

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

IN RE: AUTOMOTIVE PARTS ANTITRUST
LITIGATION

Master File No. 12-md-02311

IN RE: AIR CONDITIONING SYSTEMS

Hon. Marianne O. Battani

THIS RELATES TO: ALL DIRECT
PURCHASER ACTIONS

2:13-cv-02701-MOB-MKM

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into as of the ___ day of July, 2019 (“Execution Date”) by and between Sanden Holdings Corporation (referred to in the Complaint as Sanden Corp.), Sanden Automotive Components Corporation, Sanden Automotive Climate Systems Corporation, Sanden International (U.S.A.) Inc. (collectively, “Sanden”), and the Direct Purchaser Plaintiff Class Representative (“Direct Purchaser Plaintiff”), both individually and on behalf of a class of direct purchasers of Air Conditioning Systems (the “Settlement Class”), as more particularly defined in Paragraph 13 below.

WHEREAS, Direct Purchaser Plaintiff is prosecuting the above *In Re Automotive Parts Antitrust Litigation*, Master File No. 12-md-02311 (E.D. Mich.) (the “MDL Litigation”) and Case No. 2:13-cv-02701 on its own behalf and on behalf of the Settlement Class;

WHEREAS, Direct Purchaser Plaintiff alleges that it was injured as a result of Sanden’s 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 in Paragraph 2 below) in violation of Section 1 of the Sherman Act as set forth in Direct Purchaser Plaintiff’s {00199781} *Settlement Agreement*

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Corrected Second Consolidated Amended Class Action Complaint in the Air Conditioning Systems Action (the "Complaint") (Case No. 2:13-cv-02701, Doc. No. 105);

WHEREAS, Sanden 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 Sanden and this Agreement has been reached as a result of those negotiations;

WHEREAS, Direct Purchaser Plaintiff, through Settlement Class Counsel, has conducted an investigation into the facts and the law regarding the Action and has concluded that resolving the claims against Sanden, 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 that term is defined below) that Sanden has agreed to provide pursuant to this Agreement; and

WHEREAS, Sanden, despite its belief that it is not liable for the claims asserted and its belief that it has good defenses thereto, has nevertheless agreed to enter into this Agreement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, and to obtain the releases, orders, and judgment contemplated by this Agreement, and to put to rest with finality all claims that have been or could have been asserted against Sanden with respect to Air Conditioning Systems based on the allegations in the Action, as more particularly set out below;

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, it is agreed by and among the undersigned that the Action be settled, compromised, and dismissed on the merits with prejudice

as to the Releasees and except as hereinafter provided, without costs as to Direct Purchaser Plaintiff, the Settlement Class, or Sanden, subject to the approval of the Court, on the following terms and conditions:

A. Definitions.

1. "Action" refers to the above-captioned action filed by Direct Purchaser Plaintiff, Case No. 2:13-cv-02701.

2. "Air Conditioning Systems" includes all parts as described in Paragraph 11 of the Complaint.

3. "Cooperation" shall refer to those provisions set forth below in Section G.

4. "Cooperation Materials" means any information, testimony, Documents (as defined below) or other material provided by Sanden pursuant to the terms of this Agreement.

5. "Defendant" means, for purposes of this settlement 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.; CalsonicKansei North America, Inc.; Panasonic Corp.; and Panasonic Corporation of North America.

6. "Document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Rule 34(a) of the Federal Rules of Civil Procedure, including without limitation, electronically stored information. A draft or non-identical copy is a separate Document within the meaning of this term.

7. "Direct Purchaser Plaintiff Class Representative" means the Settlement Class Member, as defined in Paragraph 15, below, who is the named plaintiff in the Complaint.

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

9. "Released Claims" means the Claims described in Paragraphs 22 and 23 herein.

10. "Releasees" means (i) Sanden, (ii) all of Sanden's past and present direct and indirect, parents, subsidiary companies and affiliates, including their respective predecessors, successors and assigns, and (iii) each and all of the present and former principals, partners, officers, directors, supervisors, employees, agents, members, representatives, insurers, attorneys, heirs, executors, administrators, and assigns of each of the persons and entities listed in (i), (ii), and (iii). "Releasees" does not include any defendant in the MDL Litigation other than Sanden.

