

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

IN RE: AUTOMOTIVE PARTS ANTITRUST LITIGATION	Master File No. 12-md-02311
IN RE: SHOCK ABSORBERS	Hon. Sean F. Cox
THIS RELATES TO: ALL DIRECT PURCHASER ACTIONS	2:15-cv-03301-SFC-RSW 2:16-cv-13616-SFC-RSW

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into as of November 16,, 2022 (“Execution Date”) by and between Defendant Hitachi Astemo, Ltd. (f/k/a Hitachi Automotive Systems, Ltd.), successor to Defendant Showa Corporation (“Settling Defendant”), and Direct Purchaser Plaintiffs (as defined in Paragraph 5), both individually and on behalf of a class of direct purchasers of Shock Absorbers (the “Settlement Class”), as more particularly defined in Paragraph 10 below.

WHEREAS, Direct Purchaser Plaintiffs are prosecuting the above *In re Automotive Parts Antitrust Litigation*, Master File No. 12-md-02311 (E.D. Mich.) (the “MDL Litigation”) and the *Shock Absorbers—Direct Action*, 2:15-cv-03301 (E.D. Mich.) and *V.I.P., Inc. and Performance Internet Parts, LLC v. Kayaba Industry Co. Ltd, d/b/a KYB Corporation, et al.*, 2:16-cv-13616 (E.D. Mich.) (the “Action”) on their own behalf and on behalf of the Settlement Class.

WHEREAS, the Complaint in this Action, filed in October 2016, named as Defendants Kayaba Industry Co., Ltd. d/b/a KYB Corporation; KYB Americas Corporation; Showa Corporation; American Showa, Inc.; Hitachi, Ltd.; Hitachi Automotive Systems, Ltd.; and Hitachi Automotive Systems Americas, Inc. On January 1, 2021, Hitachi Automotive Systems,

Ltd. merged with Keihin Corporation, Showa Corporation, and Nissin Kogyo Co., Ltd. and renamed its trade name to Hitachi Astemo, Ltd. Honda Motor Company, Ltd. owns 33.4% of Hitachi Astemo, Ltd. The other 66.6% is owned by Hitachi, Ltd. Thus, Defendants Hitachi Automotive Systems, Ltd. and Showa Corporation are now both part of Hitachi Astemo, Ltd. Also in connection with that transaction, Defendant American Showa, Inc. became Hitachi Astemo Ohio Manufacturing, Inc., and Defendant Hitachi Automotive Systems Americas, Inc. became Hitachi Astemo Americas, Inc. Effective July 1, 2022, Hitachi Astemo Ohio Manufacturing, Inc. (formerly American Showa, Inc.) was merged into Hitachi Astemo Americas, Inc. As outlined in Paragraph 1 below, Hitachi Astemo, Ltd. (f/k/a Hitachi Automotive Systems, Ltd.), successor to Showa Corporation; Hitachi, Ltd.; and Hitachi Astemo Americas, Inc. (f/k/a Hitachi Automotive Systems Americas, Inc. and successor to American Showa, Inc.) are referred to herein as the “Astemo Defendants.”¹

WHEREAS, Direct Purchaser Plaintiffs allege that they were injured as a result of Astemo Defendants’ participation in an alleged unlawful conspiracy to raise, fix, maintain, and/or stabilize prices, rig bids, and allocate markets and customers for Shock Absorbers (as defined in Paragraph 15 of this Agreement) in violation of Section 1 of the Sherman Act as set forth in Direct Purchaser Plaintiffs’ Class Action Complaint (“Complaint”) (Case No. 2:16-cv-13616, ECF No. 1);

WHEREAS, Astemo Defendants deny Direct Purchaser Plaintiffs’ allegations and have asserted defenses to Direct Purchaser Plaintiffs’ claims in the Action;

¹ For the avoidance of doubt, “Astemo Defendants” includes all of the Hitachi and Showa entities named as Defendants in the Direct Purchaser Plaintiffs’ October 2016 Complaint in this Action.

