

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: AIR CONDITIONING SYSTEMS	:	
	:	2:13-cv-02701-MOB-MKM
THIS DOCUMENT RELATES TO: ALL DIRECT PURCHASER CASES	:	

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into this 15th day of April, 2019 (“Execution Date”) by and between Panasonic Corporation (“Panasonic Corp.”) and Direct Purchaser Plaintiffs (as defined in Paragraph 5 below), both individually and on behalf of a class of direct purchasers of Air Conditioning Systems (“Settlement Class”), as more particularly defined in Paragraph 10 below.

WHEREAS, Direct Purchaser Plaintiffs are prosecuting the above *In re Automotive Parts Antitrust Litigation*, Master File No. 12-md-02311 (E.D. Mich.) (“MDL Litigation”) and the *Air Conditioning Systems Case*, Case No. 2:13-cv-02701 (E.D. Mich.) (the “Action”) on their own behalf and on behalf of the Settlement Class against, among others, Panasonic Corp. and Panasonic Corporation of North America (the “Panasonic Defendants”);

WHEREAS, Direct Purchaser Plaintiffs allege that they were injured as a result of the Panasonic Defendants’ participation in an unlawful conspiracy to raise, fix, maintain, and/or stabilize prices, rig bids, and allocate markets and customers for Air Conditioning Systems (as defined below) in violation of Section 1 of the Sherman Act, as set forth in Direct

Purchaser Plaintiffs' Corrected Second Consolidated Amended Class Action Complaint, Case No. 2:13-cv-02701 (E.D. Mich. May 23, 2018) (ECF No. 106) (the "Complaint");

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

WHEREAS, arm's-length settlement negotiations have taken place between Settlement Class Counsel (as defined below) and counsel for the Panasonic Defendants, and this Agreement has been reached as a result of those negotiations;

WHEREAS, Direct Purchaser Plaintiffs, through their counsel, have conducted an investigation into the facts and the law regarding the Action and have concluded that resolving the claims against the Panasonic Defendants, according to the terms set forth below, is in the best interests of Direct Purchaser Plaintiffs and the Settlement Class because of the payment of the Settlement Amount and the value of the Cooperation (as those terms are defined below) that the Panasonic Defendants have 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, Panasonic Corp., despite its belief that it is not liable for the claims asserted by Direct Purchaser Plaintiffs 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 the Panasonic Defendants with respect to Air

Conditioning Systems based on the allegations made in the Action, as more particularly set out below;

WHEREAS, Panasonic Corp. has agreed to provide Cooperation (as defined below) to Direct Purchaser Plaintiffs 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 Plaintiffs' substantial burden and expense associated with prosecuting the Action; and

WHEREAS, Direct Purchaser Plaintiffs recognize the benefits of the Panasonic Defendants' Cooperation, and recognize that because of joint and several liability, this Agreement with Panasonic Corp. does not impair Direct Purchaser Plaintiffs' 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 the Panasonic Defendants' 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 Plaintiffs, the Settlement Class, or the Panasonic Defendants, subject to the approval of the Court, on the following terms and conditions:

A Definitions

1. For purposes of this Agreement, "Air Conditioning Systems" shall refer to systems that cool the interior environment of a vehicle and are part of the thermal segment of the automotive market. Air Conditioning Systems, whether sold together or separately, are defined to include one or more of the following: automotive compressors, condensers, control panels,

HVAC units (typically consisting of a blower motor, actuators, flaps, evaporator, heater core, and filter embedded in a plastic housing), sensors, and associated hoses and pipes.