11. "Releasers" means the Direct Purchaser Plaintiff Class Representative and the Settlement Class Members, as defined in Paragraph 15 below, and their past and present officers, directors, supervisors, employees, agents, members, attorneys, representatives, parents, subsidiaries, affiliates, principals, partners, insurers and the predecessors, successors, heirs, executors, administrators and assigns of any of the foregoing.

12. "Settlement Amount" is \$3,650,000 (Three Million, Six Hundred Fifty Thousand Dollars) to be paid as set forth in Paragraph 24, and the "Settlement Fund" is the Settlement Amount plus any income or accrued interest earned on that amount as set forth in Paragraph 25(b).

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

All individuals and entities who purchased Air Conditioning Systems in the United States directly from one or more Defendant(s) (or their subsidiaries, affiliates, or joint ventures) from January 1, 2001 through February 14, 2017. Excluded from the Settlement Class are Defendants, their parent companies, subsidiaries and affiliates, federal governmental entities and instrumentalities of the federal government, states and their subdivisions, agencies and instrumentalities.

14. "Settlement Class Counsel" refers to the law firms of:

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

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

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

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

16. Direct Purchaser Plaintiff and Sanden shall use their reasonable best efforts to effectuate this Agreement, including cooperating in seeking the Court's approval for the establishment of procedures, including procedures regarding the giving of class notice pursuant to Federal Rule of Civil Procedure 23(c) and (e) (subject to Paragraphs 25 and 27, the costs of which will solely be borne by Direct Purchaser Plaintiff), and to secure the complete, and final dismissal with prejudice of the Action as to the Releasees only.

17. Direct Purchaser Plaintiff shall submit to the Court a motion seeking preliminary approval of this Agreement (the "Preliminary Approval Motion"). The Preliminary Approval Motion shall include the proposed form of an order preliminarily approving this Agreement. Before submission, Sanden shall have a reasonable opportunity to review and comment on the Motion and proposed order, and Direct Purchaser Plaintiffs shall reasonably consider Sanden's comments.

18. 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 all Settlement Class Members identified by Direct Purchaser Plaintiff (the "Notice Motion"). Before submission Sanden shall have a reasonable opportunity to review and comment on the Notice Motion, and Direct Purchaser Plaintiffs shall reasonably consider Sanden's comments. To mitigate the costs of notice, which, subject to Paragraphs 25 and 27, will be borne exclusively by Direct Purchaser Plaintiff, Direct Purchaser Plaintiff shall endeavor, if practicable, to disseminate notice of this settlement with notice of any other settlements reached in the Action. The Notice Motion must include a proposed form of, method for, and date of dissemination of notice.

19. Direct Purchaser Plaintiff shall seek, and Sanden will not unreasonably object to, the entry of an order and final judgment in the Action. 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 13, pursuant to Rule 23, solely for purposes of this settlement as a Settlement Class for the Action;

(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 and directing its consummation according to its terms;

(c) directing that all Releasors shall, by operation of law, be deemed to have released all Releasees from the Released Claims;

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

(e) reserving exclusive jurisdiction over the settlement and this Agreement, including the interpretation, administration and consummation of this settlement, to the United States District Court for the Eastern District of Michigan;

(f) determining under Rule 54(b) that there is no just reason for delay and directing that the judgment of dismissal in the Action as to Sanden shall be final; and

(g) providing that (i) the Court's certification of the Settlement Class is without prejudice to, or waiver of, the rights of any Defendant, including Sanden, to contest certification of any other class proposed in the MDL Litigation, (ii) the Court's findings in the Order shall have no effect on the Court's ruling on any motion to certify any class in the MDL Litigation or on the Court's rulings concerning any Defendant's motion; and (iii) no party may cite or refer to the Court's approval of the Settlement Class as persuasive or binding authority with respect to any motion to certify any such class or any Defendant's motion.

