

**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
PRODUCTS:  AUTOMOTIVE BRAKE HOSES	Case No. 16-cv-14245-MOB-MKM
THIS DOCUMENT APPLIES TO: ALL DIRECT PURCHASER ACTIONS	Hon. Marianne O. Battani

**SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement” or “Settlement”) is made and entered into this 28<sup>th</sup> day of August, 2017 (“Execution Date”) by and between Hitachi Metals, Ltd., (“Hitachi Metals”), and Direct Purchaser Plaintiff (as defined below in Paragraph 5), both individually and on behalf of a class of direct purchasers of Automotive Brake Hoses (the “Settlement Class”), as more particularly defined in Paragraph 11 below.

WHEREAS, Direct Purchaser Plaintiff is prosecuting the above *In re Automotive Parts Litigation*, Master File No. 12-md-02311 (E.D. Mich.) (the “MDL Litigation”), Case No. 16-cv-14245-MOB-MKM (the “Action”), on its own behalf and on behalf of the Settlement Class against, among others, Hitachi Metals;

WHEREAS, Direct Purchaser Plaintiff alleges that it was injured as a result of Hitachi Metals’ participation in an unlawful conspiracy to raise, fix, maintain, and/or stabilize prices, rig bids, and allocate markets and customers for Automotive Brake Hoses (as defined below) in

violation of Section 1 of the Sherman Act as set forth in Direct Purchaser Plaintiff's Class Action Complaint (the "Complaint");

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

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

WHEREAS, Hitachi Metals, despite its belief that it is not liable for the claims asserted and 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 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 Hitachi Metals with respect to Automotive Brake Hoses based on the allegations in the Action, as more particularly set out below;

WHEREAS, Hitachi Metals has agreed to provide Cooperation (as defined below) to

Direct Purchaser Plaintiff and the Settlement Class in the ongoing prosecution of the Action as set forth in this Agreement, and such Cooperation will aid Direct Purchaser Plaintiff and the Settlement Class and reduce the substantial burden and expense associated with prosecuting the Action; and

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 (as defined below) and, except as hereinafter provided, without costs as to Direct Purchaser Plaintiff, the Settlement Class, or Hitachi Metals, subject to the approval of the Court, on the following terms and conditions:

A. Definitions.

1. "Automotive Brake Hoses" for purposes of this Agreement are the flexible hoses that carry brake fluid through the hydraulic brake system of motor vehicles.
2. "Cooperation" refers to those provisions set forth below in Section F.
3. "Cooperation Materials" means any information, testimony, Documents (as defined below) or other material provided by Hitachi Metals under the terms of this Agreement.
4. For purposes of this Agreement, "Defendants" means any party named as a defendant in the Action, or any other current or future action in the MDL Litigation concerning Automotive Brake Hoses, at any time up to and including the date when the Court has entered a final order certifying the Settlement Class defined in Paragraph 11 and approving this Agreement under Federal Rules of Civil Procedure 23(e).
5. "Direct Purchaser Plaintiff" means the Settlement Class Member, as defined below in Paragraph 13, who is the named plaintiff in the Complaint.

6. “Document” is defined to be synonymous in meaning and equal in scope to the usage 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 non-privileged English translations in Hitachi Metals’ custody, possession or control.

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

8. “Releasees” shall refer to Hitachi Metals and to all of its respective past and present, direct and indirect, parents, subsidiaries, and affiliates, including but not limited to the predecessors, successors, and assigns of each of the above; and each and all of the present and former principals, partners, officers, directors, supervisors, employees, agents, stockholders (in their capacity as stockholders of Hitachi Metals), insurers, attorneys, heirs, executors, administrators, and assigns of each of the foregoing. “Releasees” does not include any defendant in the MDL Litigation other than Hitachi Metals.

9. “Releasers” shall refer to Direct Purchaser Plaintiff and the members of the Settlement Class, as defined in Paragraph 11 below, and to their past and present officers, directors, employees, agents, stockholders (in their capacity as stockholders of Settlement Class Members), parents, subsidiaries, affiliates, partners, insurers, and all other persons, partnerships, or corporations with whom any of the former have been, or are now, affiliated, and the predecessors, successors, heirs, executors, administrators and assigns of any of the foregoing.

10. “Settlement Amount” shall be \$2,725,000 USD.

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

All direct purchasers (excluding Defendants and their present and former parents, subsidiaries, and affiliates) of Automotive Brake Hose in the United States from any of the

Defendants (or their controlled subsidiaries, affiliates, or joint-ventures) between November 1, 2005 and the Execution Date.

