motion, and no party may cite or refer to the Court's approval of the Proposed Settlement Classes as persuasive or binding authority with respect to any motion to certify any such class or any Defendant's motion.

25. The Court approves the escrow accounts referenced in the Meritor and Bosal Settlement Agreements as qualified settlement funds ("QSF") pursuant to Internal Revenue Code Section 468B and the Treasury Regulations promulgated thereunder and retains continuing jurisdiction as to any issue that may arise in connection with the formation or administration of the

QSF. Co-Lead Settlement Class Counsel are authorized to use funds from the QSF in accordance with the Meritor and Bosal Settlement Agreements, respectively, including to pay costs of notice, taxes, tax expenses, and settlement administration costs.

26. The Direct Purchaser Class litigation against the Meritor and Bosal Defendants is stayed except to the extent necessary to effectuate the Settlement Agreements.

IT IS SO ORDERED.

Dated: July 24, 2020

s/Sean F. Cox

Sean F. Cox

U. S. District Judge