

# **EXHIBIT 1**

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

_____	:	
<b>IN RE: AUTOMOTIVE PARTS</b>	:	<b>Case No. 12-MD-02311</b>
<b>ANTITRUST LITIGATION</b>	:	<b>Honorable Sean F. Cox</b>
_____	:	
	:	
<b>IN RE: FUEL INJECTION SYSTEMS</b>	:	
_____	:	
	:	<b>2:13-CV-02201-SFC-RSW</b>
<b>THIS RELATES TO:</b>	:	<b>2:15-CV-11827-SFC-RSW</b>
<b>ALL DIRECT PURCHASER CASES</b>	:	<b>2:15-CV-13423-SFC-RSW</b>
_____	:	

**SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is made and entered into this 4th day of June, 2021 (“Execution Date”) by and between Defendants Hitachi Astemo, Ltd. (f/k/a Keihin Corporation) and Hitachi Astemo Indiana, Inc. (f/k/a Keihin North America, Inc.) (together “Keihin”) and Direct Purchaser Plaintiff (as defined in Paragraph 5), both individually and on behalf of a class of direct purchasers of Fuel Injection Systems (“Settlement Class”), as more particularly defined in Paragraph 10.

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”); and the *Fuel Injection Systems Cases*, Case Nos. 2:13-cv-02201 (E.D. Mich.), 2:15-cv-11827 (E.D. Mich.), 2:15-cv-13423 (E.D. Mich.) (together, the “Action”) on its own behalf and on behalf of the Settlement Class against, among others, Keihin;

WHEREAS, Direct Purchaser Plaintiff alleges that it was injured as a result of Keihin’s participation in an unlawful conspiracy to raise, fix, maintain, and/or stabilize prices, rig bids, and allocate markets and customers for Fuel Injection Systems (as defined

below) in violation of Section 1 of the Sherman Act, as set forth in Direct Purchaser Plaintiff's Amended Consolidated Class Action Complaint, 2:13-CV-002201-SFC-RSW (ECF No. 103) (the "Complaint");

WHEREAS, Keihin denies Direct Purchaser Plaintiff's allegations and has asserted defenses to Direct Purchaser Plaintiff's claims in the Action;

WHEREAS, arm's-length settlement negotiations have taken place between Settlement Class Counsel (as defined below) and counsel for Keihin, 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 Keihin, 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 and the value of the Cooperation (as those terms are defined below) that Keihin has agreed to provide pursuant to this Agreement;

WHEREAS, the Action will continue against Defendants (as defined below) that are not Releasees (as defined below);

WHEREAS, Keihin, despite its belief that it is not liable for the claims asserted by Direct Purchaser Plaintiff and its belief that it has good defenses thereto, has 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, order, and judgment contemplated by this Agreement, and to put to rest with finality all claims that have been or could have been asserted against Keihin with respect to Fuel Injection Systems based on the allegations in the Action, as more particularly set out below;

WHEREAS, Direct Purchaser Plaintiff, on behalf of itself and the Settlement Class Members (as defined below), and Keihin agree that this Settlement shall not be deemed or construed to be an admission or evidence of the truth of any of Direct Purchaser Plaintiff's claims or allegation in the Action;

WHEREAS, Keihin has agreed to provide Cooperation (as defined below) to Direct Purchaser Plaintiff in the ongoing prosecution of the Action against Defendants that are not Releasees (as defined below), as set forth in this Agreement, and such Cooperation will reduce Direct Purchaser Plaintiff's substantial burden and expense associated with prosecuting the Action; and

WHEREAS, Direct Purchaser Plaintiff recognizes the benefits of Keihin's Cooperation, and recognizes that because of joint and several liability, this Agreement with Keihin 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 Keihin's alleged conduct.

NOW, THEREFORE, in consideration of the covenants, agreements, and releases 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 and, except as hereinafter provided, without costs as to Direct Purchaser Plaintiff, the Settlement Class, or Keihin, subject to the approval of the Court, on the following terms and conditions:

A. Definitions

1. "Fuel Injection Systems" for purposes of this Agreement are any system, or any component of a system, that admits fuel or a fuel/air mixture into engine cylinders, and may

include fuel injectors, high pressure pumps, rail assemblies, feed lines, electronic throttle bodies, engine control units, fuel pumps, fuel pump modules, pressure regulators, pulsation dampers, electronic throttle motors, electronic throttle control motors, as well as an array of meters (e.g., airflow meters and/or air mass meters), sensors (e.g., air mass sensors, altitude sensors, boost pressure sensors, cam position sensors, manifold absolute pressure sensors, mark sensors, phase sensors, pressure sensors, and/or speed sensor temperature sensors), and valves (e.g., check valves, cut-off valves, injection valves, and/or purge control valves), and other components sold as a unitary system, as part of a broader system, such as an engine management system, or as separate components, which is inclusive of the definition set forth in Paragraph 4 of the Complaint.

2. “Cooperation” refers to those provisions set forth below in Section J.

3. “Cooperation Materials” means any information, testimony, Documents (as defined below) or other material provided by Keihin under the terms of this Agreement.