12. “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., One South Broad Street, Suite 2100, Philadelphia, PA 19107; Preti, Flaherty, Beliveau & Pachios, LLP, One City Center, Portland, ME 04101; and Spector Roseman & Kodroff, P.C., 1818 Market Street, Suite 2500, Philadelphia, PA 19103.

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

14. “Settlement Fund” shall be the Settlement Amount, less any reduction provided for in Paragraph 25(e), plus any income or accrued interest on said amount as set forth in Paragraph 24(b).

B. Approval of this Agreement and Dismissal of Claims Against Hitachi Metals.

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

16. Within fifteen (15) business days after the execution of this Agreement, Direct Purchaser Plaintiff shall submit to the Court a motion seeking preliminary approval of this Agreement (the “Motion”). The Motion shall include the proposed form of an order preliminarily approving this Agreement. No less than five (5) business days before filing, Direct Purchaser Plaintiff shall submit a draft of the Motion and proposed form of order to Hitachi Metals for its

approval, which shall not be unreasonably withheld. Direct Purchaser Plaintiff and Hitachi Metals agree that the Settlement Amount shall not be disclosed prior to the submission of the Motion.

17. At a time to be decided in their discretion, but in any event no later than one (1) year after the date the Court grants preliminary approval of the Agreement, Direct Purchaser Plaintiff 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 Direct Purchaser Plaintiff (the “Notice Motion”). In order to mitigate the costs of notice, the Direct Purchaser Plaintiff shall endeavor, if practicable, to disseminate notice with any other settlements that have been or are reached in the MDL Litigation at the time the Notice Motion is filed. The Notice Motion shall include a proposed form of, method for, and date of dissemination of notice, which shall be subject to Hitachi Metals’ review. Direct Purchaser Plaintiff shall submit a draft of the Notice Motion to Hitachi Metals no less than five (5) business days before filing.

18. Direct Purchaser Plaintiff shall seek, and Hitachi Metals will not object unreasonably to, the entry of an order and final judgment in the Action, the text of which Direct Purchaser Plaintiff and Hitachi Metals shall agree upon. No less than five (5) business days before filing, Direct Purchaser Plaintiff shall submit a draft of the proposed order and final judgment to Hitachi Metals for its approval, which shall 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 11, pursuant to Rule 23 of the Federal Rules of Civil Procedure, solely for purposes of this Settlement as a

settlement class;

(b) directing that all Releasors shall be deemed to have released all Releasees from the Released Claims;

(c) 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;

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

(e) reserving exclusive jurisdiction over the Settlement and this Agreement, including the interpretation, administration, and consummation of this Settlement, as well as over Hitachi Metals, for the duration of its 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 with prejudice as to Hitachi Metals 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 Hitachi Metals, 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.

19. This Agreement shall become final when (i) the Court has entered a final order certifying the Settlement Class described in Paragraph 11 and approving this Agreement under Federal Rule of Civil Procedure 23(e) and a final judgment dismissing the Action with prejudice as to Hitachi Metals 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 Hitachi Metals described in (i) hereof has expired or, if appealed, approval of this Agreement and the final judgment as to Hitachi Metals have been affirmed in their 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 Hitachi Metals have executed this Agreement, the Settlement Class and Hitachi Metals shall be bound by its terms and this Agreement shall not be rescinded except in accordance with Paragraphs 24(f) or 43 of this Agreement.

20. Neither this Agreement (whether or not it should become final) nor the final judgment, nor any and all negotiations, documents, and discussions associated with them (including Cooperation Materials produced pursuant to Section F), shall be deemed or construed to be an admission by Hitachi Metals, or evidence of any violation, of any statute or law or of any liability or wrongdoing whatsoever by Hitachi Metals, 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 in any way, whether in the MDL Litigation, or any other arbitration, action, or proceeding whatsoever, against Hitachi Metals. Nothing in this Paragraph shall prevent Direct Purchaser Plaintiff from using and/or introducing into evidence



Cooperation Materials produced pursuant to Section F against any other defendants in the MDL Litigation, to establish any of the above. Cooperation Materials shall otherwise be subject to the terms and conditions set forth in the Stipulation and Protective Order Governing the Production and Exchange of Confidential Information, Case No. 2:12-md-02311-MOB-MKM, Dkt. No. 200 in the MDL Litigation (the "Protective Order"), as well as any protective order subsequently entered in the Action. 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 Hitachi Metals, shall be referred to, offered as evidence, or received in evidence in any pending or future civil, criminal, or administrative action, arbitration, or proceeding, except in a proceeding to enforce this Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law.

