

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: RADIATORS

:
: 2:13-cv-01001-MOB-MKM
: 2:17-cv-13147-MOB-MKM
:

THIS DOCUMENT RELATES TO:
ALL DIRECT PURCHASER CASES

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into this 28 day of February __ 2019 (“Execution Date”) by and between Calsonic Kansei Corporation and Calsonic Kansei North America, Inc. (collectively, “Calsonic”), and Direct Purchaser Plaintiff, both individually and on behalf of a class of direct purchasers of Radiators (“Settlement Class”), as more particularly defined in Paragraph 9.

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”), *Radiators Case*, 2:13-cv-01001 (E.D. Mich.), *Irving Levine Automotive Distributors, Inc. v. Calsonic Kansei Corporation, et al.*, 2:17-cv-13147 (E.D. Mich.) (the “Action”) on its own behalf and on behalf of the Settlement Class against, among others, Calsonic;

WHEREAS, Direct Purchaser Plaintiff alleges that it was injured as a result of Calsonic’s participation in an unlawful conspiracy to raise, fix, maintain, and/or stabilize prices, rig bids, and allocate markets and customers for Radiators (as defined below) in violation of Section 1 of the Sherman Act, as set forth in Direct Purchaser Plaintiff’s

Consolidated Amended Class Action Complaint (the "Complaint") (Case No. 2:17-cv-13147, Doc. No. 1);

WHEREAS, Calsonic denies Direct Purchaser Plaintiff's allegations and shall assert 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 Calsonic, 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 Calsonic, according to the terms set forth below, is in the best interest 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 Calsonic has agreed to provide pursuant to this Agreement;

WHEREAS, Calsonic, despite its belief that it is not liable for the claims asserted 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 Calsonic with respect to Radiators based on the allegations made in the Action, as more particularly set out below;

WHEREAS, Calsonic has agreed to provide Cooperation to Direct Purchaser Plaintiff in the ongoing prosecution of the Action against Defendants (as defined below) 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 Calsonic's Cooperation, and recognizes that because of joint and several liability this Agreement with Calsonic 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 Calsonic's 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 and, except as hereinafter provided, without costs as to Direct Purchaser Plaintiff, the Settlement Class, or Calsonic, subject to the approval of the Court, on the following terms and conditions:

A Definitions

1. "Cooperation" refers to those provisions set forth below in Section J.
2. "Cooperation Materials" means any information, testimony, Documents (as defined below) or other material provided by Calsonic under the terms of this Agreement.
3. "Defendant" means, for purposes of this Settlement Agreement only, any or all of the following: Calsonic Kansei Corporation, CalsonicKansei North America, Inc.; T.RAD Co., Ltd., T.RAD North America, Inc.; Mitsuba Corporation, American Mitsuba Corporation; and Denso Corporation, Denso International America, Inc.
4. "Direct Purchaser Plaintiff" means the Settlement Class Member, as defined in Paragraph 9, below, who is the named plaintiff in the Complaint.

5. "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 but not limited to, electronically stored information. A draft or non-identical copy is a separate document within the meaning of this term.

6. "Radiators" for purposes of this Agreement, are devices that help to prevent vehicles from overheating. Radiators are a form of heat exchanger, usually filled with a combination of water and antifreeze, which extracts heat from inside the engine block. The radiator indirectly exposes coolant, heated by traveling through the engine block, to cool air as the vehicle moves. Radiators are replaced when a vehicle consistently overheats. The term 'Radiators' includes, without limitation, radiator fans.

7. "Releasees" shall refer to (i) Calsonic (ii) all of Calsonic'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 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 Calsonic.

8. "Releasers" shall refer to Direct Purchaser Plaintiff and the members of the Settlement Class, as defined in Paragraph 9, below, 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.

9. For purposes of this Agreement, the "Settlement Class" is defined as:

All individuals and entities who purchased Radiators in the United States directly from any of the Defendants (or their

subsidiaries, affiliates, joint ventures, or entities of which they are the ultimate parent) from January 1, 1998 through August 14, 2018 (“Settlement Class Period”). Excluded from the Settlement Class are Defendants, their present and former parent companies, subsidiaries, and affiliates.

