

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

IN RE AUTOMOTIVE PARTS ANTITRUST
LITIGATION

CASE NO. 12-MD-02311

HON. MARIANNE O. BATTANI

In Re: HEATER CONTROL PANELS CASES

THIS RELATES TO:

ALL DIRECT PURCHASER ACTIONS

2:12-cv-00401-MOB-MKM

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement” or “Settlement”) is made and entered into this 13th day of December 2016 (“Execution Date”) by and between Sumitomo Electric Industries, Ltd., Sumitomo Wiring Systems, Ltd. and Sumitomo Electric Wiring Systems, Inc. (“SEWS”), (collectively, “Sumitomo”), and Direct Purchaser Plaintiffs, both individually and on behalf of a class of direct purchasers of Heater Control Panels (the “Settlement Class”), as more particularly defined in Paragraph 8 below.

WHEREAS, Direct Purchaser Plaintiffs are prosecuting the above *In Re Automotive Parts Antitrust Litigation*, Master File No. 12-md-02311 (E.D. Mich.) (the “MDL Litigation”), *Heater Control Panels Cases*, Case No. 12- cv-00401 (the “Action”) on their own behalf and on behalf of the Settlement Class against, among others, Sumitomo;

WHEREAS, Direct Purchaser Plaintiffs allege that they were injured as a result of Sumitomo’s participation in an unlawful conspiracy to raise, fix, maintain, and/or stabilize

prices, rig bids, allocate markets and customers for Heater Control Panels (as defined below) in violation of Section 1 of the Sherman Act, as set forth in Direct Purchaser Plaintiffs' Amended Class Action Complaint (2:12-cv-00401, Doc. No. 45) (the "Complaint");

WHEREAS, Sumitomo denies Direct Purchaser Plaintiffs' allegations and has asserted defenses to Direct Purchaser Plaintiffs' claims;

WHEREAS, arm's-length settlement negotiations have taken place between Settlement Class Counsel (as defined below) and counsel for Sumitomo, 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 Sumitomo, according to the terms set forth below, is in the best interest of the 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 Sumitomo has agreed to provide pursuant to this Agreement;

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

WHEREAS, Sumitomo, 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 Sumitomo with respect to Heater Control Panels based on the allegations in the Action, as more particularly set out below;

WHEREAS, Sumitomo has provided cooperation to Direct Purchaser Plaintiffs throughout the Action pursuant to the Antitrust Criminal Penalty Enhancement and Reform Act (“ACPERA”) and Sumitomo has agreed to continue providing Cooperation to Direct Purchaser Plaintiffs in the ongoing prosecution of the Action as set forth in this Agreement, and such Cooperation has reduced, and will continue to reduce, Direct Purchaser Plaintiffs’ substantial burden and expense associated with prosecuting the Action; and

WHEREAS, Direct Purchaser Plaintiffs recognize the benefits of Sumitomo’s Cooperation and recognize that because of joint and several liability, this Agreement with Sumitomo does not impair Direct Purchaser Plaintiffs’ ability to collect the full amount of damages to which they and the Settlement Class may be entitled in the Action:

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, and intending to be legally bound, 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 Sumitomo, subject to the approval of the Court, on the following terms and conditions:

A. Definitions.

1. “Cooperation” refers to those provisions set forth below in Paragraphs 30-37.
2. “Cooperation Materials” means any information, testimony, Documents (as defined below) or other material provided by Sumitomo under the terms of this Agreement.
3. “Defendant” means, for purposes of this Settlement Agreement only, any one or more of the following: Denso Corporation; Denso International America, Inc.; Sumitomo Electric Industries, Ltd.; Sumitomo Wiring Systems, Ltd.; Sumitomo Electric Wiring Systems,

Inc.; Tokai Rika Co., Ltd.; and TRAM, Inc.

4. “Direct Purchaser Plaintiffs” means those Settlement Class Members, as defined in Paragraph 8, below, who are named plaintiffs in the Complaint.

5. “Document” is defined to be synonymous in meaning and equal in scope to the usage of this term in Rule 34(a) of the Federal Rules of Civil Procedure, including without limitation, electronically stored information. A draft or non-identical copy is a separate document within the meaning of this term. For purposes of this Agreement, Document shall include all English translations in Sumitomo’s custody, possession or control.