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

21. In addition to the effect of any final judgment entered in accordance with this Agreement, upon this Agreement becoming final, as set out in Paragraph 19 of this Agreement, and in consideration of payment of the Settlement Amount, as specified in Paragraph 10 of this Agreement, into the Settlement Fund, and Cooperation, the Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits, causes of action, whether class, individual, or otherwise in nature (whether or not any Settlement Class Member has objected to the settlement or makes a claim upon or participates in the Settlement Fund, whether directly, representatively, derivatively, or in any other capacity) under any federal, state, or local law of any jurisdiction in the United States, that Releasers, or each of them, ever had, now has, or hereafter can, shall, or may ever have, that now exist or may exist in the future, on account of, or in any way arising out of, any and all known and unknown,

foreseen, and unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated claims, injuries, damages, and the consequences thereof in any way arising out of or relating in any way to any conduct, act or omission of the Releasees prior to the Execution Date alleged in the Complaint concerning price fixing, bid rigging, or market or customer allocation of Automotive Brake Hoses 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 complaints filed in the Action (the "Released Claims"), provided, however, that nothing herein shall release: (1) any claims based on indirect purchases of Automotive Brake Hoses; (2) any claims made by Settlement Class Members and any potential Settlement Class Members who have validly and timely requested to be excluded from the Settlement Class; (3) any claims made by any state, state agency, or instrumentality or political subdivision of a state as to government purchases and/or penalties; (4) claims involving any negligence, personal injury, breach of contract, bailment, failure to deliver lost goods, damaged or delayed goods, product defect, securities, or other similar claim relating to Automotive Brake Hoses; (5) claims concerning any automotive part other than Automotive Brake Hoses; and (6) claims under laws other than those of the United States relating to purchases of Automotive Brake Hoses made outside of the United States. Releasers 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 or conduct at issue in the Released Claims unless the Agreement, for any reason, does not become final, or is rescinded or otherwise fails to become effective.

22. In addition to the provisions of Paragraph 21 of this Agreement, Releasers hereby expressly waive and release, upon this Agreement becoming final, any and all provisions, rights, and benefits as to their claims concerning Automotive Brake Hoses conferred by § 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 § 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 21 of this Agreement, 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 Hitachi Metals and the Settlement Class Members have agreed to release pursuant to Paragraph 21, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

D. Payment of Settlement Amount.

23. Subject to the provisions hereof, and in full, complete and final settlement of the Action as provided herein, Hitachi Metals shall pay the Settlement Amount. The Settlement Amount shall be paid into an escrow account in United States Dollars to be administered in accordance with the provisions of Paragraph 24 of this Agreement (the "Escrow Account"). Hitachi Metals shall pay \$1,975,000 of the Settlement Amount within thirty (30) calendar days after preliminary approval of this Settlement and, within thirty (30) calendar days after the end of the period to request exclusion from the Settlement Class, shall pay the remainder of the Settlement Amount still due, if any, after accounting for all valid and timely exclusions, consistent with Paragraph 25 of this Agreement. Nothing in this Paragraph shall relieve Hitachi

Metals from its Cooperation obligations as specified in Section F.

24. Escrow Account.

(a) An Escrow Account shall be maintained at The Huntington National Bank. Such escrow shall be administered under the Court's continuing supervision and control.

(b) All payments into the Escrow Account, including any income earned thereon, 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 any 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. Hitachi Metals shall have no responsibility for, or liability in connection with, the Settlement Fund or the Escrow Account, including, without limitation, the investment, administration, maintenance, or distribution thereof.

(c) All funds 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 they are distributed pursuant to this Agreement and/or further order(s) of the Court.

(d) Subject to the provisions of Paragraph 26(a), 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 Hitachi Metals 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. No other disbursement from or distribution of the Settlement Fund shall be made without prior

approval of the Court.

(e) 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 Hitachi Metals, a “relation back election” as described in Treas. Reg. § 1.468B-1(j) shall be made so as to enable the Escrow Account to be treated as a qualified settlement fund from the earliest date possible, and the parties shall take all actions as may be necessary or appropriate to this end. At the direction of Settlement Class Counsel, taxes or estimated taxes shall be paid on any income earned on the funds in the Escrow Account, whether or not Final Approval has occurred, as provided in Paragraphs 19 and 20, above. In the event federal or state income tax liability is finally assessed against and paid by Hitachi Metals as a result of any income earned on the funds in the Escrow Account, Hitachi Metals 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. Hitachi Metals will use reasonable efforts to resist any such assessment or payment. Except as set forth in this Paragraph, Hitachi Metals shall have no responsibility to make any tax filings related to the Settlement Fund or to pay any taxes with respect thereto, and neither Hitachi Metals nor any Releasee nor their respective counsel shall have any liability or responsibility for the taxes or expenses incurred in connection with taxation matters.