4. “Defendant” means, for purposes of this Settlement Agreement only, any or all of the following: Aisan Industry Co., Ltd; Franklin Precision Industry, Inc.; Aisan Corporation of America; Hyundam Industrial Co., Ltd; Hitachi Automotive Systems, Ltd.; Hitachi Automotive Systems Americas, Inc.; Hitachi, Ltd.; DENSO Corporation; DENSO International America, Inc.; DENSO International Korea Corporation (f/k/a separately as DENSO International Korea Corporation and DENSO Korea Automotive Corporation); Hitachi Astemo, Ltd. (f/k/a Keihin Corporation); Hitachi Astemo Indiana, Inc. (f/k/a Keihin North America, Inc.); Maruyasu Industries Co., Ltd.; Mikuni Corporation; Mikuni American Corporation; MITSUBA Corporation; American Mitsuba Corporation; Mitsubishi Electric

Corporation; Mitsubishi Electric US Holdings, Inc.; Mitsubishi Electric Automotive America, Inc.; Robert Bosch GmbH; Bosch Electrical Drives Co., Ltd.; Robert Bosch LLC.

5. “Direct Purchaser Plaintiff” means the plaintiff named in the Complaint.

6. “Keihin” means Hitachi Astemo, Ltd. (f/k/a Keihin Corporation) and Hitachi Astemo Indiana, Inc. (f/k/a Keihin North America, Inc.).

7. “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. For purposes of this Agreement, Document shall include all English translations in Keihin’s custody, possession or control.

8. “Releasees” shall refer to (i) Keihin, (ii) all of Keihin’s past and present direct and indirect parents, subsidiary companies, and affiliates, including their respective predecessors, successors, and assigns, and (iii) each and all of the present and former stockholders, 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) and (ii). “Releasees” does not include any Defendant in the MDL Litigation other than Keihin.

9. “Releasers” shall refer to Direct Purchaser Plaintiff and the members of the Settlement Class, as defined in Paragraph 10, below, as well as each of 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.

10. For purposes of this Agreement, the “Settlement Class” is defined as:

All individuals and entities who purchased Fuel Injection Systems in the United States directly from one or more Defendants (or any current or former subsidiaries, affiliates, or joint ventures) from January 1, 2000 through March 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.

11. “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, P.O. Box 9546, Portland, ME 04112-9546; and Spector Roseman & Kodroff, P.C., 2001 Market Street, Suite 3420, Philadelphia, PA 19103.

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

13. “Settlement Amount” shall be US \$97,000 as specified in Paragraph 23.

14. “Settlement Fund” shall refer to the Settlement Amount plus any income or accrued interest on said amount as set forth in Paragraph 25.

B. Approval of this Agreement and Dismissal of Claims Against Keihin

15. Direct Purchaser Plaintiff and Keihin 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 Federal Rules of Civil Procedure 23(c) and (e)) to secure the complete and final dismissal with prejudice of the Action as to the Releasees only.

16. Within thirty (30) days after the execution of this Agreement, Direct Purchaser Plaintiff shall submit to the Court a motion seeking preliminary approval of this Agreement (the “Motion”). The Motion shall include a proposed order preliminarily approving this Agreement. Before submission, Keihin shall have a reasonable opportunity to review and comment on the draft Motion and proposed order, and Direct Purchaser Plaintiff shall reasonably consider Keihin’s comments.

17. 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 Keihin shall have a reasonable opportunity to review and comment on the Notice Motion, and Direct Purchaser Plaintiff shall reasonably consider Keihin’s comments.

18. Direct Purchaser Plaintiff shall seek the entry of an order and final judgment, the text of which Direct Purchaser Plaintiff and Keihin 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 10, pursuant to Rule 23 of the Federal Rules of Civil Procedure, solely for purposes of this settlement 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 its terms;

(c) directing that all Releasers shall, by operation of law, be deemed to have released all Releasees from the Released Claims;

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

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

(f) determining under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing that the judgment of dismissal in the Action as to Keihin 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 Keihin, to contest certification of any other class proposed in the MDL Litigation, (ii) the Court's findings in this order and final judgment in the Action 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.

19. This Agreement shall become final when (i) the Court has entered in the Action a final order certifying the Settlement Class described in Paragraph 10 and approving this

Agreement under Federal Rule of Civil Procedure 23(e) and has entered a final judgment dismissing the Action with prejudice as to Keihin 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 Keihin 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 Keihin 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 Keihin have executed this Agreement, Direct Purchaser Plaintiff and Keihin shall be bound by its terms and this Agreement shall not be rescinded except in accordance with Paragraph 60.

20. Neither this Agreement (whether or not it becomes final) nor the final judgment, nor any negotiations, documents, and discussions associated with them (including Cooperation Materials produced pursuant to Section J, unless they were produced in the normal course of discovery), shall be deemed or construed to be an admission by Keihin or any other Releasee, or evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by Keihin or any other Releasee, or of the truth of any of the claims or allegations contained in any complaint or any other pleading filed in the MDL Litigation, 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 Keihin or any other Releasee. Nothing in this Paragraph shall prevent Direct Purchaser Plaintiff from using and/or introducing into evidence Cooperation Materials produced

pursuant to Section J, subject to the limitations in those paragraphs, against any other defendants in the MDL Litigation, to establish any of the above or to develop and promulgate a plan of allocation and distribution. 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 Keihin or any other Releasee, 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 Released Claims (defined below), or as otherwise required by law.