10. “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; and Spector Roseman & Kodroff, P.C., Two Commerce Square, 2001 Market Street, Suite 3420, Philadelphia, PA 19103.

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

12. “Settlement Amount” shall be US \$1,980,000 as specified in Paragraph 22.

13. “Settlement Fund” shall refer to the Settlement Amount plus accrued interest on said amount as set forth in Paragraph 24.

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

14. Direct Purchaser Plaintiff and Calsonic 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.

15. 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 “Preliminary Approval Motion”). The Preliminary Approval Motion shall include the proposed form of an order preliminarily approving this Agreement. The text of the proposed order shall be

agreed upon by Direct Purchaser Plaintiff and Calsonic before submission of the Preliminary Approval Motion.

16. 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"). To mitigate the costs of notice, Direct Purchaser Plaintiff shall endeavor, if practicable, to disseminate notice of this settlement with notice of any other settlements reached in the Action at the time the Motion is filed. The Notice Motion shall include a proposed form of, method for, and dates of dissemination of notice. Before submission, Calsonic shall have a reasonable opportunity to review and comment on the Notice Motion and related notice materials, and Direct Purchaser Plaintiff shall reasonably consider Calsonic's comments.

17. Direct Purchaser Plaintiff shall seek the entry of an order and final judgment, the text of which Direct Purchaser Plaintiff and Calsonic 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 9, 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 Agreement 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 Releasors shall, by operation of law, be deemed to have released all Releasees from the Released Claims;

(d) as to Calsonic, 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, implementation, enforcement, consummation, and performance of this settlement, as well as over Calsonic and Direct Purchaser Plaintiff for the duration and limited purpose of interpreting, administering, implementing, enforcing, consummating, and performing under this Agreement, including Calsonic's provision of 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 Calsonic 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 Calsonic, to contest certification of any other class proposed in the MDL Litigation, (ii) the Court's findings in this 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.

18. This Agreement shall become final when (i) the Court has entered in the Action a final order certifying the Settlement Class described in Paragraph 9 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 Calsonic and 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 Calsonic 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 Calsonic 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 Calsonic have executed this Agreement, Direct Purchaser Plaintiff and Calsonic shall be bound by its terms and this Agreement shall not be rescinded except in accordance with Paragraphs 31 and 56.

19. Neither this Agreement (whether or not it becomes final) nor the final judgment, nor any negotiations, mediations, Documents, and discussions associated with them (including Cooperation Materials produced pursuant to Section J, unless this Agreement fails to become final and the corresponding Cooperation Materials are later independently produced through the normal course of discovery in this Action), shall be deemed or construed to be an admission by Calsonic or any other Releasee, or evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by Calsonic 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 any other arbitration, action or proceeding whatsoever, against Calsonic 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, 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 Calsonic 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 proceedings, 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

20. 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 18 of this Agreement and in consideration of payment of the Settlement Amount, as specified in Paragraph 22 of this Agreement, 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, damages, judgments, losses, and rights of action of every nature and description, 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, that Releasors, or any 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 alleged in the Complaint, and/or (ii) any act or omission of the Releasees (or any of them) prior to the Execution Date concerning Radiators, including but not limited to any conduct and causes of action alleged or asserted or that could have been alleged or asserted, in any class action or other complaint filed in the Action (the "Released Claims"), provided however, that nothing herein shall release: (1) any claims based on indirect purchasers of Radiators; (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 Radiators; (3) claims brought outside the United States relating to purchases of Radiators outside the United States; (4) claims brought under laws other than those of the United States relating to purchases of Radiators outside the United States; and (5) claims concerning any product other than Radiators. 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 finally approved or is terminated.