WHEREAS, arm's-length settlement negotiations have taken place between Settlement Class Counsel (as defined in Paragraph 11) and counsel for Settling Defendant and this Agreement has been reached as a result of those negotiations;

WHEREAS, Direct Purchaser Plaintiffs, through Settlement Class Counsel, have investigated the facts and the law regarding the Action and have concluded that resolving the claims against Astemo Defendants, according to the terms set forth below, is in the best interests of Direct Purchaser Plaintiffs 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 Settling Defendant has agreed to provide pursuant to this Agreement;

WHEREAS, Settling Defendant, despite the belief that it and the Astemo Defendants are not liable for the claims asserted and the belief that they have 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 releases, orders, and judgment contemplated by this Agreement, and to put to rest with finality all claims that have been or could have been asserted against Astemo Defendants with respect to Shock Absorbers based on the allegations in the Action, as more particularly set out below;

WHEREAS, Settling Defendant has agreed, to the extent required and requested, to provide Cooperation (as defined below in Paragraphs 2 and 3, and in Section I) to Direct Purchaser Plaintiffs in the ongoing prosecution of the Action against Defendants that are not Releasees (as defined below in Paragraph 8), as set forth in this Agreement, and such Cooperation will reduce Direct Purchaser Plaintiffs' substantial burden and expense associated with prosecuting the Action; and

WHEREAS, Direct Purchaser Plaintiffs recognize Settling Defendant's Cooperation, and recognize that because of joint-and-several liability, this Agreement with Settling Defendant does not impair Direct Purchaser Plaintiffs' ability to collect the full amount of damages to which they and the Settlement Class may be entitled in the Action, including any damages attributable to Astemo Defendants' 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 Plaintiffs, the Settlement Class, or Settling Defendant, subject to the approval of the Court, on the following terms and conditions:

A. Definitions

1. "Astemo Defendants" refers to Hitachi Astemo, Ltd. (f/k/a Hitachi Automotive Systems, Ltd.), successor to Showa Corporation; Hitachi, Ltd.; and Hitachi Astemo Americas, Inc. (f/k/a Hitachi Automotive Systems Americas, Inc. and successor to American Showa, Inc.).
2. "Cooperation" refers to those provisions set forth below in Section I.
3. "Cooperation Materials" means any information, testimony, Documents (as defined in Paragraph 6) or other material provided by Settling Defendant under the terms of this Agreement.
4. "Defendant" means, for purposes of this Agreement only, any or all of the following: Astemo Defendants (as defined in Paragraph 1); KYB Corporation (f/k/a Kayaba Industry Co., Ltd.); and KYB Americas Corporation ("KYB Defendants").
5. "Direct Purchaser Plaintiffs" means the Settlement Class Members, as defined in Paragraph 12, who are the named plaintiffs in the Complaint.

6. “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 the custody, possession, or control of Settling Defendant and Hitachi Astemo Americas, Inc. (f/k/a Hitachi Automotive Systems Americas, Inc. and successor to American Showa, Inc.), other than materials protected by the attorney client privilege and attorney work product doctrine.

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

8. “Releasees” shall refer to each of (i) Astemo Defendants; (ii) all of Astemo’s past and present direct and indirect, parents, subsidiaries 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, stockholders, members, representatives, insurers, attorneys, heirs, executors, administrators, and assigns of each of the persons and entities listed in (i)-(ii). “Releasees” does not include any Defendant in the MDL Litigation other than the entities set forth in this Paragraph 8.

9. “Releasers” shall refer to Direct Purchaser Plaintiffs and the Settlement Class Members (as defined in Paragraph 12 below) as well as each of their respective predecessors, successors, and past and present parents, owners, subsidiaries, affiliates, divisions, joint ventures, assigns, officers, directors, employees, principals, partners, members, heirs, representatives, insurers, and agents, and all persons who may assert Released Claims in a derivative capacity. For

the avoidance of doubt, Releasors shall not include states and state instrumentalities for their direct purchases of Shock Absorbers.

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

All individuals and entities who purchased Shock Absorbers in the United States directly from Defendants (or their controlled subsidiaries, affiliates, or joint ventures) from January 1, 1995 through September 18, 2021 (the “Settlement Class Period”). 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; Spector Roseman & Kodroff, P.C., Two Commerce Square, 2001 Market Street, Suite 3420, Philadelphia, PA 19103; and Cera LLP, 595 Market Street, Suite 1350, San Francisco, CA 94105.

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 \$2,500,000 as specified in Paragraph 24.