6. “Releasees” shall refer to Sumitomo and to all of its past and present, direct and indirect, parents, subsidiaries, and affiliates, including but not limited to the predecessors, successors and assigns of each of the above; and each and all of the present and former principals, partners, officers, directors, supervisors, employees, agents, members, representatives, insurers, attorneys, heirs, executors, administrators and assigns of each of the foregoing. “Releasees” does not include any defendant in the MDL Litigation other than Sumitomo.

7. “Releasers” shall refer to Direct Purchaser Plaintiffs and the Settlement Class Members, and to their past and present, direct and indirect, parents, subsidiaries, and affiliates, including but not limited to the predecessors, successors and assigns of each of the above; and each and all of the present and former principals, partners, officers, directors, supervisors, employees, agents, members, representatives, insurers, attorneys, heirs, executors, administrators and assigns of each of the foregoing.

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

All individuals and entities (excluding Defendants and their present and former parents, subsidiaries, and affiliates) that

purchased Heater Control Panels in the United States directly from one or more Defendants, any current or former subsidiary of any Defendant, or any alleged co-conspirators of the Defendants from January 1, 2000 through the Execution Date of this Agreement (the "Class Period").

9. "Settlement Class Counsel" shall refer to the following law firms: Freed Kanner London & Millen LLC, 2201 Waukegan Road, Suite 130, Bannockburn, IL 60015; Kohn, Swift & Graf, P.C., One South Broad Street, Suite 2100, Philadelphia, PA 19107; Preti, Flaherty, Beliveau & Pachios, LLP, One City Center, Portland, ME 04101; and Spector Roseman Kodroff & Willis, P.C., 1818 Market Street, Suite 2500, Philadelphia, PA 19103.

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

11. "Settlement Amount" shall be US \$579,000 as specified in Paragraph 22.

12. "Settlement Fund" shall be the Settlement Amount plus accrued interest on said amount as set forth in Paragraph 23.

13. "Heater Control Panels" for purposes of this Settlement Agreement are also known as climate control panels as set forth in the Complaint.

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

14. Direct Purchaser Plaintiffs and Sumitomo 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. Within fifteen (15) business days after the execution of this Agreement, 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. The text of the proposed order shall be agreed upon by Direct Purchaser Plaintiffs and Sumitomo before submission of the Motion. Before submission Sumitomo shall have a reasonable opportunity to review and comment on the Motion, and Direct Purchaser Plaintiffs shall reasonably consider Sumitomo’s comments.

16. Within thirty (30) days of the Court’s order preliminarily approving this settlement, or at any other such time agreed to by the Parties, the Direct Purchaser Plaintiffs 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 Sumitomo shall have a reasonable opportunity to review and comment on the Notice Motion, and Direct Purchaser Plaintiffs shall reasonably consider Sumitomo’s comments.

17. Direct Purchaser Plaintiffs shall seek the entry of an order and final judgment, the text of which Direct Purchaser Plaintiffs and Sumitomo 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 8 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 Sumitomo, 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 administration and consummation of this Settlement, as well as over Sumitomo, for the duration of its provision of Cooperation pursuant to this Agreement, to the United States District Court for the Eastern District of Michigan;

(e) determining under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing that the judgment of dismissal as to Sumitomo 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 Sumitomo, 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 a final order certifying the Settlement Class and approving this Agreement under Federal Rule of Civil Procedure 23(e) and has entered a final judgment dismissing the Action with prejudice as to Sumitomo 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 Sumitomo described in (i) hereof has expired or, if appealed, approval of this Agreement and the final judgment as to Sumitomo have been affirmed in their entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no

longer subject to further appeal or review. It is agreed that the provisions of Rule 60 of the Federal Rules of Civil Procedure shall not be taken into account in determining the above-stated times. On the date that Direct Purchaser Plaintiffs and Sumitomo have executed this Agreement, Direct Purchaser Plaintiffs and Sumitomo shall be bound by its terms and this Agreement shall not be rescinded except in accordance with Paragraph 38 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 (including Cooperation Materials produced pursuant to Paragraphs 30-37), shall be deemed or construed to be an admission by Sumitomo, or evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by Sumitomo, or used against Sumitomo as evidence of the truth of any of the claims or allegations contained in any complaint or any other pleading filed in the MDL Litigation, and evidence thereof shall not be discoverable or used in any way, whether in the MDL Litigation, arbitration, or other proceeding, against Sumitomo. Nothing in this Paragraph shall prevent Direct Purchaser Plaintiffs from using and/or introducing into evidence Cooperation Materials produced pursuant to Paragraphs 31-32 and 33(b), against any other defendants in the MDL Litigation, 12-md-02311, to establish any of the above, subject to the terms and conditions set forth in the Protective Order in the Action. Neither this Agreement, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any other action taken to carry out this Agreement by Sumitomo, 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.