21. In addition to the provisions of Paragraph 20, Releasors hereby expressly waive and release, solely with respect to the Released Claims, upon this Agreement becoming final, as set out in Paragraph 18, any and all provisions, rights, and benefits, as to their claims concerning Radiators 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 20, 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 Calsonic and Direct Purchaser Plaintiff have agreed to release pursuant to Paragraph 20, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

D. Settlement Amount

22. Subject to the provisions hereof, and in full, complete, and final settlement of the Action as provided herein, Calsonic shall pay or cause to be paid the Settlement Amount of US \$1,980,000. 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 following the later of (i) entry of an order preliminarily approving this Agreement or (ii) the date Calsonic is provided with the account number, account name, and wiring transfer information for the Escrow Account. No part of the Settlement Amount paid by Calsonic 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

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

24. 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. Calsonic 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.

25. 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.

26. Subject to the limitation set forth in Paragraph 32, 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 Calsonic 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 Calsonic 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.

27. 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 Calsonic, 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 Settlement Class Counsel 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 Calsonic as a result of any income earned on the funds in the Escrow Account, Calsonic 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. Calsonic will use reasonable efforts to resist any such assessment or payment. Except as set forth in this Paragraph, Calsonic 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 Calsonic nor any Releasee nor their respective counsel shall have any liability or responsibility for the taxes or expenses incurred in connection with taxation matters.

28. If this Agreement does not receive final Court approval, including final approval of the Settlement Class as defined in Paragraph 9, or if the Action is not certified as a class action for settlement purposes, then all amounts paid by Calsonic into the Settlement Fund (other than costs expended or incurred in accordance with Paragraphs 26 and 32), shall be returned to Calsonic 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

29. Subject to Court approval, any person or entity seeking exclusion from the Settlement Class must timely file a written request for exclusion from the Settlement Class by the Opt-Out Deadline, which shall be the date set by the Court by which any Settlement 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 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 approval. Settlement Class Counsel shall, within ten (10) business days of the Opt-Out Deadline, provide Calsonic with a list and copies of all opt-out requests it receives in the Action.

30. Subject to Court approval, any Settlement Class member who submits a valid and timely request for exclusion from the Settlement Class will not be a Settlement Class Member and shall not be bound by the terms of this Agreement. Calsonic reserves all of its legal rights and defenses, including, but not limited to, any defenses relating to whether any excluded member of the Settlement Class is a direct purchaser of any Radiators or has standing to bring any claim against Calsonic.

31. This Agreement is subject to rescission based on valid and timely requests for exclusion in accordance with the terms set forth in a separate, confidential letter agreement between Calsonic and the Settlement Class. The confidential letter agreement shall be provided to the Court for *in camera* review upon its request.

G. Payment of Expenses

32. Calsonic agrees to permit use of a maximum of US \$150,000 (which limitation is effective up until the date of final approval of this settlement) of the Settlement Fund towards the cost of providing 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 Calsonic 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 26, Calsonic 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, mediation, appeals, trials or the negotiation of other settlements, or for class administration, notice, and/or costs.

33. 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.

34. Within ten (10) days after the Execution Date, Calsonic will supply to Settlement Class Counsel, in an electronic mailing format, the names and addresses of putative Settlement Class Members to whom it has sold Radiators during the Settlement Class Period to the extent they are identifiable through reasonable efforts, and to the extent not previously provided to Settlement Class Counsel. Pursuant to the Order Granting Direct Purchaser Plaintiffs' Motion to Direct Defendants to Identify Settlement Class Members for Mailing Notice of Future Settlements, 2:17-cv-13147-MOB-MKM (Doc. No. 16) (August 20, 2018), Calsonic grants

permission to Settlement Class Counsel to e-mail non-settling Defendants, notifying them of the existence of a settlement and requesting non-settling Defendants provide, to the extent not previously provided to Settlement Class Counsel, the names and addresses of all persons or entities who directly purchased Radiators in the United States from any non-settling Defendant(s) or their affiliate(s) during the Settlement Class period.

H. The Settlement Fund

35. 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 Calsonic or any other Releasee as to the Released Claims.