14. “Settlement Fund” shall refer to the Settlement Amount plus accrued interest on said amount as set forth in Paragraph 26.

15. “Shock Absorbers” are part of the suspension system on automobiles, including passenger vehicles, pickup trucks, light trucks, crossovers, minivans, vans, sport utility vehicles, and motorcycles. They absorb and dissipate energy to help cushion vehicles on uneven roads

leading to improved ride quality and vehicle handling. They are also called dampers, and on motorcycles are referred to as front forks and rear cushions.

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

16. Direct Purchaser Plaintiffs and Settling Defendant shall use their reasonable 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.

17. Direct Purchaser Plaintiffs shall promptly 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. Before submission, Settling Defendant shall have a reasonable opportunity to review and comment on the Preliminary Approval Motion and proposed order, and Direct Purchaser Plaintiffs shall reasonably consider Settling Defendant's comments.

18. Direct Purchaser Plaintiffs, at a time to be decided in their 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 all Settlement Class Members identified by Defendants (the "Notice Motion"). The Notice Motion shall include a proposed form of, method for, and proposed dates of dissemination of notice. Before submission, Settling Defendant shall have a reasonable opportunity to review and comment on the Notice Motion, and Direct Purchaser Plaintiffs shall reasonably consider Settling Defendant's comments.

19. Direct Purchaser Plaintiffs shall seek entry of an order and final judgment, the text of which Direct Purchaser Plaintiffs and Settling Defendant 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 Releasors shall, by operation of law, be deemed to have released all Releasees from all claims in the Action;

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

(e) entering an order barring the Settlement Class Members and Releasors from asserting any Released Claims against any Releasees as a claim, counterclaim or defense in any action, administrative proceeding or arbitration;

(f) reserving exclusive jurisdiction over the settlement and this Agreement, including the interpretation, administration and consummation of this settlement, as well as over Settling Defendant for the provision of Cooperation pursuant to this Agreement, to the United States District Court for the Eastern District of Michigan;

(g) 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 Astemo Defendants shall be final; and

(h) providing that (i) the Court's certification of the Settlement Class is without prejudice to, or waiver of, the rights of any defendant, including Astemo Defendants, 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.

20. 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 Astemo Defendants without costs other than those provided for in this Agreement, and (ii) the time for appeal or to seek permission to appeal from the Court's approval of this Agreement and entry of a final judgment as to Astemo Defendants described in (i) hereof has expired in the Action or, if appealed, approval of this Agreement and the final judgment in the Action as to Astemo Defendants has been affirmed in its entirety by the court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review. It is agreed that the provisions of Rule 60 of the Federal Rules of Civil Procedure shall not be considered in determining the above-stated times. On the date that Direct Purchaser Plaintiffs and Settling Defendant have executed this Agreement, Direct Purchaser Plaintiffs and Settling Defendant shall be bound by its terms and this Agreement shall not be rescinded except in accordance with Paragraph 57 of this Agreement.

21. Neither this Agreement (whether or not it becomes final) nor the final judgment, nor any negotiations, Documents, or discussions associated with them, (including Cooperation

Materials produced pursuant to Section I, 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), nor any action taken by Settling Defendant to carry out this Agreement, shall be deemed or construed to be an admission by Settling Defendant or the other Releasees, or evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by Settling Defendant or the other Releasees, or referred to, offered into evidence, or used as evidence 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 in any way, whether in the MDL Litigation, or any other arbitration, action or proceeding whatsoever, against Settling Defendant or the other Releasees. Nothing in this Paragraph shall prevent Direct Purchaser Plaintiffs from using and/or introducing into evidence Cooperation Materials produced pursuant to Section I, 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.

B. Release, Discharge, and Covenant Not to Sue.

22. 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 20, and in consideration of payment of the Settlement Amount, as specified in Paragraph 24, 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, derivative (consistent with the scope set forth in Paragraph 9), 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, or in any other capacity) under any federal, state, local, statutory, or common law of any jurisdiction in

the United States, that Releasors, or each of them, ever had, now has, or hereafter can, shall, or may ever have, that now exist or may exist in the future, on account of, or in any way arising out of, any and all known 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 any conduct of the Releasees prior to the Execution Date alleged in the Complaint concerning price fixing, bid rigging, or market, customer, or supply allocation of Shock Absorbers, 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) claims based on indirect purchases of Shock Absorbers; (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 Shock Absorbers; (3) claims brought outside the United States relating to purchases of Shock Absorbers outside the United States; (4) claims brought under laws other than those of the United States relating to purchases of Shock Absorbers outside the United States; and (5) claims concerning any product other than Shock Absorbers. 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.