C. Release, Discharge, and Covenant Not to Sue

21. 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 19, and in consideration of payment of the Settlement Amount, as specified in Paragraph 23, into the Escrow Account (defined below), and for other valuable consideration, the Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits, 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, that Releasers, 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 and unknown, foreseen and 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 (ii) any act or omission of the Releasees (or any of them) prior to the Execution Date concerning Fuel Injection Systems, including but not limited to any conduct alleged and causes of action alleged or asserted or that could have been alleged or asserted, in any class action or other complaint(s) filed in the Action (the “Released Claims”), provided however, that nothing herein shall release: (1) any claims based on indirect purchases of Fuel Injection Systems; (2) claims involving any negligence, personal injury, breach of contract, bailment, failure to deliver lost goods, damaged or delayed goods, product defect, breach of product warranty, securities or other similar claim relating to Fuel Injection Systems; (3) claims brought outside the United States relating to purchases of Fuel Injection Systems outside the United States; (4) claims brought under laws other than those of the United States relating to purchases of Fuel Injection Systems outside the United States; and (5) claims concerning any product other than Fuel Injection Systems. Releasors shall not, after the date of this Agreement, seek to establish liability against any Releasee as to, in whole or in part, any of the Released Claims unless this Agreement, for any reason, does not become final, or is rescinded or otherwise fails to become effective.

22. In addition to the provisions of Paragraph 21, Releasors hereby expressly waive and release, solely with respect to the Released Claims, upon this Agreement becoming final, as set out in Paragraph 19, any and all provisions, rights, and benefits, as to their claims concerning Fuel Injection Systems, conferred by Section 1542 of the California Civil Code, which states:

CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME

OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR;

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 21 but each Releasor hereby expressly waives and fully, finally, and forever settles and releases, upon this Agreement becoming final, any known or unknown, suspected or unsuspected, contingent or non-contingent claim that Keihin and Direct Purchaser Plaintiff have agreed to release pursuant to Paragraph 21, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

D. Settlement Amount

23. Subject to the provisions hereof, and in full, complete and final settlement of the Action as provided herein, Keihin shall pay or cause to be paid the Settlement Amount of US \$97,000. 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 thirty (30) days after the later of (i) entry of an order preliminarily approving this Agreement or (ii) the date Keihin is provided with the account number, account name, and wiring transfer information for the Escrow Agent. No part of the Settlement Amount paid by Keihin 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

24. 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.

25. 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. Keihin 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.

26. 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.

27. Subject to the limitation set forth in Paragraph 34, 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 Keihin in the event the Agreement is disapproved, rescinded, or otherwise fails to become effective, to the extent such expenses have actually been expended or incurred. Any refund that becomes owed to Keihin if this Settlement does not become final or

is 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.

28. The Escrow Account is intended by the parties hereto to be treated as a “qualified settlement fund” within the meaning of Treas. Reg. § 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 Keihin, a “relation back election” as described in Treas. Reg. § 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 Keihin as a result of any income earned on the funds in the Escrow Account, Keihin 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. Keihin will use reasonable efforts to resist any such assessment or payment. Settlement Class Counsel or their designee shall be solely responsible for filing all informational and other tax returns necessary to report any taxable income earned by the Settlement Fund and shall file all informational and other tax returns necessary to report any income earned by the Settlement Fund and pay any estimated or actual taxes due thereon out of the Settlement Fund, as and when legally required, including interest and penalties due on income earned by the Settlement Fund. Except as set forth in this Paragraph, Keihin and any Releasee, 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 Keihin nor any Releasee nor their respective counsel shall have any liability or responsibility for the taxes or expenses incurred in connection with taxation matters.

29. If this Agreement does not receive final Court approval, including final approval of the Settlement Class as defined in Paragraph 10, or if the Action is not certified as a class action for settlement purposes, or if the Agreement is rescinded or otherwise fails to become effective, then all amounts paid by Keihin into the Settlement Fund (other than costs expended or incurred in accordance with Paragraphs 27 and 34), shall be returned to Keihin 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 or within thirty (30) calendar days of when the agreement is rescinded or otherwise fails to become effective.

F. Exclusions

30. Subject to Court approval, any person or entity seeking exclusion from the Settlement Class must file 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 class notice 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 Settlement Agreement upon Final Court Approval. With respect to any potential Settlement



Class Member who requests exclusion from the Settlement Class, Keihin reserves all of its 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 Fuel Injection Systems or has standing to bring any claim.

31. Subject to Court Approval, in the written request for exclusion, the member of the Settlement Class must state his, her, or its full name, street address, telephone number, and email address. Further, the member of the Settlement Class must include a statement in the written request for exclusion that he, she, or it wishes to be excluded from the settlement.

