

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

IN RE AUTOMOTIVE PARTS ANTITRUST LITIGATION	:	Master File No. 12-md-02311 Honorable Marianne O. Battani
IN RE: RADIATORS	:	
THIS DOCUMENT RELATES TO: ALL DIRECT PURCHASER CASES	:	2:13-cv-01001-MOB-MKM 2:17-cv-13147-MOB-MKM

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into this ^{4th} day of ~~February~~ ^{March}, 2019 (“Execution Date”) by and between T.RAD Co., Ltd. and T.RAD North America, Inc. (collectively, “T.RAD”), and Direct Purchaser Plaintiff (as defined in Paragraph 4), both individually and on behalf of a class of direct purchasers of Radiators (“Settlement Class”), as more particularly defined in Paragraph 9.

WHEREAS, Direct Purchaser Plaintiff is prosecuting the above *In re Automotive Parts Antitrust Litigation*, Master File No. 12-md-02311 (E.D. Mich.) (“MDL Litigation”); and the *Radiators Case*, 2:13-cv-01001 (E.D. Mich.), *Irving Levine Automotive Distributors, Inc. v. Calsonic Kansei Corporation, et al.*, 2:17-cv-13147 (E.D. Mich.) (together, the “Action”) on its own behalf and on behalf of the Settlement Class against, among others, T.RAD;

WHEREAS, Direct Purchaser Plaintiff alleges that it was injured as a result of T.RAD’s participation in an unlawful conspiracy to raise, fix, maintain, and/or stabilize prices, rig bids, and allocate markets and customers for Radiators (as defined below) in

violation of Section 1 of the Sherman Act, as set forth in Direct Purchaser Plaintiff's Class Action Complaint (2:17-cv-13147, Doc. No. 1) (the "Complaint");

WHEREAS, T.RAD denies Direct Purchaser Plaintiff's allegations and has asserted defenses to Direct Purchaser Plaintiff's claims in the Action;

WHEREAS, arm's-length settlement negotiations have taken place between Settlement Class Counsel (as defined below) and counsel for T.RAD, 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 T.RAD, according to the terms set forth below, is in the best interests of Direct Purchaser Plaintiff and the Settlement Class because of the payment of the Settlement Amount and the value of the Cooperation (as those terms are defined below) that T.RAD 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); and

WHEREAS, T.RAD, despite its belief that it is not liable for the claims asserted by Direct Purchaser Plaintiff and its belief that it has good defenses thereto, has nevertheless agreed to enter into this Agreement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, and to obtain the release, order, and judgment contemplated by this Agreement, and to put to rest with finality all claims that have been or could have been asserted against T.RAD with respect to Radiators based on the allegations made in the Action, as more particularly set out below.

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

WHEREAS, Direct Purchaser Plaintiff recognizes the benefits of T.RAD's Cooperation, and recognizes that because of joint and several liability, this Agreement with T.RAD does not impair Direct Purchaser Plaintiff's ability to collect the full amount of damages to which it and the Settlement Class may be entitled in the Action, including any damages attributable to T.RAD's alleged conduct.

NOW, THEREFORE, in consideration of the covenants, agreements, and release set forth herein and for other good and valuable consideration, it is agreed by and among the undersigned that the Action be settled, compromised, and dismissed on the merits with prejudice as to the Releasees and, except as hereinafter provided, without costs as to Direct Purchaser Plaintiff, the Settlement Class, or T.RAD, subject to the approval of the Court, on the following terms and conditions:

A Definitions

1. "Cooperation" refers to those provisions set forth below in Section K.
2. "Cooperation Materials" means any information, testimony, Documents (as defined below) or other material provided by T.RAD under the terms of this Agreement.
3. "Defendant" means, for purposes of this Settlement Agreement only, any or all of the following: Calsonic Kansei Corporation, CalsonicKansei North America, Inc., Denso Corporation and Denso International America, Inc., T.RAD Co., Ltd., T.RAD North America, Inc., Mitsuba Corporation, and American Mitsuba Corporation.

4. "Direct Purchaser Plaintiff" means the Settlement Class Member, as defined in Paragraph 11 who is the named Plaintiff in the Complaint.

5. "Document" is defined to be synonymous in meaning and equal in scope to the use of this term in Rule 34(a) of the Federal Rules of Civil Procedure, including 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 T.RAD's custody, possession or control.

6. "Radiators" for purposes of this Agreement, has the same definition as set forth in the Complaint, including radiator fans, oil coolers, intercoolers, coolant pumps, fuel cell cooling units, and ATF warmers.