(f) If this Agreement does not receive final Court approval, including final approval of the Settlement Class as defined in Paragraph 11, or if the Action is not certified as a class action for settlement purposes, then all amounts paid by Hitachi Metals into the Settlement Fund (other than costs expended or incurred in accordance with this Paragraph 24 and Paragraph

26) shall be returned to Hitachi Metals from the Escrow Account by the Escrow Agent 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.

25. Exclusions.

(a) Subject to Court approval, any person or entity seeking exclusion from the Settlement Class must submit a written request for exclusion by the Opt-Out Deadline. Any person or entity that submits such a request shall be excluded from the Settlement Class and shall have no rights with respect to this settlement. Subject to Court approval, a request for exclusion that does not comply with all of the provisions set forth in the applicable class notice will be invalid, and the person(s) or entity(ies) serving such an invalid request shall be deemed Settlement Class Member(s) and shall be bound by the Settlement Agreement upon final approval. Settlement Class Counsel shall, within ten (10) business days of the Opt-Out Deadline, provide Hitachi Metals with a list and copies of all opt-out requests it receives.

(b) Subject to Court Approval, any member of the Settlement Class who submits a valid and timely request for exclusion will not be a Settlement Class Member and shall not be bound by the terms of this Agreement. Hitachi Metals 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 Automotive Brake Hoses or has standing to bring any claim against Hitachi Metals.

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

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

(e) The Settlement Amount is subject to reduction based on valid and timely requests for exclusion in accordance with the terms set forth in a separate, confidential letter agreement between Hitachi Metals and the Settlement Class. The confidential letter agreement may be provided to the Court for in camera review upon its request.

26. Notice to the Settlement Class.

(a) Hitachi Metals agrees to permit use of a maximum of \$125,000.00 USD (which limitation is effective up until the date of final approval of this Settlement) of the Settlement Fund for notice to the Settlement Class and the costs of administration of the Settlement Fund. The notice and administration expenses (up to the maximum of \$125,000.00 USD) are not recoverable by Hitachi Metals if this Settlement does not become final or is terminated or is rescinded or otherwise fails to become effective to the extent such funds have actually been expended or the expenses incurred for notice and administration costs. Other than as set forth in this Paragraph 26(a) and Paragraph 24(d), Hitachi Metals 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 any Special Master, appeals, trials, or the negotiation of other settlements, or for class administration and costs.

(b) In order 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.

(c) Within fifteen (15) business days after the Execution date, Hitachi Metals will supply to Settlement Class Counsel, in an electronic format, the names and addresses of putative Settlement Class Members to whom it has sold Automotive Brake Hoses 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.

E. The Settlement Fund.

27. 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 Hitachi Metals or any other Releasee as to the Released Claims.

28. After this Agreement becomes final within the meaning of Paragraph 19, the Settlement Fund shall be distributed in accordance with a plan to be submitted to the Court at the appropriate time by Settlement Class Counsel, subject to approval by the Court. In no event shall any Releasee have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution, or administration of the Settlement Fund, including, but not limited to, the costs and expenses of such distribution and administration except as expressly otherwise provided in Paragraphs 24(d) and 26(a) of this Agreement.

29. Subject to Court approval, Direct Purchaser Plaintiff and Settlement Class Counsel shall be reimbursed and paid solely out of the Settlement Fund for all past, current, or future litigation costs and expenses, and any award of attorneys' fees. An incentive award to the Direct Purchaser Plaintiff, if approved by the Court, will also be paid solely out of the Settlement Fund. Attorneys' fees and costs and expenses awarded by the Court shall be payable from the Settlement Fund upon award, notwithstanding the existence of any timely filed objections



thereto, or potential appeal therefrom, or collateral attack on the settlement or any part thereof, subject to Settlement Class Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund, 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 Agreement is rescinded or terminated pursuant to Paragraph 43. Neither Hitachi Metals 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 of any fee or cost and expense award in the Action. In addition, neither Hitachi Metals 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, or any other person who may assert some claim thereto, of any fee or cost and expense award that the Court may make in the Action.

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

F. Cooperation.

31. In return for the release and discharge provided herein, Hitachi Metals agrees to pay the Settlement Amount and agrees to use its best efforts to provide Cooperation, at its expense unless otherwise specified below, as set forth specifically in this Section F. All

Cooperation shall be coordinated, to the extent reasonably practicable, between Settlement Class Counsel and any cooperation required in the settlement of claims by the End-Payor Plaintiffs in *In re Automotive Parts Antitrust Litigation*, Master File No. 2:12-md-02311 (E.D. Mich.), Case No. 2:16-cv-03603 and Automobile Dealer Plaintiffs in *In re Automotive Parts Antitrust Litigation*, Master File No. 2:12-md-02311 (E.D. Mich.), Case No. 2:16-cv-03602, in such a manner so as to avoid all unnecessary duplication and expense.