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 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) under any federal, state or local law of any jurisdiction in the United States, that Releasers, or each of them, ever had, now has, or hereafter can, shall, or may ever have, that now exist or may exist in the future, on account of, or in any way arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated claims, injuries, damages, and the consequences thereof in any way arising out of or relating in any way to any conduct prior to the Execution Date alleged in the Complaint or any act or omission of the Releasees (or any of them) alleged in the Complaint concerning price fixing, bid rigging, or market or customer allocation of Heater Control Panels including but not limited to any conduct and causes of action alleged or asserted or that could have been alleged or asserted, in any class action or other complaints filed in the Action (the "Released Claims"), provided however, that nothing herein shall release: (1) any claims based on indirect purchases of Heater Control Panels; (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 similar claim relating to Heater Control Panels;

(3) claims brought outside the United States relating to purchases of Heater Control Panels outside the United States; (4) claims brought under laws other than those of the United States relating to purchases of Heater Control Panels outside the United States; and (5) claims concerning any product other than Heater Control Panels. Releasors shall not, after the date of this Agreement, seek to establish liability against any Releasee as to, in whole or in part, any of the Released Claims unless the Agreement, for any reason, does not become final, or is rescinded or otherwise fails to become effective.

21. In addition to the provisions of Paragraph 20 of this Agreement, Releasors hereby expressly waive and release, solely with respect to the Released Claims, upon this Agreement becoming final, any and all provisions, rights, and benefits, 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 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR;

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

D. Settlement Amount.

22. Subject to the provisions hereof, and in full, complete and final settlement of the Action as provided herein, SEWS on behalf of Sumitomo, shall pay the Settlement Amount. The Settlement Amount shall be paid by wire transfer into an escrow account in United States Dollars to be administered in accordance with the provisions of Paragraph 23 of this Agreement (the "Escrow Account") within thirty (30) business days following entry of an order preliminarily approving this Agreement, or the provision of the necessary documentation and information about the Escrow Account to Sumitomo, whichever is later.

23. Escrow Account.

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

(b) All payments into the Escrow Account 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. Sumitomo 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.

(c) 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.

(d) Subject to the limitation set forth in Paragraph 25(a), reasonable disbursements for expenses associated with providing notice of the settlement to the Settlement Class, expenses for maintaining and administering the Settlement Fund, and taxes and expenses incurred in connection with taxation matters may be paid without approval from the Court and shall not be refundable to Sumitomo in the event the Agreement does not become final, or is rescinded or terminated in accordance with the provisions hereof, to the extent such expenses have actually been expended or incurred. No other disbursement from or distribution of the Settlement Fund shall be made without prior approval of the Court.

(e) The Escrow Account is intended by the parties hereto to be treated as a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1, and to that end the parties hereto shall cooperate with each other and shall not take a position in any filing or before any tax authority that is inconsistent with such treatment. At the request of Sumitomo, the parties shall take all necessary and appropriate actions to request and effectuate a “relation back election” as described in Treas. Reg. § 1.468B-1(j) so as to enable the Escrow Account to be treated as a qualified settlement fund from the earliest date possible, to the extent that such an election is necessary under applicable law. 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 Sumitomo as a result of any income earned on the funds in the Escrow Account, Sumitomo 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. Sumitomo will use reasonable efforts to resist any such assessment or payment. Except as set

forth in this Paragraph, Sumitomo 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 Sumitomo nor any Releasee nor their respective counsel shall have any liability or responsibility for the taxes or expenses incurred in connection with taxation matters.

(f) If this Agreement does not receive final Court approval, including final approval of the Settlement Class, or if the Action is not certified as a class action for settlement purposes, or if the Agreement is rescinded or otherwise fails to become effective, then all amounts paid by Sumitomo into the Settlement Fund (other than costs expended or incurred in accordance with Paragraph 23(d)), shall be returned to Sumitomo 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 or Settlement Class.