2. "Cooperation" refers to those provisions set forth below in Section J.
3. "Cooperation Materials" means any information, testimony, Documents (as defined below) or other material provided by the Panasonic Defendants under the terms of this Agreement.
4. "Defendant" means, for purposes of this Agreement only, any or all of the following: Valeo Japan Co., Ltd., Valeo, Inc., Valeo Electrical Systems, Inc., Valeo Climate Control Corp.; Mitsubishi Heavy Industries, Ltd., Mitsubishi Heavy Industries America, Inc., Mitsubishi Heavy Industries Climate Control, Inc.; Denso Corporation, Denso International America, Inc.; MAHLE Behr GmbH & Co. KG, MAHLE Behr USA Inc.; Sanden Corp., Sanden International (U.S.A.), Inc., Sanden Automotive Climate Systems Corp., Sanden Automotive Components Corp.; Calsonic Kansei Corp., Calsonic Kansei North America, Inc.; and Panasonic Corp., Panasonic Corporation of North America.
5. "Direct Purchaser Plaintiffs" means the members of the Settlement Class, as defined in Paragraph 10 below, who are the named plaintiffs in the Complaint.
6. "Document" is defined to be synonymous in meaning and equal in scope to the use of this term in Rule 34(a) of the Federal Rules of Civil Procedure, including, without limitation, electronically stored information. A draft or non-identical copy is a separate Document within the meaning of this term. For purposes of this Agreement, Document shall include all English translations in the Panasonic Defendants's custody, possession or control.
7. "Releasees" shall refer to Panasonic Corp. and Panasonic Corporation of North America, and to all of their respective past and present, direct and indirect parents, members,

subsidiaries, affiliates, divisions, predecessors, successors, and assigns, and their respective past and present officers, directors, employees, managers, members, partners, agents, attorneys and legal representatives, assigns, servants, and representatives (and the parents', members', subsidiaries', and affiliates', past and present officers, directors, employees, partners, agents, attorneys, servants, and representatives), and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing. "Releasees" does not include any Defendant in the MDL Litigation other than the Panasonic Defendants 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 Plaintiffs and the members of the Settlement Class, as defined in Paragraph 10 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. "Settlement Amount" shall be US \$650,000 as specified in Paragraph 22 below.

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

All persons and entities (excluding Defendants and their present and former parents, subsidiaries, and affiliates) who or that purchased Air Conditioning Systems in the United States directly from one or more Defendants (or their controlled subsidiaries, affiliates, or joint ventures) from January 1, 2001 through February 14, 2017.

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

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

13. "Settlement Fund" shall refer to the Settlement Amount plus accrued interest on said amount as set forth in Paragraphs 23 and 24 below.

B. Approval of this Agreement and Dismissal of Claims Against the Panasonic Defendants

14. Direct Purchaser Plaintiffs and Panasonic Corp. 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 Plaintiffs 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, Panasonic Corp. shall have a reasonable opportunity to review and comment on the Motion and proposed order, and Direct Purchaser Plaintiffs shall reasonably consider Panasonic Corp.'s comments.

16. Direct Purchaser Plaintiffs, at a time to be decided in their sole discretion, shall submit to the Court a motion for authorization to disseminate notice of the settlement and final judgment contemplated by this Agreement to 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 Panasonic Corp. shall have a reasonable opportunity to review and comment on the Notice Motion, and Direct Purchaser Plaintiffs shall reasonably consider Panasonic Corp.'s comments.

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

(a) certifying the Settlement Class described in Paragraph 10 of this Agreement, 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 the Panasonic Defendants, 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 Panasonic Corp. for its provision of Cooperation pursuant to this Agreement, to the United States District Court for the Eastern District of Michigan;

(e) determining under Rule 54(b) of the Federal Rules of Civil Procedure that there is no just reason for delay and directing that the judgment of dismissal in the Action as to the Panasonic Defendants 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 the Panasonic Defendants, to contest certification of any other class proposed in the MDL Litigation; (ii) the

Court's findings in this order shall have no effect on the Court's ruling on any motion to certify any class in the MDL Litigation or on the Court's rulings concerning any defendant's motion; and (iii) no party may cite or refer to the Court's approval of the Settlement Class as persuasive or binding authority with respect to any motion to certify any such class or any defendant's motion.