23. In addition to the provisions of Paragraph 22 of this Agreement, Releasors hereby expressly waive and release, solely with respect to the Released Claims, upon this Agreement becoming final, as set out in Paragraph 20, any and all provisions, rights, and benefits, as to their

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

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code. Each Releasor may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims which are released pursuant to the provisions of Paragraph 22, 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 Settling Defendant and Direct Purchaser Plaintiffs have agreed to release pursuant to Paragraph 22, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

C. Settlement Amount.

24. Subject to the provisions hereof, and in full, complete, and final settlement of the Action as provided herein, Settling Defendant shall pay or cause to be paid the Settlement Amount of US \$2,500,000 (two million, five hundred thousand U.S. dollars). The Settlement Amount shall be paid into an escrow account in United States Dollars to be administered in accordance with the provisions of Section D (the "Escrow Account") within thirty (30) days following the latest of (i) entry of an order preliminarily approving this Agreement or (ii) the date Settling Defendant is

provided with the account number, account name, and wiring transfer information for the Escrow Account. No part of the Settlement Amount paid by Settling Defendant shall constitute, nor shall it be construed or treated as constituting, a payment for treble damages, fines, penalties, forfeitures, or punitive recoveries.

D. Escrow Account

25. An Escrow Account shall be maintained at The Huntington National Bank. The Escrow Account shall be administered under the Court's continuing supervision and control.

26. 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. Settling Defendant 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.

27. 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.

28. Subject to the limitation set forth in Paragraph 33, 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 Settling Defendant 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 Settling Defendant 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.

29. 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 Settling Defendant, 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, irrespective of whether final approval has occurred. In the event federal or state income tax liability is finally assessed against and paid by Settling Defendant as a result of any income earned on the funds in the Escrow Account, Settling Defendant 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. Settling Defendant will use reasonable efforts to resist any such assessment or payment. Except as set forth in this Paragraph, Settling Defendant 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 Settling Defendant nor any Releasee nor their respective counsel shall have any liability or responsibility for the taxes or expenses incurred in connection with taxation matters.

30. If this Agreement does not receive final Court approval, including final approval of the Settlement Class as defined in Paragraph 20, or if the Action is not certified as a class action for settlement purposes, or if the Agreement is rescinded, terminated or otherwise fails to become effective or final, then all amounts paid by Settling Defendant into the Settlement Fund (other than costs expended or incurred in accordance with Paragraphs 28 and 33), shall be returned to Settling Defendant 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.

E. Exclusions

31. 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. Any person or entity that files a valid request for exclusion shall be excluded from the Settlement Class and shall have no rights with respect to the Settlement or Settlement Class. 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 a Settlement Class Member(s) and shall be bound by the Settlement Agreement upon final approval. Within ten (10) days after the Opt-Out Deadline, Settlement Class Counsel will provide to counsel for Settling Defendant copies of all timely requests for exclusion from the Settlement Class. With respect to any potential Settlement Class Member who requests exclusion from the Settlement Class, Settling Defendant and the other Releasees reserve all of their legal rights and defenses, including, but not limited to, any defenses relating to whether the excluded Settlement Class Member is a direct purchaser of any allegedly price-fixed Shock Absorbers or has standing to bring any claim.

32. Settling Defendant or Settlement Class Counsel may dispute an exclusion request, and the parties shall, if possible, resolve the disputed exclusion request by agreement or, if

necessary, shall inform the Court of their respective positions, and promptly seek to obtain a ruling thereon.

F. Payment of Expenses

33. Settling Defendant agrees to permit use of a maximum of US \$125,000 (which limitation is effective up until the date of final approval of this settlement) of the Settlement Fund towards notice to the Settlement Class and the costs of administration of the Settlement Fund. These notice and administration expenses, up to a maximum of US \$125,000, are not recoverable by Settling Defendant 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 33, and in Paragraph 28, Settling Defendant 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.