7. "Releasees" shall refer to T.RAD Co., Ltd. and T.RAD North America, Inc., their parents, subsidiaries, affiliates, divisions, predecessors, successors and assigns, and their respective past and present officers, directors and employees. "Releasees" does not include any Defendant in the MDL Litigation other than T.RAD or any other person or entity other than those set forth in the preceding sentence of this Paragraph 7.

8. "Releasers" shall refer to Direct Purchaser Plaintiff and the members of the Settlement Class, as defined in Paragraph 9, below, as well as each of their parents, subsidiaries, affiliates, divisions, predecessors, successors and assigns, and their respective past and present officers, directors and employees.

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

All individuals and entities who purchased Radiators in the United States directly from Defendants (or their subsidiaries or affiliates) from January 1, 1998 through August 14, 2018 ("Settlement Class Period"). Excluded from the Settlement Class are Defendants, their present and former parent companies, subsidiaries, and affiliates,

federal governmental entities and instrumentalities of the federal government, and states and their subdivisions, agencies and instrumentalities.

10. "Settlement Class Counsel" shall refer to the following law firms: Freed Kanner London & Millen LLC, 2201 Waukegan Road, Suite 130, Bannockburn, IL 60015; Kohn, Swift & Graf, P.C., 1600 Market Street, Suite 2500, Philadelphia, PA 19103; Preti, Flaherty, Beliveau & Pachios, LLP, One City Center, Portland, ME 04101; and Spector Roseman & Kodroff, P.C., 2001 Market Street, Suite 3420, Philadelphia, PA 19103.

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

12. "Settlement Amount" shall be US \$2,100,000 as specified in Paragraph 23.

13. "Settlement Fund" shall refer to the Settlement Amount plus accrued interest on said amount as set forth in Paragraph 25.

B. Approval of this Agreement and Dismissal of Claims Against T.RAD

14. Direct Purchaser Plaintiff and T.RAD shall use their best efforts to effectuate this Agreement, including cooperating in seeking the Court's approval for the establishment of procedures (including the giving of class notice under Federal Rules of Civil Procedure 23(c) and (e)) to secure the complete and final dismissal with prejudice of the Action as to the Releasees only.

15. 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. Before submission, T.RAD shall have a reasonable opportunity to review and comment on the Motion and proposed order, and Direct Purchaser Plaintiff shall reasonably consider T.RAD's comments.

16. Direct Purchaser Plaintiff, at a time to be decided in its sole discretion, shall submit to the Court a motion for authorization to disseminate notice of the settlement and final judgment contemplated by this Agreement to the Settlement Class (the "Notice Motion"). The Notice Motion shall include a proposed form of, method for, and proposed dates of dissemination of notice. Before submission, T.RAD shall have a reasonable opportunity to review and comment on the Notice Motion, and Direct Purchaser Plaintiff shall reasonably consider T.RAD's comments.

17. Direct Purchaser Plaintiff shall seek the entry of an order and final judgment, the text of which Direct Purchaser Plaintiff and T.RAD shall agree upon, and such agreement will not be unreasonably withheld. The terms of that proposed order and final judgment will include, at a minimum, the substance of the following provisions:

(a) certifying the Settlement Class described in Paragraph 9, pursuant to Rule 23 of the Federal Rules of Civil Procedure, solely for purposes of this settlement as a settlement class;

(b) as to the Action, approving finally this 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) as to T.RAD, directing that the Action be dismissed with prejudice and, except as provided for in this Agreement, without costs;

(d) reserving exclusive jurisdiction over the settlement and this Agreement, including the interpretation, administration, and consummation of this settlement, as well as over

T.RAD for its provision of Cooperation pursuant to this Agreement, to the United States District Court for the Eastern District of Michigan;

(e) 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 T.RAD shall be final; and

(f) providing that (i) the Court's certification of the Settlement Class is without prejudice to, or waiver of, the rights of any Defendant, including T.RAD, to contest certification of any other class proposed in the MDL Litigation, (ii) the Court's findings in this order shall have no effect on the Court's ruling on any motion to certify any class in the MDL Litigation or on the Court's rulings concerning any defendant's motion; and (iii) no party may cite or refer to the Court's approval of the Settlement Class as persuasive or binding authority with respect to any motion to certify any such class or any defendant's motion.