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 10 of this Agreement and approving this Agreement under Rule 23(e) of the Federal Rules of Civil Procedure and has entered a final judgment dismissing the Action with prejudice as to the Panasonic Defendants without costs other than those provided for in this Agreement and (ii) the time for appeal or to seek permission to appeal from the Court's approval of this Agreement and entry of a final judgment as to the Panasonic Defendants described in (i) hereof has expired in the Action or, if appealed, approval of this Agreement and the final judgment in the Action as to the Panasonic Defendants has been affirmed in its entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review. It is agreed that the provisions of Rule 60 of the Federal Rules of Civil Procedure shall not be considered in determining the above-stated times. On the date that Direct Purchaser Plaintiffs and Panasonic Corp. have executed this Agreement, Direct Purchaser Plaintiffs and the Panasonic Defendants shall be bound by its terms and this Agreement shall not be rescinded except in accordance with Paragraph 53 of this Agreement.

19. Neither this Agreement (whether or not it becomes final) nor the final judgment, nor any negotiations, documents, and discussions associated with them, shall be deemed or construed to be an admission by the Panasonic Defendants or any other Releasee, or evidence of

any violation of any statute or law or of any liability or wrongdoing whatsoever by the Panasonic Defendants 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 the Panasonic Defendants or any other Releasee. Nothing in this Paragraph shall prevent Direct Purchaser Plaintiffs from using and/or introducing into evidence Cooperation Materials produced pursuant to Section J of this Agreement, subject to the limitations in those paragraphs, against any other defendant 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 the Panasonic Defendants 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, to defend against the assertion of Released Claims (defined below), or as otherwise required by law.

C. Release, Discharge, and Covenant Not to Sue

20. In addition to the effect of any final judgment entered in accordance with this Agreement, upon this Agreement becoming final, as set out in Paragraph 18 of this Agreement, and in consideration of payment of the Settlement Amount, as specified in Paragraph 22 of this Agreement, into the Escrow Account (defined below), and for other valuable consideration, the Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits, causes of action, 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 (including, but not limited to, unjust enrichment claims), 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, causes of action, injuries, damages, and the consequences thereof in any way based on, arising out of, or relating in any way to any conduct, act, or omission of the Releasees prior to the Execution Date concerning the Air Conditioning Systems that are the subject of the Complaint, including but not limited to, any conduct alleged, and causes of actions asserted or that could have been alleged or asserted, in any complaints filed in the Action (the "Released Claims"), provided however, that nothing herein shall release: (1) any claims based on indirect purchases of Air Conditioning Systems; (2) claims involving any negligence, personal injury, breach of contract, bailment, failure to deliver lost goods, damaged or delayed goods, product defect, breach of product warranty, or securities relating to Air Conditioning Systems; (3) claims brought outside the United States relating to purchases of Air Conditioning Systems outside the United States; (4) claims brought under laws other than those of the United States relating to purchases of Air Conditioning Systems outside the United States; and (5) claims concerning any product other than Air Conditioning Systems. Releasors shall not, after the date of this Agreement, seek to establish liability against any Releasee as to, in whole or in part, any of the Released Claims unless the Agreement, for any reason, does not become final, is rescinded, or otherwise fails to become effective.

21. In addition to the provisions of Paragraph 20 of this Agreement, Releasors hereby expressly waive and release, solely with respect to the Released Claims, upon this Agreement

becoming final, as set out in Paragraph 18 of this Agreement, any and all provisions, rights, and benefits, as to their claims concerning Air Conditioning Systems, conferred by Section 1542 of the California Civil Code, which states:

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

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code. Each Releasor may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims that are released pursuant to the provisions of Paragraph 20 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 Panasonic Corp. and Direct Purchaser Plaintiffs have agreed to release pursuant to Paragraph 20 of this Agreement, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

D. Settlement Amount

22. Subject to the provisions hereof, and in full, complete, and final settlement of the Action as provided herein, Panasonic Corp. shall pay or cause to be paid the Settlement Amount of US \$650,000. The Settlement Amount shall be paid into an escrow account in United States Dollars to be administered in accordance with the provisions of Section E of this Agreement (the "Escrow Account") within sixty (60) days after the Execution Date. No part of the Settlement

Amount paid by Panasonic Corp. shall constitute, nor shall it be construed or treated as constituting, a payment for treble damages, fines, penalties, forfeitures, or punitive recoveries.