32. Documents. Hitachi Metals shall provide to Settlement Class Counsel the following Documents described in this Paragraph 32(a)-(b):

(a) Within sixty (60) days after Preliminary Approval, transactional data in the manner and to the extent Hitachi Metals maintains such data in the ordinary course of business in electronic transactional databases, concerning Hitachi Metals' bids for and sales of Automotive Brake Hoses in the United States (other than for use in motorcycles) to Original Equipment Manufacturers ("OEMs") or other purchasers of Automotive Brake Hoses from November 1, 2003, through the last day of the month prior to the month in which the Agreement is executed. In addition, Hitachi Metals will provide, in response to a written request from Settlement Class Counsel, a single production of electronic transactional data generated during the two years after the Execution Date of this Agreement concerning Automotive Brake Hoses, in the manner and to the extent that Hitachi Metals maintains such electronic data in the ordinary course of business. Hitachi Metals will preserve such transactional data until two years after the Execution Date of this Agreement. Hitachi Metals will also consider in good faith any request made by Settlement Class Counsel that it produce existing hard-copy records of sales transactions not recorded or maintained electronically in the existing electronic sales transaction database.

(b) Within thirty (30) days after Preliminary Approval, Documents, including translations, if any, provided to or seized by the United States Department of Justice (“DOJ”) relating to the DOJ’s investigation into alleged competition violations with respect to Automotive Brake Hoses. Such Documents will include any sales data produced to the DOJ.

(c) Hitachi Metals will consider in good faith any reasonable request by Direct Purchaser Plaintiff to produce additional Documents.

33. For all Documents withheld from production pursuant to (1) the attorney client privilege; (2) the work product doctrine; (3) a protective order; or (4) any other applicable privilege or doctrine protecting Documents from disclosure, Hitachi Metals shall provide a privilege log, to the extent already in existence (“Existing Privilege Log”), describing such Documents in sufficient detail as to explain the nature of the privilege asserted or the basis of any other law or rule protecting the Documents. No Document shall be withheld under claim of privilege if produced or made available to any government entity. If any Document protected by the attorney-client privilege, attorney work product protection, or any other privilege is accidentally or inadvertently produced under this Paragraph, upon notice by Hitachi Metals of such inadvertent production, the Document shall promptly be destroyed and/or returned to Hitachi Metals, and its production shall in no way be construed to have waived any privilege or protection attached to such Document.

34. Attorney Proffer, Witness Interviews, Depositions and Trial Testimony. Hitachi Metals shall use its best efforts to cooperate with Settlement Class Counsel as set forth in this Section F.

(a) Upon reasonable notice after Preliminary Approval, Hitachi Metals’ counsel will make themselves available at a mutually agreed-upon location in the United States for one

meeting of one business day to provide an attorney's proffer jointly to Settlement Class Counsel, settlement class counsel in the End Payor Plaintiff Action ("End Payor Plaintiff Settlement Class Counsel") and settlement class counsel in the Automobile Dealer Action ("Automobile Dealer Settlement Class Counsel") of facts known to them regarding conduct relevant to Direct Purchaser Plaintiff's claims relating to the sales of Automotive Brake Hoses. The parties and their counsel agree that any attorney's proffer or other statements made by Hitachi Metals' counsel in connection with or as part of this settlement shall be governed by Federal Rule of Evidence 408. Notwithstanding anything herein, Settlement Class Counsel may use information contained in such attorney's proffer or other statements in the prosecution of its claims against defendants other than Hitachi Metals in all cases in the MDL Litigation, consistent with Paragraph 20, including for the purpose of developing an allocation plan relating to any settlement or judgment proceeds, and rely on such information to certify that, to the best of Settlement Class Counsel's knowledge, information and belief, such information has evidentiary support or will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

(b) Upon reasonable notice, but no sooner than thirty (30) days following Preliminary Approval, Hitachi Metals agrees to make available for interviews with Settlement Class Counsel, End Payor Plaintiff Settlement Class Counsel and Automobile Dealer Settlement Class Counsel at Settlement Class Counsel's discretion, via either videoconference or at a mutually agreeable location, up to four (4) persons who Settlement Class Counsel, End Payor Plaintiff Settlement Class Counsel and Automobile Dealer Settlement Class Counsel jointly select who the parties reasonably and in good faith believe possess knowledge of facts or information that would reasonably assist Direct Purchaser Plaintiff in the prosecution of the