18. This Agreement shall become final when (i) the Court has entered in the Action a final order certifying the Settlement Class described in Paragraph 9 and approving this Agreement under Federal Rule of Civil Procedure 23(e) and has entered a final judgment dismissing the Action with prejudice as to T.RAD 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 T.RAD described herein has expired in the Action or, if appealed, approval of this Agreement and the final judgment in the Action as to T.RAD has been affirmed in its entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review. It is agreed that the provisions of Rule 60 of the Federal Rules of Civil Procedure shall not be taken into account in determining the above-stated times. On the date that Direct

Purchaser Plaintiff and T.RAD have executed this Agreement, Direct Purchaser Plaintiff and T.RAD shall be bound by its terms and this Agreement shall not be rescinded except in accordance with Paragraph 45.

19. Neither this Agreement (whether or not it becomes final) nor the final judgment, nor any negotiations, documents, and discussions associated with them (including Cooperation Materials, unless they were produced in the normal course of discovery), shall be deemed or construed to be an admission by T.RAD or any other Releasee, or evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by T.RAD or any other Releasee, or of the truth of any of the claims or allegations contained in any complaint or any other pleading filed in the MDL Litigation, and evidence thereof shall not be discoverable or used directly or indirectly, in any way, whether in the MDL Litigation, or in any other arbitration, action or proceeding whatsoever, against T.RAD or any other Releasee. Nothing in this Paragraph shall prevent Direct Purchaser Plaintiff from using and/or introducing into evidence Cooperation Materials produced pursuant to Section K, subject to the limitations in those paragraphs, against any other defendants in the MDL Litigation, to establish any of the above or to develop and promulgate a plan of allocation and distribution. Neither this Agreement, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any other action taken to carry out this Agreement by T.RAD or any other Releasee, shall be referred to, offered as evidence, or received in evidence in any pending or future civil, criminal, or administrative action, arbitration, or proceedings, except in a proceeding to enforce this Agreement, or to defend against the assertion of Released Claims (defined below), or as otherwise required by law.

C. Release, Discharge, and Covenant Not to Sue

20. In addition to the effect of any final judgment entered in accordance with this Agreement, upon this Agreement becoming final, as set out in Paragraph 18, and in consideration of payment of the Settlement Amount, as specified in Paragraph 23, into the Escrow Account (defined below), and for other valuable consideration, the Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits, causes of action, whether class, individual, or otherwise in nature (whether or not any Settlement Class Member has objected to the settlement or makes a claim upon or participates in the settlement, whether directly, representatively, derivatively or in any other capacity) under any federal, state, local, statutory, or common law of any jurisdiction in the United States, that 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, or in any future complaint concerning price fixing, bid rigging, or market, customer, or supply allocation of Radiators including but not limited to any conduct and causes of action alleged or asserted or that could have been alleged or asserted, in any class action or other complaints filed in the Action (the "Released Claims"). Notwithstanding the foregoing, nothing herein shall release: (1) any claims based on indirect purchases of Radiators; (2) claims involving any negligence, personal injury, breach of contract, bailment, failure to deliver lost goods, damaged or delayed goods, product defect, breach of product warranty, securities or other similar claim relating to Radiators; (3) claims brought outside the United States relating to purchases of Radiators outside the United States; (4) claims brought under laws other than those of the United

States relating to purchases of Radiators outside the United States; and (5) claims concerning any product other than Radiators. Releasors shall not, after the date of this Agreement, seek to establish liability against any Releasee as to, in whole or in part, any of the Released Claims unless the Agreement, for any reason, does not become final, or is rescinded or otherwise fails to become effective.

21. In addition to the provisions of Paragraph 20, Releasors hereby expressly waive and release, solely with respect to the Released Claims, upon this Agreement becoming final, as set out in Paragraph 18, any and all provisions, rights, and benefits, as to their claims concerning Radiators, conferred by Section 1542 of the California Civil Code, which states:

CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code. Each Releasor may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims that are released pursuant to the provisions of Paragraph 20, but each Releasor hereby expressly waives and fully, finally, and forever settles and releases, upon this Agreement becoming final, any known or unknown, suspected or unsuspected, contingent or non-contingent claim that T.RAD and Direct Purchaser Plaintiff have agreed to release pursuant to Paragraph 20, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

22. T.RAD releases any and all claims, rights or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including both known claims and unknown claims (as set forth in Paragraphs 20-21), that have been or could have been asserted in the Action or in any other action or proceeding by T.RAD against the Direct Purchaser Plaintiff, any Settlement Class Member, or their attorneys, which arise out of or relate to the institution, prosecution, or settlement of the Action (except for claims to enforce the terms of the Agreement).