E. Escrow Account

23. 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.

24. All payments into the Escrow Account shall, at the direction of Settlement Class Counsel, be invested in instruments or accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including U.S. Treasury Bills, U.S. Treasury Money Market Funds, or a bank account insured by the Federal Deposit Insurance Corporation ("FDIC") up to the guaranteed FDIC limit. Any interest earned on any of the foregoing shall become part of the Settlement Fund. The Panasonic Defendants shall have no responsibility for, or liability in connection with, the Settlement Fund or Escrow Account, including, without limitation, the investment, administration, maintenance, or distribution thereof.

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

26. Subject to the limitation set forth in Paragraph 30 of this Agreement, 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 Panasonic Corp. 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 Panasonic Corp. if this Settlement does not become final, is rescinded, or otherwise fails to become effective may be paid out of the Escrow Account without approval from the Court. No other disbursement from or distribution of the Settlement Fund shall be made without prior approval of the Court.

27. The Escrow Account is intended by the parties hereto to be treated as a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1, and to that end the parties hereto shall cooperate with each other and shall not take a position in any filing or before any tax authority that is inconsistent with such treatment. At the request of Panasonic, 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 Panasonic Corp. as a result of any income earned on the funds in the Escrow Account, Panasonic Corp. 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. Panasonic Corp. will use reasonable efforts to resist any such assessment or payment. Except as set forth in this Paragraph, the Panasonic Defendants 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 the Panasonic Defendants nor any Releasee nor their

respective counsel shall have any liability or responsibility for the taxes or expenses incurred in connection with taxation matters.

28. If this Agreement does not receive final Court approval, including final approval of the Settlement Class as defined in Paragraph 10 of this Agreement, or if the Action is not certified as a class action for settlement purposes, then all amounts paid by Panasonic Corp. into the Settlement Fund (other than costs expended or incurred in accordance with Paragraphs 26 and 30 of this Agreement), shall be returned to Panasonic Corp. from the Escrow Account along with any interest accrued thereon within thirty (30) calendar days of the Court's denial of final approval of the Agreement and/or Settlement Class.

F. Exclusions

29. 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 requests for exclusion from the Settlement Class to be provided to counsel for the Panasonic Defendants. With respect to any potential Settlement Class Member who requests exclusion from the Settlement Class, the Panasonic Defendants reserve all of their legal rights and defenses, including, but not limited to, any defenses relating to whether the excluded Settlement Class Member is a direct purchaser of any allegedly price-fixed Air Conditioning Systems or has standing to bring any claim. The Panasonic Defendants or Class Counsel may at their discretion dispute an exclusion request, and, if possible, resolve the disputed exclusion request by agreement and inform the Court of their position, if necessary, within thirty (30) days of the deadline set by the Court for any Class Member to seek exclusion from the Settlement Class.

G. Payment of Expenses

30. Panasonic Corp. agrees to permit use 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 Panasonic Corp. if this settlement does not become final or is terminated to the extent such funds have actually been expended or the expenses have been incurred for notice and administration costs. Other than as set forth in this Paragraph, and in Paragraph 26 of this Agreement, the Panasonic Defendants 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.

31. To mitigate the costs of notice and administration, the Direct Purchaser Plaintiffs shall use their best efforts, if practicable, to disseminate notice with any other settlements reached with other Defendants in the Action and to apportion the costs of notice and administration on a pro rata basis across the applicable settlements.