24. Exclusions.

Within ten (10) days after the end of the period to request exclusion from the Settlement Class ("Opt-Out Period"), Settlement Class Counsel will cause copies of timely requests for exclusion from the Settlement Class ("Opt-Out Plaintiffs") to be provided to counsel for Sumitomo. Sumitomo reserves all of its legal rights and defenses with respect to any and all Opt-Out Plaintiffs, including, but not limited to, any defenses relating to whether an Opt-Out Plaintiff is a direct purchaser of any allegedly price-fixed Heater Control Panels or has standing to bring any claim.

25. Payment of Settlement Expenses.

(a) Sumitomo agrees to permit use of a maximum of \$200,000¹ (which limitation is

¹ This \$200,000 total includes expenses associated with both this Agreement and for those

effective up until the date the Agreement becomes final within the meaning of Paragraph 18) of the Settlement Fund for notice to the Settlement Class and the costs of administration of the Settlement Fund as set forth in Paragraph 23(d). The notice and administration expenses (subject to the maximum set forth in this Paragraph 25) are not recoverable by Sumitomo if this Settlement does not become final or is rescinded or 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 25, and in Paragraphs 23 and 30, Sumitomo shall not be liable for any of the costs or expenses of the litigation of the Action, including attorneys' fees, fees and expenses of expert witnesses and consultants, and costs and expenses associated with discovery, motion practice, hearings before the Court or any Special Master, appeals, trials or the negotiation of other settlements, or for class administration and costs.

(b) Within ten (10) days after entry of the Preliminary Approval Order or by such later date as the Court may set for other Defendants to provide such information, Sumitomo will supply to Settlement Class Counsel, in an electronic mailing format, the names and addresses of putative Settlement Class Members to whom it has sold Heater Control Panels during the Settlement Class Period to the extent they are identifiable through reasonable efforts.

(c) If Settlement Class Counsel enter into any other settlements on behalf of a class of Direct Purchaser Plaintiffs in the Heater Control Panels litigation after the Execution Date, but before notice of this Agreement is given to the Settlement Class, Settlement Class Counsel shall use reasonable efforts, if practicable, to provide a single notice to prospective Settlement Class members of all such settlements.

incurred in connection with the Parties' concurrent settlement of the case in *Wire Harness Products*, 12-cv-00101.

E. The Settlement Fund.

26. Releasors shall look solely to the Settlement Fund for settlement and satisfaction, as provided herein, of all Released Claims against the Releasees, and shall have no other recovery against Sumitomo or any Releasee.

27. After this Agreement becomes final within the meaning of Paragraph 18, 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 23(d) and 25 of this Agreement.

28. 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 23(d) and 25. Sumitomo and the other Releasees shall not be liable for any costs, fees, or expenses of any of Direct Purchaser Plaintiffs or the Settlement Class's respective attorneys, experts, advisors, agents, or representatives, but all such costs, fees, and expenses as approved by the Court, or authorized by Paragraphs 23(d) and 25, shall be paid out of the Settlement Fund.

29. Settlement Class Counsel's Attorneys' Fees, Reimbursement of Expenses, and Incentive Awards for Class Representatives.

(a) Subject to Court approval, Direct Purchaser Plaintiffs and Settlement Class Counsel shall be reimbursed and paid solely out of the Settlement Fund for all for all past, current, or future litigation costs and expenses and any award of attorneys' fees. Incentive awards to the Direct Purchaser Plaintiffs, if approved by the Court, will also be paid solely out of

the Settlement Fund. Attorneys' fees and costs and expenses awarded by the Court shall be payable from the Settlement Fund upon award, notwithstanding the existence of any timely filed objections thereto, or potential appeal therefrom, or collateral attack on the settlement or any part thereof, subject to Settlement Class Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund with interest, if and when, as a result of any appeal or further proceedings on remand, or successful collateral attack, the fee or award of costs and expenses is reduced or reversed, or in the event the Settlement does not become final or is rescinded or otherwise or otherwise fails to become effective.

(b) 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 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 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.

(c) Neither Sumitomo nor any other Releasee under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to any payment to Settlement Class Counsel of any Fee and Expense Award in the Action.