E. Settlement Amount

23. Subject to the provisions hereof, and in full, complete and final settlement of the Action as provided herein, T.RAD shall pay or cause to be paid the Settlement Amount of US \$2,100,000. The Settlement Amount shall be paid within twenty (20) days after preliminary approval of this agreement by the Court into an escrow account in United States Dollars to be administered in accordance with the provisions of Section E ("Escrow Account"). No part of the Settlement Amount paid by T.RAD shall constitute, nor shall it be construed or treated as constituting, a payment for treble damages, fines, penalties, forfeitures, or punitive recoveries.

F. Escrow Account

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

25. All payments into the Escrow Account shall, at the direction of Settlement Class Counsel, be invested in instruments or accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including U.S. Treasury Bills, U.S. Treasury Money Market Funds or a bank account insured by the Federal Deposit Insurance Corporation ("FDIC") up to the guaranteed FDIC limit. Any

interest earned on any of the foregoing shall become part of the Settlement Fund. T.RAD shall have no responsibility for, or liability in connection with, the Settlement Fund or Escrow Account, including, without limitation, the investment, administration, maintenance, or distribution thereof.

26. The Settlement Fund held in the Escrow Account shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as the Settlement Fund shall be distributed pursuant to this Agreement or further order(s) of the Court.

27. Subject to the limitation set forth in Paragraph 32, reasonable disbursements for expenses associated with providing notice of the settlement to the Settlement Class, expenses for maintaining and administering the Settlement Fund, and taxes and expenses incurred in connection with taxation matters may be paid without approval from the Court and shall not be refundable to T.RAD 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 T.RAD if this settlement does not become final or otherwise fails to become effective may be paid out of the Escrow Account without approval from the Court. No other disbursement from or distribution of the Settlement Fund shall be made without prior approval of the Court.

28. The Escrow Account is intended by the parties hereto to be treated as a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1, and to that end the parties hereto shall cooperate with each other and shall not take a position in any filing or before any tax authority that is inconsistent with such treatment. At the request of T.RAD, a “relation back election” as described in Treas. Reg. § 1.468B-1(j) shall be made so as to enable the Escrow

Account to be treated as a qualified settlement fund from the earliest date possible, and the parties shall take all actions as may be necessary or appropriate to this end. At the direction of Settlement Class Counsel, taxes or estimated taxes shall be paid on any income earned on the funds in the Escrow Account, whether or not final approval has occurred. In the event federal or state income tax liability is finally assessed against and paid by T.RAD as a result of any income earned on the funds in the Escrow Account, T.RAD 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. T.RAD will use reasonable efforts to resist any such assessment or payment. Except as set forth in this Paragraph, T.RAD 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 T.RAD nor any Releasee nor their respective counsel shall have any liability or responsibility for the taxes or expenses incurred in connection with taxation matters. If this Agreement does not receive final Court approval, including final approval of the Settlement Class as defined in Paragraph 9, or if the Action is not certified as a class action for settlement purposes, then all amounts paid by T.RAD into the Settlement Fund (other than costs expended or incurred in accordance with Paragraphs 27 and 32), shall be returned to T.RAD 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.

G. Exclusions

30. Within ten (10) days after the end of the period to request exclusion from the Settlement Class, Settlement Class Counsel will cause copies of all timely requests for exclusion from the Settlement Class to be provided to counsel for T.RAD. With respect to any potential

Settlement Class Member who requests exclusion from the Settlement Class, T.RAD reserves all of its legal rights and defenses, including, but not limited to, any defenses relating to whether the excluded Settlement Class Member is a direct purchaser of any allegedly price-fixed Radiators or has standing to bring any claim.

31. The Settlement Amount is subject to rescission based on valid and timely requests for exclusion in accordance with the terms set forth in a separate, Confidential Addendum between T.RAD and the Settlement Class. The Confidential Addendum shall be provided to the Court for in *camera review* upon its request.

H. Payment of Expenses

32. T.RAD agrees to permit use of a maximum of US \$100,000 (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. The notice and administration expenses (up to the maximum of US \$100,000) are not recoverable by T.RAD if this settlement does not become final or is terminated to the extent such funds have actually been expended or the expenses have been incurred for notice and administration costs. Other than as set forth in this Paragraph, and in Paragraph 27, T.RAD 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.

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

Defendants in the Action and to apportion the costs of notice and administration on a pro rata basis across the applicable settlements.