36. After this Agreement becomes final within the meaning of Paragraph 18, 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 26 and 32.

37. 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 26 and 32. Calsonic and the other Releasees shall not be liable for any costs, fees, or expenses of the Direct Purchaser Plaintiff's 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 26 and 32, shall be paid out of the Settlement Fund.

I. Settlement Class Counsel's Attorneys' Fees, Reimbursement of Expenses, and Incentive Awards for Class Representatives

38. 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. Incentive awards 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 and/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 Agreement is rescinded or otherwise fails to become effective.

39. 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 incentive awards for class representatives 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 final approval of this settlement.

40. Neither Calsonic 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.

41. Neither Calsonic 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, Direct Purchaser Plaintiff, 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

42. In return for the release and discharge provided herein, Calsonic agrees to pay the Settlement Amount, and further agrees to use its reasonable best efforts to provide satisfactory and timely Cooperation, as set forth specifically in this Section J. Cooperation will take place consistent with the timing set forth specifically below, and in a manner that is in compliance with Calsonic's obligations to Government Entities (defined as the United States Department of Justice ("DOJ"), the Japanese Fair Trade Commission ("JFTC"), the European Commission, or any other government entity). Cooperation shall be limited to Radiators and shall not include information relating to any other products.

43. Identity of Individuals. Within five (5) business days of this Execution Date of this Agreement, counsel for Calsonic shall provide Settlement Class Counsel with the identity of all current and former employees, directors and officers of Calsonic who: (1) were interviewed and/or prosecuted by any Government Entity in connection with alleged price-fixing, bid rigging and market allocation of Radiators; (2) appeared before the grand jury in the DOJ's investigation into alleged antitrust violations with respect to Radiators; and/or (3) were disclosed to the DOJ as having knowledge or information relating to the DOJ's investigation into alleged antitrust violations with respect to Radiators.

44. DOJ Documents. To the extent not already produced, Calsonic shall use its reasonable best efforts to complete the production of non-privileged Documents, including any translations, provided to or seized by the DOJ in connection with its investigation into potential violations of competition laws with respect to Radiators within thirty (30) days after preliminary approval by the Court of this Agreement.

45. In the event that Calsonic produces Documents, including translations, or provides declarations or written responses to discovery to any party or nonparty in the Actions in the MDL Litigation, concerning or relating to Radiators (“Relevant Production”), Calsonic shall produce all such Documents, declarations or written discovery responses to Direct Purchaser Plaintiff contemporaneously with making the Relevant Production to the extent such Documents, declarations or written discovery responses have not previously been produced by Calsonic to Direct Purchaser Plaintiff. In addition, Calsonic shall provide Direct Purchaser Plaintiff with all cooperation it provides pursuant to any settlement agreement with any other party in the MDL Litigation, including but not limited to, the End-Payor Plaintiffs and the Automobile Dealer Plaintiffs. To the extent that such cooperation includes any attorney proffer, witness interviews, or deposition of witnesses in addition to those already provided for in Paragraph 50, 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, settlement class counsel for the End-Payor Plaintiffs (“End-Payor Settlement Class Counsel”), and settlement class counsel for the Automobile Dealer Plaintiffs (“Automobile Dealer Settlement Class Counsel”), or such other

party to whom such cooperation is provided pursuant to a settlement agreement. Direct Purchaser Plaintiff's receipt of, or participation in, cooperation provided by Calsonic shall not in any way limit Direct Purchaser Plaintiff's entitlement to receive Cooperation as set forth in this Section J, including, but not limited to, attorney proffers, witness interviews, and depositions.

46. This Agreement does not restrict Settlement Class Counsel from cross-noticing, attending and/or participating in any deposition in the MDL Litigation. Settlement Class Counsel may cross-notice, attend, and/or participate in any depositions of Calsonic's witnesses in addition to the depositions set forth in Paragraph 50, and Settlement Class Counsel together with End-Payor Settlement Class Counsel and Automobile Dealer 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, End-Payor Settlement Class Counsel, and Automobile Dealer 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 Calsonic 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 Paragraph 50 below. Direct Purchaser Plaintiff and Settlement Class Counsel agree to use their best efforts to ensure that any depositions taken under Paragraph 50 are coordinated with any other deposition noticed in the MDL Litigation to avoid unnecessary duplication.