34. To mitigate the costs of notice and administration, Direct Purchaser Plaintiffs shall use their 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.

35. Within forty-five (45) days after the Execution Date, Settling Defendant will supply to Settlement Class Counsel, in an electronic format, the names and addresses of putative Settlement Class Members to whom they or their subsidiaries, affiliates, or joint ventures directly sold Shock Absorbers in the United States 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.

G. 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 Settling Defendant or any other Releasee as to the Released Claims.

37. After this Agreement becomes final within the meaning of Paragraph 20, 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 28 and 33 of this Agreement.

38. Direct Purchaser Plaintiffs 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 28 and 33. Settling Defendant and the other Releasees shall not be liable for any costs, fees, or expenses of the Direct Purchaser Plaintiffs 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 28 and 33, shall be paid out of the Settlement Fund.

H. Settlement Class Counsel's Attorneys' Fees, Reimbursement of Expenses, and Service Awards for the Direct Purchaser Plaintiffs

39. Subject to Court approval, Direct Purchaser Plaintiffs 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. Any service awards to the Direct Purchaser Plaintiffs, 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 service awards for the Direct Purchaser Plaintiffs 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 service awards, or any appeal from any such order, shall not operate to terminate or cancel this Agreement or to prevent the Agreement from becoming final as provided in Paragraph 20 or affect or delay the finality of the judgment approving the settlement.

41. Neither Settling Defendant 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 Plaintiffs of any fee and expense award, or service award in the Action.

42. Neither Settling Defendant 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.

I. Cooperation

43. In return for the release and discharge provided herein, Settling Defendant agrees to pay the Settlement Amount, and further agrees to use reasonable best efforts to provide satisfactory and timely Cooperation, at its expense, as set forth specifically in this Section I, until the later of the entry of the final judgment or judgments with respect to all the remaining Defendants in the Action or dismissal with prejudice of those Defendants and when such judgments or dismissals become “final” as described in Paragraph 20. The Cooperation by Settling Defendant shall only be required if the settlement with the KYB Defendants does not become final as described in Paragraph 20. If the Court enters an order granting final approval of the settlement with the KYB Defendants, and the KYB Defendants’ settlement becomes final, the Settling Defendant shall not be required to provide Cooperation. Cooperation will take place consistent with the timing set forth specifically below, and in a manner that is in compliance with Settling Defendant’s obligations, if any, to the United States Department of Justice (“DOJ”), the Japanese Fair Trade Commission, the European Commission, or any other government entity (collectively, “Government Entities”). All Cooperation shall be coordinated so as to avoid all unnecessary duplication and expense, shall otherwise be reasonable, and shall not impose undue burden and expense on Settling Defendant to the extent practicable. All Cooperation shall be provided only after all Conditions for Additional Cooperation, as set forth in Paragraph 44 below, have been met.

44. Settlement Class Counsel agree to request the additional cooperation set forth in Paragraphs 45 through 48 below (“Additional Cooperation”) only if (1) the settlement with KYB does not become final as described in Paragraph 20 and (2) this Settlement does become final as described in Paragraph 20 (the “Conditions for Additional Cooperation”). Settlement Class

Counsel shall notify Settling Defendant within seven (7) days if they believe the Conditions for Additional Cooperation have been met.

45. Identity of Individuals. After the Conditions for Additional Cooperation have been met, within sixty (60) days after receiving Settlement Class Counsel's written request, counsel for Settling Defendant will provide Settlement Class Counsel with the identity of all current and former employees, directors, and officers of Astemo Defendants who: (1) were interviewed and/or prosecuted by any of the Government Entities in connection with the alleged anticompetitive activity relating to Shock Absorbers sold in or into the United States or installed in vehicles or motorcycles sold in or into the United States; or (2) appeared before the grand jury in the DOJ's investigation into alleged antitrust violations with respect to Shock Absorbers sold in or into the United States or installed in vehicles or motorcycles sold in or into the United States; 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 Shock Absorbers sold in or into the United States or installed in vehicles or motorcycles sold in or into the United States.