32. Within thirty (30) days after the Execution Date, the Panasonic Defendants will supply to Settlement Class Counsel, in an electronic mailing format, the names and addresses of putative Settlement Class Members to whom the Panasonic Defendants or their subsidiaries or affiliates sold Air Conditioning Systems during the Settlement Class Period to the extent they are identifiable through reasonable efforts, and to the extent not previously provided to Settlement Class Counsel. Pursuant to the Order Granting Direct Purchaser Plaintiffs' Motion to Direct

Defendants to Identify Settlement Class Members for Mailing Notice of Future Settlements, 2:13-cv-02701-MOB (ECF No. 119) (August 20, 2018), the Panasonic Defendants grant permission to Settlement Class Counsel to e-mail the other Defendants, notifying them of the existence of a settlement and requesting that those Defendants provide within sixty (60) days, to the extent not previously provided to Settlement Class Counsel, the names and addresses of all persons or entities who directly purchased Air Conditioning Systems in the United States from them or their affiliate(s) during the Settlement Class period.

H. The Settlement Fund

33. 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 the Panasonic Defendants or any other Releasee as to the Released Claims.

34. After this Agreement becomes final within the meaning of Paragraph 18 of this Agreement, the Settlement Fund shall be distributed in accordance with a plan to be submitted to the Court at the appropriate time by Settlement Class Counsel, subject to approval by the Court. In no event shall any Releasee have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution, or administration of the Settlement Fund, including, but not limited to, the costs and expenses of such distribution and administration except as expressly otherwise provided in Paragraphs 26 and 30 of this Agreement.

35. Direct Purchaser Plaintiffs and Settlement Class Counsel shall be reimbursed and indemnified solely out of the Settlement Fund for all expenses and costs, as provided by Court Order and the provisions of Paragraphs 26 and 30 of this Agreement. The Panasonic Defendants and the other Releasees shall not be liable for any costs, fees, or expenses of the Direct Purchaser Plaintiffs' or the Settlement Class' respective attorneys, experts, advisors, agents, or

representatives. Instead, all such costs, fees, and expenses as approved by the Court, or authorized by Paragraphs 26 and 30 of this Agreement, shall be paid out of the Settlement Fund.

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

36. Subject to Court approval, Direct Purchaser Plaintiffs and Settlement Class Counsel shall be reimbursed and paid solely out of the Settlement Fund for all past, current, or future litigation costs, expenses, and any award of attorneys' fees. An incentive award to each Direct Purchaser Plaintiff, if approved by the Court, will also be paid solely out of the Settlement Fund. Attorneys' fees, 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, 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, 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.

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

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

39. Neither the Panasonic Defendants nor any other Releasee under this Agreement shall have any responsibility for, interest in, or liability whatsoever with respect to the allocation among Settlement Class Counsel and/or any other person who may assert some claim thereto, of any fee and expense award that the Court may make in the Action.

J. Cooperation

40. In return for the release and discharge provided herein, Panasonic Corp. agrees to pay the Settlement Amount and the Panasonic Defendants further agree to use their reasonable efforts to provide satisfactory and timely Cooperation, at their expense, as set forth specifically in this Section J, until the later of the entry of the final judgment or judgments with respect to all the remaining Defendants in the Action or dismissal with prejudice of those Defendants and when such judgments or dismissals become “final” as described in Paragraph 18 of this Agreement. Cooperation will take place consistent with the timing set forth specifically below, and in a manner that is in compliance with the Panasonic Defendants’ obligations to the United States Department of Justice (“DOJ”), the Japanese Fair Trade Commission, the European Commission, or any other government entity (collectively, “Government Entities”). All Cooperation shall be coordinated so as to avoid all unnecessary duplication and expense, shall otherwise be reasonable, and shall not impose undue burden and expense on the Panasonic Defendants to the extent practicable.

41. *Identity of Individuals.* Within ten (10) business days of the Execution Date, the Panasonic Defendants will provide Settlement Class Counsel with the identity of all current and

former employees, directors, and officers of the Panasonic Defendants who: (1) were interviewed and/or prosecuted by any of the United States Department of Justice (“DOJ”), the Japanese Fair Trade Commission, or the European Commission in connection with the alleged anticompetitive activity relating to Air Conditioning Systems; (2) appeared before the grand jury in the DOJ investigation of conduct in the alleged Air Conditioning Systems conspiracy; or (3) were disclosed to the DOJ as having knowledge or information relating to the DOJ’s investigation into alleged antitrust violations with respect to Air Conditioning Systems.