47. Further Cooperation. Calsonic shall provide the following additional cooperation set forth in Paragraphs 48-50 below. However, if Direct Purchaser Plaintiff enters into settlement agreements with all Defendants in the Radiators Action prior to the completion of the additional cooperation as set forth in Paragraphs 48-50 below, or if otherwise notified by Direct Purchaser

Plaintiff that certain cooperation is no longer required, Calsonic will not be obligated to complete said additional cooperation.

48. Transactional Data. Calsonic will use its reasonable best efforts to complete the production of transactional data, no later than thirty (30) days after preliminary approval by the Court of this Agreement, concerning Calsonic's sales of Radiators sold to Original Equipment Manufacturers, or other purchasers of Radiators from January 1, 1996 through the Execution Date. In addition, Calsonic will provide, in response to a written request from Settlement Class Counsel, a single production of electronic transactional data generated during the two (2) years after the Execution Date of this Agreement concerning Radiators, as it exists in Calsonic's electronic databases at the time of the request, within sixty (60) days of the receipt of such request. Calsonic shall preserve such transactional data until two (2) years after the Execution Date of this Agreement. Calsonic will produce transaction data only from existing electronic transaction databases, except that, to the extent that Calsonic has not recorded or maintained electronic transaction data for any period between January 1, 1996 and two (2) years from the Execution Date of this Agreement, then Calsonic will use reasonable efforts to produce existing hard copy records of sales transactions not recorded or maintained electronically in the existing electronic sales transaction database. Calsonic shall also provide reasonable assistance to Settlement Class Counsel in understanding the transactional data produced, including, if appropriate, a reasonable number of communications with Direct Purchaser Plaintiff's experts and between technical personnel.

49. Documents. To the extent not already produced, Calsonic will use its reasonable best efforts to complete the production of the following Documents, including English translations, to the extent they exist: (1) Documents provided to or seized by DOJ and JFTC

relating to their investigation into alleged competition violations with respect to Radiators; (2) non-privileged Documents concerning Radiators collected and reviewed in connection with a communication, meeting, or agreement regarding Radiators, by any employee, officer, or director of Calsonic with any employee, officer, or director of another manufacturer or seller of Radiators, which were not provided to or seized by the DOJ or JFTC; (3) Documents concerning Calsonic's determination of its prices for Radiators; and (4) Documents soliciting requests for quotation ("RFQ"), bids submitted in response to RFQs, RFQ award notifications, and post-award price adjustments for Radiators, including any Annual Price Reduction ("APR") Documents. The parties will meet and confer regarding the timing of production. As to Documents in Calsonic's possession, custody or control that are not listed above, including Documents provided to or seized by Government Entities in addition to the DOJ and JFTC, Calsonic will consider in good faith any reasonable request by Direct Purchaser Plaintiff to collect and produce such Documents provided the request would not impose an undue burden on Calsonic.

50. Attorney Proffers, Witness Interviews and Depositions. Additionally, Calsonic shall use its reasonable best efforts to cooperate with Settlement Class Counsel as set forth below.

(a) Calsonic's counsel will make themselves available at a mutually agreed location in the United States for up to two (2) meetings of one (1) business day within thirty (30) business days of the Execution Date to provide an attorneys' proffer of facts known to them. Calsonic further agrees to make three (3) persons available for interviews and depositions, provide three (3) declarations or affidavits from the same persons, and make those persons available to testify at trial. The interviews and depositions shall be conducted at a mutually agreed-upon location in