46. Documents. After the Conditions for Additional Cooperation have been met, within one hundred twenty (120) days after receiving Settlement Class Counsel's written request, Settling Defendant will use reasonable best efforts to substantially complete the production of the following Documents: (1) Documents provided to or seized by Government Entities relating to their investigation into alleged competition violations with respect to Shock Absorbers sold in or into the United States; and (2) non-privileged Documents concerning a communication, meeting, or agreement regarding Shock Absorbers sold in or into the United States by any employee, officer, or director of Astemo Defendants with any employee, officer, or director of another manufacturer or seller of Shock Absorbers, that were collected and reviewed as of the Execution Date but that

were not provided to or seized by Government Entities. As to Documents in Astemo Defendants' possession, custody, or control that are not listed above, Settling Defendant will consider in good faith any reasonable request by Direct Purchaser Plaintiffs to collect and produce such Documents, provided the request would not impose an undue burden on Astemo Defendant. Except for the Cooperation to be provided by Settling Defendant pursuant to Section I of this Agreement, no further discovery will be sought from Settling Defendant or any of the other Releasees.

47. Transactional Data. After the Conditions for Additional Cooperation have been met, and to the extent consistent with the operative Scheduling Order, Settlement Class Counsel shall send a written request to Settling Defendant for the production of transactional data from January 1, 1995 to December 31, 2016, which request shall specify the data fields they are requesting. The parties will meet and confer in good faith to agree upon the transactional data fields to be produced. Settling Defendant will use reasonable best efforts to produce that transactional data within one hundred twenty (120) after the parties agree upon the data fields.

48. Attorney Proffers and Witness Interviews. Any attorney proffers or witness interviews provided pursuant to the below obligations shall be coordinated with, and occur at the same time as, any related obligations that may arise from any other settlement to the extent practicable.

(a) After the Conditions for Additional Cooperation have been met, Settling Defendant's counsel will make themselves available in the United States within sixty (60) days after receiving a request by Settlement Class Counsel to provide an attorney's proffer to Settlement Class Counsel of facts known to them regarding the claims asserted by Direct Purchaser Plaintiffs in the Action. Thereafter, Settling Defendant's counsel will make themselves available for reasonable follow-up conversations. It is understood that neither Settling Defendant nor its counsel

have any obligation to seek new or additional information or documents from any Settling Defendant's employees, officers or directors; however, Settling Defendant will in good faith consider requests for new or additional information or documents, and will produce such information or documents, if appropriate, in their discretion.

(b) Class Counsel will not seek interviews or depositions of Astemo Defendants' directors, officers or employees at this time. If, however, Settlement Class Counsel reasonably believe testimony from Astemo Defendants is necessary for use in a scheduled trial of this Action, then, after the conditions for Additional Cooperation have been met, and upon Settlement Class Counsel's written request, Settling Defendant further agrees to make reasonable best efforts to make two (2) persons, whose identities will be subject to a meet and confer by Settling Defendant and Settlement Class Counsel, available for interviews and to provide declarations or affidavits from the same persons. Each interview shall be conducted at a mutually agreed-upon location in the United States or by Zoom (or a similar form of video technology), and shall be limited to a total of three and a half (3.5) hours per interview. If the interview or trial takes place outside the country of the witness's residence, Settlement Class Counsel shall reimburse the reasonable travel costs incurred by such persons, including economy airfare, meals, lodging and ground transportation. Settlement Class Counsel shall provide counsel for Settling Defendant no less than 30 calendar days' notice prior to the requested date of any such interview or declaration. Cost limits will be negotiated by the parties in good faith at the time of written request.

(c) In addition to the Cooperation obligations set forth herein, after the Conditions for Additional Cooperation have been met, at the request of Direct Purchaser Plaintiffs and subject to meet and confer with Settling Defendant, Settling Defendant agrees to use reasonable best efforts to provide affidavit(s) or written declarations from 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 Settling Defendant.

49. Notwithstanding any other provision in this Settlement Agreement, Settling Defendant may assert where applicable the work product doctrine, the attorney client privilege, the joint defense privilege, and the common interest privilege with respect to any Cooperation Materials requested under this Settlement Agreement and withhold production of that Document. If any Documents protected by the attorney client privilege, the work product doctrine, the joint defense privilege, and/or the common interest privilege are accidentally or inadvertently produced, upon notice by Settling Defendant of such inadvertent production, these Documents shall be promptly returned to Settling Defendant's counsel, and their production shall in no way be construed to have waived in any manner any privilege or protection attached to such Documents. No Document shall be withheld under claim of privilege or work product if produced to or made available to any Government Entity, unless clawed back from those entities pursuant to Rule 502 or otherwise.