42. *Documents.* The Panasonic Defendants will use their reasonable efforts to substantially complete the production of the following Documents no later than ninety (90) days after preliminary approval of this Agreement: Documents provided to or seized by the Department of Justice relating to their investigation into alleged competition violations with respect to Air Conditioning Systems. All currently pending discovery requests will be withdrawn, and no further discovery will be sought from any Panasonic entity other than as provided for in this Agreement.

43. *Transactional Data.* Within sixty (60) days of Settlement Class Counsel’s request, the Panasonic Defendants will use reasonable best efforts to complete the production of transactional data concerning the Panasonic Defendants’ sales of Air Conditioning Systems sold to Original Equipment Manufacturers, or other purchasers of Air Conditioning Systems, for Vehicles sold in the United States from May 1, 1997 through December 31, 2007. The Panasonic Defendants shall also provide reasonable assistance to Settlement Class Counsel in understanding the transactional data produced, including, if appropriate, the Panasonic Defendants’ attorneys answering a reasonable number of written questions from Direct Purchaser Plaintiffs’ experts regarding such data.

44. *Attorney Proffers and Declarations.* Any attorney proffers provided pursuant to the below obligations shall be coordinated with, and occur at the same time as, the attorney proffers provided in settlements of indirect purchaser claims entered into by the Panasonic Defendants in Case No. 2:13-cv-02702 (the “ADP AC Systems Action”) or Case No. 2:13-cv-02703 (the “EPP AC Systems Action”) (together, the *In re Air Conditioning Systems Cases*) and any related obligations that may arise from any other settlement to the extent practicable.

(a) Within thirty (30) days after preliminary approval of this Agreement, counsel for the Panasonic Defendants will make themselves available upon request by Settlement Class Counsel at a mutually agreed-upon location in the United States for a meeting of one (1) business day to provide an attorney’s proffer of facts known to them. Thereafter, Panasonic’s counsel will make themselves available for reasonable follow-up conversations.

(b) At the request of Direct Purchaser Plaintiffs, the Panasonic Defendants agree to use their reasonable efforts to provide affidavit(s) or written declarations of representatives qualified to authenticate or establish as business records, or otherwise establish any other necessary foundation for admission into evidence of any Documents produced or to be produced by the Panasonic Defendants. Settlement Class Counsel agrees to use best efforts to minimize the burden on the Panasonic Defendants of any such authentication.

45. Notwithstanding any other provision in this Agreement, the Panasonic Defendants may assert where applicable the work product doctrine, the attorney client privilege, the joint defense privilege, and the common interest privilege with respect to any Cooperation Materials requested under this Agreement. If any Documents protected by the attorney client privilege, the work product doctrine, the joint defense privilege, and/or the common interest privilege are accidentally or inadvertently produced, upon notice by the Panasonic Defendants of such

inadvertent production, these Documents shall be promptly destroyed or returned to counsel for the Panasonic Defendants, and their production shall in no way be construed to have waived in any manner any privilege or protection attached to such Documents. No Document shall be withheld under claim of privilege or work product if produced to or made available to any Government Entity, unless clawed back from those entities pursuant to Rule 502 of the Federal Rules of Evidence or otherwise. Upon reasonable request, for all Documents withheld from production, the Panasonic Defendants shall provide a 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 such Documents.

46. Direct Purchaser Plaintiffs and Settlement Class Counsel agree they will not use the information or Cooperation Materials provided by the Panasonic Defendants or the other Releasees or their representatives under this Agreement for any purpose other than the prosecution of their claims in the Action, will use the information or Cooperation Materials in the Action 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 Action or as otherwise required by law. All Documents and other Cooperation Materials provided pursuant to this Agreement shall be deemed "Highly Confidential" and shall be governed by the terms of the Protective Order, as if they had been produced in response to discovery requests and so designated.