I. The Settlement Fund.

34. 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 T.RAD or any other Releasee as to the Released Claims.

35. After this Agreement becomes final within the meaning of Paragraph 16, the Settlement Fund shall be distributed in accordance with a plan to be submitted to the Court at the appropriate time by Settlement Class Counsel, subject to approval by the Court. In no event shall any Releasee have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution, or administration of the Settlement Fund, including, but not limited to, the costs and expenses of such distribution and administration except as expressly otherwise provided in Paragraphs 27 and 32.

36. Direct Purchaser Plaintiff and Settlement Class Counsel shall be reimbursed and indemnified solely out of the Settlement Fund for all expenses and costs, as provided by Court Order and the provisions of Paragraphs 27 and 32. T.RAD and the other Releasees shall not be liable for any costs, fees, or expenses of the Direct Purchaser Plaintiff's or the Settlement Class' respective attorneys, experts, advisors, agents, or representatives. Instead, all such costs, fees, and expenses as approved by the Court, or authorized by Paragraphs 27 and 32, shall be paid out of the Settlement Fund.

J. Settlement Class Counsel's Attorneys' Fees, Reimbursement of Expenses, and Incentive Award for the Class Representative

37. 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 Direct Purchaser Plaintiff, if approved by the Court, will also be paid solely out of the Settlement Fund. Attorneys' fees and costs and expenses awarded by the Court shall be payable from the Settlement Fund upon award, notwithstanding the existence of any timely filed objections thereto, or potential appeal therefrom, or collateral attack on the settlement or any part thereof, subject to Settlement Class Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund with interest, if and when, as a result of any appeal or further proceedings on remand, or successful collateral attack, the fee or award of costs and expenses is reduced or reversed, or in the event the Settlement is rescinded or otherwise fails to become effective.

38. The procedure for and the allowance or disallowance by the Court of the application by Settlement Class Counsel for attorneys' fees, costs and expenses, or an incentive award for the class representative to be paid out of the Settlement Fund are not part of this Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the settlement, and any order or proceeding relating to a request for attorneys' fees and reimbursement of expenses or an incentive award, 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.

39. Neither T.RAD nor any other Releasee under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to any payment to Settlement Class Counsel and/or Direct Purchaser Plaintiff of any fee and expense award, or incentive award, in the Action.

40. Neither T.RAD 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.

K. Cooperation

41. In the event that Direct Purchaser Plaintiffs' settlements with the other *In re Radiators* defendants do not become final, T.RAD will provide reasonable cooperation to the Direct Purchaser Plaintiffs by providing targeted Documents and other information Direct Purchaser Plaintiffs may need to pursue their claims against other *In re Radiators* defendants. The scope of that Cooperation will be determined at the time it is requested, but may include reasonably tailored requests for Documents, attorney proffers, depositions and witness interviews. All Cooperation shall be coordinated so as to avoid all unnecessary duplication and expense, and shall not impose undue burden and expense on T.RAD to the extent practicable.

42. Direct Purchaser Plaintiff and Settlement Class Counsel agree they will not use the information or Cooperation Materials provided by T.RAD under this Agreement for any purpose other than the prosecution of their claims in the MDL Litigation, and will use the information or Cooperation Materials in the MDL Litigation consistent with the Stipulation and Protective Order Governing the Production and Exchange of Confidential Information, Master File No. 2:12-md-02311 (E.D. Mich. July 10, 2012) (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 T.RAD shall have the right to designate any and all appropriate Documents and other Cooperation Materials as "Highly Confidential" pursuant to the Protective Order.

43. T.RAD's obligations to provide Cooperation shall not be affected by the releases set forth in this Settlement Agreement. 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 9, 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 T.RAD, 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 T.RAD and/or the other Releasees, their counsel, or any individual made available by T.RAD and/or the other Releasees pursuant to Cooperation (as opposed to from any other source or pursuant to a court order or materials previously provided by T.RAD in discovery in this action). Notwithstanding anything contained herein, Direct Purchaser Plaintiff and the Settlement Class are not relinquishing any rights to pursue discovery against T.RAD 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 18, or in the event that it is terminated by either party under any provision herein.

44. T.RAD need not respond to discovery requests made pursuant to the Federal Rules of Civil Procedure from Direct Purchaser Plaintiff, meet and confer, or otherwise negotiate with Direct Purchaser Plaintiff 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 K. This withdrawal of discovery and pending motions shall be without prejudice to reinstating such discovery or motions if this Agreement fails to receive final approval by the Court or in the event that it is terminated by either party

under any provision herein. Other than to enforce the terms of this Agreement, neither T.RAD nor Direct Purchaser Plaintiff shall file motions against the other, in the Action, during the pendency of the Agreement.