the United States, and each deposition shall be limited to a total of seven (7) hours over one (1) day unless the deposition is in a language other than English, in which case the deposition shall be limited to a total of thirteen (13) hours over two (2) days. If any such interview or deposition takes place outside of the witness's country of residence, Settlement Class Counsel shall reimburse Calsonic for such person's economy class fare and up to \$450 per day for lodging and expenses actually incurred. To the extent that Settlement Class Counsel coordinates any such interview or deposition with End-Payor Settlement Class Counsel or Automobile Dealer Settlement Class Counsel, Settlement Class Counsel, End-Payor Settlement Class Counsel, and Automobile Dealer Settlement Class Counsel shall collectively reimburse Calsonic for such person's economy class fare and up to \$450 per day for lodging and expenses actually incurred. In no event shall Direct Purchaser Plaintiff be responsible for reimbursing such persons for time or services rendered. Settlement Class Counsel will use their reasonable best efforts to coordinate any such interview or deposition with End-Payor Settlement Class Counsel and Automobile Dealer Settlement Class Counsel.

(b) In addition to its Cooperation obligations set forth herein, Calsonic agrees to produce through affidavit(s), declaration(s), and/or at trial, 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 Documents or transactional data produced or to be produced by Calsonic. Settlement Class Counsel agree to use their best efforts to obtain stipulations that would avoid the need to call Calsonic witnesses at trial for the purpose of obtaining such evidentiary foundations.

51. Calsonic's obligations to provide Cooperation shall not be affected by the releases set forth in this Settlement Agreement. Unless this Agreement is rescinded, disapproved, or otherwise fails to take effect, Calsonic's obligations to provide Cooperation under this Agreement

shall continue only until otherwise ordered by the Court, or the date that final judgments have been entered in the Action as to all Defendants and such judgments have become “final” as described in Paragraph 18.

52. In the event that this Agreement fails to receive final approval by the Court, including final approval of the Settlement Class, or in the event that it is terminated or rescinded by either party under any provision herein, or otherwise fails to take effect, the parties agree that neither Direct Purchaser Plaintiff nor Settlement Class Counsel shall be permitted to introduce into evidence against Calsonic, at any hearing or trial, or in support of any motion, opposition or other pleading 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 Documents provided by Calsonic and/or the other Releasees, their counsel, or any individual made available by Calsonic pursuant to Cooperation (as opposed to from any other source or pursuant to a court order). This limitation shall not apply to any discovery of Calsonic which Settlement Class Counsel may participate in 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 Calsonic in the event that this Agreement fails to receive final approval by the Court, including final approval of the Settlement Class, or in the event that it is terminated by either party under any provision herein.

53. Direct Purchaser Plaintiff further agrees that, within sixty (60) days of (i) this Agreement either being rescinded, disapproved, terminated, or otherwise failing to take effect, or (ii) final judgment has been entered by the Court against all Defendants in the Action and such final judgments have become “final” as described in Paragraph 18, unless otherwise agreed by Calsonic, Direct Purchaser Plaintiff must return or destroy all Cooperation Materials received from Calsonic.

54. Calsonic and other Releasees need not respond to formal discovery requests from Direct Purchaser Plaintiff or otherwise participate in the Action during the pendency of this Agreement, with the exception of the Cooperation provisions set forth above in Paragraphs 42-50. Other than to enforce the terms of this Agreement, neither Calsonic nor Direct Purchaser Plaintiff shall file motions against the other, in the Action, during the pendency of this Agreement.

55. If Settlement Class Counsel believes that Calsonic or any current or former employee, officer, or director of Calsonic has failed to cooperate under the terms of this Agreement, Settlement Class Counsel shall meet and confer with Calsonic over a ten (10) day period. If at the conclusion of the ten (10) day period, the parties remain at an impasse, Settlement Class Counsel may seek an order from the Court compelling such Cooperation. Nothing in this provision shall limit in any way Calsonic's ability to defend the level of Cooperation it has provided or to defend its compliance with the terms of the Cooperation provisions in this Agreement. Moreover, nothing in this Agreement shall be interpreted to state or imply that Calsonic has any control over any former employees, officers or directors.