47. The Panasonic Defendants' obligations to provide Cooperation shall not be affected by the releases set forth in this Agreement. Unless this Agreement is rescinded,

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

48. In the event that this Agreement fails to receive final approval by the Court, including final approval of the Settlement Class as defined in Paragraph 10 of this Agreement, or in the event that it is terminated by either party under any provision herein, the parties agree that neither Direct Purchaser Plaintiffs nor Settlement Class Counsel shall be permitted to introduce into evidence against the Panasonic Defendants, at any hearing or trial, or in support of any motion, opposition or other pleading in the Action or in any other federal or state or foreign action alleging a violation of any law relating to the subject matter of the Action, any Documents or information or statements provided by the Panasonic Defendants and/or the other Releasees, their counsel, or any individual made available by the Panasonic Defendants and/or the other Releasees pursuant to Cooperation (as opposed to from any other source or pursuant to a court order). This limitation shall not apply to any discovery of the Panasonic Defendants which Settlement Class Counsel participate in as part of the MDL Litigation. Notwithstanding anything contained herein, Direct Purchaser Plaintiffs and the Settlement Class are not relinquishing any rights to pursue discovery against the Panasonic Defendants in the event that this Agreement fails to receive final approval by the Court, including final approval of the Settlement Class, as defined in Paragraph 18 of this Agreement, or in the event that it is terminated by either party under any provision herein.

49. The Panasonic Defendants need not respond to discovery requests made pursuant to the Federal Rules of Civil Procedure from Direct Purchaser Plaintiffs, meet and confer, or otherwise negotiate with Direct Purchaser Plaintiffs regarding discovery requests served in the

Action or otherwise participate in the Action during the pendency of the Agreement, with the exception of the Cooperation provisions set forth in this Section J. 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 the Panasonic Defendants nor Direct Purchaser Plaintiffs shall file motions against the other, in the Action, during the pendency of the Agreement.

50. In the event that the Panasonic Defendants produce Documents, including translations, or provide declarations or written responses to discovery to any party or non-party in the *In re Air Conditioning Systems* Cases concerning or relating to Air Conditioning Systems (“Relevant Production”), the Panasonic Defendants shall produce all such Documents, declarations or written discovery responses to Direct Purchaser Plaintiffs contemporaneously with making the Relevant Production to the extent such Documents, declarations, or written discovery responses have not previously been produced by the Panasonic Defendants to Direct Purchaser Plaintiffs. In addition, the Panasonic Defendants shall provide Direct Purchaser Plaintiffs with all cooperation it provides pursuant to any settlement agreement with any other party in the *In re Air Conditioning Systems* Cases concerning or relating to Air Conditioning Systems. To the extent that such cooperation includes any attorney proffer, witness interviews, or depositions of witnesses in addition to those already provided for in Paragraph 44, Settlement Class Counsel shall be permitted to attend and/or participate in such attorney proffer, witness interviews or depositions, and shall be entitled to ask questions for a period up to three (3) hours at any interview or deposition (provided that this shall not expand the time permitted for any deposition).

51. This Agreement does not restrict Settlement Class Counsel from noticing, attending and/or participating in any deposition in the MDL Litigation. Settlement Class Counsel may attend and/or participate in any depositions of the Panasonic Defendants' witnesses, provided that the time for participation of Settlement Class Counsel shall not expand the time permitted for the deposition as may be provided by the Court, and Settlement Class Counsel will not ask the Court to enlarge the time of any deposition noticed of a current or former employee of the Panasonic Defendants.

52. If Settlement Class Counsel believes that the Panasonic Defendants or any current employee, officer or director of the Panasonic Defendants have failed to provide Cooperation under the terms of this Agreement, Settlement Class Counsel may seek an Order from the Court compelling such Cooperation. Nothing in this provision shall limit in any way the Panasonic Defendants' ability to defend the level of Cooperation they have provided or to defend their compliance with the terms of the Cooperation provisions in this Agreement.