F. Cooperation.

30. In return for the Release and Discharge provided herein, Sumitomo agrees to pay the Settlement Amount and agrees to use its best efforts to provide satisfactory and timely Cooperation, at its expense (except as provided in Paragraph 33(c)) as set forth specifically in

Paragraphs 31-37, until final judgment of all Heater Control Panels claims by Direct Purchaser Plaintiffs against each and every one of the Defendants in the Action or dismissal with prejudice of all Heater Control Panels claims by Direct Purchaser Plaintiffs against each and every one of the Defendants in the Action (“Termination Orders”), whichever is earlier.² Cooperation will take place consistent with the timing set forth specifically in Paragraphs 31-37 below, and in a manner that is in compliance with Sumitomo’s obligations to the United States Department of Justice (“DOJ”), the Japanese Fair Trade Commission, the European Commission and/or any other government entity (collectively referred to herein as “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 Sumitomo.

31. To the extent not already produced, Sumitomo shall produce to Direct Purchaser Plaintiffs:

(a) Transactional data that are kept in electronic databases and concern Sumitomo’s Heater Control Panels business units’ sales of Heater Control Panels to Original Equipment Manufacturers (“OEMs”) or other purchasers of Heater Control Panels (“Transactional Data”) from January 1, 1997 to September 15, 2017, including the following information: (1) the date for each sale; (2) the final price of each sale; (3) the purchaser to whom each sale was made; (4) the model, model year(s) and brand of car for which sale was made, as well as the country of sale of said cars; (5) the total amount of Heater Control Panels sold in each sale; (6) the location where each sale was made; (7) the Sumitomo entity which made each sale; (8) value engineering

² Sumitomo’s Cooperation obligations shall continue until the time for appeal or to seek permission to appeal from the Court’s Termination Orders has expired or, if appealed, approval of the Termination Orders have been affirmed in their entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review.

and/or other price adjustment made to the Heater Control Panels sold in each sale; (9) any ancillary costs associated with each sale such as tooling costs; (10) Sumitomo's profits, losses and margins on Heater Control Panels and other reasonably available financial information, e.g., balance sheets and ledger data; (11) data showing Sumitomo's costs to produce Heater Control Panels; (12) product description and identification information (including codes, identifiers, and/or part numbers). To the extent Sumitomo has not recorded or maintained electronic transaction data for any period between January 1, 1997 and September 15, 2017, then Sumitomo will use reasonable efforts to produce records of those sales transactions not recorded or maintained electronically in the existing electronic sales transaction databases. This request does not require Sumitomo to compile any data from any less centralized or comprehensive source including without limitation individual invoices, purchase orders, personal computers, hard copy files, servers or manufacturing facilities. However, to the extent gaps in data exist, Settlement Class Counsel and Sumitomo shall use their best efforts to reach a reasonable, narrowly-tailored agreement concerning the production of alternative sources of information in Sumitomo's control, but it is understood by the parties that such agreement shall not require Sumitomo to undertake a broad search for or review of documents and shall not require Sumitomo to expand the temporal scope of discovery to which the parties agreed in the Action. Sumitomo shall also provide reasonable assistance to Settlement Class Counsel in understanding the Transactional Data produced, including, if appropriate, a reasonable number of communications with Direct Purchaser Plaintiffs' experts and between technical personnel. Notwithstanding any other provision in this Agreement, Settlement Class Counsel agrees that it shall maintain all data that Sumitomo will produce as "Highly Confidential," as said designation is described in the Protective Order in the Action, subject to any challenge that any party may

make subject to the Protective Order and any orders of the Court.

(b) Non-privileged Documents concerning bids submitted to OEMs or other purchasers of Heater Control Panels related to the provision of Heater Control Panels, including the following information (1) the date for each bid; (2) the price submitted in each bid; (3) bids formulated but not submitted due to agreements or understandings with co-conspirators; (4) the purchaser to whom each bid was submitted; (5) the model, model year(s) and brand of car for which each bid was submitted; (6) the location where each bid was submitted; (7) the Sumitomo entity which submitted each bid; (8) the identity of any other bids submitted by competitors, including each winning bid; (9) the specifications for each bid; and (10) adjustments made to each bid as it was being formulated, to the extent that such Documents exist in the files of the 12 custodians listed at Appendix A and are dated between January 1, 1998 and October 31, 2011. Sumitomo also agrees to produce the categories of Documents described in this Paragraph for those car models that Sumitomo has identified in their responses to the Direct Purchaser Plaintiffs' Interrogatory No. 8 in this Action, to the extent that such Documents exist in the files of the 12 custodians listed at Appendix A and are dated between January 1, 1998 and December 31, 2013.