32. Keihin 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.

33. Within ten (10) days after the end of the period to request exclusion from the Settlement Class, Settlement Class Counsel will cause copies of all timely requests for exclusion from the Settlement Class to be provided to counsel for Keihin.

G. Payment of Expenses

34. Keihin agrees to permit use 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 \$97,000) are not recoverable by Keihin 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 27, Keihin 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, and costs and expenses associated with discovery, motion practice, hearings before the Court or Special Master, appeals, trials or the negotiation of other settlements, or for class administration and costs.

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

#### H. The Settlement Fund

36. 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 Keihin or any other Releasee as to the Released Claims.

37. After this Agreement becomes final within the meaning of Paragraph 19, 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 27 and 34.

38. 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 27 and 34. Keihin and the other Releasees shall not be liable for any costs, fees, or expenses of the Direct Purchaser Plaintiff or the Settlement Class' respective attorneys, experts, advisors, agents, or representatives. Instead, all such

costs, fees, and expenses as approved by the Court, or authorized by Paragraphs 27 and 34, 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

39. 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 Direct Purchaser Plaintiff, 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.

40. 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, and 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.

41. Neither Keihin 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.

42. Neither Keihin 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 and expense award that the Court may make in the Action.

J. Cooperation.

43. In return for the release and discharge provided herein, Keihin agrees to pay the Settlement Amount and agrees to use reasonable efforts to provide satisfactory and timely Cooperation, as set forth specifically in Section J, until final judgment is entered on all Fuel Injection System claims made by Direct Purchaser Plaintiff against each and every one of the Defendants in the Action or dismissal with prejudice of all Fuel Injection Systems claims made by Direct Purchaser Plaintiff against each and every one of the Defendants in the Action (“Termination Orders”), whichever is earlier.<sup>1</sup> Cooperation will take place consistent with the timing set forth specifically in Section J, and in a manner that is in compliance with any Keihin obligation to Government Entities (defined as the United States Department of Justice (“DOJ”), the Japanese Fair Trade Commission (“JFTC”), the European Commission (“EU”), or any other government entity). If Direct Purchaser Plaintiff reaches settlement agreements

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<sup>1</sup> Keihin’s Cooperation obligations shall continue until the time for appeal or to seek permission to appeal from the Court’s Termination Orders has expired or, if appealed, the Termination Orders have been affirmed by the Court of last resort to which such appeal has been taken such that all Fuel Injection System claims made by Direct Purchaser Plaintiff against each and every one of the Defendants in the Action are resolved and such affirmance has become no longer subject to further appeal or review.

with all Defendants in the Action prior to any deadline to complete the additional Cooperation set forth in Paragraphs 46-51 below, or if otherwise notified by Direct Purchaser Plaintiff that certain Cooperation is no longer required, Keihin will not be obligated to complete such additional Cooperation. Notwithstanding the foregoing, Keihin will only be required to complete said additional Cooperation if Direct Purchaser Plaintiff initiates or resumes active litigation against a Defendant in the Action for any reason, unless Direct Purchaser Plaintiff initiates or resumes active litigation against Keihin. The parties will subsequently meet and confer in good faith regarding any extensions concerning the timing of the completion of such additional Cooperation.

44. Keihin shall not be required to provide Documents protected by the attorney-client privilege, the attorney work product doctrine, any applicable privilege under foreign law, or whose disclosure is prohibited by relevant antitrust agencies and/or by the law of the relevant foreign jurisdictions, or prohibited by court order. Should Keihin withhold any materials pursuant to the foregoing sentence, Keihin will so inform the Direct Purchaser Plaintiffs and will describe the basis for such withholding to the extent permissible under applicable law. Cooperation shall be limited to Fuel Injection Systems and shall not include information relating to other products manufactured by Keihin and/or Releasees. Notwithstanding the foregoing sentence, no Document shall be withheld under a claim of privilege if produced to any government entity, unless clawed back from that government entity pursuant to Rule 502 or otherwise.

45. Direct Purchaser Plaintiff shall use reasonable best efforts to coordinate Cooperation in such a manner so as to avoid unnecessary duplication and expenses. Class Counsel further agree that they will not use Documents or any other Cooperation Materials

produced by Keihin pursuant to this Section J for any purpose other than the prosecution of claims in the MDL Litigation, and will use this information in the MDL Litigation consistent with the protective order entered in the MDL Litigation (Dkt. No. 200) (the “Protective Order”) and will not use it beyond what is reasonably necessary for the prosecution of claims in the MDL Litigation or as otherwise required by law. All Documents and other Cooperation Materials provided pursuant to this Agreement shall be governed by the terms of the Protective Order in the Action. To the extent not already produced, Keihin agrees to use its reasonable best efforts to produce the following materials to Direct Purchaser Plaintiff on the timetable indicated below:

46. Transactional Data. Within one hundred twenty (120) days after Settlement Counsel’s request, Keihin will produce reasonably available pre-existing sales and cost transactional data from existing electronic transactional databases kept in the ordinary course of business concerning its sales of Fuel Injection System to customers in the United States. The time period for this production will be from January 1, 2000 through December 31, 2017. Keihin shall consider any reasonable request by Direct Purchaser Plaintiff to produce transactional data from January 1, 1998 through December 31, 1999. Keihin shall provide reasonable assistance to Direct Purchaser Plaintiff in understanding the transactional sales and cost data produced, including, if appropriate, a reasonable number of communications with Direct Purchaser Plaintiff. Settlement Class Counsel agree that they shall maintain all data that Keihin produces as “Highly Confidential,” as said designation is described in the Protective Order, subject to any successful challenge that any party may make to the Protective Order or any other orders of the Court.