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

56. 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 definitions set forth in 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 17 of this Agreement, 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 Calsonic and Direct Purchaser Plaintiff shall each, in their sole discretion, have the option to rescind this Agreement in its entirety following a meet and confer. The parties shall have a ten (10) day period over which to meet and confer. If at the conclusion of the ten (10) day period the parties remain at an impasse, Calsonic and/or Direct Purchaser Plaintiff may provide written notice of the exercise of their right to rescind. Written

notice of the exercise of any such right to rescind shall be made according to the terms of Paragraph 68. 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 part of the terms of this Agreement or such final judgment.

57. In the event that this Agreement does not become final as set forth in Paragraph 18, 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 Calsonic less only disbursements made, or the amount of obligations incurred in accordance with Paragraphs 26 and 32. Calsonic expressly reserves all rights and defenses if this Agreement does not become final.

58. Further, and in any event, Direct Purchaser Plaintiff and Calsonic agree that this Agreement, whether or not it shall become final, and any and all negotiations, mediations, 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 Calsonic, or the other Releasees, to be used against Calsonic, 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, to be used against Calsonic, 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 Calsonic. Nothing in this Paragraph shall prevent Direct Purchaser Plaintiff from using Cooperation Materials produced by Calsonic against any other defendants in any Actions in the MDL to establish (i) or (ii) above.

59. 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 each Releasee as provided in this Agreement.

60. The parties to this Agreement contemplate and agree that, prior to final approval of the Agreement as provided for in Paragraphs 14-18 hereof, appropriate notice (i) of the settlement, and (ii) of a hearing at which the Court will consider the approval of this Agreement, will be given to the Settlement Class.

L. Miscellaneous.

61. Calsonic 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.

62. 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 Calsonic. 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 Calsonic and the other Releasees, for sales made by Calsonic and Calsonic's alleged illegal conduct are specifically reserved by Direct Purchaser Plaintiff and Settlement Class Members. Calsonic's sales to the Settlement Class and its 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. Calsonic shall not be responsible for any payment to Direct Purchaser Plaintiff other than the Settlement Amount specifically agreed to in Paragraph 22.

63. The United States District Court for the Eastern District of Michigan shall retain exclusive jurisdiction over the implementation, administration, interpretation, enforcement,

consummation, 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 Calsonic, 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. Calsonic will not object to complying with any of the provisions outlined in this Agreement on the basis of jurisdiction.

64. This Agreement, and the confidential letter agreement between Calsonic and the Settlement Class, as described in Paragraph 31, constitutes the entire, complete and integrated agreement among Direct Purchaser Plaintiff and Calsonic pertaining to the settlement of the Action against Calsonic, and supersedes all prior and contemporaneous undertakings, communications, representations, understandings, negotiations and discussions, either oral or written, between Direct Purchaser Plaintiff and Calsonic in connection herewith. This Agreement may not be modified or amended except in writing executed by Direct Purchaser Plaintiff and Calsonic, and approved by the Court.

65. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Direct Purchaser Plaintiff and Calsonic. Without limiting the generality of the foregoing, upon final approval of this Agreement by the Court 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 Releasers. The Releasees (other than Calsonic entities which are parties hereto) are third-party beneficiaries of this Agreement and are authorized to enforce its terms applicable to them.

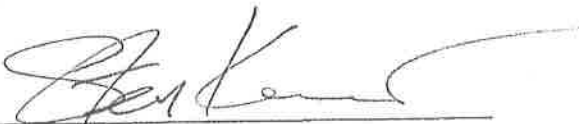
66. This Agreement may be executed in counterparts by Direct Purchaser Plaintiff and Calsonic, and a facsimile signature shall be deemed an original signature for purposes of executing this Agreement.

67. Neither Direct Purchaser Plaintiff nor Calsonic 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.

68. 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.

69. 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: February 28, 2019



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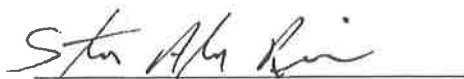
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Date: February 28, 2019



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