20. This Agreement shall become final when (i) the Court has entered a final order certifying the Settlement Class described in Paragraph 13 and approving this Agreement under Rule 23(e) and has entered a final judgment dismissing the Action with prejudice as to Sanden and without costs other than those provided for in this Agreement, and (ii) the time for appeal or

to seek permission to appeal from the Court's approval of this Agreement and entry of a final judgment as to Sanden described in (i) above has expired or, if appealed, approval of this Agreement and the final judgment in the Action as to Sanden 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 shall not be taken into account in determining the above-stated times. On the date that Direct Purchaser Plaintiff and Sanden have executed this Agreement, Direct Purchaser Plaintiff and Sanden shall be bound by its terms and this Agreement shall not be rescinded except in accordance with Paragraph 46 of this Agreement.

21. Neither this Agreement (whether or not it should become final) nor the final judgment, nor any and all negotiations, Documents, or discussions associated with them (including Cooperation Materials produced pursuant to Section G, unless this Agreement fails to become final and the corresponding Cooperation Materials are later independently produced through the normal course of discovery in this Action), shall be deemed or construed to be an admission by Sanden, or evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by Sanden, or of the truth of any of the claims or allegations contained in any complaint or any other pleading filed in the MDL Litigation, and evidence thereof shall not be discoverable or used in any way, whether in the MDL Litigation, or any other arbitration, action or proceeding whatsoever, against Sanden. Nothing in this Paragraph shall prevent Direct Purchaser Plaintiff from using and/or introducing into evidence Cooperation Materials produced pursuant to Section G, subject to the limitations in those Paragraphs, against any other defendants in the MDL Litigation, or to develop and promulgate a plan of allocation and distribution. Neither this Agreement, nor any of its terms and provisions, nor any of the

negotiations or proceedings connected with it, nor any other action taken to carry out this Agreement by Sanden, 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, or as otherwise required by law.

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

22. In addition to the effect of any final judgment entered in accordance with this Agreement, upon this Agreement becoming final, as set out in Paragraph 20 of this Agreement, and in consideration of payment of the Settlement Amount, as specified in Paragraph 24 of this Agreement, into the Settlement Fund, 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 Fund, whether directly, representatively, derivatively or in any other capacity) that Releasers, or any of them, ever had, now has, or hereafter can, shall, or may ever have, that now exist or may exist in the future, on account of, or in any way arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated claims, injuries, damages, and the consequences thereof in any way arising out of or relating in any way to (i) any conduct prior to the Execution Date alleged in the Complaint, and (ii) any act or omission of the Releasees (or any of them) prior to the Execution Date concerning Air Conditioning Systems, including but not limited to any conduct and causes of action alleged or asserted or that could have been alleged or asserted, in any class action or other complaint filed in the Action (the "Released Claims"), provided however, that nothing herein shall release; (1) any claims based on indirect purchases of Air

Conditioning Systems; (2) any claims made by a federal government entity or instrumentality of the federal government or any State, State agency, or instrumentality or political subdivision of a State as to government purchases and/or penalties; (3) claims involving 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 Air Conditioning Systems; (4) claims concerning any product other than Air Conditioning Systems; (5) claims brought under laws other than those of the United States relating to purchases of Air Conditioning Systems outside of the United States; and (6) claims brought outside the United States relating to purchases of Air Conditioning Systems outside the United States. Releasors shall not, after the date of this Agreement, seek to establish liability against any Releasee as to, in whole or in part, any of the Released Claims unless this Agreement is, for any reason, not finally approved or is terminated.

23. In addition to the provisions of Paragraph 22 of this Agreement, Releasors hereby expressly waive and release, solely with respect to the Released Claims, upon this Agreement becoming final, as set out in Paragraph 20 of this Agreement, any and all provisions, rights, and benefits, as to their claims concerning Air Conditioning Systems conferred by § 1542 of the California Civil Code, which states:

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

or by any equivalent law or statute of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code. Each Releasor may hereafter discover facts other than or different from those which

he, she, or it knows or believes to be true with respect to the claims which are released pursuant to the provisions of Paragraph 22 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 Sanden and Direct Purchaser Plaintiff have agreed to release pursuant to Paragraph 22, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

D. Settlement Amount.

24. Subject to the provisions hereof, and in full, complete and final settlement of the Action as provided herein, Sanden, shall pay or cause to be paid the Settlement Amount within 30 days of the Execution Date (the "Settlement Payment"). The Settlement Payment shall be paid in U.S. dollars into an escrow account to be administered in accordance with the provisions of Paragraph 25 of this Agreement (the "Escrow Account").