Automotive Brake Hoses claims in the MDL Litigation. In the event that End Payor Plaintiff Settlement Class Counsel and Automobile Dealer Settlement Class Counsel do not seek the interviews provided for under the terms of End Payor Plaintiffs and Automobile Dealer Plaintiffs settlement agreements, or End-Payor Plaintiff Settlement Class Counsel and Automobile Dealer Settlement Class counsel cannot agree with Settlement Class Counsel on the timing for interviews of such persons, Hitachi Metals agrees to make available for an interview with Settlement Class Counsel up to four (4) persons who Settlement Class Counsel select who the parties reasonably and in good faith believe possess knowledge of facts or information that would reasonably assist Direct Purchaser Plaintiff in the prosecution of the Automotive Brake Hoses claims in the MDL Litigation.

(c) Upon reasonable notice, but no sooner than thirty (30) days following Preliminary Approval, Hitachi Metals shall make those same four (4) persons referred to in subsection (b) above available for depositions, provide declarations or affidavits from the same persons, and make those persons available to testify at trial. If Hitachi Metals is unable to make those same persons available for interviews and depositions, or provide declarations and affidavits, then Settlement Class Counsel may jointly select a substitute interviewee, deponent or declarant with Automobile Dealer Plaintiff Settlement Class Counsel and End Payor Plaintiff Settlement Class Counsel. The depositions shall be conducted at a mutually agreed-upon location in the United States, and shall be limited to a total of seven (7) hours over one (1) day unless the deposition is in a language other than English and an interpreter is requested, in which case the deposition shall be limited to a total of thirteen (13) hours over two (2) consecutive days. In the event that End Payor Plaintiff Settlement Class Counsel and Automobile Dealer Settlement Class Counsel do not seek the depositions provided for under the End Payor Plaintiffs and Automobile

Dealer Plaintiffs settlement agreements, or End-Payor Plaintiff Settlement Class Counsel and Automobile Dealer Settlement Class Counsel cannot agree with Settlement Class Counsel on the timing for such depositions, Hitachi Metals agrees to make the same four (4) persons referred to in subsection (b) available to Settlement Class Counsel for depositions, provide declarations or affidavits from the same persons, and make those persons available to testify at trial. If any interview, deposition or trial takes place outside the country of the witness's residence, Settlement Class Counsel, End Payor Plaintiff Settlement Class Counsel and Automobile Dealer Settlement Class Counsel shall together (or any such combination of them who are parties to any such interview, deposition or trial) reimburse half the reasonable travel costs incurred by such persons, but in no event shall Settlement Class Counsel be responsible for reimbursing such persons for time or services rendered. Such travel expenses may include economy airfare, but not airfare for business or first-class seats. Reimbursable expenses shall not exceed \$1,500 per interviewee or deponent to be allocated among Settlement Class Counsel, End Payor Plaintiff Settlement Class Counsel and Automobile Dealer Settlement Class Counsel. If the interview provided for in Paragraph 34 (b) and the above-described deposition occur during the same trip, the above conditions regarding reimbursement of travel expenses will apply to that trip.

(d) In addition to its Cooperation obligations set forth herein, at the request of Direct Purchaser Plaintiff, Hitachi Metals agrees to use reasonable efforts to provide affidavit(s) or written declarations 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 Hitachi Metals, and to the extent possible, any Documents produced by Defendants or third parties in this Action. Settlement Class Counsel agree to use their best efforts to minimize the burden on Hitachi Metals of any such authentication.

35. In the event that Hitachi Metals has produced or subsequently produces pre-existing Documents, including translations, or provides declarations or written responses to discovery to any government entity, party or non-party in the MDL Litigation, concerning or relating to this Action (a “Relevant Production”), Hitachi Metals shall produce all such Documents, declarations, or written discovery responses to Settlement Class Counsel contemporaneously with making the Relevant Production to the extent such Documents, declarations, or written discovery responses have not previously been produced by Hitachi Metals to Settlement Class Counsel. In no event shall Hitachi Metals be required to make such Relevant Production prior to the date this Agreement is Preliminarily Approved. In addition, Hitachi Metals shall provide Direct Purchaser Plaintiff with all cooperation it provides pursuant to any settlement agreement with any other party in this MDL Litigation, including, but not limited to, the End Payor Plaintiffs and Automobile Dealer Plaintiffs. To the extent that such cooperation includes any attorney proffer, witness interviews, or depositions of individuals in addition to those already provided for in Paragraph 34 herein, Settlement Class Counsel shall be permitted to attend and participate in such attorney proffer, witness interviews or depositions, and shall be entitled to ask questions for a period of up to three (3) hours at any interview or deposition (provided that this shall not expand the time permitted for any deposition), but shall not be entitled to any independent additional attorney proffer, witness interviews or depositions. All such additional cooperation shall be coordinated, to the extent reasonably practicable, between Settlement Class Counsel, Automobile Dealer Settlement Class Counsel, and End-Payor Plaintiff Settlement Class Counsel, or such other party in the MDL Litigation to whom such cooperation is provided pursuant to a settlement agreement. Direct Purchaser Plaintiff’s receipt of or participation in cooperation provided by Hitachi Metals to other parties or non-parties shall