(c) Non-privileged Documents concerning Sumitomo's determinations of its prices for Heater Control Panels that it sells, including pricing policies, formulas and guidelines, including Documents concerning the relationship between prices charged or submitted to different OEMs or to the same OEM for different models, to the extent that those documents exist in the files of the 12 custodians listed at Appendix A and are dated between January 1, 1998 and October 31, 2011, or to the extent such documents have been identified in any proffers by attorneys and/or Sumitomo witnesses.

(d) Non-privileged Documents, if any, concerning Heater Control Panels that were collected and reviewed in connection with Sumitomo's internal investigation, but were not provided to or seized by Government Entities and that are relevant to the claims and allegations in the Complaint, to the extent that those documents exist in the files of the 12 custodians listed at Appendix A and are dated between January 1, 1998 and October 31, 2011, or to the extent such documents have been identified in any proffers by attorneys and/or Sumitomo witnesses.

(e) Pre-existing business Documents, if any, produced to Government Entities in response to a formal request ("Produced") as of the Execution Date of this Agreement relevant in any way, directly or indirectly, to the claims alleged in the Complaint and relating to their investigation into alleged competition violations with respect to Heater Control Panels.

Sumitomo shall not be required to disclose to Settlement Class Counsel the specific Government Entities to which documents were Produced. No Document shall be withheld under a claim of privilege if Produced to any Government Entity, unless clawed back from that Government Entity pursuant to Rule 502 or otherwise.

32. In the event that Sumitomo produces Documents or provides declarations or written responses to discovery to any opposing party in the Action or in any other Heater Control Panels action within 2:12-cv-00400 (a "Relevant Production"), Sumitomo shall produce all such Documents, declarations, or written discovery responses to Settlement Class Counsel contemporaneously with making the Relevant Production to the extent such Documents, declarations or written discovery responses have not previously been produced by Sumitomo to Settlement Class Counsel.

33. In addition, Sumitomo shall use its best efforts to cooperate with Settlement Class Counsel as set forth in Paragraphs 33(a)-(e). To the extent reasonably practicable, any witness

interview provided pursuant to the below obligations shall be coordinated with, and occur at the same time as, the witness interviews to be provided in settlements of indirect purchaser claims entered into by Sumitomo in the MDL Litigation and any related obligations that may arise from any other settlement.

(a) Upon reasonable notice after preliminary approval of this Agreement, Sumitomo shall make its best efforts (not to include actual or threatened employee disciplinary action) to make available for an interview, via videoconference or at a mutually agreed-upon location up to one (1) person who Settlement Class Counsel selects, and which may consist of a current director, officer, and/or employee of Sumitomo whom Settlement Class Counsel reasonably and in good faith believe possesses knowledge of facts or information that would reasonably assist Direct Purchaser Plaintiffs in the prosecution of the MDL Litigation. The interview shall be limited to a total of seven (7) hours over one day. To the extent that the person to be interviewed requests an interpreter, the interview shall be limited to a total of twelve (12) hours, which would occur over two (2) consecutive days, but for no more than seven (7) hours in any one day, unless otherwise agreed. Upon reasonable notice by Settlement Class Counsel, Sumitomo shall use its best efforts to make available by telephone the person who has been interviewed as set forth in this Paragraph to answer follow-up questions for a period not to exceed two (2) hours. To the extent that the person to be interviewed is not reasonably available in the United States for an interview, the interview will be conducted at a mutually agreed upon location elsewhere. For the purposes of interviews and testimony at trial provided pursuant to this Paragraph and Paragraph 33(c), the phrase “current directors, officers, and/or employees of Sumitomo” refers only to the individuals identified in Sumitomo’s Response to Direct Purchaser Plaintiffs’ Interrogatory No. 7 in this Action, to the extent those individuals are employed at the time of the

interview or trial or hearing at Sumitomo or a subsidiary or affiliate of Sumitomo.

(b) Upon reasonable notice, Sumitomo shall, at Settlement Class Counsel's request, provide a declaration or affidavit from the same person who was chosen for an interview pursuant to Paragraph 33(a), if that person has not already been deposed. If Sumitomo is unable to provide a declaration from that individual then Settlement Class Counsel may select a substitute declarant. If Settlement Class Counsel requests a declaration or affidavit, it will be provided in English or in Japanese with an acceptable English translation.