25. Escrow Account.

(a) The Escrow Account will be maintained at Huntington National Bank with such Bank serving as escrow agent ("Escrow Agent"). The Escrow Account shall be administered by the Escrow Agent under the Court's continuing supervision and control.

(b) 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. Sanden shall bear no risk related to the management and investment of the Settlement Fund.

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

(d) Subject to the provisions of Paragraphs 25, 27 and 29, 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 Sanden 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 Sanden if this Settlement does not become final or is rescinded or otherwise fails to become effective may be paid out of the Escrow Account without approval from the Court. No other disbursement from or distribution of the Settlement Fund shall be made without prior approval of the Court.

(e) The Escrow Account is intended by the parties hereto to be treated as a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1, and to that end the parties hereto shall cooperate with each other and shall not take a position in any filing or before any tax authority that is inconsistent with such treatment. At the request of Sanden, 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 reasonably 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 Sanden as a result of any income earned on the funds in the Escrow Account, Sanden shall be entitled to reimbursement of such payment within 10 business days of notice of payment being provided to Settlement Class Counsel from the funds in the Escrow Account whether or not final approval has occurred. Except as set forth in this Paragraph, Sanden 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 Sanden nor any Releasee nor their respective counsel shall have any liability or responsibility for the taxes or expenses incurred in connection with taxation matters.

(f) All (i) taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon Sanden or any other Releasee with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a qualified settlement fund for federal or state income tax purposes ("Taxes"); and (ii) expenses and costs incurred in connection with the operation and implementation of Paragraphs 256(c) through 256(f) (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in Paragraph 256**Error! Reference source not found.** ("Tax Expenses")), shall be paid out of the Settlement Fund.

(g) If this Agreement does not receive final Court approval, including final approval of the Settlement Class as defined in Paragraph 13, or if the Action is not certified as a class action for settlement purposes, then all amounts paid by Sanden into the Settlement Fund (other than costs expended or incurred in accordance with Paragraphs 25 and 27), shall be

returned to Sanden from the Escrow Account by the Escrow Agent, along with any interest accrued thereon, within thirty (30) calendar days of the court's final determination denying final approval of the Agreement and/or Settlement Class.

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

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

(b) Sanden or Settlement Class Counsel may dispute an exclusion request, and the parties shall, if possible, resolve the disputed exclusion request by agreement and shall

inform the Court of their position, and, if necessary, obtain a ruling thereon within thirty (30) days of the Opt-Out Deadline.

27. Payment of Expenses.

(a) Sanden agrees to permit \$100,000 of the Settlement Fund to be used towards notice to the Settlement Class and the costs of administration of the Settlement Fund. The notice and administration expenses are not recoverable 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 27 and Paragraph 25, Sanden 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, expenses associated with class notice, or for class administration and costs.

(b) 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.

E. The Settlement Fund.

28. After this Agreement becomes final within the meaning of Paragraph 20, the Settlement Fund shall be distributed in accordance with a plan to be submitted to the Court at the appropriate time by Settlement Class Counsel, subject to approval by the Court. In no event shall any Releasee have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution, or administration of the Settlement Fund, including, but

not limited to, the costs and expenses of such distribution and administration except as expressly otherwise provided in Paragraphs 25 and 27 of this Agreement.

29. 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. Sanden and the other Releasees shall not be liable for any costs, fees, or expenses of any of Direct Purchaser Plaintiff's or the Settlement Class's respective attorneys, experts, advisors, agents, or representatives, but all such costs, fees, and expenses as approved by the Court shall be paid out of the Settlement Fund.