47. Documents. Upon the request of Settlement Class Counsel and subject to the parties' meeting and conferring regarding any extensions concerning the timing of the completion of production, and to the extent that the following Documents have been collected and loaded into a review tool, Keihin shall begin to produce Documents (including non-privileged English translations, to the extent they exist) within ninety (90) days of Settlement Class Counsel's request: (1) Documents, including any translations, provided to or seized by government entities relating to their investigation into alleged competition violations with respect to Fuel Injection Systems; (2) non-privileged Documents concerning Fuel Injection Systems collected and reviewed in connection with a communication, meeting, or agreement regarding Fuel Injection Systems, by any employee, officer, or director of Keihin with any employee, officer, or director of another manufacturer or seller of Fuel Injection Systems, but that were not provided to or seized by government entities; (3) Documents concerning Keihin's determination of Keihin's prices for Fuel Injection Systems; and (4) Documents soliciting requests for quotation ("RFQ"), bids submitted in response to RFQs, RFQ award notifications, and post-award price adjustments for Fuel Injection Systems, including any Annual Price Reduction ("APR") Documents, provided that the Documents were subject to competitor communications. Subject to the meet-and-confer referenced above, Keihin shall complete the production of the aforementioned Documents within one hundred twenty (120) days of Settlement Class Counsel's request.

48. Upon the request of Settlement Class Counsel and subject to the parties' meeting and conferring regarding any extensions concerning the timing of the completion of production, and to the extent that the following Documents have not been collected and loaded into a review tool, Keihin shall use reasonable efforts to produce such Documents

(including English translations, to the extent they exist) from centrally-maintained files and from the files of a reasonable number of custodians to be identified by Direct Purchaser Plaintiff within ninety (90) days of Settlement Class Counsel's request: (1) Documents, including any translations, provided to or seized by government entities relating to their investigation into alleged competition violations with respect to Fuel Injection Systems; (2) non-privileged Documents concerning Fuel Injection Systems collected and reviewed in connection with a communication, meeting, or agreement regarding Fuel Injection Systems, by any employee, officer, or director of Keihin with any employee, officer, or director of another manufacturer or seller of Fuel Injection Systems, but that were not provided to or seized by government entities; (3) Documents concerning Keihin's determination of Keihin's prices for Fuel Injection Systems; and (4) Documents soliciting requests for quotation ("RFQ"), bids submitted in response to RFQs, RFQ award notifications, and post-award price adjustments for Fuel Injection Systems, including any Annual Price Reduction ("APR") Documents, provided that the Documents were subject to competitor communications. To the extent that any such Documents described by this Paragraph 48 are not maintained in an active computer system or otherwise require special efforts or procedures to collect and produce, Settlement Class Counsel and Keihin shall meet and confer on collecting and producing such Documents.

49. Keihin shall not be required to disclose to Settlement Class Counsel the specific government entities to which documents were provided or to which documents were produced.

50. If Keihin produces Documents or provides declarations or written responses to discovery to any party in the Action or in any other Fuel Injection Systems action within 2:13-



cv-02200 (a “Relevant Production”), Keihin shall produce all such Documents, declarations, or written discovery responses to Settlement Class Counsel contemporaneously with making the Relevant Production to the extent such Documents, declarations, or written discovery responses have not previously been produced by Keihin to Settlement Class Counsel. In addition, Keihin shall provide Direct Purchaser Plaintiff with all cooperation concerning Fuel Injection Systems that it provides pursuant to any settlement agreement with any other party in this MDL Litigation unless it relates to information that is commercially sensitive in the context of Keihin’s relationships with its customers. To the extent that such cooperation includes any attorney proffer, witness interviews, or depositions of witnesses in addition to those already provided for in Paragraph 51 below, Settlement Class Counsel shall be permitted to attend and/or participate in such attorney proffer, witness interviews or depositions, and shall be entitled to ask questions for a period up to three (3) hours at any interview or deposition (provided that this shall not expand the time permitted for any deposition). All such additional Cooperation shall be coordinated, to the extent reasonably practicable, between Settlement Class Counsel and counsel for any other party in this MDL Litigation for which Keihin is providing cooperation concerning Fuel Injection Systems pursuant to a settlement agreement.