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

53. If the Court refuses to approve this Agreement or any part hereof, including if the Court does not certify the Settlement Class in accordance with the specific Settlement Class definition set forth in Paragraph 10 of this Agreement, or if such approval is modified or set aside on appeal, or if the Court does not enter the final judgment provided for in Paragraph 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 the Panasonic Defendants and Direct Purchaser Plaintiffs shall each, in their sole discretion, have the option to rescind this Agreement in its entirety. The provisions of Paragraphs 26 and 30 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 64 of this Agreement. 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.

54. In the event that this Agreement does not become final as set forth in Paragraph 18 of this Agreement, 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 Panasonic Corp. less only disbursements made, or the amount of obligations incurred in accordance with Paragraphs 26 and 30 of this Agreement. The Panasonic Defendants expressly reserve all rights and defenses if this Agreement does not become final.

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

56. 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 Released Claims with respect to the Panasonic Defendants as provided in this Agreement in exchange for the payment of the Settlement Amount as well as Cooperation by the Panasonic Defendants.

L. Miscellaneous

57. The Panasonic Defendants, Direct Purchaser Plaintiffs, and Settlement Class Counsel agree not to disclose publicly or to any other person the terms of this Agreement until Plaintiffs submit a motion seeking preliminary approval of this agreement to the Court pursuant to Paragraph 15.

58. The Panasonic Defendants 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.

59. This Agreement does not settle or compromise any claim by Direct Purchaser Plaintiffs or any Settlement Class Member asserted in the Complaint or, if amended, any subsequent complaint, against any Defendant or alleged co-conspirator other than Releasees. All rights against such other Defendants or alleged co-conspirators are specifically reserved by Direct Purchaser Plaintiffs and the Settlement Class. All rights of any Settlement Class Member against any and all former, current, or future Defendants or co-conspirators or any other person other than Releasees for sales of Air Conditioning Systems made by Releasees relating to alleged illegal conduct are specifically reserved by Direct Purchaser Plaintiffs and Settlement Class Members. The Panasonic Defendants' and the other Releasees' sales of Air Conditioning Systems to the Settlement Class and their alleged illegal conduct shall, to the extent permitted or authorized by law, remain in the Action as a potential basis for damage claims and shall be part

of any joint and several liability claims against other current or future Defendants in the Action or other persons or entities other than Releasees. Releasees shall not be responsible for any payment to Direct Purchaser Plaintiffs other than the Settlement Amount.

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

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

62. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Direct Purchaser Plaintiffs and the Panasonic Defendants. Without limiting the

generality of the foregoing, upon final approval of this Agreement each and every covenant and agreement made herein by Direct Purchaser Plaintiffs or Settlement Class Counsel shall be binding upon all Settlement Class Members and Releasers. The Releasees (other than Panasonic Corp. which is a party to this Agreement) are third-party beneficiaries of this Agreement and are authorized to enforce its terms applicable to them.

63. This Agreement may be executed in counterparts by Direct Purchaser Plaintiffs and Panasonic Corp.

64. Neither Direct Purchaser Plaintiffs nor Panasonic Corp. 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.

65. 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, 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.

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

Date: April 15, 2019

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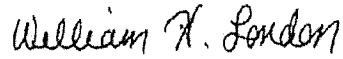
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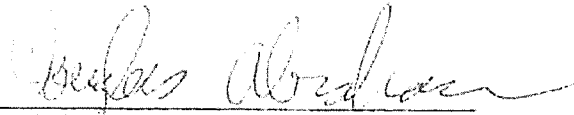
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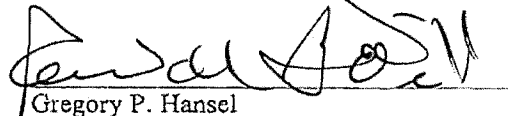
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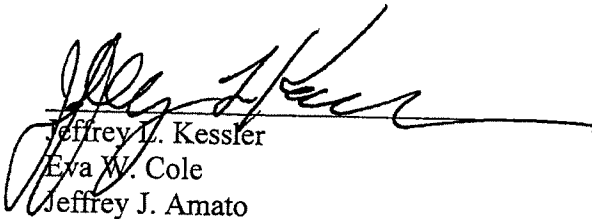
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