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

45. 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 9 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 17, 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 T.RAD and Direct Purchaser Plaintiff shall each, in its sole discretion, have the option to rescind this Agreement in its entirety. The provisions of Paragraphs 27 and 32 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 57. 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.

46. In the event that this Agreement does not become final as set forth in Paragraph 18, or this Agreement otherwise is terminated, then this Agreement shall be of no force or effect and any and all parts of the Settlement Fund caused to be deposited in the Escrow Account (including interest earned thereon) shall be returned forthwith to T.RAD less only disbursements made, or the amount of obligations incurred in accordance with Paragraphs 27 and 32. T.RAD expressly reserves all rights and defenses if this Agreement does not become final.

47. Further, and in any event, Direct Purchaser Plaintiff and T.RAD 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 T.RAD, or the other Releasees, and shall not be used against T.RAD 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 T.RAD 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 T.RAD or the Releasees. Nothing in this Paragraph shall prevent Direct Purchaser Plaintiff from using Cooperation Materials produced by T.RAD against any other defendants in any action to establish (i) or (ii) above.

48. 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 T.RAD as provided in this Agreement in exchange for the payment of the Settlement Amount as well as Cooperation by T.RAD.

M. Miscellaneous

49. T.RAD, 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 filed with the Court.

50. T.RAD 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.

51. This Agreement does not settle or compromise any claim by Direct Purchaser Plaintiff or any Settlement Class Member asserted in the Complaint or, if amended, any subsequent complaint, against any Defendant or alleged co-conspirator other than Releasees. All rights against such other Defendants or alleged co-conspirators are specifically reserved by

Direct Purchaser Plaintiff and the Settlement Class. All rights of any Settlement Class Member against any and all former, current, or future Defendants or co-conspirators or any other person other than Releasees for sales made by Releasees relating to alleged illegal conduct are specifically reserved by Direct Purchaser Plaintiff and Settlement Class Members. T.RAD's and the other Releasees' sales to the Settlement Class and their alleged illegal conduct shall, to the extent permitted or authorized by law, remain in the Action as a potential basis for damage claims and shall be part of any joint and several liability claims against other current or future Defendants in the Action or other persons or entities other than Releasees. Releasees shall not be responsible for any payment to Direct Purchaser Plaintiff other than the Settlement Amount and the amounts specifically agreed to in Paragraphs 27 and 32.

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

53. This Agreement constitutes the entire, complete and integrated agreement between Direct Purchaser Plaintiff and T.RAD pertaining to the settlement of the Action against T.RAD, and supersedes all prior and contemporaneous undertakings, communications, representations, understandings, negotiations and discussions, either oral or written, between Direct Purchaser

Plaintiff and T.RAD in connection herewith. This Agreement may not be modified or amended except in writing executed by Direct Purchaser Plaintiff and T.RAD, and approved by the Court.

54. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Direct Purchaser Plaintiff and T.RAD. Without limiting the generality of the foregoing, upon final approval of this Agreement each and every covenant and agreement made herein by Direct Purchaser Plaintiff or Settlement Class Counsel shall be binding upon all Settlement Class Members and Releasers. The Releasees (other than the T.RAD entities, which are parties to this Agreement) are third-party beneficiaries of this Agreement and are authorized to enforce its terms applicable to them.


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

56. Neither Direct Purchaser Plaintiff nor T.RAD 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.

57. 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.

58. 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.

March
Date: ~~February~~ 4, 2019



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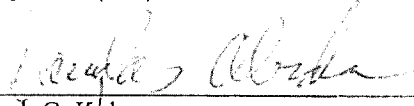
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*Interim Co-Lead Class Counsel and Settlement
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Date: ~~February~~ ^{March} 4, 2019

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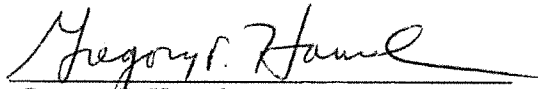
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March 4
Date: February 1, 2019

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Date: ~~February~~ ^{March} 4, 2019

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T.RAD CO., LTD.

By: H. Kano
Hiromi Kano
Chairman, CEO & Representative Director

T.RAD NORTH AMERICA, INC.

By: H. Kano
Hiromi Kano
Authorized Signatory

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