(c) Upon reasonable notice, Sumitomo shall make its best efforts to provide, for trial testimony, if necessary, up to three (3) Sumitomo persons from among the persons who have been interviewed pursuant to Paragraph 33(a) or through Sumitomo's ACPERA cooperation, which may consist of current directors, officers, and/or employees of Sumitomo whom Settlement Class Counsel, in consultation with counsel for Sumitomo, reasonably and in good faith believe possess knowledge of facts or information that would reasonably assist Direct Purchaser Plaintiffs as a trial witness in the Action. Nothing in this provision shall prevent Sumitomo from objecting to the reasonableness of the number or identity of persons selected by Settlement Class Counsel. Settlement Class Counsel shall reimburse Sumitomo for reasonable travel expenses incurred by any such person in connection with their trial testimony, but in no event shall Settlement Class Counsel be responsible for reimbursing such persons for time or services rendered.

(d) In addition to its Cooperation obligations set forth herein, Sumitomo agrees to produce through affidavit(s) or 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 of Sumitomo's

Documents and Transactional Data produced or to be produced, and to the extent possible, any Documents produced by Defendants or third-parties in this Action. Settlement Class Counsel agree to use their best efforts to obtain stipulations that would avoid the need to call Sumitomo witnesses at trial for the purpose of obtaining such evidentiary foundations.

(e) Direct Purchaser Plaintiffs and Settlement Class Counsel agree they will not use the information provided by Sumitomo or the other Releasees or their representatives under this Agreement for any purpose other than the prosecution of claims in the MDL Litigation, and will use it in the Action consistent with the Protective Order, and will not use it beyond what is reasonably necessary for the prosecution of claims in the MDL Litigation or as otherwise required by law. Pursuant to the Protective Order in the Action, Sumitomo shall have the right to designate any and all appropriate Documents and Cooperation Materials provided pursuant to this Agreement as “Highly Confidential” and the use of any such designated Documents and Cooperation Materials shall be governed by the terms of the Protective Order.

34. Sumitomo’s 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, Sumitomo’s obligations to provide Cooperation under this Agreement shall continue only until otherwise ordered by the Court, or the date that a Termination Order has been entered in the Action against all Defendants, whichever occurs earlier.

35. In the event that this Agreement fails to receive final approval by the Court as contemplated in Paragraphs 14-18 hereof, including final approval of the “Settlement Class” as defined in Paragraph 8, 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 Sumitomo, 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 any other Cooperation Materials provided by Sumitomo and/or the other Releasees, their counsel, or any individual only made available by Sumitomo pursuant to Cooperation (as opposed to information obtained in discovery or from other sources or pursuant to a court order other than a court order enforcing the Cooperation obligations). This limitation shall not apply to any discovery of Sumitomo in which Settlement Class Counsel participates in as part of MDL 2311. Notwithstanding anything contained herein, Direct Purchaser Plaintiffs and the Settlement Class are not relinquishing any rights to pursue discovery against Sumitomo in the event that this Agreement fails to receive final approval by the Court as contemplated in Paragraphs 14-18 hereof, including final approval of the "Settlement Class" as defined in Paragraph 8, or in the event that it is terminated by either party under any provision herein.

36. Sumitomo need not respond to discovery requests made pursuant to the Federal Rules of Civil Procedure from Direct Purchaser Plaintiffs or otherwise participate in the Action during the pendency of the Agreement, including responding to any document production and other discovery deadlines ordered in the *Automotive Parts Antitrust Litigation*, 12-md-02311. 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 Sumitomo nor Direct Purchaser Plaintiffs shall file motions against the other, in the Action, during the pendency of the Agreement.

37. If Settlement Class Counsel believes that Sumitomo has refused to use its best

efforts to cooperate under the terms of this Agreement, Settlement Class Counsel shall meet and confer with Sumitomo. Upon reaching an impasse in any meet and confer, Settlement Class Counsel may seek an Order from the Court compelling Sumitomo to use best efforts. Nothing in this provision shall limit in any way Sumitomo'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.

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

38. If the Court refuses to approve this Agreement or any part hereof, including if the Court does not certify a settlement class in accordance with the specific Settlement Class definition set forth in this Agreement, or if such approval is modified or set aside on appeal, or if the Court does not enter the final judgment provided for in Paragraph 17 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 Sumitomo and Direct Purchaser Plaintiffs shall each, in their sole discretion, have the option to rescind this Agreement in its entirety. The provisions of Paragraphs 23(d) and 25(a) 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 50. 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.