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

30. Subject to Court approval, Direct Purchaser Plaintiff and Settlement Class Counsel shall be reimbursed and paid solely out of the Settlement Fund for all expenses including, but not limited to, attorneys' fees and past, current, or future litigation expenses and incentive awards. Attorneys' fees and expenses awarded by the Court shall be payable from the Settlement Fund upon award, notwithstanding the existence of any timely filed objections thereto, or potential appeal therefrom, or collateral attack on the settlement or any part thereof, subject to Settlement Class Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund with interest, if and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the fee or award of expenses is reduced or reversed, or in the event the Agreement is rescinded or terminated pursuant to Paragraph 46.

31. The procedure for and the allowance or disallowance by the Court of the application by Settlement Class Counsel for attorneys' fees, costs, and expenses, and an incentive award for the class representative to be paid out of the Settlement Fund is not part of this Agreement, and is to be considered by the Court separately from the Court's consideration of

the fairness, reasonableness and adequacy of the settlement. Any order or proceeding relating to the Fee and Expense Application, or any appeal from any such order shall not operate to terminate or cancel this Agreement or affect the finality of the final approval of the settlement.

32. Neither Sanden 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 in the Action.

33. Neither Sanden nor any other Releasee under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to the allocation among Settlement Class Counsel, Direct Purchaser Plaintiff and/or any other person who may assert some claim thereto, of any Fee and Expense Award that the Court may make in the Action.

G. Cooperation.

34. In return for the release and discharge provided herein, Sanden agrees to pay the Settlement Amount, and further agrees to use its reasonable best efforts to provide satisfactory and timely Cooperation, as set forth specifically in this Section G. Cooperation will take place consistent with the timing set forth specifically below.

35. Sanden will not be required to provide Documents or information protected by the attorney-client privilege, the attorney work product doctrine, the common interest doctrine, any applicable privilege under foreign law, or whose disclosure is prohibited by court order or any foreign or domestic law. Upon reasonable written request, for all Documents withheld from production, Sanden 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.

36. In the event that Sanden produces Documents, including translations, or provides declarations or written responses to discovery to any party or nonparty in the Action in the MDL

Litigation, concerning or relating to the Action (“Relevant Production”), Sanden shall produce all such Documents, declarations or written discovery responses to Direct Purchaser Plaintiff contemporaneously with making the Relevant Production to the extent such Documents, declarations or written discovery responses have not previously been produced by Sanden to Direct Purchaser Plaintiff. In addition, Sanden shall provide Direct Purchaser Plaintiff with all cooperation it provides pursuant to any settlement agreement with any other party in this MDL Litigation. 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 37, 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 one (1) hour at any interview or deposition (provided that this shall not expand the time permitted for any interview or deposition). All such additional Cooperation shall be coordinated, to the extent reasonably practicable, between Settlement Class Counsel, settlement class counsel for Automobile Dealer Plaintiffs (“Auto Dealer Settlement Class Counsel”), and settlement class counsel for the End Payor Plaintiffs (“End Payor Settlement Class Counsel”), or such other party to whom such cooperation is provided pursuant to a settlement agreement. Direct Purchaser Plaintiff’s receipt of, or participation in, cooperation provided by Sanden will not in any way change the scope of Sanden’s Cooperation obligations as set forth in this Section G, including, but not limited to, attorney proffers, witness interviews, and depositions.

37. 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 cross-notice, attend and/or participate in any depositions of Sanden’s witnesses, and Settlement Class Counsel together with Auto Dealer and End Payer Settlement Class Counsel

may ask questions for a combined total of three (3) hours at such deposition, provided that the time for participation of Settlement Class Counsel and settlement class counsel for the Auto Dealer Plaintiffs and the End Payer Plaintiffs 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 Sanden current or former employee. Direct Purchaser Plaintiff and Settlement Class Counsel agree to use their best efforts to ensure that any depositions taken are coordinated with any other deposition noticed in the MDL Litigation to avoid unnecessary duplication.