51. Attorney Proffers and Witness Interviews.

(a) Keihin shall use its reasonable efforts to cooperate with Settlement Class Counsel as set forth in the following. If requested by Settlement Class Counsel following the entry of any order preliminarily approving this Agreement, Keihin’s counsel will make themselves available by phone or videoconference within thirty (30) business days to provide an attorney’s proffer to Settlement Class Counsel of facts known to them regarding the claims

asserted by Direct Purchaser Plaintiff in the Fuel Injections Systems case. If requested, the proffer shall include the identity, if any, of all current and former employees, directors, and officers of Keihin who: (1) were interviewed by any government entities in connection with alleged price-fixing, bid rigging, customer allocation, market allocation, and/or other unlawful anticompetitive activity with respect to Fuel Injection Systems; or (2) appeared before the grand jury in the DOJ's investigation into alleged antitrust violations with respect to Fuel Injection Systems. Counsel for Keihin shall not be required to disclose to Settlement Class Counsel the identities of any government entities to which each such current or former employee, director, or officer of Keihin was identified or before which they appeared. Thereafter, Keihin's counsel will make themselves available for reasonable follow-up conversations in connection with the attorney's proffer and will use reasonable efforts to respond to reasonable questions posed by Settlement Class Counsel. It is understood that neither Keihin nor its counsel have any obligation to seek new or additional information or documents from any employees, officers, or directors; however, Keihin will in good faith consider requests for new or additional information or documents, and will produce such information or documents, if appropriate, in its discretion.

(b) Class Counsel will not seek interviews or depositions of Keihin's directors, officers, or employees at this time. If, however, Settlement Class Counsel reasonably believe that testimony from Keihin is necessary for use in a scheduled trial of this Action, then upon reasonable notice after preliminary approval of this Agreement, Keihin shall use its reasonable best efforts to make available for interviews and depositions, upon at least sixty (60) days' notice, unless extenuating circumstances exist, via video or teleconference or at a mutually agreed-upon location or locations, up to two (2) persons for interviews and depositions whom Settlement Class Counsel select, who may be current directors, officers, or employees of Keihin

who Settlement Class Counsel reasonably and in good faith believe possess knowledge of facts or information that would reasonably assist Direct Purchaser Plaintiff in the prosecution of the MDL Litigation. Interviews shall each be limited to a total of seven (7) hours over one (1) day and should occur via video or teleconference. Should Class Counsel elect to conduct the interview(s) in person and to the extent that a person to be interviewed is not reasonably available in the United States for an interview, the interview will be conducted at a mutually agreed upon location elsewhere.

(c) Consistent with Paragraph 51, upon reasonable notice, Keihin shall, at Settlement Class Counsel's request, use its reasonable best efforts to make available to appear for deposition (i) up to two (2) persons whom Settlement Class Counsel select from among the persons who have been chosen for interviews pursuant to Paragraph 51(b), and/or to provide (ii) up to two (2) declarations/affidavits from among the same persons who have been chosen for interviews and/or depositions pursuant to Paragraph 51(b) and (c). If Keihin is unable to make those same persons available for deposition or to provide a declaration or affidavit, then Settlement Class Counsel may select a substitute deponent or declarant/affiant. To the extent that a person to be deposed is not reasonably available in the United States for a deposition, the deposition will be conducted at a mutually agreed upon location elsewhere. Each deposition shall be limited to a total of seven (7) hours over one day, unless otherwise agreed. Written notice by Settlement Class Counsel to Keihin's counsel, which shall be provided at least sixty (60) days prior to the requested deposition date unless extenuating circumstances exist, shall constitute sufficient service of notice for such depositions. If Settlement Class Counsel request declarations/affidavits, such affidavits and declarations will be provided in English or in Japanese with an acceptable English translation.

(d) It is understood that Keihin may be unable to make available for interviews, depositions, or trial testimony or any other court proceedings any individual who is no longer an officer, director, or employee of Keihin.

(e) In addition to its Cooperation obligations set forth herein, Keihin agrees to use its reasonable efforts to produce through affidavit(s), declaration(s), and/or deposition testimony, in Settlement Class Counsel's discretion, representatives qualified to authenticate, establish as business records, or otherwise establish any other necessary foundation for admission into evidence of any of Keihin's Documents or Transactional Data produced or to be produced, and to the extent necessary, any Documents produced by other Defendants or third-parties in this Action. Settlement Class Counsel agree to use reasonable efforts to obtain stipulations that would avoid the need to depose Keihin witnesses for the purpose of obtaining such evidentiary foundations.

52. This Agreement does not restrict Settlement Class Counsel from noticing, attending, and/or participating in any deposition in the MDL Litigation. In addition to the depositions set forth in Paragraph 51, if any party in the MDL litigation other than Direct Purchaser Plaintiff deposes a Keihin current or former employee, Settlement Class Counsel may cross-notice, attend, and/or participate in such deposition, and Settlement Class Counsel may ask questions for a combined total of three (3) hours at such deposition, provided that the time for participation of Settlement Class Counsel shall not expand the time permitted for the deposition as may be provided by the Court, and Settlement Class Counsel will not ask the Court to enlarge the time of any deposition noticed of a Keihin current or former employee. Participation by Settlement Class Counsel in the depositions discussed in this Paragraph will not limit the number of depositions to be provided under Paragraphs 51. Settlement Class