not in any way limit Direct Purchaser Plaintiff's entitlement to receive Cooperation as set forth in this Section F, including but not limited to, an attorney proffer, witness interviews, and depositions.

36. This Agreement does not restrict Settlement Class Counsel from attending, cross-noticing, or participating in any depositions in the MDL Litigation noticed by any other party in the MDL Litigation. Settlement Class Counsel may attend, cross-notice, and/or participate in any depositions of Hitachi Metals' witnesses in addition to the four (4) depositions set forth in Paragraph 34, and Settlement Class Counsel may ask questions for up to three (3) hours at such deposition, provided that the time for participation of Settlement Class Counsel shall not expand the time permitted for the deposition, and Settlement Class Counsel will not ask the Court to enlarge the time of any deposition noticed of a Hitachi Metals 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 35 above. Direct Purchaser Plaintiff and Settlement Class Counsel agree to use their best efforts to ensure that any depositions taken under Paragraph 35 above are coordinated with any other deposition of the same person(s) noticed in the MDL Litigation to avoid unnecessary duplication.

37. After conducting a reasonable search, Hitachi Metals shall, to the best of its knowledge, identify those Vehicles sold in the United States that contain Automotive Brake Hoses sold by Hitachi Metals in the United States.

38. Hitachi Metals' obligations to provide Cooperation shall not be affected by the Release set forth in this Agreement. Unless this Agreement is rescinded, disapproved, or otherwise fails to take effect, Hitachi Metals' obligations to provide Cooperation under this Agreement shall continue only until: (i) otherwise ordered by the Court, or (ii) the date that final



judgment has been entered in the Action against all Defendants and the time for appeal or to seek permission to appeal entry of the final judgment as to all Defendants has expired or, if appealed, final judgment(s) as to the applicable Defendant(s) have been affirmed in their 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.

39. In the event that this Agreement fails to receive final approval by the Court as contemplated in Paragraphs 16-20 hereof, including final approval of “the Settlement Class” as defined in Paragraph 11, or in the event that it is terminated by either party under any provision herein, the parties agree that neither Direct Purchaser Plaintiff nor Settlement Class Counsel shall be permitted to introduce into evidence against Hitachi Metals, 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 this Action, any deposition testimony or any Documents provided by Hitachi Metals and/or the Releasees, their counsel, or any individual made available by Hitachi Metals pursuant to Cooperation (as opposed to from any other source or pursuant to a court order). Notwithstanding anything contained herein, the Settlement Class Members are not relinquishing any rights to pursue discovery against Hitachi Metals in the event that this Agreement fails to receive final approval by the Court as contemplated in Paragraphs 16-20 hereof, including final approval of “the Settlement Class” as defined in Paragraph 11, or in the event that it is terminated by either party under any provision herein.

40. Hitachi Metals need not respond to formal discovery requests from Direct Purchaser Plaintiff or otherwise participate in the Action during the pendency of the Agreement. Other than to enforce the terms of this Agreement, neither Hitachi Metals nor Direct Purchaser

Plaintiff shall file motions against the other in this Action during the pendency of the Agreement.

41. Hitachi Metals and Direct Purchaser Plaintiff agree not to disclose publicly or to any other person the terms of this Agreement until this Agreement is submitted to the Court for Preliminary Approval. If Settlement Class Counsel believes that any current or former employee, officer, or director of Hitachi Metals has refused to cooperate under the terms of this Agreement, Settlement Class Counsel may seek an Order from the Court compelling such current or former employee, officer, or director of Hitachi Metals to provide discovery.

42. Direct Purchaser Plaintiff and Settlement Class Counsel agree they will not use the information provided by Hitachi Metals or the Releasees or their representatives under this Section F for any purpose other than the prosecution of claims in the MDL Litigation, and will otherwise use it in the MDL Litigation consistent with the Protective Order, and will not use it beyond what is reasonably necessary for the prosecution of claims in the MDL Litigation or as otherwise required by law. All Documents and other information 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 Hitachi Metals shall have the right to designate any and all appropriate Documents and other Cooperation Materials as “Highly Confidential” pursuant to the Protective Order.