50. Direct Purchaser Plaintiffs and Settlement Class Counsel agree they will not use the information or Cooperation Materials provided by Settling Defendant or the other Releasees or their representatives under this Agreement for any purpose other than the prosecution of their claims related to Shock Absorbers in the MDL Litigation, and will use the information or Cooperation Materials in the MDL Litigation consistent with the Protective Order entered in the Wire Harnesses action (No. 12-md-02311, ECF No. 200) (the "Protective Order"), and will not use the information or Cooperation Materials beyond what is reasonably necessary for the prosecution of their 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, as if they had been produced in response to discovery requests, and Settling Defendant shall have the right to designate any and all appropriate Documents and other Cooperation Materials as “Highly Confidential” pursuant to the Protective Order.

51. Settling Defendant’s obligations to provide Cooperation shall not be affected by the release set forth in this Settlement Agreement. Unless this Agreement is rescinded, disapproved, or otherwise fails to take effect, Settling Defendant’s obligations to provide Cooperation under this Agreement shall continue in accordance with the provisions of this Section I.

52. In the event that this Agreement fails to receive final approval by the Court, including final approval of the Settlement Class as defined in Paragraph 10, or in the event that it is terminated by either party under any provision herein, the parties agree that neither Direct Purchaser Plaintiffs nor Settlement Class Counsel shall be permitted to introduce into evidence against Astemo Defendants, 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 or information or statements provided by Settling Defendant and/or the other Releasees pursuant to Cooperation (as opposed to from any other source or pursuant to a court order). Notwithstanding anything contained herein, Direct Purchaser Plaintiffs and the Settlement Class are not relinquishing any rights to pursue discovery against Astemo Defendants in the event that this Agreement fails to receive final approval by the Court, including final approval of the Settlement Class, as defined in Paragraph 20, or in the event that it is terminated by either party under any provision herein, or to use materials and information obtained through discovery to prosecute their claims in this Action.

53. Astemo Defendants need not respond to discovery requests made pursuant to the Federal Rules of Civil Procedure from Direct Purchaser Plaintiffs, meet and confer, or otherwise negotiate with Direct Purchaser Plaintiffs regarding discovery requests served in the Action or otherwise participate in the Action during the pendency of the Agreement, with the exception of the Cooperation provisions set forth in this Section I. The obligation in this Paragraph 53 shall be without prejudice to Direct Purchaser Plaintiffs' ability to reinstate such discovery or motions if this Agreement fails to receive final approval by the Court or if it is terminated by either party under any provision herein. Other than to enforce the terms of this Agreement, neither Astemo Defendants nor Direct Purchaser Plaintiffs shall file motions against the other, in the Action, during the pendency of the Agreement.

54. In the event Settling Defendant has produced Documents, including translations, or have provided declarations or written responses to discovery to any party or non-party in the MDL Litigation concerning or relating to Shock Absorbers ("Relevant Production"), after the Conditions for Additional Cooperation have been met, and within sixty (60) days after receiving a request from Settlement Class Counsel, Settling Defendant shall produce all such Documents, declarations or written discovery responses to Direct Purchaser Plaintiffs to the extent such Documents, declarations or written discovery responses have not previously been produced to Direct Purchaser Plaintiffs.

55. If Settlement Class Counsel believe that Settling Defendant or any current employee, officer, or director of Astemo Defendants have failed to provide Cooperation under the terms of this Agreement, Settlement Class Counsel shall meet and confer with Settling Defendant. Upon reaching an impasse in any meet and confer, Settlement Class Counsel may seek an Order from the Court compelling Settling Defendant or such employee, officer, or director of Astemo

Defendants to provide the Cooperation sought. Nothing in this provision shall limit in any way Settling Defendant's ability to defend the level of Cooperation they have provided or to defend its compliance with the terms of the Cooperation provisions in this Agreement.