Counsel agree to use their best efforts to ensure that any depositions taken under Paragraph 51 are coordinated with any other deposition noticed in the MDL Litigation to avoid unnecessary duplication. In the event Direct Purchaser Plaintiff has settled with all defendants in the Action, Direct Purchaser Plaintiff will forego participating in depositions of Keihin current or former employees scheduled by other plaintiff groups in the Action provided that if: (1) this Agreement does not receive final approval, or (2) or any other settlement in that Action does not receive final approval as set forth in Paragraph 19, then Direct Purchaser Plaintiff may, at a later date, take depositions of any Keihin current or former employees who were previously deposed in the Action subject to the limitations of this Paragraph. Nothing herein shall alter, limit, or otherwise affect rights of Direct Purchaser Plaintiff to take depositions of Keihin employees subject to Paragraph 51 of this Agreement. Settlement Class Counsel may attend and participate in any depositions of Keihin in this Action noticed by any other party.

53. To the extent reasonably practicable, any attorney proffers, witness interviews, or depositions provided pursuant to the below obligations shall be coordinated with, and occur at the same time as, the attorney proffers, witness interviews, and depositions to be provided in connection with settlements of Fuel Injection Systems claims brought by other claimants entered into by Keihin in the MDL Litigation. If any such interviews or depositions take place outside of the country of the witness's or deponent's residence, Direct Purchaser Plaintiff shall reimburse Keihin for such person's economy class fare and US \$450 per day for lodging and expenses. The maximum reimbursement to Keihin for any witness shall be US \$2,250. In no event shall Direct Purchaser Plaintiff be responsible for reimbursing such person for time or services rendered. If an interview and a deposition of an individual occur during the same trip, the above limitations will apply to that trip.

54. Notwithstanding any other provision in this Agreement, Settlement Class Counsel shall maintain all statements made by Keihin's counsel as "Highly Confidential," as said designation is described in the Protective Order, and shall not use the information so received for any purpose other than the prosecution of the claims in the MDL Litigation, 12-md-02311, and will not attribute any information obtained from an attorney's proffer pursuant to this Agreement to Keihin or its counsel. The parties and their counsel further agree that any statements made by Keihin's counsel in connection with or as part of this settlement, including the proffer(s) referred to in Paragraph 51, shall be governed by Federal Rule of Evidence 408. Notwithstanding anything herein, Settlement Class Counsel may use information contained in such statements in the prosecution of the claims in the MDL Litigation, 12-md-02311, and rely on such information to certify that, to the best of Settlement Class Counsel's knowledge, information, and belief, such information has evidentiary support or will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

55. Direct Purchaser Plaintiff and Settlement Class Counsel agree they will not use the information provided by Keihin or the other Releasees or their representatives under this Agreement for any purpose other than the prosecution of claims in the MDL Litigation, and will use it in the MDL Litigation consistent with the Protective Order and will not use it beyond what is reasonably necessary for the prosecution of claims in the MDL Litigation or as otherwise required by law. All Documents and other Cooperation Materials provided pursuant to this Agreement shall be governed by the terms of the Protective Order in the Action.

56. Keihin's obligations to provide Cooperation shall not be affected by the releases set forth in this Agreement. Unless this Agreement is rescinded, disapproved, or

otherwise fails to take effect, Keihin's obligations to provide Cooperation under this Agreement shall continue in accordance with the provisions of Section J.

57. In the event that this Agreement fails to receive final approval by the Court as contemplated in Paragraph 19, including final approval of the Settlement Class as defined in Paragraph 10, or in the event that it is terminated by either party under any provision herein, the parties agree that neither Direct Purchaser Plaintiff nor Settlement Class Counsel shall be permitted to introduce into evidence against Keihin's, at any hearing or trial, or in support of any motion, opposition, or other filing in the Action or in any other federal or state or foreign action alleging a violation of any law relating to the subject matter of the Action, any information provided by Keihin's counsel as part of its attorney's proffer, any deposition testimony, any Documents, or any other Cooperation Materials provided by Keihin and/or the other Releasees, their counsel, or any individual only made available by Keihin pursuant to Cooperation (as opposed to information obtained in discovery in the Action or from other sources or pursuant to a court order other than a court order enforcing the Cooperation obligations). This limitation shall not apply to any discovery of Keihin in which Settlement Class Counsel participates as part of the MDL Litigation. Notwithstanding anything contained herein, Direct Purchaser Plaintiff and the Settlement Class are not relinquishing any rights to pursue discovery against Keihin in the event that this Agreement fails to receive final approval by the Court as contemplated in Paragraph 19 hereof, including final approval of the Settlement Class as defined in Paragraph 10, or in the event that it is terminated by either party under any provision herein.

58. Keihin need not respond to discovery requests or motions made pursuant to the Federal Rules of Civil Procedure from Direct Purchaser Plaintiff or otherwise participate in

the Action during the pendency of the Agreement. This suspension of discovery and any pending motions shall be without prejudice to reviving such discovery or motions if this Agreement fails to receive final approval by the Court or in the event that it is terminated by either party under any provision herein. Other than to enforce the terms of this Agreement, neither Keihin nor Direct Purchaser Plaintiff shall file motions against the other in the Action during the pendency of the Agreement.