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

43. If the Court refuses to approve this Agreement or any part hereof, including if the Court does not certify a settlement class in accordance with the specific Settlement Class definition 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 19 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 Hitachi Metals and Direct Purchaser Plaintiff shall each, in their sole discretion, have the option to rescind this Agreement in its entirety. The provisions of Paragraphs 24 and 26 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 56. 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.

44. In the event that this Agreement does not become final as set forth in Paragraph 19, or this Agreement otherwise is terminated pursuant to Paragraph 43, 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 Hitachi Metals less only disbursements made or the amount of obligations incurred in accordance with Paragraphs 24 and 26 of this Agreement. Hitachi Metals expressly reserves all rights and defenses if this Agreement does not become final.

45. Further, and in any event, Direct Purchaser Plaintiff and Hitachi Metals 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 Hitachi Metals, or the other Releasees, to be used against Hitachi Metals, 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 Hitachi Metals, and evidence thereof shall not be discoverable or used in any way, in the MDL Litigation, against Hitachi Metals. Nothing in this Paragraph shall prevent Direct Purchaser Plaintiff from using Cooperation Materials produced

pursuant to Section F, as otherwise authorized in this Agreement.

46. 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 as well as Cooperation by Hitachi Metals.

47. The parties to this Agreement contemplate and agree that, prior to final approval of the settlement as provided for in Paragraphs 16-20 herein, appropriate notice (1) of the settlement; and (2) of a hearing at which the Court will consider the approval of this Agreement, will be given to Settlement Class Members.

H. Miscellaneous.

48. Hitachi Metals 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.

49. Hitachi Metals, Direct Purchaser Plaintiff, and Settlement Class Counsel agree not to disclose publicly or to any other person the terms of this Agreement until this Agreement is fully executed by all parties and Direct Purchaser Plaintiff have submitted to the Court a motion seeking preliminary approval of this Agreement pursuant to Paragraph 16 hereof.

50. This Agreement does not settle or compromise any claim by any Settlement Class Member asserted in the Complaint or, if amended, any subsequent Complaint, against any Defendant or alleged co-conspirator other than Hitachi Metals and the other Releasees. All rights against such other Defendants or alleged co-conspirators are specifically reserved by 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 Hitachi Metals and the other Releasees, for sales made by Hitachi Metals and Hitachi Metals' alleged illegal conduct are

specifically reserved by Settlement Class Members. Hitachi Metals' sales to the 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 Hitachi Metals and the other Releasees. Hitachi Metals shall not be responsible for any payment to the Settlement Class Members other than the amount specifically agreed to in Paragraph 23.

51. The United States District Court for the Eastern District of Michigan shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of this Agreement that cannot be resolved by negotiation and agreement by Direct Purchaser Plaintiff and Hitachi Metals, 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. Hitachi Metals will not object to complying with any of the provisions outlined in this Agreement on the basis of jurisdiction.

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

53. This Agreement shall be binding upon, and inure to the benefit of, the successors

and assigns of the Settlement Class Members and Hitachi Metals. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by Direct Purchaser Plaintiff or Settlement Class Counsel shall be binding upon all Settlement Class Members and Releasees. The Releasees (other than Hitachi Metals' entities which are parties hereto) are third-party beneficiaries of this Agreement and are authorized to enforce its terms applicable to them.

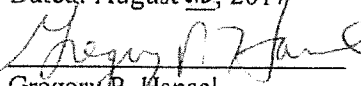
54. This Agreement may be executed in counterparts by Direct Purchaser Plaintiff and Hitachi Metals, and a facsimile signature shall be deemed an original signature for purposes of executing this Agreement.

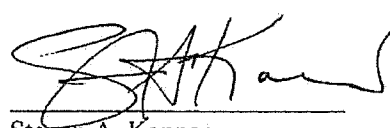
55. Neither Direct Purchaser Plaintiff nor Hitachi Metals shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of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

56. 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.

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

Dated: August 28, 2017

  
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Randall B. Weill

  
Steven A. Kanner  
William H. London

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*Interim Co-Lead Class Counsel and Settlement Class Counsel for Direct Purchaser Plaintiff*

Dated: August \_\_\_\_, 2017

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*Interim Co-Lead Class Counsel and Settlement Class Counsel for Direct Purchaser Plaintiff*

Dated: August \_\_\_\_, 2017

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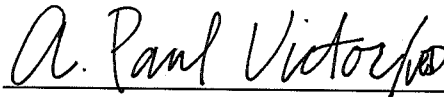
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*Interim Co-Lead Class Counsel and Settlement Class Counsel for Direct Purchaser Plaintiff*

Dated: August 28, 2017



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