38. Sanden shall provide the following additional Cooperation set forth in Paragraphs 39-40 below. However, if Direct Purchaser Plaintiff reaches settlement agreements with all Defendants in the Action prior to the deadline to complete additional Cooperation as set forth in Paragraphs 39 and 40 below, Sanden will not be obligated to complete said additional Cooperation. Notwithstanding the foregoing, Sanden will only be required to complete said additional Cooperation if Direct Purchaser Plaintiff initiates, continues, or resumes active litigation against a Defendant in the Air Conditioning Systems Action for any reason, unless Direct Purchaser Plaintiff initiates or resumes active litigation against Sanden. The parties will subsequently meet and confer in good faith regarding any extensions concerning the timing of the completion of such additional Cooperation.

39. Identity of Individuals. Within ten (10) business days of a written request from Direct Purchaser Plaintiff, Counsel for Sanden shall provide Settlement Class Counsel with the identity of all current and former employees, directors and officers of Sanden who: (1) were interviewed and/or prosecuted by any Government Entity (defined as the United States Department of Justice ("DOJ"), Japan Fair Trade Commission ("JFTC"), European Commission

("EC"), the Canadian Competition Bureau ("CCB") and/or any other government entity) in connection with alleged price-fixing, bid rigging and market allocation of Air Conditioning Systems; (2) appeared before the grand jury in the DOJ's investigation into alleged antitrust violations with respect to Air Conditioning Systems; and/or (3) were disclosed to the DOJ as having knowledge or information relating to the DOJ's investigation into alleged antitrust violations with respect to Air Conditioning Systems. Notwithstanding the foregoing, Sanden is not required to identify or provide to Settlement Class Counsel a list of all persons whose names happen to appear in business documents produced to DOJ.

40. Attorney Proffers. Sanden shall use its reasonable best efforts to cooperate with Settlement Class Counsel.

(a) Upon receipt of Settlement Class Counsel's written request, Sanden's counsel will make themselves available at 303 Colorado Street, Suite 2300, Austin, Texas 78701 for a one-day meeting to provide a proffer of facts known to them. Thereafter, Sanden's counsel will make themselves available for reasonable follow-up conversations in connection with the proffer, and will use reasonable best efforts to respond to questions posed by Settlement Class Counsel.

(b) In addition to its Cooperation obligations set forth herein, Sanden agrees to produce through affidavit(s), declaration(s) and/or at trial, in Settlement Class Counsel's discretion, representatives qualified to authenticate, establish as business records, or otherwise establish any other necessary foundation for admission into evidence of any Documents or transactional data produced or to be produced by Sanden. Settlement Class Counsel agree to use their best efforts to obtain stipulations that would avoid the need to call Sanden witnesses at trial for the purpose of obtaining such evidentiary foundations.

41. Sanden's obligations to provide Cooperation shall not be affected by the releases set forth in this Settlement Agreement. Unless this Agreement is rescinded, disapproved, or otherwise fails to take effect, Sanden's obligations to provide Cooperation under this Agreement shall continue only until the later of the entry of the final judgment or judgments with respect to all remaining Defendants in the Action or dismissal with prejudice of those Defendants and when such judgments or dismissals become "final" as described in Paragraph 20.

42. 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 13, 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 Sanden, at any hearing or trial, or in support of any motion, opposition or other pleading in the Action or in any other federal or state or foreign action alleging a violation of any law relating to the subject matter of the Action, any Documents provided by Sanden and/or the other Releasees, their counsel, or any individual made available by Sanden 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 Sanden that Settlement Class Counsel participate in as part of the MDL Litigation. Notwithstanding anything contained herein, Direct Purchaser Plaintiff and the Settlement Class are not relinquishing any rights to pursue discovery against Sanden 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 13, or in the event that it is terminated by either party under any provision herein.

43. Sanden and other Releasees need not respond to formal discovery requests from Direct Purchaser Plaintiff or otherwise participate in the Action during the pendency of this

Agreement, with the exception of the Cooperation provisions set forth in this Section G. Other than to enforce the terms of this Agreement, neither Sanden nor Direct Purchaser Plaintiff shall file motions against the other, in the Action, during the pendency of this Agreement.