59. If Settlement Class Counsel believes that Keihin has refused to use reasonable efforts to cooperate under the terms of this Agreement, Settlement Class Counsel shall meet and confer with Keihin. Upon reaching an impasse in any meet and confer, Settlement Class Counsel may seek an Order from the Court compelling Keihin to use reasonable best efforts. Nothing in this provision shall limit in any way Keihin's ability to defend the level of cooperation provided or to defend compliance with the terms of the Cooperation provisions in this Agreement.

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

60. 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 10 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 18, 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 Keihin and Direct Purchaser Plaintiff shall each, in their sole discretion, have the option to rescind this Agreement in its entirety. The provisions of Paragraphs 27 and 34 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 72. 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.

61. In the event that this Agreement does not become final as set forth in Paragraph 19, 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 forthwith to Keihin less only disbursements made, or the amount of obligations incurred in accordance with Paragraphs 27 and 34. Keihin expressly reserves all rights and defenses if this Agreement does not become final.

62. Further, and in any event, Direct Purchaser Plaintiff and Keihin 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 of any liability or wrongdoing whatsoever by Keihin, or the other Releasees, and shall not be used against Keihin or the Releasees, or of (ii) the truth of any of the claims or allegations contained in the Complaint or any other pleading filed in the MDL Litigation, and shall not be used against Keihin or the other Releasees, and evidence thereof shall not be discoverable or used in any way, whether in the MDL Litigation or in any other action or proceeding, against Keihin or the Releasees. Nothing in this Paragraph shall prevent Direct Purchaser Plaintiff from using Cooperation Materials produced by Keihin against any other defendants in any action to establish (i) or (ii) above.

63. 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 Keihin as provided in this Agreement in exchange for the payment of the Settlement Amount as well as Cooperation by Keihin.

L. Miscellaneous

64. Keihin, Direct Purchaser Plaintiff, and Settlement Class Counsel agree not to disclose publicly or to any other person the terms of this Agreement until this Agreement is fully executed by all parties and Direct Purchaser Plaintiff has filed the Motion seeking the Court's preliminary approval of this Agreement.

65. Keihin 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.

66. 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. Keihin's 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 27 and 34.

67. 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 Keihin, including challenges to the reasonableness of any party's actions. 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. Keihin will not object to complying with any of the provisions outlined in this Agreement on the basis of jurisdiction.

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

69. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Direct Purchaser Plaintiff and Keihin. 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 Releasees. The Releasees (other than the

Keihin entities, which are parties to this Agreement) are third-party beneficiaries of this Agreement and are authorized to enforce its terms applicable to them.

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

71. Neither Direct Purchaser Plaintiff nor Keihin 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.

72. 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 electronic mail (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.

73. 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.

Date: June 4, 2021



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Steven A. Kanner  
William H. London  
Michael E. Moskovitz  
FREED KANNER LONDON & MILLEN LLC  
2201 Waukegan Road, Suite 130

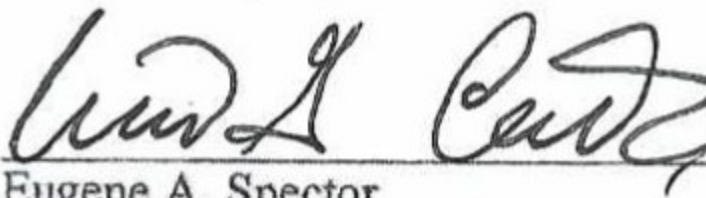
Bannockburn, IL 60015  
Telephone: (224) 632-4500



Joseph C. Kohn  
William E. Hoese  
Douglas A. Abrahams  
KOHN, SWIFT & GRAF, P.C.  
1600 Market Street, Suite 2500  
Philadelphia, PA 19103  
Telephone: (215) 238-1700



Gregory P. Hansel  
Randall B. Weill  
Michael S. Smith  
PRETI, FLAHERTY, BELIVEAU  
& PACHIOS LLP  
One City Center, P.O. Box 9546  
Portland, ME 04112-9546  
Telephone: (207) 791-3000



Eugene A. Spector  
William G. Caldes  
Jeffrey L. Spector  
SPECTOR ROSEMAN & KODROFF, P.C.  
2001 Market Street, Suite 3420  
Philadelphia, PA 19103  
Telephone: (215) 496-0300

*Interim Co-Lead Class Counsel and Settlement  
Class Counsel*



Anita F. Stork  
COVINGTON & BURLING LLP  
Salesforce Tower  
415 Mission Street, Suite 5400  
San Francisco, CA 94105-2533  
Telephone: (415) 591-7050

Ross A. Demain

COVINGTON & BURLING LLP  
One CityCenter  
850 Tenth Street, NW  
Washington, DC 20001-4956  
Telephone: (202) 662-5994

*Counsel for Defendants Hitachi Astemo, Ltd.  
(f/k/a Keihin Corporation) and Hitachi Astemo  
Indiana, Inc. (f/k/a Keihin North America, Inc.)*