39. In the event that this Agreement does not become final as set forth in Paragraph 18, or this Agreement otherwise is terminated pursuant to Paragraph 38, 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 Sumitomo less only disbursements made, or the amount of obligations incurred in accordance with Paragraphs 23(d) and 25(a) of this Agreement (subject to the maximum of \$200,000 for notice and administration expenses in this Action). Sumitomo and Direct Purchaser Plaintiffs expressly reserve all their respective rights and defenses if this Agreement does not become final.

40. Further, and in any event, Direct Purchaser Plaintiffs and Sumitomo 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 Sumitomo, or the other 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 against Sumitomo, and evidence thereof shall not be discoverable or used in any way, in the MDL Litigation, against Sumitomo. Nothing in this Paragraph shall prevent Direct Purchaser Plaintiffs from using Cooperation Materials produced pursuant to Paragraphs 31-32 and 33(b), as otherwise authorized in this Agreement.

41. 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 in exchange for the payment of the Settlement Amount and Cooperation by Sumitomo.

H. Miscellaneous.

42. Sumitomo 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.

43. Sumitomo, Direct Purchaser Plaintiffs, and Settlement Class Counsel agree that absent agreement by the Parties, they will not disclose publicly or to any other person the terms of this Agreement until this Agreement is fully executed by all parties.

44. 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 Sumitomo and the other 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 Sumitomo and the other Releasees, for sales made by Sumitomo and Sumitomo's alleged illegal conduct are specifically reserved by Direct Purchaser Plaintiffs and Settlement Class Members. Sumitomo'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 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 Sumitomo and the other Releasees. Sumitomo shall not be responsible for any payment to Direct Purchaser Plaintiffs other than the Settlement Amount, and the amounts specifically agreed to in Paragraph 23(d) and 25.

45. 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 Plaintiffs and the Settlement Class, and Sumitomo, 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. Sumitomo will not object to complying with any of the provisions outlined in this Agreement on the basis of jurisdiction.

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

47. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Direct Purchaser Plaintiffs and Sumitomo. 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 Sumitomo entities which are parties hereto) are third-party beneficiaries of this Agreement and are authorized to enforce its terms applicable to them.

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

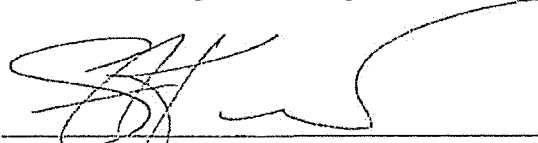
49. Neither Direct Purchaser Plaintiffs nor Sumitomo shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule

of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

50. 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.

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

Dated: December 13, 2016



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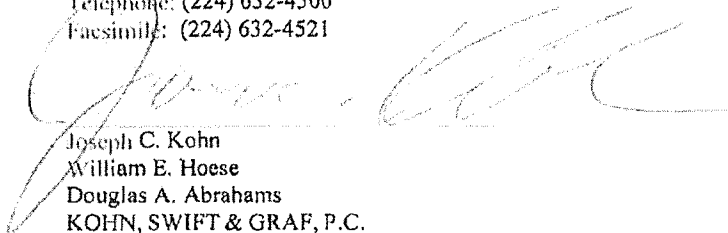
of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

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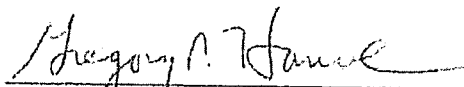
51. Each of the undersigned attorneys represents that he or she is fully authorized to enter in to the terms and conditions of, and to execute, this Agreement subject to Court approval.

Dated: December 3, 2016

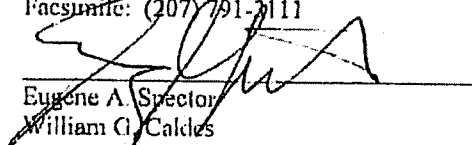
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and Sumitomo Electric Wiring Systems, Inc.,*

Appendix A

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Katsuyama, Tomofumi

Nagano, Tomoaki

Nakai, Kazuyoshi

Nakamura, Masaharu

Okuda, Shinsuke

Shida, Naoki

Shimizu, Atsushi

Shimizu, Kazushi

Suda, Masahiro

Urata, Akifumi