44. If Settlement Class Counsel believe that Sanden or any current or former employee, officer or director of Sanden has failed to cooperate 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 Sanden's ability to defend the level of Cooperation it has provided or to defend its compliance with the terms of the Cooperation provisions in this Agreement.

45. Any Cooperation Materials provided by Sanden are governed by the Protective Order entered in or governing the Action (e.g., *Wire Harness Systems*, No. 12-md-02311 (E.D. Mich. Jul. 7, 2012 ECF No. 200), including the limitation contained in the Protective Order on the uses to which information may be put and the persons to whom disclosure may be made, and may be designated "Confidential" or "Highly Confidential" as provided in the Protective Order. Direct Purchaser Plaintiff further agrees that, within sixty (60) days of (i) this Agreement either being rescinded, disapproved, terminated, or otherwise failing to take effect, or (ii) final judgments or dismissals with prejudice having been entered by the Court against all Defendants in the Action, and such judgments or dismissals having become "final" as described in Paragraph 20, unless otherwise agreed by Sanden, Direct Purchaser Plaintiff must return or destroy all Cooperation Materials received from Sanden.

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

46. 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 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 20 of this Agreement, or if the Court enters the final judgment and appellate review is sought, and on such review, such final judgment is not affirmed in its entirety, then Sanden and Direct Purchaser Plaintiff shall each, in their sole discretion, have the option to rescind this Agreement in its entirety. The provisions of Paragraphs 25 and 27 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 58. 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.

47. In the event that this Agreement does not become final as set forth in Paragraph 20, or this Agreement otherwise is terminated pursuant to Paragraph 46, then this Agreement will 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) must be returned forthwith to Sanden less only disbursements made in accordance with Paragraphs 25 and 27 of this Agreement. Sanden expressly reserves all rights and defenses if this Agreement does not become final.

48. Further, and in any event, Direct Purchaser Plaintiff and Sanden agree that this Agreement, whether or not it will become final, and any and all negotiations, Documents, and discussions associated with it, will 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 Sanden, or the other Releasees, to be used against Sanden, or of (ii) the truth of any of the claims or allegations contained in the Complaint or any other pleading filed in the MDL Litigation, to be used against Sanden, 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 Sanden. Nothing in this

Paragraph will prevent Direct Purchaser Plaintiff from using Cooperation Materials produced by Sanden against any other defendants in any action in the MDL Litigation to establish (i) or (ii) above.

49. This Agreement shall be construed and interpreted to effectuate the intent of the parties, which is to provide, through this Agreement, for a complete resolution of the relevant claims with respect to each Releasee as provided in this Agreement.

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

I. Miscellaneous.

51. Sanden 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.

52. 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 Sanden. 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 Sanden and the other Releasees, for sales made by Sanden and Sanden's alleged illegal conduct are specifically reserved by Direct Purchaser Plaintiff and Settlement Class Members. Sanden's sales to the class and its alleged illegal conduct shall, to the extent permitted or authorized by law, remain in the Action as a 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 Sanden and the other Releasees. Sanden shall not be responsible for any payment to Direct Purchaser Plaintiff other than the amount specifically agreed to in Paragraph 12 of this Agreement.

53. The United States District Court for the Eastern District of Michigan shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of this Agreement that cannot be resolved by negotiation and agreement by Direct Purchaser Plaintiff and Sanden, including challenges to the reasonableness of any party's actions. This Agreement shall be governed by and interpreted according to the substantive laws of the state of Michigan without regard to its choice of law or conflict of laws principles. Sanden will not object to complying with any of the provisions outlined in this Agreement on the basis of jurisdiction.

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

55. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Direct Purchaser Plaintiff and Sanden. 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 Sanden entities which are

parties hereto) are third-party beneficiaries of this Agreement and are authorized to enforce its terms applicable to them.

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

57. Neither Direct Purchaser Plaintiff nor Sanden 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.

58. 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.

59. 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.

[signature pages follow]

Dated: July 9, 2019

William E. Hoese


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