J. Destruction of Materials Produced to Direct Purchaser Plaintiffs

56. Within sixty (60) days after both this Agreement and the KYB agreement have become final as described in Paragraph 20 by the Court, the Direct Purchaser Plaintiffs shall return or destroy all materials produced by Astemo Defendants to Direct Purchaser Plaintiffs in connection with this Action, including any materials produced in the ordinary course of discovery, and all copies, abstracts, compilations, summaries, or any other form that reproduces or captures any of the materials produced by Astemo Defendants. Direct Purchaser Plaintiffs shall submit a written certification to the Settling Defendant by the sixty (60) day deadline that affirms that the Direct Purchaser Plaintiff have not retained any copies, abstracts, compilations, summaries or other form that reproduces or captures any of the materials produced by Astemo Defendants to Direct Purchaser Plaintiffs in connection with this Action.

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

57. 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 19, 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 Settling Defendant and Direct Purchaser Plaintiffs shall each, in their sole discretion, have the option to rescind this Agreement in its entirety. The provisions of Paragraphs 28 and 33 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 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 a part of the terms of this Agreement or such final judgment.

58. In the event that this Agreement does not become final as set forth in Paragraph 20, 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 Settling Defendant less only disbursements made, or the amount of obligations incurred in accordance with Paragraphs 28 and 33. Settling Defendant, on behalf of itself and the other Releasees, expressly reserves all rights and defenses if this Agreement does not become final.

59. Further, and in any event, Direct Purchaser Plaintiffs and Settling Defendant 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 Astemo Defendants, or the other Releasees, and shall not be used against Astemo Defendants 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 Astemo Defendants 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 Astemo Defendants or the Releasees. In the event that the KYB settlement does not become final, nothing in this Paragraph shall prevent Direct Purchaser Plaintiffs from using Cooperation Materials produced by Astemo Defendants in the Action to establish as to the KYB Defendants (i) any violation of statute or law,

or (ii) the truth of any of the claims or allegations contained in the Complaint or other pleading filed in this Action.

60. 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 Astemo Defendants as provided in this Agreement in exchange for the payment of the Settlement Amount as well as Cooperation outlined in Section I above.

L. Miscellaneous.

61. Settling Defendant 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 Plaintiffs 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 Plaintiffs 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 Plaintiffs and Settlement Class Members. Astemo Defendants and the other Releasees' sales to the Settlement Class and their alleged illegal conduct shall, to the extent permitted or authorized by law, remain in the Action as a potential basis for damage claims and shall be part of any joint and several liability claims against other current or future Defendants in the Action or other persons or entities other than Releasees. Releasees shall not be responsible for any payment to Direct Purchaser Plaintiffs other than the Settlement Amount and the amounts specifically agreed to in Paragraphs 28 and 33.

63. 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 Plaintiffs and Settling Defendant, 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. Settling Defendant will not object to complying with any of the provisions outlined in this Agreement based on jurisdiction.

64. This Agreement constitutes the entire, complete and integrated agreement between Direct Purchaser Plaintiffs and Settling Defendant pertaining to the settlement of the Action against Astemo Defendants, and supersedes all prior and contemporaneous undertakings, communications, representations, understandings, negotiations and discussions, either oral or written, between Direct Purchaser Plaintiffs and Settling Defendant in connection herewith. This Agreement may not be modified or amended except in writing executed by Direct Purchaser Plaintiffs and Settling Defendant, 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 Plaintiffs and Settling Defendant. Without limiting the generality of the foregoing, upon final approval of this Agreement, each and every covenant and agreement made herein by Direct Purchaser Plaintiffs or Settlement Class Counsel shall be binding upon all Settlement Class Members and Releasers. The Releasees (other than Settling Defendant which is a party 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 Plaintiffs and Settling Defendant, and a facsimile or Portable Document Format (.pdf) signature shall be deemed an original signature for purposes of executing this Agreement.

67. Neither Direct Purchaser Plaintiffs nor Settling Defendant 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: October __, 2022

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Michael E. Moskovitz
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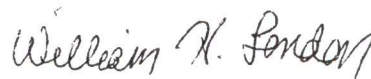
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Date: November 16, 2022



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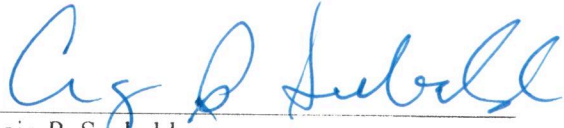
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